

Memorandum

U.S. Sanctions on Iran to Return: President Trump Announces Withdrawal From the Iran Nuclear Deal

May 9, 2018

In a move that will affect non-U.S. subsidiaries of U.S. companies and other non-U.S. companies that do business in and with Iran, on May 8, 2018, President Donald Trump announced his decision to terminate the participation of the United States in the Joint Comprehensive Plan of Action (the “JCPOA”). The termination of sanctions relief under the JCPOA marks a move away from the Obama-era U.S. foreign policy towards Iran and will result in the re-imposition of certain sanctions relating to Iran. In particular, President Trump’s announcement signals:

- The need to wind-down and terminate work being done by foreign subsidiaries of U.S. companies in and with Iran pursuant to authorization under General License H. The U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) issued General License H in January 2016 to allow foreign subsidiaries of U.S. companies to engage in transactions or dealings in or with Iran. Public reports indicate that foreign subsidiaries of leading American companies have entered into significant transactions to provide goods and services in Iran over the past few quarters. That work must now be wound down, with all such work scheduled to be terminated no later than November 4, 2018.
- The return of so-called “secondary sanctions” relating to Iran. Under the secondary sanctions regime, non-U.S. companies that do business with Iran or engage in business involving Iranian goods and services risk being added to OFAC’s Specially Designated Nationals and Blocked Persons (“SDN”) List, which would effectively cut them off from the U.S. financial system, or being subject to other more limited sanctions (such as being denied entry into U.S. ports, being denied loans or credit from U.S. banks, being made ineligible for U.S. government procurement, or being deprived of U.S. Export-Import Bank privileges, among others).¹

¹ Note that the precise secondary sanctions that may be imposed on the non-U.S. company differ depending on the sanctionable conduct in question. This list of possible secondary sanctions is illustrative only.

While press reports suggest that the withdrawal from the JCPOA could be a negotiating tactic by President Trump to renegotiate the Iran nuclear deal, given the logistical and legal implications of President Trump's announcement, foreign subsidiaries of U.S. companies that do business in or with Iran should begin now the process of winding down and terminating such operations. Also, other non-U.S. companies should begin now the process of ensuring compliance with Iranian secondary sanctions.

Background on the JCPOA

On January 16, 2016, the International Atomic Energy Agency ("IAEA") certified that Iran had achieved key milestones regarding its nuclear program, as set forth under the JCPOA entered among the P5+1 (the United States, China, France, Russia, the United Kingdom, and Germany), the European Union, and Iran in July 2015. This verification by the IAEA on "Implementation Day" automatically triggered the relaxation of certain sanctions against Iran by the United States, the European Union, and the United Nations. As required by the JCPOA, on Implementation Day, the United States lifted a significant number of sanctions it imposed on companies that do business with Iran, including especially (1) most secondary sanctions relating to Iran and (2) sanctions imposed on foreign subsidiaries of U.S. companies that do business in Iran. While the lifting of U.S. sanctions paved the way for non-U.S. companies to do business in Iran, U.S. companies remained subject to a near-total ban on transactions or dealings involving Iran or Iranian-origin goods and services.

President Trump's Announcement

On May 8, President Trump announced the withdrawal by the U.S. from the JCPOA and issued a National Security Presidential Memorandum ("NSPM") instructing the Secretary of State, the Secretary of the Treasury, and other leaders of key federal government departments and agencies, to take steps immediately for the re-imposition of all economic sanctions—both primary sanctions and secondary sanctions—that were removed or waived pursuant to the JCPOA.

Following the President's May 8th announcement, we will return to the *status quo ante* Implementation Day.

Wind-Down

Notwithstanding the President's announcement to withdraw from the JCPOA and the issuance of the NSPM, consistent with guidelines previously issued by OFAC, foreign subsidiaries of non-U.S. companies and other foreign companies will be allowed to wind-down and terminate their work in and with Iran without fear of

sanction. While more direction from OFAC is anticipated, OFAC's initial guidance is that there will be two wind-down periods.²

- **August 6, 2018:** The first, shorter wind-down period will end August 6, 2018. This first wind-down period is intended to allow companies to terminate activities related to certain currency-related dealings concerning Iran, trade in certain raw materials with Iran, transactions involving Iranian sovereign debt, and dealings with the Iranian automotive sector.
- **November 4, 2018:** The second, longer wind-down period will end on November 4, 2018. This second wind-down period will allow companies to terminate activities involving Iran's port, shipping, and shipbuilding sectors, petroleum-related transactions with Iran, transactions by foreign financial institutions with the Central Bank of Iran and certain designated Iranian financial institutions, the provision of underwriting services, insurance, or reinsurance involving Iran, and dealings with Iran's energy sector.

Repercussions

Sanctions Re-Imposed After the First Wind-Down Period Ending on August 6, 2018

The first wind-down period is 90 days and will end on August 6, 2018. After August 6, 2018, the U.S. government will re-impose the following secondary sanctions that were lifted pursuant to the JCPOA, including sanctions concerning associated services related to the targeted activities:

- Sanctions on the purchase or acquisition of U.S. dollar banknotes by the Government of Iran;
- Sanctions on Iran's trade in gold or precious metals;
- Sanctions on the direct or indirect sale, supply, or transfer to or from Iran of graphite, raw, or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes;
- Sanctions on significant transactions related to the purchase or sale of Iranian rials, or the maintenance of significant funds or accounts outside of Iran denominated in Iranian rials;
- Sanctions on the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt; and
- Sanctions on Iran's automotive sector.

Additionally, after August 6, 2018, the U.S. government will revoke previously-issued authorizations that allowed the importation of Iranian-origin carpets and foodstuffs to the U.S., as well as a favorable licensing

² See FAQ's 1.2 and 1.3, accessible at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_winddown_faqs.pdf.

policy related to commercial passenger aircrafts. OFAC guidance also indicates that specific licenses issued pursuant to the favorable licensing policy concerning commercial passenger aircraft will be revoked.

[Sanctions Re-Imposed After the Second Wind-Down Period Ending on November 4, 2018](#)

After November 4, 2018, the U.S. government will re-impose the following secondary sanctions that were lifted pursuant to the JCPOA, including sanctions concerning associated services related to the targeted activities:

- Sanctions on Iran's energy sector;
- Sanctions on Iran's port operators, and shipping and shipbuilding sectors, including those sanctions imposed on the Islamic Republic of Iran Shipping Lines ("IRISL"), South Shipping Line Iran, or their affiliates;
- Sanctions on the provision of underwriting services, insurance, or reinsurance;
- Sanctions on petroleum-related transactions with, among others, the National Iranian Oil Company ("NIOC"), Naftiran Intertrade Company ("NICO"), and the National Iranian Tanker Company ("NITC"), including the purchase of petroleum, petroleum products, or petrochemical products from Iran;
- Sanctions on transactions by foreign financial institutions with the Central Bank of Iran and Iranian financial institutions designated pursuant to Section 1245 of the National Defense Authorization Act ("NDAA") for Fiscal Year 2012;³ and
- Sanctions on the provision of specialized financial messaging services to the Central Bank of Iran and Iranian financial institutions described in Section 104(c)(2)(E)(ii) of the Comprehensive Iran Sanctions and Divestment Act of 2010 ("CISADA").

[Re-Naming of Iranian SDNs](#)

OFAC also indicated that no later than November 5, 2018, OFAC will move persons identified as meeting the definitions of the "Government of Iran" or an "Iranian financial institution" from the List of Persons Blocked Solely Pursuant to Executive Order 13599 (the "E.O. 13599 List") to the SDN List. Consequently,

³ The 2012 NDAA provided for the imposition of sanctions against any foreign financial institution determined to have knowingly conducted or facilitated any significant financial transaction with the Central Bank of Iran or another designated Iranian financial institution. However, the 2012 NDAA also excused from these restrictions those foreign financial institutions subject to the jurisdiction of certain foreign countries determined by the Secretary of State to have "significantly reduced their volume of crude oil purchases from Iran," and in some cases, "reduced their crude oil purchases from Iran to zero." Thus, part of the intended practical effect of the re-imposition of these provisions is to incentivize foreign countries to reduce reliance on Iranian crude oil.

beginning on November 5, 2018, activities with most persons moved from the E.O. 13599 List to the SDN List will be subject to secondary sanctions.

Revocation of General License H

In addition to the re-imposition of the foregoing secondary sanctions, effective November 5, 2018, General License H will be revoked.⁴ Consequently, U.S.-owned or -controlled foreign entities will no longer be permitted to engage in previously authorized dealings with Iran and must wind down operations or business involving Iran. Dealings with Iran by U.S.-owned or -controlled foreign entities after November 4, 2018, will potentially violate the Iranian Transactions and Sanctions Regulations (“ITSR”) and may, accordingly, be subject to enforcement actions by OFAC.

In light of the re-imposition of Iran sanctions, non-U.S. persons with Iran-related dealings should systematically identify and catalogue all Iran-related dealings, including, for example, any indirect dealings that may be carried out by subsidiaries or joint venture partners, and implement orderly controls for winding down impermissible dealings and for communicating effectively with relevant internal and external stakeholders. Once such Iran-related dealings are identified, it would be prudent to review the relevant agreements and make arrangements for termination in a timely fashion.

Securities Filings Considerations

Companies that file reports with the Securities and Exchange Commission should also note that certain dealings with Iran that were previously merely reportable, pursuant to Section 13(r) of the Securities and Exchange Act of 1934, may now be sanctionable. Additionally, many dealings that were exempt from disclosure if undertaken pursuant to General License H will now be reportable, meaning that even immaterial transactions by the foreign affiliates of public U.S. companies might need to be disclosed in those public companies’ SEC filings. Please [click here](#) to view our previous Section 13(r) memos.

⁴ OFAC guidance indicates that notice of the revocation of General License H and the issuance of a wind-down authorization will be published in the Federal Register. See FAQ 4.4, accessible at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_winddown_faqs.pdf.

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