

U.S. Reimposes Final Tranche of Iran-Related Sanctions

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On November 5, 2018, the United States took steps to complete the U.S. withdrawal from the Joint Comprehensive Plan of Action (“JCPOA”), under which the United States – along with its partners in the P5+1¹ – had previously agreed to suspend or waive certain sanctions on Iran in exchange for limitations on Iran’s nuclear program. It did so by reimposing the final tranche of sanctions against Iran pursuant to Executive Order (“E.O.”) 13846 and imposing blocking sanctions on hundreds of additional targets.

These sanctions include the following:

Blocking Sanctions

- On Iran’s designated port operators, and designated persons in Iran’s shipping and shipbuilding sectors, including on the Islamic Republic of Iran Shipping Lines (“IRISL”), South Shipping Line Iran, or their affiliates²;
- On designated persons that are part of Iran’s energy sector;
- On transactions that materially assist the National Iranian Oil Company (“NIOC”), the Naftiran Intertrade Company (“NICO”), and the Central Bank of Iran (“CBI”);
- On persons determined to have: (a) been involved in various corruption-related activities; (b) transferred or facilitated the transfer to Iran of goods or technologies that the Iranian government would likely use to commit serious human rights abuses against its people; or (c) engaged in censorship or related activities with respect to Iran after 2009.

Correspondent and Payable-Through Account Sanctions

- On foreign financial institutions that engage in significant transactions with the CBI and designated Iranian financial institutions³;
- On foreign financial institutions that facilitate significant transactions with NIOC or NICO (subject to certain exceptions), or for the purchase, acquisition, sale, transport, or marketing of petroleum or petroleum products or petrochemical products from Iran;
- On entities that provide underwriting services, insurance, or reinsurance, including with respect to

Iran's energy, shipping, and shipbuilding sectors, as well as the broad range of Iran-related activities that are subject to U.S. sanctions.

*Menu-Based Sanctions*⁴

- On persons that engage in transactions for the purchase, acquisition, sale, transport, or marketing of petroleum or petroleum products or petrochemical products from Iran.

Our previous [client alert](#) includes further details on these sanctions.

OFAC revised the Iranian Transactions and Sanctions regulations to implement these sanctions and published several Frequently Asked Questions ("FAQs") to provide guidance on its interpretation of several implementation issues.⁵

Blocking Sanctions

OFAC [added](#) more than 700 individuals and entities to the list of Specially Designated Nationals and Blocked Persons ("SDN List"), covering "hundreds of targets previously granted sanctions relief under the JCPOA, as well as more than 300 new designations."⁶ These include many Iranian banks, their foreign and domestic subsidiaries, Iranian vessels, energy firms, and the Iranian airline Iran Air.

Under the JCPOA, the U.S. had suspended secondary sanctions for certain dealings involving parties on the List of Persons Identified as Blocked Solely Pursuant to Executive Order 13599 ("E.O. 13599 List").⁷ OFAC has now moved most, but not all, persons designated pursuant to E.O. 13599 to the SDN List, meaning that significant transactions by non-U.S. entities with such persons will again be subject to secondary sanctions.

There remain certain non-designated Iranian financial institutions and other entities (i.e., those that were not moved from the E.O. 13599 List to the SDN List). Transactions with these financial institutions by non-U.S. persons are not subject to secondary sanctions. However, OFAC has removed the E.O. 13599 List from its website and has not provided a full list of non-designated Iranian financial institutions and other entities.

Petroleum Sales

E.O. 13846 authorized the imposition of sanctions on persons determined to have engaged, after November 4, in a significant transaction for the purchase, acquisition, sale, transport, or marketing of petroleum or petroleum products from Iran. Likewise, the E.O. provided authority to impose sanctions on those who purchase petroleum or petroleum products from Iran, as well as engage in other significant dealings with NIOC or NICO.

These sanctions targeting Iran's petroleum sales will apply except against persons in a country that has been granted a significant reduction exception ("SRE")—i.e., countries and territories that the Secretary of State determines have significantly reduced their oil imports from Iran can continue to pay for petroleum and petroleum products imported from Iran. Financial institutions facilitating transactions involving Iranian petroleum or petroleum products, or with NIOC and NICO, are subject

to secondary sanctions unless they are facilitating transactions for an entity from an SRE jurisdiction.

The Trump Administration issued SREs to eight jurisdictions: China, India, Japan, Italy, Greece, Turkey and Taiwan. The SREs will extend for six months, after which it may be renewed. In announcing the SREs, Secretary of State Pompeo stated that “[t]wo of the jurisdictions will completely end imports as part of their agreements. The other six will import at greatly reduced levels.”⁸ U.S. officials have also indicated, however, that the United States is not contemplating more SREs after this first six-month period,⁹ leaving some uncertainty as to how the six jurisdictions that are not committing to “go to zero” will be able to pay for those imports.

Financial Sector

As noted above, the sanctions that went into effect on November 5 include designations of approximately 50 Iranian financial institutions and many of their foreign subsidiaries and branches. These designations include Bank Melli, one of Iran’s largest banks, and 13 of its subsidiaries, along with the Export Development Bank of Iran, the Iran-Venezuela Bi-National Bank, Bank Sepah, and Bank Tejarat, among others. Notably, the re-imposed measures also include the authority to sanction persons providing specialized financial messaging services to the CBI and the other designated Iranian financial institutions.¹⁰

Moreover, last month, the Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”) issued an [advisory](#) to help financial institutions “better detect potentially illicit transactions related to the Islamic Republic of Iran (Iran).”¹¹ The FinCEN advisory described various tactics that Iran employs to evade U.S. sanctions, including through regional financial institutions, third-country exchange houses, shell companies, deceptive shipping practices, precious metals and virtual currency. The advisory also identified red flags to help financial institutions identify suspicious activities.

OFAC’s broad-scale designations, the Secretary’s threat to sanction financial messaging services, and FinCEN’s Advisory reflect a concerted effort by Treasury to isolate the Iranian financial sector to the greatest extent possible without the level of disruption to the global financial system that occurred during the prior round of intense sanctions on Iran.

Shipping Sector

OFAC [added](#) Iran’s national maritime carrier, IRISL, and its major oil carrier, National Iranian Tanker Company (“NITC”), to the SDN List, among many other entities in Iran’s shipping sector. Persons that knowingly provide significant financial, material, technological, or other support to, or goods or services in support of any activity or transaction on behalf of or for the benefit of a persons in Iran’s shipping sector or who operate a port in Iran will be subject to secondary sanctions.¹² Likewise, foreign financial institutions will also be exposed to U.S. sanctions for knowingly conducting or facilitating a significant financial transaction for the sale, supply, or transfer of significant goods or services used in connection with the shipping or shipbuilding sectors of Iran, including NITC and IRISL.¹³

General License for Humanitarian Trade

The United States continues to maintain a general license for sales of agricultural commodities, food, medicine, or medical devices to Iran. Notably, funds held at foreign financial institutions (including those in non-SRE jurisdictions) on behalf of the Central Bank of Iran institution can be used to facilitate humanitarian trade.¹⁴

EU's Pushback

These actions widen the divergence between the EU and U.S. approach to sanctions on Iran. The EU remains expressly committed to the JCPOA. In a joint statement on November 2 condemning the United States' planned reimposition of sanctions, the EU stated that it "remain[s] committed to implementing the JCPOA" and it is "determined to protect European economic operators engaged in legitimate business with Iran, in accordance with EU law and with UN Security Council resolution 2231."¹⁵

As part of this effort, the EU has recently reactivated the so-called 1996 "Blocking Statute" intended to penalize EU companies that comply with certain U.S. sanctions on Iran that are inconsistent with the EU's commitments under the JCPOA. However, the EU has not initiated any enforcement actions pursuant to the Blocking Statute despite the fact that some EU companies have already abandoned trade and investment opportunities in Iran in anticipation of re-imposed U.S. sanctions.

In addition, the EU, Germany, France, Britain, Russia and China have agreed to set up a special purpose vehicle ("SPV") for non-U.S. trade with Iran. The SPV, which will process Iran's import and export payments, is meant to enable European companies to bypass U.S. sanctions targeting Iran's oil and financial sectors. However, the SPV has not yet been established.¹⁶ U.S. officials have suggested that the SPV will not be an effective tool to overcome ongoing sanctions risks presented by U.S. actions to implement JCPOA withdrawal and that the United States "will aggressively pursue" transactions intended to evade applicable U.S. sanctions.

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Financial institutions and other businesses in the United States and abroad should recognize that OFAC – and the U.S. government more broadly – intends to take strong action to enforce the reimposition and expansion of U.S. sanctions against Iran. Numerous administration officials have made clear that they will scrutinize ongoing dealings with Iran from the perspective of how such transactions implicate primary or secondary sanctions liability. Given these heightened enforcement risks, firms should take steps to understand the scope and nature of their possible dealings with Iran and to assess both the compliance challenges presented by the full snap-back of U.S. sanctions authorities, as well as their respective exposure to such authorities in the current environment.

1. The "P5 1" consisted of the five permanent members of the UN Security Council (the United States, Russia, China, the United Kingdom, and France) along with Germany (the "1"). The EU also participated actively in the negotiation of the JCPOA.

2. On November 5, OFAC added more than 200 individuals and entities in Iran’s shipping and energy sectors to the List of Specially Designated Nationals and Blocked Persons.
3. These include sanctions on the provision of specialized financial messaging services to the CBI and certain other Iranian financial institutions. See OFAC Frequently Asked Questions #645.
4. E.O. 13846 authorizes the Executive Branch to choose from a “menu” of sanctions with respect to certain sanctioned persons. There is no cap on the number of sanctions that can be imposed from the menu. The sanctions menu includes blocking sanctions, directing Export-Import Bank to not approve the issuance of any guarantee, insurance, extension of credit, or participation in the extension of credit related to the sanctioned person, and the denial of visas to sanctioned parties, among others. See Sections 4 and 5 of E.O. 13486.
5. 83 Fed. Reg. 55269 (Nov. 5, 2018), <https://www.gpo.gov/fdsys/pkg/FR-2018-11-05/pdf/2018-24058.pdf>; see OFAC FAQs #630–645.
6. Department of Treasury Office of Foreign Assets Control Press Release, *U.S. Government Fully Re-Imposes Sanctions on the Iranian Regime As Part of Unprecedented U.S. Economic Pressure Campaign* (Nov. 5, 2018), <https://home.treasury.gov/news/press-releases/sm541>; Department of State, *Briefing on Iran* (Nov. 2, 2018), <https://www.state.gov/secretary/remarks/2018/11/287090.htm>
7. The E.O. 13599 List contained a list of individuals and entities determined to constitute the “Government of Iran” or “Iranian financial institution.”
8. Department of State, *Briefing on Iran* (Nov. 2, 2018), <https://www.state.gov/secretary/remarks/2018/11/287090.htm>
9. Department of State, *Briefing With Special Representative for Iran Brian Hook* (Nov. 2, 2018), <https://www.state.gov/r/pa/prs/ps/2018/11/287095.htm>
10. For example, Secretary of State Mnuchin has indicated the Administration’s willingness to sanction SWIFT. See Department of State, *Briefing on Iran* (Nov. 2, 2018), <https://www.state.gov/secretary/remarks/2018/11/287090.htm> (“First of all, I think there’s been a lot of fueled misinformation as it relates to SWIFT and what we’re doing with SWIFT. So that’s why I want to be very clear. So one, okay, I think there was information that SWIFT would not be subject to sanctions. That’s not the case. SWIFT will be subject to sanctions.”)
11. Department of Treasury Financial Crimes Enforcement Network, *Advisory on the Iranian Regime’s Illicit and Malign Activities and Attempts to Exploit the Financial System* (Oct. 11, 2018), [https://www.fincen.gov/sites/default/files/advisory/2018-10-12/Iran Advisory FINAL 508.pdf](https://www.fincen.gov/sites/default/files/advisory/2018-10-12/Iran%20Advisory%20FINAL%20508.pdf)
12. Iran Freedom and Counter-Proliferation Act of 2012, § 1244(c)(2).
13. Iran Freedom and Counter-Proliferation Act of 2012, § 1244(c)(2).
14. See OFAC Frequently Asked Questions Nos. 637 and 641.
15. Press Release, *Joint Statement by the UK, France and Germany on the Iran Nuclear Deal*

(Nov. 2, 2018), <https://www.gov.uk/government/news/joint-statement-by-the-uk-france-and-germany-on-the-iran-nuclear-deal>

16. Financial Times, *Europe Prepares for US Iran Sanctions Hit* (Nov. 4, 2018), <https://www.ft.com/content/644d3400-e045-11e8-a6e5-792428919cee?kbc=e05846a6-3cf5-48e5-8907-89a307e4795e>

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