

## Trade & Customs - Switzerland

### Swiss sanctions against Iran

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### Introduction

The list of countries affected by international sanctions and embargoes includes Libya, Syria, North Korea and Iran; and this list is getting longer. The sanctions imposed on such countries are also gradually becoming more extensive and restrictive. At the end of December 2012, the United States and European Union tightened their sanctions against Iran with the aim of forcing it to stop its suspected nuclear weapons programme. Not only was the blacklist of Iranian companies and individuals expanded, but the list of restricted transactions was broadened. The new tighter EU and US sanctions added an outright ban on trading Iranian oil and gas and on sales of any kind of shipping equipment and steel. They also prohibit any kind of financial transactions with Iranian companies, except for those involving humanitarian goods (eg, food and medicine).

Switzerland has adopted its own sanctions against Iran by transposing into Swiss national law the United Nations' sanctions and some – but notably not all (in particular, not the most recent general ban on oil and gas trades and financial transactions) – of the further EU and US sanctions.

### Summary of sanctions

The current Swiss sanctions against Iran have three main aspects. First, Switzerland has adopted its own blacklist, distinct from the EU and US blacklists, of Iranian individuals and companies whose assets have been frozen, who have been banned from entering Switzerland and with whom any kind of business transaction is, in principle, prohibited. Second, the Swiss sanctions provide for restrictions on trade and providing services, including a ban on transactions (for instance, import, export, sale or purchase) involving, and services related to (including intermediary, brokerage and consultancy services), certain so-called 'dual-use' goods, technologies and software which have both civilian and military applications, as well as equipment used in the petrochemical industry. The products targeted by the sanctions are set out in comprehensive schedules. Third, the business activities of Swiss banks and (re-) insurance companies with Iranian individuals or entities are restricted. For instance, any money transfer over Sfr10,000 to or from an Iranian individual or company must be reported to the State Secretariat for Economic Affairs (SECO), and money transfers exceeding Sfr50,000 require prior authorisation.

Further, Swiss entities are prohibited from granting loans in relation to, and/or making certain investments in, the Iranian oil and petrochemical industry, including participating in joint ventures in this area.

However, contrary to the most recent EU and US sanctions, the Swiss sanctions do not include a general ban on oil and gas trades and related financial transactions, but merely impose a duty to report such transactions to SECO.

A breach of these sanctions may lead to imprisonment of up to one year or a monetary fine of up to Sfr500,000 (respectively five-years imprisonment and a fine up to Sfr1,000,000 in very severe cases).

### Applicability of sanctions

The Swiss sanctions are part of mandatory Swiss law and thus apply, in principle, to any contract governed by Swiss law. Even if parties agree on an applicable law other

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than Swiss law, or specifically exclude the applicability of the sanctions (or certain provisions thereof), a Swiss court or arbitral tribunal seated in Switzerland might still have to apply the Swiss sanctions. An exclusion of mandatory sanctions might also be found to be null and void on the ground that it is tantamount to an abuse of law (Article 2 of the Civil Code). In addition, a court or arbitral tribunal may even take into account mandatory provisions of other jurisdictions with a close connection to the matter before it, provided that such provisions form part of Swiss or international public policy (Articles 18 and 19 of the Private International Law Act).

However, it appears that these issues have not yet been addressed by the Swiss courts or by Swiss seated arbitral tribunals.

### Effects of sanctions

Even though embargoes are typically only temporary, there is jurisprudence from the Federal Supreme Court (see Decision 81 II 613, December 13 1985) to the effect that an embargo could constitute a possible cause for (permanent) legal impossibility pursuant to Article 20 of the Code of Obligations. For further details as to what effects the Swiss sanctions may have on contracts governed by Swiss law please see "[Impact of embargoes on construction contracts - Swiss sanctions against Iran](#)".

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