

U.S. Government Fully Re-Imposes Iran Sanctions, Announces “Unprecedented” Sanctions Effort as it Moves on from the JCPOA

November 6, 2018

On November 5, 2018, the United States **completed the process** of fully re-imposing sanctions related to Iran that were waived or lifted pursuant to the Joint Comprehensive Plan of Action (“**JCPOA**”) with Iran, consistent with President Trump’s May 8, 2018 **announcement** terminating the United States’ participation in the JCPOA. Consistent with the decisions already taken and largely announced in May, the Treasury Department’s Office of Foreign Assets Control (“**OFAC**”) **updated** the List of Specially Designated Nationals and Blocked Persons (“**SDN List**”) and published both **amendments** to the Iranian Transactions and Sanctions Regulations (“**ITSR**”), 31 C.F.R. Part 560 and **new and updated responses** to Frequently Asked Questions (“**FAQs**”). Separately, the Secretary of State announced that eight countries would be granted waivers, at least temporarily, to continue importing Iranian oil.

While public statements from the administration emphasized the **breadth of the sanctions** and the **government’s determination to fully enforce sanctions** going forward as part of an “unprecedented” **economic pressure campaign** intended to deprive the Iranian government of revenue to engage in malign activities, OFAC’s actions were largely consistent with prior **guidance** and served mostly to establish the appropriate framework for administration and enforcement of the re-imposed sanctions. Now that this restored framework is fully in place, it remains to be seen whether the U.S. government will be able to leverage these authorities to force changes in the Iranian regime’s behavior, and whether and to what extent it will follow through on threats to enforce secondary sanctions against non-Iranian actors in order to achieve this goal. The other non-Iranian parties to the JCPOA continued to condemn the U.S. withdrawal from the JCPOA and re-imposition of sanctions, and reiterated their commitment to maintaining the agreement going forward (including by continuing to afford sanctions relief to Iran), as reflected in a **joint statement** from the governments of the United Kingdom, France, and Germany, **remarks** from a Chinese Foreign Ministry spokesperson, and a **statement** issued by the Russian Foreign Ministry.

The Current State of Iran Sanctions

With the conclusion of the final wind-down period provided for under the President’s May 8 announcement, U.S. sanctions on Iran have largely “snapped back” to the state they were in prior to January 16, 2016, “Implementation Day” under the JCPOA. This has involved changes both to “primary sanctions” prohibitions applicable to U.S. persons (and, once again, foreign subsidiaries of U.S. companies) and transactions with a nexus to the United States and, more significantly, to “secondary sanctions,” which target non-U.S. actors for conduct wholly outside of U.S. jurisdiction.

Primary Sanctions

Most U.S. primary sanctions relating to Iran remained in place notwithstanding the JCPOA, and so the U.S. withdrawal from the agreement did not result in major changes to the compliance obligations of U.S. persons. The most significant change in the primary sanctions was the revocation of General License (“**GL**”) H, which had permitted foreign subsidiaries of U.S. companies to engage in transactions otherwise prohibited by the ITSR, subject to certain conditions and limitations. Effective November 5, the wind-down period for transactions previously authorized by GL H has concluded, and such foreign subsidiaries are again fully subject to the ITSR’s prohibitions. Other changes in licensing policy resulting from the

U.S. withdrawal from the JCPOA – relating to importation of carpets and foodstuffs and exports for commercial passenger aviation – took effect in **August**.

Secondary Sanctions

The re-imposition of secondary sanctions is a far more substantial change from the status quo under the JCPOA, as the United States had committed to put in place broad waivers of nuclear-related secondary sanctions for activities by foreign persons permitted under the JCPOA. These waivers have now been fully revoked, and the secondary sanctions landscape has reverted to its pre-Implementation Day status.¹

Specifically, effective November 5, 2018, the 180-day wind-down period applicable to the following secondary sanctions has concluded, and activities of the type described are once again sanctionable:

- Sanctions on certain transactions supporting Iran's port operators and shipping and shipbuilding sectors, including on the Islamic Republic of Iran Shipping Lines ("**IRISL**"), South Shipping Line Iran, or their affiliates;²
- Sanctions on petroleum-related transactions with, among others, the National Iranian Oil Company, Naftiran Intertrade Company, and National Iranian Tanker Company ("**NITC**"), including the purchase of petroleum, petroleum products, or petrochemical products from Iran (subject to the "significant reduction" exceptions discussed below);³
- 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 2012**") (subject to the "significant reduction" exceptions described below);⁴
- 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 CISADA;⁵
- Sanctions on the provision of underwriting services, insurance, or reinsurance;⁶ and
- Sanctions on certain transactions involving Iran's energy sector.⁷

This is in addition to the following secondary sanctions that came back into effect as of August 7, 2018, following the conclusion of a 90-day wind-down period:

- Sanctions on the purchase or acquisition of U.S. dollar banknotes by the Government of Iran;⁸

¹ Additional detail on these secondary sanctions authorities is available in our prior client memoranda addressing the Comprehensive Iran Sanctions and Divestment Act of 2010 ("**CISADA**") and the Iran Threat Reduction and Syria Human Rights Act of 2012, Pub. L. 112-158 ("**TRA**"), as well as memoranda describing the [sanctions relief](#) provided for under the JCPOA.

² See, e.g., subsections 1(a)(iv) and 5 of Executive Order ("**E.O.**") 13846 and section 1244(c)(1) of the Iran Freedom and Counter-Proliferation Act of 2012 ("**IFCA**"), Pub. L. 112-239.

³ See, e.g., subsections 1(a)(ii), 1(a)(iv), 2(a)(iii)-(a)(v), and 3(a)(ii)-(a)(iii) and sections 4 and 5 of E.O. 13846.

⁴ See, e.g., section 5 of E.O. 13846, section 1245 of NDAA 2012, and subsection 1247(a) of IFCA.

⁵ See, e.g., section 5 of E.O. 13846, section 220 of TRA, and subsection 1244(c)(1) of IFCA.

⁶ See, e.g., section 5 of E.O. 13846, section 5(a)(7) of the Iran Sanctions Act of 1996, as amended ("**ISA**") 50 U.S.C. § 1701 note, subsections 211(a) and 212(a) of TRA, and subsections 1246(a) and 1247(a) of IFCA.

⁷ See, e.g., section 5 of E.O. 13846, subsection 5(a) of ISA, section 212(a) of TRA, and sections 1244(c)(1), (d) and (h)(2), 1246(a), and 1247(a) of IFCA.

⁸ See, e.g., section 1(a)(i) of E.O. 13846.

- Sanctions on Iran's trade in gold or precious metals;⁹
- 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;¹⁰
- 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;¹¹
- Sanctions on the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt;¹² and
- Sanctions on Iran's automotive sector.¹³

Additionally, as a result of the return or addition of a substantial number of individuals and entities to the SDN List, discussed in greater detail below, the potential reach of secondary sanctions has been greatly expanded. The authorities that apply to significant transactions with Iranian persons on the SDN List remained in effect even under the JCPOA, but many of the key actors in the Iranian economy were removed from the SDN List on Implementation Day. Restoring transactions with these SDNs as a basis for secondary sanctions will be a signal concern going forward, especially in the risk-benefit analyses of global financial institutions.

Significant Reduction Exceptions and Other Waivers

Contrary to the administration's previously expressed desire to reduce Iran's oil exports to zero by November 5, 2018, the State Department did **grant** to eight countries – China, Greece, India, Italy, Japan, South Korea, Taiwan, and Turkey – “significant reduction” exceptions (“**SREs**”) under Section 1245(d)(4)(D) of NDAA 2012, as amended. The SRE countries may continue to import oil from Iran, and financial institutions in those countries may, without risking secondary sanctions, engage in limited transactions with the CBI or designated Iranian financial institutions regarding both the oil imports and a limited range of bilateral trade with Iran. Iran's earnings from permitted oil sales must be held in accounts in the SRE country and may be used only for approved categories of bilateral trade, for instance the purchase of agricultural commodities, food, medicine, or medical devices. Transactions by persons in an SRE country involving bilateral trade consistent with these requirements are not sanctionable, even if the transaction involves an SDN. The SREs last for a period of 180 days, and the State Department has indicated that its **goal** is not to renew the exceptions at the end of the 180-day period.¹⁴

The State Department also indicated that it had granted waivers to permit ongoing activity in connection with three nonproliferation projects relating to implementation of Iran's nuclear commitments under the JCPOA.

⁹ See, e.g., section 1(a)(i) of E.O. 13646 and subsection 1245(a)(1)(A) of IFCA.

¹⁰ See, e.g., section 5 of E.O. 13846 and subsections 1245(a)(1)(B)-(a)(1)(C) and (c) of IFCA.

¹¹ See, e.g., section 6 of E.O. 13846.

¹² See, e.g., Section 5 of E.O. 13846 and subsection 213(a) of TRA.

¹³ See, e.g., subsections 2(a)(i) and 3(a)(i) of E.O. 13846.

¹⁴ In contrast, SREs granted under the original NDAA 2012 were extended repeatedly between 2012 and 2016.

SDN List Updates

OFAC added more than 700 individuals, entities, aircraft, and vessels to the SDN List, including the designation of 50 Iranian banks and their subsidiaries; the identification of more than 400 targets (including over 200 persons and vessels in Iran's shipping and energy sectors, and an Iranian airline and more than 65 of its aircraft), and the placement on the SDN List of nearly 250 persons and associated blocked property that appeared until November 5 on the List of Persons Identified as Blocked Solely Pursuant to Executive Order 13599 ("**E.O. 13599 List**"). The E.O. 13599 List, which was designed to facilitate JCPOA implementation, has now been deleted.

The persons and property added to the SDN List had all been subject to sanctions previously, and their addition to the SDN List serves primarily to (1) make clear to the public that they are blocked, and (2) provide a clear indication that those who engage in future transactions with these listed persons expose themselves to secondary sanctions. To further clarify the secondary sanctions risk, the SDN List entries of such listed persons bear the notation: "Additional Sanctions Information – Subject to Secondary Sanctions."

OFAC designated a number of Iranian banks, which had since Implementation Day been blocked solely pursuant to E.O. 13599, pursuant to E.O.13224 (which targets terrorists and their support networks), E.O. 13382 (which targets WMD proliferation) and E.O. 13553 (which targets human rights violators in Iran). Targets include Bank Melli and its subsidiaries, the Export Development Bank of Iran, Ghavamin Bank, Bank Sepah, Bank of Industry and Mine, Europaisch-Iranische Handelsbank AG, Post Bank, Bank Tejarat, and Day Bank. These designations are significant because they trigger secondary sanctions consequences that do not attach to Iranian financial institutions that are solely blocked pursuant to E.O. 13599, as explained in our [prior client memoranda](#).

OFAC also identified Iran Air and several associated aircraft, IRISL and NITC and several of their subsidiaries and associated vessels, and the Atomic Energy Organization of Iran and several subsidiaries and associated individuals, as Government of Iran entities or, in the case of the vessels and aircraft, as blocked property. Interestingly, these actions were taken solely pursuant to E.O. 13599, even though several of these entities had previously been designated under E.O. 13382 as well.

Further additions of Iranian persons to the SDN List, including additional designations of Iranian financial institutions, seem likely as OFAC continues to implement the administration's economic pressure strategy.

Updated Regulations

The amendments to the ITSR issued by OFAC in connection with the re-imposition of sanctions were largely technical in nature. Specifically, OFAC amended section 560.211 of the ITSR to provide for the implementation of any blocking sanctions that may be imposed pursuant to E.O. 13846, which [President Trump issued in August](#) to replace and consolidate a number of Iran-related E.O.s that had been revoked or modified to implement the JCPOA. OFAC also removed from the ITSR references to the E.O. 13599 List in light of OFAC's deletion of the list.

Additionally, in a change apparently unrelated to the JCPOA, OFAC has amended an existing general license, 31 C.F.R. § 560.543, to authorize individual U.S. persons to engage in transactions necessary to sell certain personal property in Iran (which was acquired before becoming a U.S. person or which was inherited from persons in Iran) and to transfer the proceeds of those sales to the United States, subject to a number of conditions and limitations. Previously, this general license had only authorized such transactions with respect to real property.

New and Updated FAQs

OFAC issued a number of new and updated FAQs to address questions and provide guidance regarding the treatment of continuing wind-down transactions after November 5, 2018, the specific actions taken by OFAC on November 5, and the application of primary and secondary sanctions in certain circumstances going forward. Notable FAQs are summarized below. A number of FAQs addressing secondary sanctions issued by OFAC prior to Implementation Day remain [available on OFAC's website](#) as well, and are again relevant in light of the re-imposition of those sanctions.

Continuing Wind-Down Transactions: New FAQs 630-636 address questions regarding transactions related to wind-down activities not concluded by November 5, 2018. Among other things, these FAQs:

- Reiterate that after November 5, 2018, the delivery of goods or services, or extension of loans or credits to an Iranian counterparty, even pursuant to a pre-May 8, 2018 contract or written agreement may result in the imposition of sanctions unless such activities are exempt from regulation, authorized by OFAC, or otherwise not sanctionable (FAQ 630);
- Note that receipt of payment by a non-U.S., non-Iranian person for goods or services fully provided or delivered prior to the conclusion of the applicable wind-down period, and which were consistent with sanctions in effect at the time, would not be sanctionable; such payments may be received after November 5, 2018 provided that they are made in a manner consistent with U.S. sanctions, including that they are not routed through the U.S. financial system unless authorized or exempt. (FAQs 631 and 634). Non-U.S., non-Iranian persons relying on this guidance are invited to contact OFAC or the State Department to confirm that payments are permissible, including in cases where such payments involve a person newly designated as an SDN (FAQs 632, 636);
- Confirm that, as a general matter, goods or services will be considered 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 or other agreed-to compensation. With respect to goods exported to or from Iran, at a minimum, title to the goods must have transferred to the relevant party (FAQ 633); and
- Explain that U.S. persons and foreign entities owned or controlled by U.S. persons must receive a specific license before they may receive payment after the expiration of an applicable wind-down authorization. OFAC will consider applications for such licenses on a case-by-case basis (FAQs 635 and 636).

Explanation of November 5 Actions: New FAQs 638-640 provide additional background regarding the changes to the SDN List and deletion of the E.O. 13559 List, and summarize the November 5, 2018 amendments to the ITSR.

Guidance on Sanctionable Activities: In addition to questions regarding the treatment of wind-down activities, OFAC published a number of new and updated FAQs addressing the secondary sanctions risk associated with certain types of transactions. Among other things, these FAQs:

- Confirm that, broadly speaking, transactions for the sale of agricultural commodities, food, medicine, or medical devices to Iran are 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, including designated Iranian financial institutions or the Islamic Revolutionary Guard Corps ("IRGC"), or activity that is subject to other sanctions (FAQ 637);
- Note that, to avoid risking sanctions, transactions related to the export to Iran of other types of consumer goods that are not expressly targeted by U.S. sanctions should not involve certain persons on the SDN List, including the CBI or a designated Iranian financial institution (unless an

SRE applies), or the IRGC. In addition, such transactions should not involve U.S. persons or transit the U.S. financial system, unless exempt from regulation or authorized by OFAC (FAQ 637);

- Clarify that funds held on behalf of the CBI by a foreign financial institution may be used to facilitate humanitarian trade with Iran, regardless of whether the country with primary jurisdiction over the foreign financial institution has received an SRE (FAQ 641);
- Clarify that the provision of associated services relating to the purchase of petroleum or petroleum products consistent with an SRE is not sanctionable, unless the transaction involves an SDN designated in connection with Iran's support for international terrorism or WMD proliferation (FAQs 256 and 642);
- Note that payment of Iran-related insurance or reinsurance claims arising from incidents that occurred prior to November 5, 2018 could create sanctions exposure for non-U.S. persons to the extent such payment involves a person designated in connection with Iran's proliferation of WMD or support for international terrorism, or an Iranian person on the SDN List, other than a non-designated Iranian financial institution, or if the underlying activity involved such persons or was otherwise sanctionable at the time it occurred. The FAQ also notes that U.S. persons (including foreign entities owned or controlled by U.S. persons) would typically require a specific license from OFAC to make such payments (FAQ 643); and
- Warn that to avoid potential sanctions exposure, providers of specialized financial messaging services should discontinue the provision of such services to the CBI and any Iranian financial institutions designated in connection with Iran's WMD proliferation, support for terrorism, or human rights abuses. (FAQ 645).

Clarification of Sanctions Obligations of U.S.-owned or -Controlled Foreign Entities: New FAQ 644 clarifies 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 subject to section 560.211 of the ITSR to ensure that such property and interests in property are not transferred, paid, exported, withdrawn, or otherwise dealt in. This requirement applies both with respect to a person whose property and interests in property are blocked solely pursuant to the ITSR and a person whose property and interests in property are blocked pursuant to the ITSR and another authority.

Going Forward

November 5, 2018 marks a significant milestone in the Trump administration's withdrawal from the JCPOA and renewed effort to impose maximum economic pressure on Iran, but is really just the beginning of what the administration asserts will be an "unprecedented" campaign of economic pressure against the Iranian regime. It remains to be seen how the rest of the world, including the remaining parties to the JCPOA, will respond to this campaign, and whether the U.S. government will follow the stark warnings it has issued with real consequences for countries and companies that do not fully cooperate with U.S. efforts to isolate Iran economically. In that regard, the administration continues to signal in its public statements that it intends to take a hard line with respect to enforcement of secondary sanctions, but has also shown some (somewhat unexpected) flexibility by issuing SREs similar to those issued by the prior administration in the lead up to the JCPOA.

We will continue to monitor developments in this area, and will publish 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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