

CLIENT ALERT:

U.S. WITHDRAWS FROM IRAN NUCLEAR DEAL SECONDARY SANCTIONS AGAINST IRAN RE-IMPOSED

May 14, 2018

Introduction

On May 8, 2018 President Trump issued a National Security Presidential Memorandum, available [here](#), announcing that the United States was withdrawing from the Joint Comprehensive Plan of Action (“JCPOA”) and would re-impose the U.S. secondary sanctions against Iran which had been suspended upon the commencement of the JCPOA. Those secondary sanctions had restricted the activities of non-U.S. persons in relation to Iran. Two separate wind-down periods have been established, enabling non-U.S. persons to conclude Iranian transactions entered into prior to May 8. Also on May 8, the U.S. Office of Foreign Asset Control (“OFAC”) issued FAQs on the re-imposition of sanctions and the wind down periods, which can be reviewed [here](#). At this point the re-imposition of U.S. sanctions against Iran is still being implemented and further developments are expected.

Background

On January 16, 2016, Implementation Day under the JCPOA, the U.S. statutory secondary sanctions against Iran were not completely terminated, but rather those sanctions were waived for successive six-month periods. At the same time, various Executive Orders which included sanctions were revoked. On May 8, 2018 the State Department revoked the statutory waivers which had implemented the JCPOA and, at the same time, issued the necessary statutory sanctions waivers to permit the winding down of Iranian transactions which had been commenced before May 8.

The Wind-down Periods

Two separate wind-down periods have been established for sanctionable activities, one for 90 days and the other for 180 days.

After 90 days, on August 6, 2018, sanctions will be re-imposed on the following activities:

- The purchase or acquisition of U.S. dollar banknotes by the Government of Iran;
- Iran's trade in gold or precious metals;
- 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;
- 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;
- The purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt; and
- Transactions with Iran's automotive sector.

After 180 days, on November 4, 2018, sanctions will be re-imposed on:

- Iran's port operators, and shipping and shipbuilding sectors, including on the Islamic Republic of Iran Shipping Lines (IRISL), South Shipping Line Iran, or their affiliates;
- Petroleum-related transactions with, among others, the National Iranian Oil Company (NIOC), Naftiran Intertrade Company (NICO), and National Iranian Tanker Company (NITC), including the purchase of petroleum, petroleum products, or petrochemical products from Iran;
- Transactions by foreign financial institutions with the Central Bank of Iran and designated Iranian financial institutions under Section 1245 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA);
- The provision of specialized financial messaging services to the Central Bank of Iran and Iranian financial institutions described in Section 104(c)(2)(E)(ii) of the Comprehensive Iran Sanctions and Divestment Act of 2010 (CISADA);
- The provision of underwriting services, insurance, or reinsurance; and
- Iran's energy sector.

Any person engaged in above-described sanctionable activities prior to May 8 should take immediate steps to wind down those activities before August 6 or November 4, as applicable. If the sanctionable activities continue beyond those wind-down deadlines, even pursuant to a pre-May 8 contract, then penalties may be imposed.

Note that if a non-U.S., non-Iranian party who has wound down a pre-May 8 contract within the applicable deadline of either August 6 or November 4 is still owed payment for goods or services by an Iranian contract counterparty after the wind-down deadlines, that payment can be received after the conclusion of the wind-down period. This assumes that the activities for which payment is owed were consistent with the U.S. sanctions in effect at the time. However, such payments cannot involve the U.S. financial system or U.S. persons.

New Iran-related Business

FAQ 2.2 addresses the issue of whether, after May 8, 2018, parties can engage in new Iran-related transactions if they will be concluded within the applicable wind-down periods. The response provided

in FAQ 2.2 is less than clear, but in informal discussions OFAC has indicated that penalties could be imposed on sanctionable activities entered into after May 8, even if they are concluded within the applicable wind-down period. It is recommended that any party considering entering a new Iran-related transaction after May 8, which transaction would be contrary to the secondary sanctions, give careful consideration to the possibility that sanctions could be imposed by OFAC, and consider seeking guidance from OFAC before entering any such transaction.

Prior Executive Orders

In order to implement the JCPOA, Executive Order 13716 was issued revoking prior Executive Orders containing sanctions provisions. It is anticipated that the U.S. government will re-impose the relevant provisions of Executive Orders 13754, 13590, 13622, 13628 and 13645 in order to completely return the U.S. secondary sanctions to the pre-JCPOA status.

Specially Designated Nationals

When the JCPOA was implemented over 400 individuals and entities were removed from the U.S. Specially Designated Nationals List, the Foreign Sanctions Evaders List, and the Non-SDN Iran Sanctions Act List. While these individuals and entities have not been immediately restored to the lists, OFAC advises that they will be re-listed no later than November 5, 2018. After these parties have been restored to the SDN List and other sanctions lists, persons who engage in activities with them may be subject to secondary sanctions exposure. OFAC advises that once re-listed, such persons and entities will have a notation of “Additional Sanctions Information – Subject to Secondary Sanctions” in their SDN List entry.

General License H

As part of the implementation of the JCPOA, OFAC issued General License H, which authorized U.S.-owned or U.S.-controlled foreign entities to engage in transactions with Iran. OFAC intends to revoke General License H, and will issue a more restrictive license which will permit only the wind-down of activities commenced under General License H, which must be concluded by November 4, 2018.

Summary

The re-imposition of the U.S. secondary sanctions against Iran will be an ongoing process and we will continue to report developments. The Trump administration has long criticized the Iran nuclear deal and expressed a determination to completely renegotiate the agreement with Iran. Since the restoration of the prior sanctions against Iran is designed to pressure Iran back to the negotiating table, it can be assumed that OFAC may enforce the re-imposed secondary sanctions with renewed vigor. At this point, it is not clear what ultimate positions will be taken by the other parties to the JCPOA (Great Britain, France, Germany, China and Russia). However, at least initially they have indicated they intend to continue to work within the framework of the JCPOA.

Any parties trading with Iran should now exercise caution and carefully review the status of the U.S. secondary sanctions against Iran to determine whether their activities may expose them to penalties.

Disclaimer: This Client Alert provides only a general summary of the U.S. withdrawal from the Joint Comprehensive Plan of Action on May 8, 2018 and the re-imposition of U.S. sanctions against Iran and is not intended to constitute comprehensive legal advice. Specific legal advice should be taken with respect to each individual inquiry regarding the designations. For additional clarification, please feel free to contact Bill Juska (juska@freehill.com), Gina Venezia (venezia@freehill.com) or Bill Pallas (pallas@freehill.com).

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