

US Withdrawal From Iran Nuclear Deal Poses Challenges for Companies

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On May 8, 2018, President Donald Trump announced that the United States was withdrawing from its participation in the Joint Comprehensive Plan of Action (JCPOA), the agreement the P5+1 (the United States, China, France, Russia, the United Kingdom and Germany) reached with Iran in 2015 to limit Iran's nuclear activities in exchange for sanctions relief. In connection with this announcement, President Trump issued a [national security presidential memorandum](#) that instructed the Treasury and State departments to begin re-imposing the nuclear-related sanctions that were lifted on "Implementation Day" in January 2016.¹ The sanctions will be re-imposed following a 90-day wind-down period ending on August 6, 2018, or a 180-day wind-down period ending on November 4, 2018, depending on the specific sanctions. Following November 4, 2018, all U.S. nuclear-related sanctions that were lifted under the JCPOA will be re-imposed and in full effect.

As a result of the May 8, 2018, action, there will be broad changes to U.S. primary and secondary sanctions related to Iran over the next several months. From a primary sanctions perspective (*i.e.*, transactions with a U.S. nexus), the changes include the revocation of general licenses related to foreign companies owned or controlled by U.S. companies, Iranian carpets and foodstuffs, the elimination of OFAC's statement of licensing policy with respect to commercial passenger aircraft and the related general license authorizing the negotiation of contingent contracts. From a secondary sanctions perspective, the United States will re-impose all nuclear-related secondary sanctions that previously targeted broad sectors of Iran's economy, including banking, finance and insurance; energy and petrochemical; shipping, shipbuilding and ports; automotive; precious metals; and software. The United States will also resume efforts to significantly reduce Iran's exports of crude oil.

In contrast to the United States, the European Union sanctions relief extended in January 2016 remains unchanged. France, Germany and the United Kingdom have already indicated they are still committed to the agreement, despite the U.S.' withdrawal. This divergence is likely to leave many companies — particularly outside the United States — in a very challenging position.

Limited Primary Sanctions Relief Rescinded

Even under the JCPOA, the comprehensive U.S. embargo against Iran remained in place and, with very limited exceptions, U.S. persons remained prohibited from doing business with Iran or the Government of Iran. Further, U.S. export controls continued to prohibit exports, re-exports, and transfers to Iran and Iranian entities of almost all U.S.-origin goods, software and technology, as well as many foreign-produced products that contain greater than de minimis levels of U.S.-origin content. The limited activities for U.S. persons that were authorized as part of U.S. implementation of the JCPOA are now being rescinded.

Foreign Companies Owned or Controlled by US Persons

Prior to the JCPOA, foreign entities owned or controlled by U.S. persons were prohibited from engaging in any activity that would have been prohibited if engaged in by a U.S. person or in the United States. These entities were therefore effectively subject to the

¹ For more information, see our January 28, 2016, client alert "['Implementation Day': Key Aspects of US and EU Implementation of Iran Sanctions Relief.](#)"

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same restrictions as U.S. persons. Under the JCPOA, however, the United States committed to license non-U.S. entities that are owned or controlled by a U.S. person to engage in activities with Iran that are “consistent with” the agreement. In keeping with this commitment, the U.S. Treasury Department’s Office of Foreign Assets Control (OFAC) issued General License H to authorize non-U.S. entities that are owned or controlled by a U.S. person to engage in most activities with Iran that are permitted for other non-U.S. entities. OFAC has stated that it will revoke General License H and issue a revised authorization for the wind down of activities involving Iran pursuant to General License H. The wind down of those activities must be completed by November 4, 2018.

This development may impact the disclosure obligations of public companies in their filings with the U.S. Securities and Exchange Commission (SEC). Section 13(r) of the Securities Exchange Act of 1934 (Exchange Act) requires SEC-registered companies, including both U.S. issuers and foreign private issuers, to disclose certain specified activities involving Iran or other identified persons in their annual or quarterly reports filed pursuant to Section 13(a) of the Exchange Act. Such disclosable activities include any transaction or dealing that the company (or any of its affiliates) “knowingly conducted” involving parties affiliated with the Iranian government without specific authorization of a federal department or agency. However, activities covered by General License H are considered specifically authorized and therefore have been excluded from the disclosure requirements pursuant to Section 13(r)(1)(D)(iii). Absent further authorizations provided by OFAC, companies will need to consider whether such activities should be disclosed in their periodic reports once General License H is terminated.

Iranian-Origin Carpets and Foodstuffs

OFAC will amend the general licenses that allow for the import into the United States, from Iran or a third country, or other dealings involving Iranian-origin carpets and foodstuffs, including pistachios, dates and caviar, to narrow the scope of authorized activities to only wind-down activities. The wind down of those activities must be completed by August 6, 2018.

Commercial Passenger Aviation

OFAC has rescinded the Statement of Licensing Policy for Activities Related to the Export or Re-Export to Iran of Commercial Passenger Aircraft and Related Parts and Services (SLP). OFAC will no longer evaluate applications under the SLP. Furthermore, OFAC intends to revoke General License I and

the specific licenses it issued to individual companies under the SLP and issue authorizations to provide for a wind-down period ending August 6, 2018. OFAC has specified that applicants may resubmit applications for consideration under the safety of flight statement of licensing policy.

All Secondary Sanctions to Be Re-Imposed

Non-U.S. persons were the primary beneficiaries of U.S. sanctions relief under the JCPOA, as the vast majority of U.S. sanctions relief provided under the JCPOA affected secondary sanctions. The relief included the suspension of secondary sanctions on transactions by non-U.S. persons related to vast sectors of the Iranian economy and transactions involving individuals and entities that had been removed from the List of Specially Designated Nationals and Blocked Persons (SDN List). The relief also extended to the provision by non-U.S. persons of “associated services,” including technical assistance, training, insurance, reinsurance, brokering, transportation or financial services necessary and ordinarily incident to the underlying activity for which sanctions were lifted. Following President Trump’s announcement, the United States is re-imposing these secondary sanctions, with a 90-day wind-down period for certain types of sanctions and a 180-day wind-down period for the remaining sanctions.

Sanctions Re-Imposed With 90-Day Wind-Down Period

OFAC has indicated that the following sanctions lifted pursuant to the JCPOA will be re-imposed with a 90-day wind-down period that ends on August 6, 2018:

- 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 significant transactions related to the purchase or sale of Iranian rials, or the maintenance of significant funds or accounts outside the territory of Iran denominated in the Iranian rial;
- sanctions on the purchase, subscription to or facilitation of the issuance of Iranian sovereign debt;
- sanctions on the direct or indirect sale, supply, or transfer to or from Iran of graphite, raw or semifinished metals such as aluminum and steel, coal, and software for integrating industrial processes; and
- sanctions on Iran’s automotive sector.

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OFAC has advised that persons engaging in these activities pursuant to the U.S. sanctions relief provided for in the JCPOA should take the steps necessary to wind down those activities by August 6, 2018, to avoid exposure to U.S. secondary sanctions.

Sanctions Re-Imposed With 180-Day Wind-Down Period

OFAC has indicated that the remaining sanctions lifted pursuant to the JCPOA will be re-imposed with a 180-day wind-down period ending on November 4, 2018. They are:

- sanctions on Iran's port operators, and shipping and shipbuilding sectors, including on the Islamic Republic of Iran Shipping Lines, South Shipping Line Iran or their affiliates;
- sanctions on petroleum-related transactions with, among others, the National Iranian Oil Company, Naftiran Intertrade Company and National Iranian Tanker Company, 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 (CBI) and designated Iranian financial institutions under Section 1245 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA);
- sanctions on the provision of specialized financial messaging services to the CBI and Iranian financial institutions described in Section 104(c)(2)(E)(ii) of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010;
- sanctions on the provision of underwriting services, insurance or reinsurance; and
- sanctions on Iran's energy sector.

In addition, OFAC is expected to re-add hundreds of individuals and entities that were removed from the SDN List at the start of implementation of the JCPOA. A number of these are Government of Iran entities and Iranian financial institutions that were removed from the SDN List but that remained blocked under Executive Order 13599. The relocation of certain individuals and entities from the so-called E.O. 13599 List to the SDN List will not be material for U.S. persons, but it has significant implications in the context of secondary sanctions, as significant transactions with any of these individuals will now be subject to secondary sanctions.

As with the sanctions that will be re-imposed with a 90-day wind-down period, OFAC has advised that persons engaging in the activities for which sanctions will again apply following the 180-day wind-down period should take the steps necessary to wind down those activities by November 4, 2018, to avoid exposure to U.S. secondary sanctions.

Efforts to Reduce Iran's Petroleum Sales

An exception from certain NDAA secondary sanctions is available to countries that achieve a significant reduction in the volume of their crude oil purchases from Iran. Specifically, the NDAA provides that if a country importing Iranian crude oil "significantly reduced" its imports of such products, the secretary of state may grant a waiver to foreign financial institutions in that country with respect to certain transactions with the CBI and certain petroleum purchase transactions.

Sanctions mandating restrictions on the uses of CBI funds and funds received by Iran for petroleum sales are expected to be reinstated. These sanctions — imposed by Section 504 of the Iran Threat Reduction and Syria Human Rights Act of 2012 — narrowed the NDAA's significant reduction exception applicable to foreign financial institutions to (i) exempt from the secondary sanctions applicable to transactions involving the CBI and Iranian petroleum funds only transactions that conduct or facilitate bilateral trade in goods or services between the country granted the exception and Iran, and (ii) require that any funds owed to Iran as a result of the bilateral trade be credited to an account located in that country. The funds could not be repatriated to Iran and could not be moved to accounts in other countries.

The secretary of state must renew the waiver every 180 days. OFAC's guidance indicates that countries seeking a significant reduction exception under the NDAA should begin to reduce their volume of crude oil purchases from Iran during the 180-day wind-down period. The State Department has said it expects to engage in dialogue with countries currently purchasing Iranian oil during the wind-down period.

Guidance on Permitted Wind-Down Activities

OFAC has provided some clarification in its guidance regarding the scope of permitted wind-down activities for those categories of business that will again become sanctionable as a result of the announced "snap back."

OFAC has stated that the provision or delivery of goods or services to an Iranian counterparty after August 6, 2018, or November 4, 2018, as applicable, including pursuant to written contracts or written agreements entered into prior to May 8, 2018, may result in the imposition of U.S. secondary sanctions unless such activities are exempt from regulation, authorized by OFAC or otherwise not sanctionable. However, in the event that a non-U.S., non-Iranian person is owed payment after the conclusion of the applicable wind-down period, for goods or services fully provided or delivered to an Iranian counterparty prior to August 6, 2018,

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or November 4, 2018, as applicable, the U.S. government would allow the non-U.S., non-Iranian person to receive payment for those goods or services according to the terms of the written contract or written agreement. In each instance, the activities must be consistent with U.S. sanctions in effect at the time of delivery or provision of the goods or services and must be pursuant to a written contract or written agreement entered into prior to May 8, 2018.

Similarly, OFAC has indicated that if a non-U.S., non-Iranian person is owed repayment after August 6, 2018, or November 4, 2018, as applicable, for loans or credits extended to an Iranian counterparty prior to the applicable wind-down date, pursuant to a written contract or written agreement entered into prior to May 8, 2018 — and such activities were consistent with U.S. sanctions in effect at the time the loans or credits were extended — the U.S. government would allow the non-U.S., non-Iranian person to receive repayment according to the terms of the written contract or written agreement.

OFAC has emphasized that any payments would need to be consistent with U.S. sanctions, including that payments could not involve U.S. persons or the U.S. financial system, unless the transactions are exempt from regulation or authorized by OFAC.

With respect to U.S. persons and U.S.-owned or -controlled foreign entities, OFAC has indicated that it intends to replace General License H, General License I and the general licenses set forth at 31 C.F.R. §§ 560.534 and 560.535 (relating to trade in Iranian-origin carpets and foodstuffs) with narrower authorizations. These new authorizations would be intended to allow all transactions ordinarily incident and necessary to wind down activities that were previously authorized pursuant to these respective authorizations and to receive payments according to the terms of the written contract or written agreement entered into prior to May 8, 2018, for goods or services fully provided or delivered pursuant to an OFAC authorization. OFAC has

not provided any indication that U.S. persons or U.S.-owned or -controlled foreign entities will be allowed to receive payments owed to them after the completion of the wind-down period.

OFAC has not clearly articulated its position regarding new contracts that are both entered into and completed during the applicable wind-down period. While it raised this question in its guidance, it only answered the question by discussing new business that continues beyond the termination of the wind-down period. To that end, OFAC has stated that when considering a potential enforcement or sanctions action with respect to activities engaged in after August 6, 2018, or November 4, 2018, as applicable, OFAC will evaluate efforts and steps taken to wind down activities and will assess whether any new business was entered into involving Iran during the applicable wind-down period.

Looking Ahead

It remains to be seen how the other parties to the JCPOA will respond to President Trump's action. The United States withdrew from the JCPOA unilaterally, and as noted above, France, Germany and the United Kingdom have already indicated they are still committed to the agreement. Iranian President Hassan Rouhani has indicated that he would like to negotiate with the remaining P5+1 powers to preserve the deal. European officials are planning to meet on May 17, 2018, and are reportedly considering extending the application of the so-called blocking statute to prohibit EU companies from complying with re-instated U.S. secondary sanctions. If European or other parties to the JCPOA decide to proceed with the agreement without the United States or countries adopt measures in an effort to counter the impact of U.S. secondary sanctions, many non-U.S. companies and financial institutions will be in a difficult position. Financial institutions and other companies will need to pay careful attention to potentially changing and conflicting legal requirements. In addition, both U.S. persons and non-U.S. persons should stay tuned as OFAC adopts new regulations and issues new guidance pursuant to President Trump's announcement.

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