

U.S. Reimposes Economic Sanctions On Iran

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On November 5, 2018, the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") will reimpose certain economic sanctions against Iran that had been held in abeyance under the Joint Comprehensive Plan of Action ("JCPOA"), an international agreement intended to restrain Iran's nuclear program. This action requires U.S. companies to ensure their global compliance policies prevent non-U.S. subsidiaries from doing business with Iran, with only a few limited exceptions. In short, the wind-down periods for terminating transactions with Iran have now expired, and so the OFAC sanctions in place prior to the JCPOA will now be in effect again. The United States has also indicated it will invoke its secondary sanctions against non-U.S. companies and banks who continue to do business with Iran, especially in its energy sector.

Summary of Changes to Iran Sanctions

Since President Donald Trump withdrew the United States from JCPOA in May 8, 2018, the U.S. Government had allowed certain previously authorized transactions to continue under two so-called "wind-down" periods. The first wind-down period ended in August 2018, and the second period ends on Sunday, November 4, 2018. As of November 5, 2018, the pre-JCPOA U.S. sanctions once again apply with full force, and so, as was the case before the JCPOA, foreign subsidiaries of U.S. companies may no longer engage in any transactions involving Iran unless authorized by the U.S. Government.

Following the Administration's May 2018 withdrawal announcement, OFAC issued new rules and guidance to set out two wind-down periods that applied to the various transactions that OFAC had authorized pursuant to JCPOA. The first wind-down period, which ended on August 6, 2018, applied to certain transactions involving Iranian purchases of U.S. currency; trade in precious metals; certain transactions in graphite, aluminum, steel, coal, and software; trade in Iranian currency; Iranian sovereign debt; the Iranian automotive sectors; Iranian-origin carpets and foods; and commercial passenger aircraft and parts.

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The second wind-down period, which ends on Sunday, November 4, 2018, applies to transactions that relate to Iranian ports, shipping, and shipbuilding sectors; Iranian petroleum and petrochemical products; transactions by foreign banks through the U.S. banking system that involve designated Iranian banks; certain financial messaging services to Iranian banks; underwriting services, insurance, and reinsurance; and Iranian energy sector. The November 4 deadline also applies with respect to persons deemed to be part of the Government of Iran with whom transactions had been allowed. Most importantly for U.S. companies, the U.S. Government will reestablish penalties for U.S. companies whose foreign subsidiaries engage in transactions with Iran, unless there is separate OFAC authorization to continue such activities.

It is important to note, however, these JCPOA-related changes do not generally alter the scope of longstanding OFAC authorizations (known as “general licenses”) for U.S. and non-U.S. companies to provide food and agricultural items, medical devices, pharmaceuticals and certain humanitarian donations to Iran. These authorizations, however, require careful attention to ensure compliance with all relevant conditions of the applicable general license by all parties involved in such transactions with Iran.

The Historical Context of Iran Sanctions

The United States has long maintained a complex set of economic sanctions against Iran, which are mostly codified in the Iranian Transactions and Sanctions Regulations (“ITSR”), 31 C.F.R. Part 560. The entire complex U.S. sanctions regime against Iran is comprised of Congressional legislation, the ITSR and other regulations, Executive Orders issued by the President, and OFAC’s interpretations of the foregoing. OFAC within the Treasury Department is the U.S. Government agency that has a primary role in enforcing these sanctions.

Because of concern over Iran’s intentions with respect to its nuclear program, the United States along with the other permanent members of the United Nations Security Council imposed a series of coordinated international sanctions against Iran after 2006. The U.S. Government initially tightened sanctions against Iran, including targeting its primary revenue source from petroleum sales. Most significantly for U.S. companies, in 2012, Congress extended the Iranian sanctions to cover the foreign subsidiaries of U.S. companies for the first time. Previously, OFAC’s prohibitions only covered companies incorporated within the United States and their foreign branches but did not include separately incorporated foreign subsidiaries.

The United States also began imposing secondary sanctions on non-U.S. companies and banks that conducted significant transactions with Iran in select industrial sectors, especially in automobiles, aviation, banking, precious metals, and energy. Secondary sanctions are used to punish non-U.S. companies and banks that are not otherwise subject to U.S. legal jurisdiction through the leverage of market access denial, including the potential loss of the right to sell goods or services to the U.S. Government, the right to access U.S. stock exchanges for listings of securities, the right to borrow funds from U.S. financial institutions and the right to process U.S. dollar transactions through any U.S. clearinghouse or other financial institutions. These secondary sanctions effectively

imposed great economic pressure upon non-U.S. banks and companies to cease doing business with Iran.

In July 2015, the United States, United Kingdom, France, Russia, China, and Germany concluded the JCPOA with Iran to suspend certain types of sanctions in exchange for restrictions on Iran's nuclear program. For its part, the United States in January 2016 issued a series of "general licenses" that authorized certain categories of transactions that otherwise would have been prohibited under prior U.S. law, removed a large number of Iranian entities and organizations from the OFAC Specially Designated Nationals ("SDN") List, and announced the U.S. would not impose its secondary sanctions on non-U.S. banks and companies who restarted their business and financial activities with Iran. One of these general licenses authorized certain transactions with Iran by foreign subsidiaries of U.S. companies. This sanctions relief also narrowed the definitions of Iranian financial institutions and the Government of Iran, which then allowed certain Iranian entities to do business with non-U.S. companies.

Conclusion

As of November 5, 2018, with certain exceptions, the U.S. sanctions targeting Iran effectively return to their former state before the implementation of the JCPOA in 2015. This reintroduction of the U.S. sanctions, both direct and secondary, in their full force is intended to pressure the Iranian Government into accepting U.S. demands for Iran to cease a range of activities, such as support for foreign militant activities at various Middle Eastern hotspots and development of ballistic missiles.

As a result of the changes, U.S. parent companies must strengthen their oversight of the operations of separately-incorporated overseas subsidiaries to prevent inadvertent violations of the renewed Iranian sanctions. To the extent that foreign subsidiaries of U.S. companies were permitted to transact with Iran under authorizations pursuant to the JCPOA, U.S. companies must now ensure those transactions have ceased or remain eligible under OFAC general or specific authorizations. U.S. companies must also be on guard against dealing directly or indirectly with the many Iranian entities who have been renamed to the OFAC SDN List. Finally, non-U.S. companies and banks that have engaged in business with Iran since the JCPOA was adopted in 2015 must now again reassess the U.S. Government's announced intention to invoke secondary sanctions vigorously against those who continue to do business with Iran.

It remains to be seen whether the Trump Administration's approach to Iranian sanctions will achieve its objectives, and if so, whether other changes to those sanctions in the future might yet be possible. It is also unclear whether the other nations who were signatories to and strong supporters of the JCPOA (the United Kingdom, France, Germany, China and Russia) will seek to continue to allow or even to encourage their own banks and companies to continue doing business with Iran, particularly in regard to Iran's energy sector and its export sale of petroleum and natural gas, in the face of the U.S. secondary sanctions threat. Moreover, Iran has become a major energy source to multiple national markets, and so now many market adjustments may be required, given the weight of such secondary sanctions.

