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November 5, 2018 Regulatory Alert: **U.S. Withdrawal from JCPOA and Re-Imposition of U.S. Sanctions suspended in 2016**

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On May 8, 2018, President Trump announced the U.S. withdrawal from the Iran nuclear agreement (the JCPOA) and, subject to 90 or 180 day wind-down periods, he re-imposed nuclear-related primary and secondary sanctions that were lifted in January 2016 pursuant to the JCPOA.

On August 6, the President signed Executive Order 13864 to re-impose the first tranche of such sanctions, and OFAC issued implementing regulations and guidance. On November 2, OFAC issued further regulations implementing the second tranche of restored sanctions. With few exceptions, all of the sanctions waived as part of the JCPOA have now been restored.

U.S. Sanctions Rollbacks Effective August 6, 2018

Effective August 6, OFAC revoked (i) the general license to import Iranian-origin foodstuffs and carpets into the United States, (ii) the favorable licensing policy for exporting commercial passenger aircraft and related parts and services to Iran, and (iii) General License I to negotiate and consummate contingent contracts for such exports to Iran. OFAC also revoked all specific licenses issued pursuant to these policies since January 2016 and indicated that it will no longer consider or evaluate any such license applications.

Secondary sanctions directed at non-U.S. Persons related to the following activities were re-imposed: (i) the Government of Iran purchasing or acquiring U.S. dollar banknotes, (ii) Iran's trade in gold and other precious metals, (iii) Iran's trade in graphite, raw or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes, (iv) significant transactions relating to trading in Iranian Rials or the maintenance of significant funds or accounts denominated in Iranian Rials outside Iran, (v) purchasing, subscribing to, or facilitating the issuance of Iranian sovereign debt, and (vi) transactions relating to Iran's automotive sector, other than exporting finished vehicles (cars, trucks, buses, minibuses, pick-up trucks, and motorcycles) and goods or services for the maintenance of finished vehicles to Iran if no further assembly or manufacturing is required there.

U.S. Sanctions Rollbacks and Expansions Effective November 5, 2018

OFAC revoked General License H on June 27, 2018, substituting a "wind-down" license for existing transactions through November 4, 2018. General License H formerly authorized transactions with Iran by U.S. owned or controlled foreign entities with the Government of Iran or persons subject to Iranian jurisdiction. The wind-down period has now expired, meaning that foreign subsidiaries must comply with OFAC sanctions against Iran to the same extent as U.S. persons.

OFAC has reiterated that a U.S. parent will be responsible for penalties for violations committed by a U.S. owned or controlled foreign entity's violation of U.S. sanctions.

U.S. secondary sanctions with respect to the following activities were also re-imposed, as of November 5, 2018: (i) transactions with Iran's shipping and shipbuilding sectors and port operators (including the Islamic Republic of Iran Shipping Lines, South Shipping Line Iran, and their affiliates), (ii) petroleum-related transactions, including barter arrangements, such as the purchase of petroleum, petroleum products, and petrochemical products from Iran, including with the National Iranian Oil Company, Naftiran Intertrade Company, National Iranian Tanker Company, or entities owned or controlled by or acting on their behalf, (iii) transactions by foreign financial institutions with the Central Bank of Iran (CBI) and certain designated Iranian financial institutions, (iv) provision of specialized financial messaging services (i.e. SWIFT) to the CBI and certain other Iranian financial institutions, (v) provision of underwriting services, insurance or re-insurance, and (vi) transactions relating to Iran's energy sector.

While there has been discussion in the press about a possible sanctions waiver for SWIFT, Treasury Secretary Mnuchin has indicated that SWIFT will be held to the same standard as other financial institutions. The key prohibition that could trip up SWIFT is that many Iranian banks will be re-designated as SDNs and banking transactions involving such banks, directly or indirectly, could trigger sanctions against SWIFT. SWIFT announced on November 5 that it is suspending access of unspecified Iranian banks' access to its messaging system.

Perhaps most significantly, sanctions for buying Iranian crude oil have also been re-imposed, and the U.S. has been undertaking efforts to reduce Iran's crude oil sales. The United States is issuing secondary sanctions waivers to eight countries (China, India, South Korea, Turkey, Italy, Greece, Japan, and Taiwan) to permit them to continue to purchase Iranian oil temporarily, although some of these waivers will be very short only to permit the completion of wind-downs already underway.

Re-Designation of Persons Removed from the SDN List Pursuant to the JCPOA

OFAC re-designated persons removed from the SDN List in January 2016 and moved persons identified as the "Government of Iran" or "Iranian Financial Institutions" on the "13599 List" back to the SDN List. Dealings with most such persons also became subject to U.S. secondary sanctions, being re-designated under the Weapons of Mass Destruction Sanctions.

The list of re-designated parties can be found at: https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20181105_names.aspx.

These re-designations affect numerous financial institutions, vessels, and other institutions and prohibit them from being involved in OFAC licensed transactions involving Iran, such as authorized agricultural and medical sales, and humanitarian donations. Companies involved in those transactions must ensure that funds do not pass through SDN financial institutions.

Further complicating that situation, OFAC recently designated a number of additional Iranian parties, including financial institutions, under the Global Terrorism Sanctions and sanctions programs targeting the Iranian Revolutionary Guard Corps. This leaves very few Iranian banks that can participate in funds transfers related to authorized trade.

EU Blocking Statute

European Commission Delegated Regulation (EU) 2018/1100 (the "EU Blocking Statute") went into effect on August 7, 2018, but it applies to all Iran-related contractual obligations of EU Operators, even if such obligations arose before that date. The Blocking Statute seeks to protect European businesses from the effects of extraterritorial application of U.S. laws, including JCPOA-related U.S. secondary sanctions being re-imposed.

The Blocking Statute applies to "EU Operators", which is defined to include (i) any natural person that is a resident in the EU, (ii) any legal entity incorporated within the EU, including any such subsidiaries of U.S. companies that have their registered office, central administration, or principal place of business within the EU, but not EU branches of U.S. companies or U.S. subsidiaries of EU companies, (iii) any national of a Member State established outside the EU and any shipping company established outside the EU and controlled by nationals of a Member State, if their vessels are registered in that Member State in accordance with its legislation, (iv) any other natural person being a resident in the EU, unless that person is in the country of which he is a national, and (v) any other natural person within the EU and acting in a professional capacity. Concerning legal persons, the EU Blocking Statute also applies to such legal person's directors, managers, and other persons with management responsibilities.

The Blocking Statute (i) prohibits EU Operators from complying with U.S. secondary sanctions, or any administrative, judicial, arbitral or other ruling or award based on them, (ii) provides that decisions requiring enforcement of penalties against an EU Operator based on the application of U.S. secondary sanctions will not be executed in the EU or its Member States, (iii) authorizes EU Operators to recover damages, including legal costs, arising from the application of U.S. secondary sanctions from the person causing such damages or anyone acting on its behalf or as its intermediary, (iv) prohibits EU Operators from requesting a specific license from U.S. authorities to exempt them from the application of U.S. secondary sanctions, and (v) requires EU Operators to inform the European Commission within 30 days of any events resulting from the application of U.S. secondary sanctions and directly or indirectly affecting their economic or financial interests.

While prohibiting EU Operators from complying with U.S. secondary sanctions, the EU Blocking Statute also makes it clear that European companies are free to choose whether to commence, continue, or cease commercial operations in or relating to Iran on the basis of their assessment of business considerations. As such, and given the difficulty of discerning whether a company has elected not to pursue commercial opportunities relating to Iran based on business considerations or in order to avoid U.S. secondary sanctions, it seems unlikely that the EU or any Member States will take enforcement against an EU Operator who may have even disengaged from significant business activities relating to Iran (in fact, certain major European companies, including Total, Renault, Daimler, and Maersk, recently quit Iran-related transactions, arguing that they cannot risk their U.S. businesses). Nevertheless, EU officials hope that the Blocking Statute will mitigate the impact of U.S. secondary sanctions on EU businesses, including by deterring U.S. authorities from applying discretionary sanctions and enforcing assessed penalties.

The EU has also worked on setting up an alternative payment structure, called the Special Purpose Vehicle, to provide an alternative to SWIFT, in an attempt to limit the chilling effect of U.S. sanctions on the continuation of business with Iran by EU companies.

EU businesses, especially European subsidiaries of U.S. companies, are now caught between the proverbial rock and a hard place with respect to the application of Iran-related U.S. secondary sanctions and the EU Blocking Statute. If the past is any guide, it is possible that the U.S. and EU may reach a diplomatic resolution of their standoff, just as they did in 1998 when a similar standoff over U.S. secondary sanctions on Cuba was resolved by the U.S. agreeing to suspend its application of certain Cuba-related secondary sanctions in exchange for the EU and other allies agreeing to continue their stepped up efforts to promote democracy in Cuba.

For now, it is unclear how the application of re-imposed U.S. secondary sanctions relating to Iran, on the one hand, and the EU Blocking Statute, on the other, will play out in practice.

Our recently issued Export Licensing Clients Memorandum addresses changes to the Iran sanctions, as well as recent changes to other OFAC sanctions programs and U.S. export controls. For more information, please contact your regular contact in the BCR Export Control and Sanctions Group.

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