

US Implements First Round of Iran Sanctions ‘Snap Back’

Skadden

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On August 6, 2018, President Donald Trump issued Executive Order 13846 to reimpose certain nuclear-related sanctions against Iran that had previously been suspended in January 2016 in connection with the United States’ implementation of the Joint Comprehensive Plan of Action (JCPOA). The issuance of the executive order and related guidance coincided with the final day of the first of two “wind-down” periods following President Trump’s May 8, 2018, announcement that the United States was withdrawing from its participation in the JCPOA, which we discussed in a [client alert on May 14, 2018](#). On August 7, 2018, the first tranche of sanctions “snap back” went into effect. The remaining nuclear-related sanctions to be reimposed will snap back on November 5, 2018.

Certain Secondary Sanctions Fully Reimposed

In connection with the May 8, 2018, withdrawal from the JCPOA, President Trump directed the State and Treasury departments to “snap back” the secondary sanctions suspended under the JCPOA. “Secondary sanctions” are a set of measures that target foreign banks and other foreign companies that engage in certain activities involving Iran (see client alerts from [May 14, 2018](#), and [January 28, 2016](#)). Persons engaged in sanctionable activities were allowed to wind down existing business with Iran by August 6, 2018 (90 days), or November 4, 2018 (180 days), depending on the sanctions. The end of the 90-day wind-down period on August 6, 2018, and the issuance of Executive Order 13846 resulted in the full reimposition of the first tranche of secondary sanctions.

The secondary sanctions fully reimposed on August 7, 2018, are on:

- the purchase or acquisition of U.S. dollar banknotes by the government of Iran;
- Iran’s trade in gold or precious metals;
- the direct or indirect sale, supply, or transfer to or from Iran of certain materials, such as graphite, raw, or semifinished metals and software for integrating industrial processes;
- significant transactions related to the purchase or sale of Iranian rials or a derivative whose value is based on the exchange rate of the Iranian rial or the maintenance of significant funds or accounts outside the territory of Iran denominated in the Iranian rial;
- the purchase, subscription to or facilitation of the issuance of Iranian sovereign debt; and
- the sale, supply, or transfer to Iran of significant goods or services used in connection with Iran’s “automotive sector” which, consistent with pre-JCPOA sanctions, is defined in Executive Order 13846 as “the manufacturing or assembly in Iran of light and heavy vehicles including passenger cars, trucks, buses, minibuses, pick-up trucks, and motorcycles, as well as original equipment manufacturing and after-market parts relating to such vehicles.” While the export of finished vehicles to Iran is not subject to secondary sanctions, the export of auto kits for assembly in Iran is captured by this definition. Additionally, goods or services exported to Iran for the maintenance of finished vehicles would not be considered sanctionable.

The consequences for non-U.S. persons engaging in activities subject to secondary sanctions vary depending on the underlying authority. Certain secondary sanctions authorize the president to select from a menu of sanctions, while other secondary sanctions require the imposition of blocking sanctions. Additionally, foreign financial institutions may be prohibited from opening or maintaining correspondent or payable-through accounts, or may face strict conditions in maintaining such accounts at U.S. financial institutions, curtailing their access to the U.S. financial system.

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Four Times Square
New York, NY 10036
212.735.3000

1440 New York Ave., N.W.
Washington, D.C. 20005
202.371.7000

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Wind-Down Authorizations Related to Certain Primary Sanctions Expire

Even under the JCPOA, the comprehensive U.S. embargo against Iran remained in place and, with very few 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.

Certain limited activities for U.S. persons were, however, authorized as part of the implementation of the JCPOA. Specifically, U.S. persons were allowed to import and engage in certain other dealings involving Iranian-origin carpets and foodstuff and to negotiate and enter into contingent contracts for activities eligible for authorization under the now-revoked “Statement of Licensing Policy for Activities Related to the Export or Re-Export to Iran of Commercial Passenger Aircraft and Related Parts and Services” (the SLP).¹ Although U.S. persons were authorized to wind down these activities through August 6, 2018, pursuant to the general licenses issued by the Office of Foreign Assets Control (OFAC) on June 27, 2018, both new and wind-down activities are now generally prohibited.

New Guidance on Wind-Down Activities

Timed with the end of the 90-day wind-down period, OFAC provided additional guidance on the scope of permitted wind-down activities and the circumstances under which payments can be received after the end of the wind-down periods.

First, OFAC provided additional clarification on sanctionable and nonsanctionable new business during wind-down. Specifically, OFAC said it would not consider new business sanctionable if a person entered into a new contract or business that is in furtherance of a written contract or written agreement entered into prior to May 8, 2018, and that is necessary and ordinarily incident to the wind-down of activities under the pre-May 8, 2018, written contract or written agreement.

Second, OFAC previously advised that non-U.S. persons that are owed payments after the conclusion of the applicable wind-down period for goods and services fully delivered to an Iranian counterparty — or for loans or credits extended to an Iranian counterparty — prior to the expiration of the relevant wind-down period and pursuant to a written agreement entered into prior to

May 8, 2018, would be permitted to receive payments according to the terms of the agreement, as long as the relevant activities were consistent with U.S. sanctions in effect at the time. OFAC has now further clarified that it will generally consider goods or services to be “fully provided or delivered” when the party providing or delivering the goods or services has performed all the actions and satisfied all the obligations necessary to be eligible for payment. For goods exported to or from Iran, at a minimum, the title must be transferred to the relevant party.

However, OFAC also clarified that the wind-down authorizations only permit U.S. persons and U.S.-owned or -controlled foreign entities to receive payments for activities conducted pursuant to the wind-down authorizations during the relevant wind-down period. Therefore, U.S. persons and U.S.-owned or -controlled foreign entities would require a specific license from OFAC to receive any payment following the end of the relevant wind-down period for activities conducted during that period.

Finally, OFAC confirmed that the pre-JCPOA secondary sanctions exceptions related to the sale of agricultural commodities, food, medicine or medical devices to Iran generally remain nonsanctionable activities. However, such transactions could still be sanctionable to the extent they involved those on the List of Specially Designated Nationals and Blocked Persons (SDN List), including designated Iranian financial institutions or the Islamic Revolutionary Guard Corps, or otherwise sanctionable conduct.

Looking Ahead

The second — and broader — tranche of sanctions will be fully reimposed on November 5, 2018, and include sanctions on:

- transactions by foreign financial institutions with the Central Bank of Iran and designated Iranian financial institutions;
- Iran’s energy sector, including on the purchase, acquisition, sale, transport or marketing of petroleum, petroleum products and petrochemical products from Iran;
- transactions with the National Iranian Oil Company, Naftiran Intertrade Company and National Iranian Tanker Company;
- 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;
- the provision of specialized financial messaging services to the Central Bank of Iran and Iranian financial institutions; and
- the provision of underwriting services, insurance or reinsurance to Iran’s shipping, ports and petroleum sectors and certain other sanctionable activities.

¹ In lieu of the SLP, OFAC will still consider license applications under the safety-of-flight statement of licensing policy.

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An exception from certain secondary sanctions is available to countries that achieve a significant reduction in the volume of their crude oil purchases from Iran. Specifically, if a country importing Iranian crude oil is determined to have “significantly reduced” its imports of such products, the U.S. secretary of state may grant a waiver to foreign financial institutions in that country with respect to certain transactions with the Central Bank of Iran and certain petroleum purchase transactions. The U.S. State Department has been engaging in dialogue with countries that purchase Iranian oil. However, it remains to be seen if, when and to which countries the secretary of state will grant such waivers. Thus, the full impact of the November 5, 2018, sanctions remains uncertain.

On or after November 5, 2018, OFAC is also 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. Significant transactions with any of these individuals will again be subject to secondary sanctions.

Finally, as of November 5, 2018, the wind-down period for certain activities authorized for U.S.-owned or -controlled foreign entities will end. At that point, such entities will be unable to engage in any further wind-down activities and will be prohibited from knowingly engaging in any transaction involving Iran that would otherwise be prohibited if the transaction were engaged in by a U.S. person. As was the case prior to the JCPOA, any exception or license that permits U.S. persons to engage in an activity would similarly permit U.S.-owned or -controlled foreign entities to engage in that activity.

As with the sanctions that were reimposed on August 7, 2018, persons engaging in the activities for which sanctions will again apply should continue to take the necessary steps to wind down those activities by November 4, 2018, to avoid exposure to U.S. sanctions.

Contacts

Jamie L. Boucher

Partner / Washington, D.C.
202.371.7369
jamie.boucher@skadden.com

Pamela Nwaoko

Associate / Washington, D.C.
202.371.7324
pamela.nwaoko@skadden.com

Ashton M. Simmons

Associate / Washington, D.C.
202.371.7352
ashton.simmons@skadden.com

Eytan J. Fisch

Partner / Washington, D.C.
202.371.7314
eytan.fisch@skadden.com

Lindsey F. Randall

Associate / Washington, D.C.
202.371.7226
lindsey.randall@skadden.com