

Fried Frank International Trade and Investment *Alert*TM

Trump Withdraws U.S. from Iran Nuclear Deal, Will Reimpose Sanctions

On May 8, 2018, President Trump [announced](#) that the United States would withdraw from the Iran nuclear deal, the Joint Comprehensive Plan of Action (JCPOA), and would begin the process of reimposing sanctions that were [waived](#) under the JCPOA on January 16, 2016. The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) issued a [statement](#) and [FAQs](#) regarding the reimposition of sanctions on Iran. OFAC and the State Department will work together to establish 90-day and 180-day wind-down periods for activities involving Iran that were taken in reliance on sanctions relief provided for in the JCPOA. U.S.-owned or controlled foreign entities will have until November 4, 2018 to wind down business with Iran undertaken pursuant to General License H. Since the primary sanctions prohibiting U.S. persons from doing business with Iran were never lifted under the JCPOA, the sanctions to be reimposed are largely secondary sanctions on non-U.S. persons doing business with Iran. It remains to be seen how the secondary sanctions will be implemented or enforced, as the remaining parties to the JCPOA (European allies plus Russia and China) remain committed to upholding it.

Sanctions That Will Snap Back Into Effect

OFAC announced that it will reimpose sanctions on a staggered basis. A smaller group of sanctions will be reimposed after a 90-day wind-down period ending August 6, 2018, and the remainder will be reimposed after a 180-day wind-down period ending November 4, 2018. All sanctions that were suspended or waived by the JCPOA will be in force by November 5, 2018 at the latest. Most sanctions waived by the JCPOA are secondary sanctions that apply to non-U.S. companies. The limited sanctions relief afforded to U.S. companies, such as the authorization to engage with the Iranian commercial aircraft sector and for U.S.-owned or controlled foreign subsidiaries to do certain business with Iran, will also be revoked within the next 90 and 180 days, respectively.

The sanctions that will be reimposed after 90 days (on August 6, 2018) are:

- Sanctions on the purchase or acquisition of U.S. dollar bank notes by the Government of Iran;
- Sanctions on Iranian trade in gold and 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 Iranian rials;
- Sanctions on the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt;
- Sanctions on the Iranian automotive sector;
- Revocation of the authorization of the importation of Iranian-origin carpets and foodstuffs into the United States, as well as certain related financial transactions;
- Revocation of 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); and
- Revocation of General License I relating to contingent contracts for eligible activities under the JCPOA SLP.

The sanctions that will be reimposed after 180 days (on November 4, 2018) are:

- Sanctions on Iranian port operators, shipping, and shipbuilding sectors, including sanctions on the Islamic Republic of Iran Shipping Lines (IRISL), South Shipping Line Iran, and their affiliates;
- Sanctions on the Iranian petroleum and petrochemical sectors, including transactions with the National Iranian Oil Company (NIOC), Naftiran Intertrade Company (NICO), and National Iranian Tanker Company (NITC);
- Sanctions on transactions by foreign financial institutions with the Central Bank of Iran (CBI) and Iranian financial institutions designated under Section 1245 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA);
- Sanctions on the provision of specialized financial messaging services to CBI and Iranian financial institutions described in Section 104(c)(2)(E)(ii) of the Comprehensive Iran Sanctions and Divestment Act of 2010 (CISADA);
- Sanctions on the provision of underwriting services, insurance, or reinsurance to Iran;
- Sanctions on the Iranian energy sector; and
- Revocation of General License H, which authorized U.S.-owned or controlled entities to do business with Iran.

The persons who were removed from the list of Specially Designated Nationals and Blocked Persons (SDN List) and placed on the List of Persons Identified as Blocked Solely Pursuant to Executive Order 13599 (EO 13599 List) as part of sanctions relief under the JCPOA will be re-listed on the SDN List and once again be subject to secondary sanctions on November 5, 2018.

Additionally, the secondary sanctions aimed at cutting Iranian crude oil exports under the NDAA will be reimposed. OFAC FAQs indicate that countries that plan to seek an exemption from these sanctions due

to a significant reduction in imports of Iranian crude oil should reduce the volume of Iranian crude oil imported during the 180-day wind-down period prior to November 5, 2018.

Effects on U.S. Businesses

The most significant effect of the withdrawal from the JCPOA for U.S. businesses is the wind-down and revocation of General License H, which allowed U.S.-owned or controlled foreign entities to transact business with Iran and Iranian entities. OFAC intends to revise General License H shortly to implement this wind-down authorization. Pursuant to OFAC's FAQs, all business being conducted pursuant to General License H must be wound down and concluded within 180 days, by November 4, 2018. OFAC makes clear in the FAQs that any business with Iran or Iranian entities being conducted by U.S.-owned or controlled foreign entities that continues after the wind-down period may be subject to enforcement actions by OFAC. OFAC also states that in considering any potential enforcement action, it will take into account the efforts to wind down activities involving Iran or Iranian entities prior to November 4, 2018.

The authorizations pursuant to the JCPOA SLP and General License I that allowed U.S. companies to engage in certain business with the Iranian commercial aircraft sector are being eliminated. OFAC will no longer be accepting license applications under the JCPOA SLP and all pending applications will be returned without action. All currently issued specific licenses pursuant to the JCPOA SLP (presumably including licenses to Boeing and Airbus for larger Iranian orders that have been publicly reported) will be revoked. OFAC expects to issue authorizations that provide for a wind-down period ending August 6, 2018 for transactions under these specific licenses and any contingent transactions that are currently authorized by General License I. Additionally, the general licenses to import Iranian-origin carpets and foodstuffs will also be replaced with authorizations to wind down activities under these general licenses by August 6, 2018.

Though new activity with Iran or Iranian entities pursuant to these licenses that concludes before the end of the wind-down period may be technically allowed, any party that does so must ensure that any such activity in fact concludes by the end of the applicable wind-down period. Additionally, OFAC has implied that such activity is disfavored, and it will "assess whether any new business was entered into involving Iran during the applicable wind-down period" when considering a potential enforcement or sanctions action with respect to activities that were engaged in after the wind-down period has expired.

Other than the licenses described above, the effects on U.S. businesses of the withdrawal from the JCPOA should be limited. Throughout the life of the JCPOA, the United States maintained its comprehensive embargo against Iran. U.S. businesses were (and are) generally prohibited from doing business with Iran and Iranian entities. Most of the sanctions that are being reimposed are those that impose secondary sanctions on non-U.S. persons that engage in certain business with Iran.

Reaction of Other Parties to the JCPOA

The High Representative of the European Union, Federica Mogherini, issued a press release that stated "As long as Iran continues to implement its nuclear related commitments, as it is doing so far, the European Union will remain committed to the continued full and effective implementation of the nuclear deal." Separately, UK Prime Minister Theresa May, German Chancellor Angela Merkel, and French President Emmanuel Macron issued a statement that emphasized their "continuing commitment" to the JCPOA. Russia and China, the other non-Iranian parties to the JCPOA, have not yet issued a response to the Trump administration's action. However, Russia and China issued a [joint statement](#) in support of the JCPOA on May 5, 2018 at the Preparatory Committee for the 2020 Nuclear Non-Proliferation Treaty (NPT) Review Conference. Iranian Foreign Minister Javad Zarif issued a [statement on Twitter](#) stating that

he would “spearhead a diplomatic effort” to determine if the remaining participants in the JCPOA and Iran could uphold the deal without the United States.

Though it remains to be seen what may be negotiated between the United States and the other parties to the JCPOA, the stage is set for a conflict of laws. The statements by EU parties to the JCPOA indicate they plan to uphold their commitments under the JCPOA. Previously, the EU Ambassador to the United States [threatened](#) to use the blocking regulation (which already prevents EU companies from complying with unsanctioned foreign boycotts, including the U.S. sanctions against Cuba) in the event of a JCPOA withdrawal by the United States. EU companies may be forced to decide whether to comply with U.S. secondary sanctions against Iran or the EU’s blocking regulation after secondary sanctions come back into force.

Key Takeaways

The United States has withdrawn from the JCPOA, and within 180 days, all sanctions relief under the JCPOA will have ended and all U.S. sanctions against Iran that were in place before the JCPOA’s implementation will once again be in force. Although most of these sanctions are secondary sanctions against non-U.S. persons that do business with Iran, a limited number relate to conduct by U.S. persons and their subsidiaries. U.S. businesses that engage in any of the following activity should immediately begin a review of their Iran-related activity and begin the process of winding down the activity in accordance with OFAC guidance and with the assistance of experienced counsel:

- Own or control a non-U.S. entity that does business with Iran pursuant to General License H;
- Does business with the Iranian commercial aircraft sector pursuant to specific licenses under the JCPOA SLP and/or General License I; or
- Imports Iranian-origin carpets or foodstuffs into the United States.

All U.S. companies that conduct business internationally, particularly any companies that do business with Iran, should ensure their compliance policies and procedures are up to date and reflect the latest updates to the JCPOA. Non-U.S. companies should also evaluate any business with Iran to determine their potential exposure to secondary sanctions. These companies may also find European and other foreign banks to become less willing to finance transactions with Iran, as many foreign banks are likely to limit their own exposure to Iran.

If you have any questions regarding the Iran sanctions program or how it may affect your business, please reach out to the contacts listed below.

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