

President Trump Withdraws from Iran Deal, U.S. Sanctions to “Snap Back” After Limited Wind-down Period

May 9, 2018

On May 8, 2018, President Trump [announced](#) that he was terminating the United States’ participation in the Joint Comprehensive Plan of Action (“**JCPOA**”) with Iran and issued a [National Security Presidential Memorandum](#) (“**NSPM**”) directing his administration to immediately begin the process of fully re-imposing sanctions that target critical sectors of Iran’s economy, including the energy, petrochemical, and financial sectors. Depending on the particular sanctions measure, the United States will provide either a 90-day or 180-day period in which activities permitted under or consistent with the JCPOA can be wound down. Following the conclusion of the applicable wind-down period, persons engaged in such activities involving Iran will face exposure to secondary sanctions or enforcement actions under U.S. law. After **November 4, 2018**, all U.S. sanctions (both primary and secondary) that had been [waived or lifted under the JCPOA](#) are expected to be re-imposed and in full effect, though it remains to be seen how vigorously the U.S. government will implement secondary sanctions targeting foreign companies that continue to do business with Iran after that date.

Consistent with the NSPM, the State Department has revoked waivers of statutory sanctions under the Iran Sanctions Act of 1996, the Iran Freedom and Counter-proliferation Act of 2012, the Iran Threat Reduction and Syria Human Rights of 2012, and the National Defense Authorization Act for Fiscal Year 2012 (“**NDAA**”) required to implement the JCPOA, and issued new waivers to implement the President’s direction to re-impose all sanctions lifted under the JCPOA following limited wind-down periods. Additionally, the Treasury Department’s Office of Foreign Assets Control (“**OFAC**”) has issued [guidance](#) in the form of responses to frequently asked questions (“**FAQs**”) outlining how it expects to implement the re-imposition of sanctions, including details on timing and the scope of permitted wind-down activities. Key elements of this guidance are summarized below.

Sanctions Re-imposed After August 6, 2018

Following the 90-day wind-down period that ends on August 6, 2018, the U.S. government will re-impose the following secondary sanctions that were waived or lifted pursuant to the JCPOA:

- 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 the territory of Iran denominated in the Iranian rial;
- Sanctions on the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt; and
- Sanctions on Iran’s automotive sector (FAQ 1.2).

After August 6, 2018, foreign persons engaged in these activities, or in the provision of associated services related to these activities, will face potential exposure to secondary sanctions.

The 90-day wind-down period will also apply to the following activities that have been authorized under U.S. primary sanctions relating to Iran under the JCPOA:

- The importation into the United States of Iranian-origin carpets and foodstuffs and certain related financial transactions pursuant to general licenses under the Iranian Transactions and Sanctions Regulations, 31 C.F.R. part 560 (“**ITSR**”);
- Activities undertaken pursuant to specific licenses issued in connection with 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* (“**Commercial Aircraft SLP**”); and
- Activities undertaken pursuant to General License (“**GL**”) I relating to contingent contracts for activities eligible for authorization under the Commercial Aircraft SLP (FAQ 1.2).

As soon as is administratively practicable, OFAC intends to revoke these authorizations and replace them with more limited authorizations permitting the wind-down of previously licensed activities (FAQs 4.2, 4.3, and 4.5). Effective immediately, OFAC will no longer evaluate specific license applications under the Commercial Aircraft SLP, although it will continue to consider license applications for exports and reexports of goods, services, and technology to Iran to insure the safety of civil aviation and safe operation of U.S.-origin commercial passenger aircraft, pursuant to § 560.528 of the ITSR (FAQ 4.1).

Sanctions Re-imposed After November 4, 2018

Following the 180-day wind-down period that ends on November 4, 2018, the U.S. government will re-impose the following secondary sanctions that were waived or lifted pursuant to the JCPOA:

- 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 and designated Iranian financial institutions under Section 1245 of the NDAA;
- 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;
- Sanctions on the provision of underwriting services, insurance, or reinsurance; and
- Sanctions on Iran’s energy sector (FAQ 1.3).

After November 4, 2018, foreign persons engaged in these activities, or in the provision of associated services related to these activities, will face potential exposure to secondary sanctions.

Additionally, no later than November 5, 2018, the U.S. government will re-impose, as appropriate, sanctions on persons removed from OFAC’s List of Specially Designated Nationals and Blocked Persons (“**SDN List**”) or other sanctions lists on JCPOA Implementation Day, January 16, 2016 (FAQs 1.3, 3.2). This will include reintegrating into the SDN List persons identified as meeting the definition of “Government of Iran” or “Iranian financial institution” that are currently included on OFAC’s List of Persons Blocked Solely Pursuant to Executive Order. 13599 (FAQ 3.1). Significant transactions with Iranian persons on the SDN List, including persons that are re-listed pursuant to these efforts, are sanctionable.

The 180-day wind-down period will also apply to activities of foreign entities owned or controlled by U.S. persons authorized pursuant to GL H, which generally permits such entities to engage in transactions involving Iran (FAQ 1.3). OFAC intends as soon as is administratively practicable to revoke GL H, and replace it with a narrower authorization to wind down authorized activities (FAQ 4.4). With the revocation of GL H, foreign subsidiaries of U.S. companies will once again be required to comply with the prohibitions of the ITSR.

Guidance on Scope of Permitted Wind-Down Activities

OFAC has clarified in FAQ 2.1 that a non-U.S., non-Iranian person may, following the conclusion of the applicable wind-down period on August 6, 2018 or November 4, 2018:

- Receive payment for goods or services fully provided or delivered to an Iranian counterparty prior to the end of the 90-day or 180-day wind-down period, as applicable, provided that the transaction is pursuant to a written contract or written agreement entered into prior to May 8, 2018, and that such activities were consistent with U.S. sanctions in effect at the time of delivery or provision; or
- Receive repayment for loans or credits extended to an Iranian counterparty prior to the end of the 90-day or 180-day wind-down period, as applicable, provided that such loans or credits were extended 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.

OFAC cautioned, however, that the provision or delivery of additional goods or services and/or the extension of additional loans or credits 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. sanctions unless such activities are exempt from regulation, authorized by OFAC, or otherwise not sanctionable (FAQ 2.1).

For U.S. persons (and foreign entities owned or controlled by U.S. persons in the case of GL H), OFAC indicated that it anticipates issuing wind-down general licenses authorizing all transactions ordinarily incident and necessary to wind down activities that were previously authorized pursuant to General License H, General License I, or the general licenses set forth at 31 C.F.R. §§ 560.534 and 560.535 and to receive payments according to the terms of a 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 (FAQ 2.1).

OFAC issued a separate FAQ purporting to address whether new activity involving Iran was permitted if consistent with the JCPOA and conducted entirely within the applicable wind down period, but did not clearly respond to this question. Instead, it merely noted that such new business might be considered in the context of enforcement and secondary sanctions determinations made with respect to activities engaged in after August 6, 2018, or November 4, 2018, as applicable (FAQ 2.2). When available, the text of the wind-down general licenses OFAC plans to issue may provide additional clarity on this point, at least in the context of primary sanctions.

Reaction and the Way Forward

The leaders of the United Kingdom, France, and Germany issued a [joint statement](#) expressing regret and concern over the United States' withdrawal from the JCPOA. The statement emphasized the three countries' continuing commitment to the JCPOA, called on Iran to remain in compliance with its commitments under the agreement, and urged the United States to avoid taking action that would obstruct the implementation of the JCPOA by the remaining parties. The Russian Ministry of Foreign Affairs issued a [statement](#) condemning the United States for violating its commitments under the JCPOA and reiterating Russia's commitment to the agreement. Iranian Foreign Minister Javid Zarif indicated in a

[tweet](#) that Iran's response to the United States' withdrawal will be determined after engaging in diplomatic efforts to examine whether the remaining JCPOA participants can ensure its full benefits for Iran. Collectively, these statements suggest the possibility that the other JCPOA parties may "muddle through" without U.S. participation, with Iran continuing to adhere to its nuclear commitments and countries other than the United States, and in particular the European Union and its members, continuing to provide sanctions relief.

Ultimately, however, the viability of that path, and the risks faced by non-U.S. companies considering whether to continue to do business with Iran under the JCPOA, will depend on how aggressively the United States is willing to enforce the secondary sanctions that it is re-imposing. Initial signals in that regard suggest that the re-imposition of sanctions will not be merely cosmetic. President Trump himself stated that the United States "will be instituting the highest level of economic sanction," and that "[a]ny nation that helps Iran in its quest for nuclear weapons could also be strongly sanctioned." OFAC indicated in its published guidance that the United States intends to resume efforts to reduce Iran's crude oil sales. (FAQ 5.1) These efforts will be backed by the potential threat of correspondent account sanctions targeting foreign financial institutions and central banks under section 1245(d) of the 2012 NDAA once the 180-day wind-down period applicable to sanctions under that authority has ended, subject to exceptions from such sanctions for countries determined by the State Department to have significantly reduced purchases of crude oil from Iran. (FAQ 5.2). Richard Grenell, the U.S. Ambassador to Germany, [tweeted](#) a warning that "German companies doing business in Iran should wind down operations immediately," although other [State Department officials](#) speaking at a background briefing for press were more measured, indicating that the United States would seek cooperation with secondary sanctions through engagement in the first instance, rather than enforcement. It remains to be seen whether these words will be backed up by actions, particularly in the face of diplomatic resistance and potential countermeasures by U.S. allies and partners.

We will continue to closely monitor developments and provide updates as appropriate.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

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