

## **PRESIDENT TRUMP ANNOUNCES U.S. WITHDRAWAL FROM THE IRAN NUCLEAR ACCORD AND RE-IMPOSITION OF WIDE-RANGING U.S. SANCTIONS**

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On May 8, 2018, President Trump announced that the United States would terminate its participation in the Joint Comprehensive Plan of Action (“JCPOA”) and, following a grace period for businesses to wind down operations in or business involving Iran that were conducted pursuant to authorization from the Treasury Department’s Office of Foreign Assets Control (“OFAC”), will re-impose the U.S. nuclear-related sanctions that were lifted as part of U.S. participation in the accord. President Trump also issued a National Security Presidential Memorandum (“NSPM”) directing the Secretaries of State and of the Treasury immediately to begin taking the administrative steps required to re-impose all U.S. sanctions lifted or waived in connection with the JCPOA as expeditiously as possible, and in all cases no later than 180 days. Accordingly, OFAC has issued preliminary guidance on two wind-down periods (90 and 180 days, discussed below) applicable to individuals and entities engaged in certain transactions involving Iran. OFAC expects that all U.S. nuclear-related sanctions that were lifted under the JCPOA will be re-imposed and in full effect by November 4, 2018.

Although the President’s decision was not unexpected, the consequences of U.S. withdrawal are now becoming clear: individuals and entities that consummated transactions in Iran based on U.S. sanctions relief provided for in the JCPOA should take the steps necessary to wind down those activities by either August 6, 2018, or November 4, 2018, as applicable, to avoid exposure to U.S. sanctions or an enforcement action under U.S. law. As discussed below, individuals and entities have either 90 or 180 days from May 8, 2018 to wind down such activities. At the conclusion of the wind-down periods, the applicable sanctions will come back into full effect, including those implemented under both primary and secondary sanctions authorities.

This dramatic shift in U.S. sanctions policy will have a significant and immediate impact on both U.S. and non-U.S. companies, and require businesses to closely scrutinize any transactions or activities that intersect with Iran or that involve Iranian counterparties. For investors, funds and other international businesses, this means applying a robust sanctions compliance program – and ensuring that changes to policies, procedures and trade controls are implemented following the May 8, 2018, announcement – to screen the activities of portfolio companies, non-U.S. subsidiaries, as well as all transaction counterparties.

This advisory reviews changes to the U.S. economic sanctions against Iran and highlights additional areas of risk and uncertainty on the horizon.

### **1. Foreign Subsidiaries of U.S. Companies Must Cease Doing Business in Iran**

Following agreement on the JCPOA in January 2016, OFAC took steps to authorize certain transactions in Iran by foreign subsidiaries of U.S. companies that were subject to primary

sanctions (*i.e.*, those sanctions targeting U.S. companies and their foreign subsidiaries). OFAC announced that it is revoking General License H (“GL H”), which authorized “an entity owned or controlled” by a U.S. person and “established or maintained outside the United States . . . to engage in transactions, directly or indirectly, with the Government of Iran or any person subject to the jurisdiction of the Government of Iran.” The revocation of GL H will be completed “as soon as is administratively feasible.” OFAC expects to issue a revised authorization for the wind down of activities involving Iran authorized pursuant to GL H in the Federal Register and made clear that all wind down procedures must conclude by November 4, 2018.

## **2. OFAC Will Revoke Specific Licenses, Subject to a Wind-Down Period**

The limited opportunity for companies to engage in activities related to Iran’s commercial passenger aircraft sector is also ending. Effective May 8, 2018, OFAC will no longer consider license applications under 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 (“JCPOA SLP”) to engage in the sale of commercial passenger aircraft and related parts and services to Iran. OFAC will revoke licenses issued under JCPOA SLP, but will authorize wind-down of the previously-licensed activities through August 6, 2018. OFAC will still consider applications under a separate “safety of flight” statement of licensing policy. The related general license, which authorized U.S. persons to engage in transactions incident to negotiating and entering into contracts for activities eligible under JCPOA SLP, will also be revoked subject to the wind-down period.

OFAC will also end importation into the United States of Iranian-origin carpets and foodstuffs and certain related financial transactions under general licenses, subject to a wind-down period through August 6, 2018.

## **3. Re-imposition of Secondary Sanctions**

The U.S. exiting the deal does not mean the agreement immediately collapses. The other parties to the accord – Britain, France, Germany, Russia and China – remain committed to implementing the agreement for now. And Iranian President Hassan Rouhani has indicated that Iran will enter into negotiations with these other parties on remaining in the JCPOA. This means that non-U.S. sanctions relief provided, for example, by the European Union, is unchanged, and all restrictions on Iran’s nuclear activities remain in place.

Importantly, however, the re-imposition of far-reaching U.S. secondary sanctions on certain activities, in key industries, and with respect to listed individuals, exposes non-U.S. persons, including non-U.S. subsidiaries of U.S. companies, to civil and criminal liability if they do business in certain Iranian industry sectors or with designated Iranian individuals and entities.

The U.S. Government will re-impose sanctions that were lifted pursuant to the JCPOA, subject to 90 and 180-day wind-down periods. The United States most commonly applies primary sanctions aimed at restricting U.S. persons (companies and individuals) from doing business with a particular target. Secondary sanctions involve additional economic restrictions designed to

prohibit non-U.S. companies and individuals from doing business with a target of primary U.S. sanctions. The following secondary sanctions will be re-imposed:

***Sanctions Re-imposed After the 90-day Wind-down Period Ending on August 6, 2018.***

After the 90-day wind-down period ends, the U.S. Government will re-impose sanctions on: Purchase or acquisition of U.S. dollar banknotes by the Government of Iran; Iran's trade in gold or precious metals; 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; significant transactions related to the purchase or sale of Iranian currency; the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt; and Iran's automotive sector.

***Sanctions Re-imposed After the 180-day Wind-down Period Ending on November 4, 2018.*** After the 180-day wind-down period ends on November 4, 2018, the U.S. Government will re-impose sanctions on: Iran's port operators and shipping and shipbuilding sectors; petroleum-related transactions with Iran; transactions by foreign financial institutions with Iranian financial institutions; the provision of specialized financial messaging services to the Central Bank of Iran and Iranian financial institutions; the provision of underwriting services, insurance, or reinsurance; and Iran's energy sector.

**4. OFAC Will Re-List Persons and Entities on the SDN and Blocked Persons Lists**

By November 5, 2018, the U.S. Government will move persons meeting the definition of "Government of Iran" or "Iranian financial institution" from the List of Persons Blocked Solely Pursuant to E.O. 13599 ("E.O. 13599 List") back to the List of Specially Designated Nationals and Blocked Persons (the "SDN List"). Until that time, non-U.S., non-Iranian persons may wind down activities which had been authorized under the JCPOA-related sanctions relief involving these affected persons which were undertaken before May 8, 2018. U.S. persons continue to be broadly prohibited from engaging in transactions or dealing with the Government of Iran and Iranian financial institutions.

**5. The Potential for Contractual Problems and Business Disruption**

OFAC will take steps to allow U.S. persons and U.S.-owned or -controlled foreign entities until August 6, 2018, or November 4, 2018, as applicable, to wind down operations in or business involving Iran conducted pursuant to an OFAC authorization, 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.

However, 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.

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This means, for example, if U.S. persons and U.S.-owned or -controlled foreign entities have existing contracts providing for delivery of goods or services after the applicable wind-down period ends, such persons or entities will be subject to U.S. sanctions if they consummate the delivery of such goods or services, unless specifically authorized by OFAC or exempt from the regulations. OFAC has advised that the U.S. Government will evaluate these transactions on a case-by-case basis. Accordingly, many companies could confront a difficult business decision if contracts to deliver goods or services after November 4, 2018 do not contain appropriate termination provisions: face potential violations of U.S. sanctions or run the risk of litigation for breach of contract.

The situation for non-U.S., non-Iranian persons is more straightforward: if such person is owed payment after the conclusion of the wind-down period on August 6, 2018, or November 4, 2018, as applicable, for goods or services fully provided or delivered to an Iranian counterparty prior to August 6, 2018 or November 4, 2018, as applicable, 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 of delivery or provision, the non-U.S., non-Iranian person is allowed to receive payment for those goods or services according to the terms of the written contract or agreement.

Similarly, 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 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 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 non-U.S., non-Iranian person is allowed to receive repayment of the related debt or obligation according to the terms of the written contract or agreement. This allowance is designed for non-U.S., non-Iranian parties to be made whole for debts and obligations owed or due to them for goods or services fully provided or delivered or loans or credit extended to an Iranian party prior to the end of the 90-day or 180-day wind-down period, as applicable.

**6. More Sanctions on the Horizon?**

Companies should be aware that additional multilateral and unilateral sanctions may be on the horizon. In parallel to the JCPOA, the United Nations Security Council (“UNSC”) adopted resolution 2231 that terminated all the previous UNSC resolutions concerning Iran’s nuclear program. To re-impose multilateral sanctions against Iran, UNSC resolution 2231 created a “snap-back” mechanism that could be triggered by any party to the JCPOA that notifies the UNSC that “significant non-performance of commitments under the JCPOA” have occurred. The International Atomic Energy Agency has certified Iran’s compliance with the JCPOA 11 times and Britain, France and Germany reiterated the same in their joint statement on May 8, 2018. But President Trump has repeatedly claimed that Iran is not in compliance with the JCPOA. If the U.S. attempts to trigger the “snap-back” mechanism and force a vote, the UNSC may be unable to stop the restoration of multilateral sanctions against Iran because attempts by the other UNSC members to adopt a resolution to continue suspension could be blocked by a permanent U.S. veto.

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Finally, it is possible that the U.S. could impose additional unilateral sanctions targeting Iran. For example, the U.S. could impose additional, more far-reaching secondary sanctions in connection to different sectors or industries in the Iranian economy, that would present non-U.S. companies with additional sanctions risk, or OFAC could add additional individuals and entities to the SDN List, potentially further limiting the opportunity for U.S. and non-U.S. businesses to transact business. President Trump's new National Security Advisor John Bolton told reporters in a briefing following Trump's announcement: "It's entirely possible that additional sanctions will follow as new information comes to light...[a]nd that's something that we should pursue vigorously because we want to put as much economic pressure on Iran as we can, and deny them the revenues that they would have gotten from the transactions we're now eliminating."

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