

**May 10, 2018**  
**Regulatory Alert:**

**Trump Announces U.S. Withdrawal from the JCPOA and Re-imposition of Sanctions on Iran Removed in 2016**

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On May 8, 2018, President Trump announced that the United States was withdrawing from the Iran Nuclear Agreement, formally known as the Joint Comprehensive Plan of Action (JCPOA). Accordingly, subject to certain 90 or 180 day wind-down periods, the United States is re-imposing nuclear-related primary and secondary sanctions that were lifted as of January 16, 2016 (Implementation Day) to effectuate its obligations under the JCPOA.

Also on May 8, OFAC issued new Frequently Asked Questions providing preliminary guidance on how these sanctions are to be re-imposed, and the applicable wind-down periods. In its guidance, OFAC indicates that it will soon revoke or amend, as appropriate, general and specific licenses issued in connection with the JCPOA since Implementation Day, and will issue authorizations and more specific guidance for the winding down of activities and transactions undertaken pursuant to such revoked or modified licenses. To be compliant with U.S. law and avoid exposure to U.S. secondary sanctions, U.S. and non-U.S. Persons that are engaged in activities heretofore permissible as a result of U.S. sanctions relief pursuant to the JCPOA will be required to wind them down in accordance with OFAC's guidance by either August 6 or November 4, 2018, as applicable.

The recent OFAC Guidance indicates that permissible agreements relating to commerce and trade with Iran that were entered into by U.S. or non-U.S. Persons prior to May 8 will not be grandfathered. However, any amounts owed under such written agreements after the end of the wind-down period for goods or services fully delivered or provided or loans or credit extended to the Iranian counterparty prior to the end of such period may be received after such date.

**Activities Subject to a 90 Day Wind-Down Period Ending August 6, 2018**

- Secondary sanctions directed at non-U.S. Persons relating to (i) the purchase or acquisition of U.S. dollar banknotes by the Government of Iran, (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) the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt, and (vi) Iran's automotive sector. Such secondary sanctions, if imposed, will deny or limit the access of Persons engaging in the foregoing activities to U.S. financial and commercial markets.

- Primary sanctions directed at U.S. Persons concerning (i) the importation of Iranian-origin foodstuffs and carpets into the U.S., (ii) activities undertaken in accordance with specific licenses issued pursuant to the favorable licensing policy for the export to Iran of commercial aircraft, spare parts for commercial aircraft, and related services (at the

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end of the wind-down period, OFAC will revoke all specific licenses issued pursuant to this policy), and (iii) activities undertaken in accordance with General License I to negotiate and enter into contingent contracts for the sale and export of commercial aircraft or related parts and services.

#### Activities Subject to a 180 Day Wind-Down Period Ending November 4, 2018

- Secondary sanctions directed at non-U.S. Persons relating to (i) transactions with Iran’s shipping and shipbuilding sectors and port operators, (ii) petroleum-related transactions, including the purchase of petroleum, petroleum products, or petrochemical products from Iran, (iii) certain transactions by foreign financial institutions with the Central Bank of Iran (CBI) and the designated Iranian financial institutions, (iv) the provision of specialized financial messaging services (i.e. SWIFT) to the CBI and certain other Iranian financial institutions, (v) the provision of underwriting services, insurance or re-insurance, and (vi) transactions with Iran’s energy sector.
- Prohibition of transactions permitted to be undertaken pursuant to General License H by U.S.-owned or controlled foreign entities with the Government of Iran or Persons subject to Iranian jurisdiction.

Perhaps most significantly, OFAC has indicated that the U.S. will resume efforts to reduce Iran’s crude oil sales after November 4, 2018, subject to possible country-by-country exceptions.

#### Re-Designation of Persons Removed from U.S. Sanctions Lists Pursuant to the JCPOA

On or before November 5, 2018, the U.S. will (i) again designate Persons removed from the SDN List or other U.S. sanctions lists on Implementation Day pursuant to the JCPOA, and (ii) move Persons identified as the “Government of Iran” or “Iranian Financial Institutions” from the 13599 List back to the SDN List. Most such Persons will, as of such date, become subject to U.S. secondary sanctions.

#### Permissible U.S. Person Activities Going Forward

There is no indication that limited general licenses in place before the implementation of the JCPOA and authorizing U.S. Persons to engage in certain limited activities relating to Iran will be revoked or scaled back. Accordingly, U.S. Persons will, subject to certain conditions and requirements and absent a further change in U.S. policy, continue to be permitted to engage in, among other things, transactions relating to (i) the export/re-export to Iran of food, medicine, and medical devices, (ii) the export/re-export to Iran of certain services, software and hardware incident to personal communications, (iii) the exchange of information and informational materials with Persons in Iran, (iv) certain humanitarian donation of goods to Iran, (v) certain legal services exported to or imported from Iran, and (vi) travel to Iran.

#### Prospects for the JCPOA and U.S. Secondary Sanctions

In reaction to President Trump’s announcement, President Rouhani of Iran has stated that so long as the P5+1 countries other than the United States (China, France, Germany, Russia, and the United Kingdom) remain committed to the JCPOA and Iran receives the benefit of its bargain under the Agreement, in the form of unfettered trade with and foreign direct investment by non-U.S. Persons as contemplated under the JCPOA, it will continue to comply with its nuclear obligations under the Agreement. The other P5+1 countries have also expressed their continued commitment to the Agreement. Furthermore, some European officials have criticized the extraterritorial application of U.S. law and suggested that they will protect their businesses against U.S. secondary sanctions. Whether such efforts, in the form of blocking statutes or otherwise, will materialize let alone succeed remains to be seen. For now, two things are certain: the fate of the JCPOA remains in the

balance, and U.S. sanctions compliance risk for Persons engaged in commerce with Iran has just significantly increased.

Since Implementation Day, some American and many more foreign businesses have pursued business opportunities in or relating to Iran, often under general or specific licenses issued by OFAC pursuant to the JCPOA. Such licenses will soon be terminated, and those businesses will have to wind down their Iran-related activities during the next 3 to 6 months. This will obviously present various challenges for companies involved in wind-down activities so that they secure compliance under U.S. law, minimize costs and potential liability, and address a range of practical difficulties. These challenges may be especially complex for U.S. companies and their foreign subsidiaries that have engaged in Iran-related businesses relying on General License H, as well as major foreign corporations such as Total and Airbus who will face increased risks of secondary sanctions.

For a more detailed and comprehensive analysis of this and other recent developments with respect to U.S. export control and sanctions laws, you may inquire about our next ELC Memo which will be available shortly, and can be purchased on a reasonable shared costs basis.

