

May 9, 2018

United States Withdraws from the Joint Comprehensive Plan of Action with Iran

President Trump Announces Immediate Withdrawal from the Joint Comprehensive Plan of Action; Pre-JCPOA U.S. Sanctions Targeting Iran Will Be Fully Reinstated Following a Wind-Down Period

SUMMARY

On May 8, 2018, President Trump announced his decision to cease the United States' participation in the Joint Comprehensive Plan of Action ("JCPOA") with respect to Iran and to re-impose the U.S. nuclear-related sanctions targeting Iran that were lifted under the JCPOA. In conjunction with this announcement, the President issued a National Security Presidential Memorandum ("NSPM") directing the Secretary of State and the Secretary of the Treasury to prepare immediately for the re-imposition of all of the U.S. sanctions lifted or waived in connection with the JCPOA, to be accomplished as expeditiously as possible and in no case later than 180 days from the date of the NSPM. New business that is contrary to the re-imposed sanctions will be sanctionable immediately upon re-imposition; business that pre-dates May 8, 2018 will be subject to wind-down periods of 90 days and 180 days following which parties will be exposed to the risk of sanctions or an enforcement action under U.S. law.

The announcement means that the United States will reverse the sanctions relief that it granted pursuant to the JCPOA and will re-impose the Iran secondary sanctions regime that was in place prior to the JCPOA under various statutory authorities, including the Iran Sanctions Act, the Iran Threat Reduction and Syria Human Rights Act of 2012, section 1245(d)(1) of the National Defense Authorization Act of Fiscal Year 2012 ("NDAA"), and the Iran Freedom and Counter-Proliferation Act of 2012, as well as certain primary sanctions provisions that had been relieved. Following November 4, 2018, it is expected that the full panoply of the U.S. nuclear-related sanctions that had been lifted under the JCPOA will be re-imposed and in full effect. General License H, which authorized U.S.-owned or -controlled foreign entities

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to engage in certain activities involving Iran, will be revoked as soon as is administratively feasible, although a replacement license allowing wind-down activities for a limited time will be substituted.

Because U.S. primary sanctions were not significantly relieved under the JCPOA, the effect of the re-imposition of the pre-JCPOA sanctions regime of the United States is likely to impact non-U.S. companies (including non-U.S. companies that are owned or controlled by U.S. persons) most significantly. Non-US companies with U.S. operations will have a higher risk of violating U.S. primary sanctions due to their operations in the United States that are subject to U.S. jurisdiction, and could be subject to greater U.S. government expectations in respect of activities targeted under the secondary sanctions because of their U.S. presence.

This memorandum discusses the guidance provided by OFAC in conjunction with the announcement, including the activities subject to the 90-day and 180-day wind-down periods, the scope of the wind-down activities, modifications to U.S. licensing policy, and crude oil sales.

DISCUSSION

Restoration of Sanctions and Related Guidance from OFAC

In conjunction with the President's announcement, OFAC published FAQ guidance ("OFAC Guidance") discussing the wind-down periods for different types of activities.¹ OFAC cautions that "[p]ersons engaging in activity undertaken pursuant to the 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 sanctions or an enforcement action under U.S. law."² The OFAC Guidance also provides that OFAC will evaluate efforts taken to wind down activities and whether any new business was entered into involving Iran during the applicable wind-down period when considering potential enforcement or sanctions actions to take with respect to activities engaged in after the applicable wind-down period.

A. 90-DAY WIND-DOWN PERIOD (AUGUST 6, 2018)

The vast majority of activities permitted under the JCPOA must be wound down by August 6, 2018. On this date, certain secondary and primary sanctions will be reinstated for the activities and related associated services listed below. Secondary sanctions will resume on: (i) the purchase or acquisition of U.S. dollar banknotes by the Government of Iran; (ii) Iran's trade in gold or precious metals; (iii) the direct or indirect sale of graphite, raw, or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes; (iv) 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; (v) the purchase of Iranian sovereign debt; and (vi) Iran's automotive sector. In addition, primary sanctions regarding Iran will be reinstated on: (i) the importation into the United States of Iranian carpets and foodstuffs; (ii) activities undertaken pursuant to specific licenses issued in connection with the

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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”); and (iii) activities undertaken pursuant to General License I relating to activities eligible for authorization under the JCPOA SLP.

B. 180-DAY WIND-DOWN PERIOD AND REVOCATION OF GENERAL LICENSE H (NOVEMBER 4, 2018)

By November 4, 2018, additional secondary sanctions will be reinstated for the certain activities and related associated services, particularly in the shipping, petroleum, petrochemical, and banking industries. Secondary sanctions will resume on: (i) 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; (ii) 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; (iii) transactions by foreign financial institutions with the Central Bank of Iran and designated Iranian financial institutions; (iv) the provision of specialized financial messaging services to the Central Bank of Iran and Iranian financial institutions; (v) the provision of underwriting services, insurance, or reinsurance; and (vi) Iran’s energy sector.

In addition, General License H will be revoked as soon as is administratively feasible and replaced with a revised authorization. The revised authorization will allow the wind-down of activities involving Iran currently authorized pursuant to General License H. The wind-down license will be revoked on November 4, 2018 and all wind-down activities must be completed by that date. Any activities by U.S.-owned or -controlled foreign entities that continue after November 4, 2018 may be subject to enforcement actions by OFAC.

After the 180-day wind-down period, the U.S. government will re-impose, as appropriate, the sanctions that applied to persons removed from the List of Specially Designated Nationals and Blocked Persons (“SDN List”) and other lists maintained by the U.S. government on January 16, 2016, the date of the JCPOA relief. OFAC expects to move persons identified as meeting the definition of the terms “Government of Iran” or “Iranian financial institution” from the List of Persons Blocked Solely Pursuant to E.O. 13599 (the “E.O. 13599 List”) to the SDN List. OFAC will not add these persons to the SDN List on May 8, 2018, in order to allow for the orderly wind-down by non-U.S., non-Iranian persons of activities that had been undertaken prior to May 8, 2018, consistent with the U.S. sanctions relief provided for under the JCPOA. Beginning on November 5, 2018, activities with most persons moved from the E.O. 13599 List to the SDN List will be subject to secondary sanctions.

C. SCOPE OF WIND-DOWN ACTIVITIES

OFAC’s Guidance emphasized that “[t]he U.S. government has a past practice of working with U.S. or third-country companies to minimize the impact of sanctions on the legitimate activities of those parties undertaken prior to the imposition of sanctions.”³ Relief, however, is limited to the 90-day and 180-day

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wind-down periods, as applicable, for activities involving Iran that were consistent with U.S. sanctions relief under the JCPOA. Non-U.S., non-Iranian persons are advised to use these periods to wind down activities that will become sanctionable.

The OFAC Guidance does not seek to penalize certain payments or repayments made after the wind-down periods for goods and services or loans, as applicable, pursuant to agreements entered into prior to May 8, 2018, so long as certain criteria are met. This guidance 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. With regard to payments for goods or services, the OFAC Guidance provides that if a non-U.S., non-Iranian person is owed payment after the conclusion of a wind-down period for goods or services fully provided or delivered to an Iranian counterparty prior to the conclusion of the applicable wind-down period, pursuant to a 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 U.S. government would not seek to penalize the non-U.S., non-Iranian person receiving payment for those goods or services according to the terms of the written agreement. The OFAC Guidance likewise would not seek to penalize repayments for loans or credits, if a non-U.S., non-Iranian person is owed repayment for loans or credits extended to an Iranian counterparty prior to the end of an applicable wind-down period, provided that such loans or credits were extended pursuant to a 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. Any payments would need to be consistent with U.S. sanctions, including that payments could not involve U.S. persons or the U.S. financial system. The U.S. government will evaluate matters falling outside the above parameters on a case-by-case basis.

OFAC recommends that a person conducting activities in Iran or with Iranian persons during the wind-down periods exercise due diligence sufficient to ensure that it is not knowingly engaging in transactions with persons on the SDN List or in activities that would be sanctionable under authorities targeting Iran's malign activities. Transactions conducted during the wind-down periods involving persons removed from the SDN List on January 16, 2016 could be sanctionable to the extent they are outside the scope of the wind-down waivers issued by the State Department or involve persons on the SDN List or certain conduct that was sanctionable even under the JCPOA sanctions relief.

D. LICENSING

1. Aircraft-Related

As of May 8, 2018, OFAC will no longer consider license applications under the JCPOA SLP. To the extent not yet expired, OFAC expects to revoke any specific licenses issued pursuant to the JCPOA SLP and issue replacement authorizations to provide for a wind-down period that will end on August 6, 2018. OFAC expects to revoke, as soon as is administratively feasible, General License I, which authorized

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U.S. persons to enter into, and to engage in transactions that are ordinarily incident to the entry into contingent contracts for activities eligible for authorization under the JCPOA SLP. OFAC also expects to issue replacement authorizations to provide for a wind-down period that will end on August 6, 2018 for General License I activities. OFAC will still consider applications, however, under the safety of flight statement of licensing policy found in 31 C.F.R. § 560.528.

2. Carpets and Foodstuffs

OFAC intends to amend the general licenses at 31 C.F.R. §§ 560.534 (authorizing the importation into the United States of, and dealings in, certain Iranian-origin carpets and foodstuffs) and 560.535 (authorizing certain related letters of credit and brokering services) as soon as is administratively feasible in order to narrow the scope of those general licenses to authorize the wind-down of activities by August 6, 2018 that were undertaken consistent with the sanctions relief provided for in the JCPOA.

E. CRUDE OIL SALES

The United States will resume efforts to reduce Iran's crude oil sales under section 1245(d) of the NDAA. The applicable sanctions will be re-imposed following a 180-day wind-down period, and the United States will again pursue efforts to reduce Iran's sales of crude oil under the NDAA.

The State Department will evaluate and make determinations with respect to significant reduction exceptions provided for in section 1245(d)(4)(D) of the NDAA at the end of the 180-day wind-down period. Countries seeking exceptions are advised to reduce their volume of crude oil purchases from Iran during the wind-down period. Consistent with past practice, the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of Energy, and the Director of National Intelligence, would make such determinations following a process of rigorous due diligence. For the initial set of such determinations, the State Department intends to consider relevant evidence in assessing each country's efforts to reduce the volume of crude oil imported from Iran during the 180-day wind-down period, including the quantity and percentage of the reduction in purchases of Iranian crude oil, the termination of contracts for future delivery of Iranian crude oil, and other actions that demonstrate a commitment to decrease substantially such purchases. The State Department expects to engage in consultations with countries currently purchasing Iranian crude oil during the 180-day wind-down period.

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ENDNOTES

¹ *Frequently Asked Questions Regarding the Re-Imposition of Sanctions Pursuant to the May 8, 2018 National Security Presidential Memorandum Relating to the Joint Comprehensive Plan of Action* (May 8, 2018), available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_winddown_faqs.pdf.

² *Id.* at 1.1.

³ *Id.* at 2.1.

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