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Client Alert

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United States Withdraws from the Iran Nuclear Deal and Snaps Back Stringent Sanctions

On May 8, 2018, President Donald Trump announced that the United States was withdrawing from the Joint Comprehensive Plan of Action ("JCPOA") negotiated between the "P5+1" countries (United States, United Kingdom, France, Germany, China, and Russia) and Iran. Under the JCPOA, which went into effect in January 2016, Iran agreed to strict curbs on its nuclear program in exchange for the United States, Europe, and the United Nations suspending or revoking a number of sanctions.

President Trump issued a National Security Presidential Memorandum ("NSPM") on "Ceasing US Participation in the JCPOA and Taking Additional Action to Counter Iran's Malign Influence and Deny Iran All Paths to a Nuclear Weapon," which orders the State Department and Treasury Department to "immediately begin taking steps to re-impose all United States sanctions lifted or waived in connection with the JCPOA[.]" The White House also issued a fact sheet on Ending United States Participation in an Unacceptable Iran Deal, and the Treasury Department's Office of Foreign Assets Control ("OFAC") also issued wind-down Frequently Asked Questions ("FAQs").

President Trump's announcement will have significant implications for cross-border trade, regulatory compliance, and US and non-US companies – including those in the energy, shipping and ports, banking and investment, manufacturing, automotive, and insurance industries. Below, we provide greater detail on the process for re-imposing US primary and secondary sanctions targeting Iran.

Primary Sanctions Snapback

As soon as administratively feasible, OFAC intends to revoke the JCPOA-related authorities that permitted limited transactions with Iran that involve a US nexus, and issue new authorities authorizing wind-down transactions. OFAC will publish these new authorities in the Federal Register. The NSPM did not indicate that OFAC plans to revoke any other existing regulations or licenses authorizing US person transactions with Iran, such as for food and medicine.

90-Day Wind-Down Period

By August 6, 2018, US and non-US persons must wind down transactions authorized under the Statement of Licensing Policy ("SLP") for Activities Related to the Export and Re-export to Iran of Commercial Passenger Aircraft and Related Parts and Services and General License I authorizing negotiating and entry into contracts related to the SLP. To the extent that OFAC granted specific licenses pursuant to the SLP, OFAC also will revoke those specific licenses (if they have not yet expired).

By August 6, 2018, all transactions related to the importation into the United States of Iranian-origin carpets and foodstuffs must be wound down. All related financial transactions, such as letters of credit and brokering, must also be wound down.

180-Day Wind-Down Period

By November 4, 2018, US-owned and -controlled foreign affiliates must wind down all transactions with Iran that were authorized pursuant to General License H. OFAC has not provided updated guidance regarding whether US persons and US parent companies are permitted to participate in any wind-down decisions.

Secondary Sanctions Snapback

On May 8, the State Department revoked secondary sanctions waivers due to expire on May 12, 2018 and July 12, 2018, and issued new waivers to authorize these otherwise-sanctionable activities during wind-down periods that expire on August 8, 2018 and November 4, 2018. Because the State Department has not yet published these new waivers, it is unclear whether they only changed the temporal scope of the previous waivers, or whether they instead include substantive limits on the types of activities authorized during the wind-down periods. OFAC is also expected to re-issue relevant provisions of Executive Orders 13574, 13590, 13622, 13628, and 13645. Unlike the waivers, which were immediately revoked and replaced, each EO will not be issued until its applicable wind-down period expires.

90-Day Wind-Down Period

Non-US persons may undertake wind-down transactions related to the following activities until August 6, 2018:

- The purchase or acquisition of US dollar banknotes by the Government of Iran ("GOI");
- The trade in gold or precious metals by Iran;
- The direct or indirect sale, supply, or transfer to or from Iran of graphite, raw or semi-finished metals (e.g., aluminum, steel, coal), or software for integrating industrial processes;
- Significant transactions related to the purchase or sale of Iranian rials, or the maintenance of significant funds or accounts outside of Iran denominated in rials;
- The purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt; and
- Transactions related to Iran's automotive sector.

180-Day Wind-Down Period

Non-US persons may undertake wind-down transactions related to the following activities until November 4, 2018:

- Iranian port operators, shipping, and shipbuilding;

- The purchase from Iran of petroleum, petroleum products, and petrochemical products, and other petroleum-related transactions (including those involving the National Iranian Oil Company, Naftiran Intertrade Company, and the National Iran Tanker Company);
- Non-US financial institution transactions with the Central Bank of Iran ("CBI") and Iranian financial institutions;
- The provision of specialized financial messaging services to CBI and Iranian financial institutions (*e.g.*, SWIFT);
- The provision of underwriting services, insurance, or reinsurance; and
- Additional sanctions related to Iran's energy sector.

Scope of "Wind-Down" Activities

The State Department and OFAC have not defined what constitutes a "wind-down activity," although the new FAQs indicate that OFAC expects US and non-US persons to *reduce* transactions with Iran by August 6 or November 4, not continue normal business transactions until the cut-off date. For example, when determining whether to impose sanctions for any activity that occurs *after* the applicable wind-down period expires, FAQ 2.2 states that "OFAC will evaluate efforts and steps taken to wind down activities and will assess whether any new business was entered into involving Iran during the applicable wind-down period." While OFAC does not define the term "new business," FAQ 2.1 indicates that OFAC expects US and non-US persons to only conduct transactions during the applicable wind-down period "pursuant to a written contract or written agreement *entered into prior to May 8, 2018*."

Significant Reduction Exceptions for Purchases of Iranian Oil

The NSPM and the State Department's revocation of waivers snap back the FY 2012 National Defense Authorization Act provision requiring a country to significantly reduce its Iranian oil purchases for financial institutions in that country to avoid secondary sanctions for facilitating Iran-related transactions. The State Department will determine whether to issue exceptions by November 4, based on a country's reduced Iranian oil purchases from May 8 to November 4. The State Department will consider reductions in quantity and percentage of purchases, termination of contracts for future delivery of Iranian crude oil, and "other actions that demonstrate a commitment to decrease substantially such purchases."

Re-Designation of Specially Designated Nationals ("SDNs")

By November 4, OFAC will re-designate on the SDN List approximately 400 individuals, entities, and vessels that were de-listed on JCPOA Implementation Day. These persons are currently listed on the List of Persons Blocked Solely Pursuant to EO 13599 ("EO 13599 List"), which means they are only listed because they are affiliated with GOI or are an Iranian financial institution; therefore, non-US persons could transact with them as long as they were not designated on the SDN List for another reason. A State Department official stated that this re-designation process will take time, and OFAC will not re-designate persons in a manner that undermines the wind-down authorizations. For example, because energy transactions benefit from a 180-day wind-down period, OFAC is unlikely to designate Iranian energy entities until that wind-down period ends.

Nevertheless, FAQs 3.1 and 3.2 also underscore that "Treasury will continue to target aggressively anyone who engages in [non-nuclear] sanctionable activity [involving Iran's support for terrorism, ballistic missile program, human rights abuses, and regional destabilization], regardless of whether the individual or entity was removed from the SDN List on Implementation Day." Therefore, entities may be added to the SDN List during the next six months.

What's Next?

The other parties to the JCPOA have not followed the United States' example. German Chancellor Angela Merkel, UK Prime Minister Theresa May, and French President Emmanuel Macron published a joint statement, "It is with regret and concern that we, the Leaders of France, Germany and the United Kingdom take note of President Trump's decision to withdraw the United States of America from the Joint Comprehensive Plan of Action. Together, we emphasise our continuing commitment to the JCPoA." EU High Representative Federica Mogherini issued a similar statement, which also expressed concern about the re-imposition of secondary sanctions and hinted that the EU could impose blocking laws to prohibit its companies from complying with US secondary sanctions. Russia and China also oppose withdrawing from the JCPOA.

The United States and Europe had been negotiating possible extensions and side agreements to the JCPOA right up until President Trump's announcement. In particular, Europe agreed in principle to side agreements requiring Iran to cease funding terrorism, supporting regional instability, and developing ballistic missiles in order to continue receiving sanctions relief under the JCPOA. Europe would not agree to extend the sunset provisions of the JCPOA. Moreover, Russia, China, and Iran had not agreed to alter the JCPOA. White House and State Department officials plan to re-start negotiations with Europe – now with the threat of secondary sanctions hanging over their heads – in hopes they can reach agreement on these additional issues and force Iran back to the negotiating table. Iranian President Hassan Rouhani stated that Iran will stay a party to the JCPOA as long as the remaining parties continue to suspend sanctions.

Iran already lodged several complaints against the United States under the JCPOA's Joint Commission, which was set up to hear and mitigate disputes between the parties, and could lodge the United States' withdrawal as a new complaint. However, if Iran's complaint is not resolved and Iran deems the withdrawal to constitute significant non-performance (which it almost certainly is), the JCPOA states that Iran "could treat the unresolved issue as grounds to cease performing its commitments under this JCPOA in whole or in part," which could free Iran to resume enriching uranium. Iran's leaders must decide whether the benefits offered by the remaining JCPOA parties – which could be further reduced if the United States and Europe agree to side agreements to the JCPOA – are sufficient for it to continue abiding by the terms of the deal.

The State Department and Treasury Department are expected to publish additional guidance regarding the United States' withdrawal from the JCPOA in the coming days. King & Spalding will continue to monitor developments related to President Trump's announcement and its impact on US and EU sanctions programs. Please contact us if you have any questions or would like additional information.