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Iran sanctions relief: Easy come, easy go... the United States withdraws from Iran nuclear deal and announces intent to re-impose sanctions

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Declaring that it is “defective at its core,” on 8 May 2018, President Trump announced that the United States would withdraw from the Iran nuclear deal and begin re-imposing sanctions that were lifted pursuant to U.S. commitments under the agreement. Formally known as the Joint Comprehensive Plan of Action (JCPOA), the deal has been in effect since January 2016 and is the political agreement between the world’s major powers and Iran that cut off Iran’s path to a nuclear bomb in exchange for sanctions relief.

The announcement was accompanied by issuance of a Presidential memorandum ordering the Secretary of State to “take all appropriate steps to cease” U.S. participation in the JCPOA and directing the Secretaries of State and the Treasury to immediately take steps to re-impose all U.S. sanctions waived or lifted in connection with the JCPOA.

The Treasury Department’s Office of Foreign Assets Control (OFAC) simultaneously issued public guidance setting out a two-tiered wind-down schedule, with 90 and 180-day expirations “for activities involving Iran that were consistent with the U.S. sanctions relief specified in the JCPOA.” At the end of each wind-down period, 6 August and 4 November, 2018, respectively, certain sanctions that had been waived or lifted will be brought back into effect.

Critically, the re-imposition of sanctions will eliminate (1) opportunities for non-U.S. companies to engage in almost every key industry sector (e.g., energy and petrochemicals, banking and finance, insurance and reinsurance, shipping, and automotive) without potential sanctions exposure, (2) the ability of foreign subsidiaries of U.S. companies (or other non-U.S. entities “owned or controlled” by U.S. persons, such as 50/50 joint ventures) to engage in authorized business in Iran (pursuant to OFAC General License H), (3) OFAC approval of specific licenses for the sale or lease of commercial passenger aircraft (and parts and services) to Iranian airlines (such as Iran Air) that were not designated as Specially Designated Nationals (SDNs); and (4) OFAC’s general license for the importation of Iranian-origin foodstuffs and carpets.

Additionally, by 5 November 2018, 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.” Effectively, parties that were SDNs in the past and were moved to the E.O. 13599 List in January 2016 will now be again re-designated as SDNs, creating exposure under secondary U.S. sanctions for non-U.S. persons who deal with them.

Practical implications for companies and financial institutions engaging with Iran

In light of today's announcement and the upcoming re-imposition of U.S. secondary sanctions on business activities with Iran, non-U.S. companies should immediately review any existing operations, contracts, loans, or other arrangements involving Iran to determine potential sanctions exposure (and whether there is a sufficiently robust sanctions exclusion clause); assess whether there is a need to wind down those operations due to the re-imposition of sanctions; and, if so, determine the appropriate wind-down steps and relevant wind-down period.

Foreign subsidiaries of U.S. companies that are engaging with Iran under General License H (GL H) should prepare for the elimination of GL H. Absent another path to conduct such activities without sanctions exposure, those subsidiaries will also need to urgently determine what steps are necessary to wind down operations. In FAQs issued in conjunction with the President's announcement, OFAC stated that GL H will be revoked and replaced with a different wind-down authorization that will expire on 5 November 2018. OFAC stated that General License I (for certain activities involving civil aviation sector) will be revoked as well and replaced with a different wind-down authorization that will expire on 6 August 2018.

Finally, for companies engaged in business with Iran that will continue to be authorized after the snapback of sanctions (e.g., medical device sales), the re-designation of financial institutions that had been removed from the SDN List under the deal could present greater difficulties and risks in processing authorized payments. Businesses will need to reassess any authorized financial dealings that they continue to have with Iran.

Withdrawal foreshadowed

President Trump's decision to withdraw the U.S. from the JCPOA, while isolating the U.S. from key allies and delivering a significant blow to businesses engaged in Iran pursuant to JCPOA relief, was not a surprise. He has been foreshadowing the decision for several months, threatening in January 2018 that he would pull out of the deal and terminate the sanctions relief unless certain demands to supplement and enhance the JCPOA were met.

The President's ultimatum sought to broaden the JCPOA to: (1) encompass Iran's ballistic missile program; (2) extend Iran's nuclear breakout period to at least one year; (3) require "anytime, anywhere" inspections of nuclear facilities; and (4) eliminate any sunset clauses. European officials expressed willingness to adopt the first three conditions, but resisted the elimination of the sunset clauses.

The real question is where we go from here. Iran's response – whether it continues with the deal or opts to resume its nuclear program – may depend on how the other parties to the JCPOA conduct themselves. It is possible that the EU nations will attempt to offer Iran new economic incentives in exchange for continuing to fulfill its commitments and, in response to Tuesday's announcement, they have already reiterated their commitment to the deal, including through a joint UK, German, and French statement and a statement from the EU's High Representative for Foreign Affairs. The

EU could also seek to force European companies not to comply with U.S. sanctions through a so-called "blocking regulation," though no such action has yet been announced. Additionally, there are similar possibilities with Russia and China, also signatories to the JCPOA.

Finally, it is possible that the dual-pronged wind-down period could give European nations one last chance to reach a supplemental agreement with the United States that would meet President Trump's demands and allow him to declare victory and back away from the re-imposition of sanctions. (Even the optimists among us would not dare to predict that Iran would sign-off on such a deal.) For now, however, the United States appears to be on a glide path toward eliminating all JCPOA sanctions relief.

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We will continue to monitor this space closely and provide updates as events warrant.

Contacts

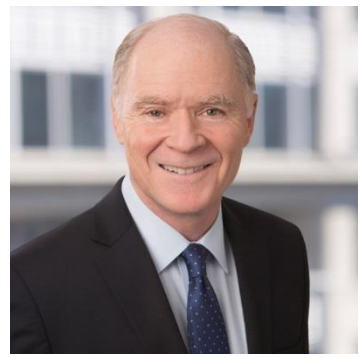
Anthony V. Capobianco
Partner, Washington, D.C.
Tel +1 202 637 2568
anthony.capobianco@hoganlovells.com

Brian P. Curran
Partner, Washington, D.C.
Tel +1 202 637 4886
brian.curran@hoganlovells.com

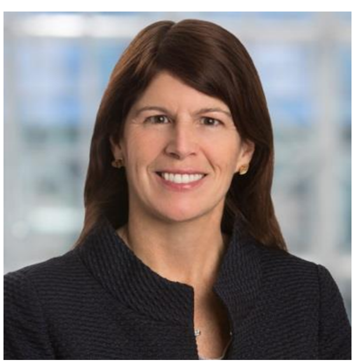
Aleksandar Dukic
Partner, Washington, D.C.
Tel +1 202 637 5466
aleksandar.dukic@hoganlovells.com

Andrew Keller
Partner, Washington, D.C.
Tel +1 202 637 5649
andrew.keller@hoganlovells.com

Ajay Kuntamukkala
Partner, Washington, D.C.
Tel +1 202 637 5552
ajay.kuntamukkala@hoganlovells.com

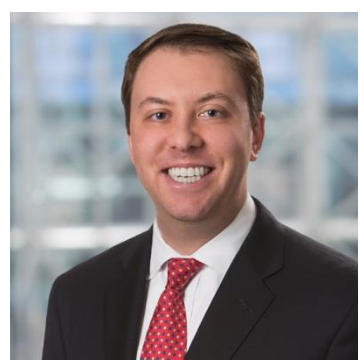


Robert D. Kyle
Partner, Washington, D.C.
Tel +1 202 637 5494
robert.kyle@hoganlovells.com



Beth Peters
Partner, Washington, D.C.
Tel +1 202 637 5837
beth.peters@hoganlovells.com

Stephen F. Propst
Partner, Washington, D.C.
Tel +1 202 637 5894
stephen.propst@hoganlovells.com



Ari Fridman
Senior Associate, Washington, D.C.
Tel +1 202 637 5449
ari.fridman@hoganlovells.com

Adam J. Berry
Associate, Washington, D.C.
Tel +1 202 637 2871
adam.berry@hoganlovells.com

Sean Carlesimo
Associate, Washington, D.C.
Tel +1 202 637 5589
sean.carlesimo@hoganlovells.com

WWW.HOGANLOVELLS.COM