

US Terminates All Remaining Sanctions Relief Under Iran Nuclear Deal

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On November 5, 2018, the United States reimposed all remaining nuclear-related sanctions against Iran that it had previously lifted in connection with its implementation of the Joint Comprehensive Plan of Action (JCPOA) in January 2016. Following the United States' withdrawal from the JCPOA on May 8, 2018 (see our [May 14, 2018, client alert](#)), and pursuant to Executive Order (E.O.) 13846 issued by President Donald Trump on August 6, 2018 (see our [August 28, 2018, client alert](#)), all U.S. nuclear-related sanctions suspended under the JCPOA were scheduled to snap back after 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. The Trump administration has signaled that it will fully enforce the sanctions that are now in effect. In a November 5, 2018, press release, the Treasury Department indicated that the Trump administration hopes to cut off the Iranian regime's major sources of revenue to draw it back to the negotiating table and execute a more comprehensive agreement than the JCPOA.¹

Wind-Down Authorization for Iran-Related Activities of Foreign Companies Owned or Controlled by US Persons Expires

On June 27, 2018, the Treasury Department's Office of Foreign Assets Control (OFAC) revoked General License H, which had authorized non-U.S. entities owned or controlled by a U.S. person to engage in most activities with Iran not sanctionable for other non-U.S. entities. OFAC concurrently issued a general license to permit, through November 4, 2018, all activities ordinarily incident and necessary to the wind-down of transactions previously authorized under General License H. U.S.-owned or -controlled foreign entities are now prohibited from knowingly engaging in any transaction, directly or indirectly, involving Iran that would be prohibited by the Iranian Transactions and Sanctions Regulations (ITSR) if engaged in by a U.S. person or in the United States. Additionally, OFAC issued guidance indicating that U.S.-owned or -controlled foreign entities are required to apply restrictions akin to blocking on any property or interests in property of persons blocked pursuant to the ITSR.² As was the case prior to the withdrawal from the JCPOA, any license or exception authorizing U.S. persons to engage in an activity also allows U.S.-owned or -controlled foreign entities to engage in that activity.

All Secondary Sanctions Fully Reimposed

The vast majority of U.S. sanctions lifted in January 2016 under the JCPOA were secondary sanctions, a set of measures that target non-U.S. persons engaged in certain activities involving Iran. (See our [January 28, 2016, client alert](#).) The first tranche of secondary sanctions to snap back went into effect on August 7, 2018. The second — and final — set of secondary sanctions was reimposed on November 5, 2018. These sanctions target the following activities, entities or economic sectors:

- Iran's port operators, and shipping and shipbuilding sectors, including the Islamic Republic of Iran Shipping Lines (IRISL), South Shipping Lines Iran or their affiliates;
- transactions with the National Iranian Oil Company, Naftiran Intertrade Company and National Iranian Tanker Company;
- transactions by foreign financial institutions with the Central Bank of Iran (CBI) and designated Iranian financial institutions;

¹ Treasury Department, "U.S. Government Fully Re-Imposes Sanctions in the Iranian Regime as Part of Unprecedented U.S. Economic Pressure Campaign," November 5, 2018.

² OFAC FAQ 644.

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- the provision of specialized financial messaging services to the CBI and Iranian financial institutions designated in connection with Iran's proliferation of weapons of mass destruction or Iran's support for international terrorism;³
- the provision of underwriting services, insurance or reinsurance to Iran's shipping, ports and petroleum sectors, and certain other sanctionable activities; and
- Iran's energy sector, including the purchase, acquisition, sale, transport or marketing of petroleum, petroleum products and petrochemical products from Iran.

The consequences for non-U.S. persons engaging in activities subject to secondary sanctions vary depending on the underlying authority. Secondary sanctions may require the imposition of blocking sanctions or authorize the president to select from a menu of sanctions. Moreover, foreign financial institutions engaging in certain activities subject to secondary sanctions 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.

Over 700 New SDNs, Including All Persons on the E.O. 13599 List

On November 5, 2018, OFAC moved all persons identified on the E.O. 13599 List (which was comprised of persons meeting the definition of the terms "Government of Iran" or "Iranian financial institution") to the List of Specially Designated Nationals and Blocked Persons (SDN List), and OFAC removed the E.O. 13599 List from its website. OFAC also designated many Iranian financial institutions and other persons previously appearing on the E.O. 13599 List under other sanctions authorities, namely E.O. 13224 (relating to counterterrorism), E.O. 13382 (relating to weapons of mass destruction proliferation), and E.O. 13553 (relating to serious human rights abuses by the Government of Iran).

Going forward, persons engaged in significant transactions with individuals and entities moved from the E.O. 13599 List to the SDN List, other than nondesignated Iranian financial institutions, could be subject to secondary sanctions. Non-U.S. persons may, however, engage in business with Iranian financial institutions solely blocked pursuant to E.O. 13599 without becoming subject to secondary sanctions, unless other secondary sanctions apply or another person on the SDN List subject to secondary sanctions is involved in the transaction.⁴

³ On November 5, 2018, SWIFT, a Belgium-based network provider that facilitates the cross-border transmission of messages regarding financial transactions, stated that it would be suspending certain Iranian banks' access to the messaging system.

⁴ Persons subject to secondary sanctions will have a notation of "Additional Sanctions Information – Subject to Secondary Sanctions" in the SDN List entry.

In addition to moving hundreds of persons from the E.O. 13599 List to the SDN List, OFAC added several hundred additional persons to the SDN List. Many of these persons were previously on the SDN List prior to the JCPOA, such as IRISL, the Atomic Energy Organization of Iran, Iran Air, and their related parties, vessels and aircraft. However, OFAC also identified or designated numerous new Iranian financial institutions and other persons and added them to the SDN List. Transactions involving such persons (other than Iranian financial institutions blocked solely pursuant to E.O. 13599) now similarly present secondary sanctions risks.

Nonsanctioned Trade With Iran

Although the web of U.S. sanctions on Iran is vast and entangles many categories of business activity, not all transactions by non-U.S. persons with Iran are sanctionable. Transactions by non-U.S. persons related to the export to Iran of consumer goods are not expressly targeted by U.S. secondary sanctions. However, such transactions can nevertheless present risks and should be carefully navigated. For example, the sale of goods or the provision of services to certain sectors of Iran's economy, such as energy or shipping, could trigger secondary sanctions risk. Moreover, unless an exception applies, such transactions should not involve: certain persons on the SDN List, including the CBI or a designated Iranian financial institution; U.S. persons, or U.S.-owned or -controlled foreign entities; U.S. origin goods; or the U.S. financial system.⁵

In addition, transactions for the sale of agricultural commodities, food, medicine or medical devices to Iran are generally not sanctionable unless they involve persons on the SDN List that have been designated in connection with Iran's support for international terrorism or proliferation of weapons of mass destruction.⁶ To the extent such transactions involve U.S. persons, U.S.-owned or -controlled foreign entities, U.S.-origin goods or transit the U.S. financial system, they must comply with general licenses in the ITSR and be consistent with applicable U.S. export control regulations.

Guidance on Receipt of Payments After Expiration of Wind-Down Periods

In May and August 2018, OFAC issued guidance regarding the receipt of payments by U.S. and non-U.S. persons after the conclusion of the applicable wind-down period. Specifically, OFAC previously clarified that 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.

⁵ OFAC FAQ 637.

⁶ *Id.*

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Moreover, OFAC advised that non-U.S. persons are permitted to receive payments after the respective wind-down period expires for goods or services fully delivered to an Iranian counterparty — or for loans or credits extended to an Iranian counterparty — prior to the expiration of the applicable wind-down period and pursuant to a written agreement entered into prior to May 8, 2018, provided that the relevant activities were consistent with U.S. sanctions then in effect.

OFAC's guidance offers that non-U.S., non-Iranian persons can seek guidance from OFAC or the State Department, as appropriate, prior to the receipt of payment, if they would like to confirm that the payments would meet the criteria the U.S. government has set out.⁷ OFAC states that non-U.S., non-Iranian persons seeking to receive payment where an individual or entity added to the SDN List is involved should seek such guidance.⁸

Significant Reduction Exceptions

The State Department has issued so-called significant reduction exceptions (SREs) to eight countries — China, Greece, India, Italy, Japan, South Korea, Taiwan and Turkey — for significantly reducing their crude oil importations from Iran during the wind-down period. As a result, foreign financial institutions based in those countries will be able to engage in certain transactions with the CBI or certain Iranian financial institutions related to the purchase of petroleum or petroleum products (but not petrochemicals) from Iran without the threat of being sanctioned. Additionally, the use of services to import petroleum from Iran by a person in a country that has been granted an SRE — includ-

⁷ OFAC FAQ 632.

⁸ OFAC FAQ 636.

ing services provided by the shipping sector of Iran and Iranian port operators, and related financial transactions, including with the CBI — is also generally not sanctionable. However, the SREs generally do not waive secondary sanctions for activities or transactions involving Iranian entities that are designated in connection with Iran's support for international terrorism or its proliferation of weapons of mass destruction.⁹

All proceeds of purchases of petroleum or petroleum products must be credited to an account at a financial institution in the country that received the SRE. Such funds may only be used to facilitate bilateral trade in nonsanctioned goods and services between the country granted the SRE and Iran, and the funds cannot be repatriated to Iran. Sales of agricultural commodities, food, medicine or medical devices to Iran are not subject to the bilateral trade restrictions.¹⁰

The SREs must be renewed every six months.

Nuclear Waivers

The United States has announced that all nuclear cooperation with Iran, except for limited nonproliferation projects, will be sanctionable. On November 5, 2018, the Trump administration granted temporary waivers permitting the continuation of certain ongoing nonproliferation projects in Arak, Bushehr and Fordow. These waivers provide an interim measure to preserve oversight of Iran's civil nuclear program and reduce proliferation risks, and are conditioned on the cooperation of the various stakeholders.¹¹

⁹ OFAC FAQ 642.

¹⁰ OFAC FAQ 265.

¹¹ White House Fact Sheet: Constraining Iran's Nuclear Program, November 5, 2018.

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