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U.S. Completes Reintroduction of Post-JCPOA Iran Sanctions

New sanctions target key sectors and hundreds of Iranian and Iran-related entities for blocking

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The United States today completed the reintroduction of Iran-related sanctions that had been lifted or waived in connection with the Joint Comprehensive Plan of Action (JCPOA) (commonly known as the Iran nuclear deal). This move includes the reimposition of secondary sanctions and the designation by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) of over 700 individuals, entities, aircraft, and vessels onto its Specially Designated Nationals and Blocked Entities list (the "SDN List"). Today marks the largest action targeting the Iranian government in a single day in OFAC history. These changes substantially elevate compliance risks for companies around the world, including those that do not conduct business directly with Iran.

Factual Context

On May 8, 2018, President Donald J. Trump announced his intention to withdraw the United States from participating in the JCPOA, the anti-nuclear proliferation agreement entered into in 2015 by the "P5+1" (the United States, United Kingdom, France, Russia, China, and Germany) and Iran and implemented in January 2016. As part of the May announcement, OFAC announced that certain sanctions on Iran previously lifted or suspended as a result of the JCPOA would be re-imposed after a 90-day wind-down period that expired on August 6, 2018 and a 180-day wind-down period that expired on yesterday. Today's measure was the final anticipated reimposition of sanctions by OFAC on Iran arising from President Trump's announcement.

As part of the JCPOA, in exchange for certain limitations on Iran's nuclear program, the United States lifted certain nuclear-related secondary sanctions, removed many Iranian and Iran-related entities from the SDN List, and made limited revisions more directly impacting U.S. persons, such as reauthorizing the importation of Iranian-origin foodstuffs and carpets into the United States and creating an OFAC specific licensing regime for the sale and exportation of commercial aircraft to Iran. These policies and related authorizations have since been revoked.

The Iranian industries targeted for secondary sanctions by the United States include the following sectors:

(1) banking & finance
(2) energy, oil and petrochemical products
(3) shipping, shipbuilding
(4) precious metals
(5) the automotive industry
(6) trade-related insurance

Notably, this has resulted in scores of Iranian entities, including financial institutions, port operators, Iran's flag carrier Iran Air (and 67 of its aircraft), and a number of key individuals being added to the SDN List. OFAC has also removed the Executive Order (EO) 13599 list of certain Iranian financial institutions and instead added them to the SDN List under the "[Iran]" tag, subjecting them to blocking and certain sanctions absent some exceptions. These designations will, with limited exception, require any property or interests in property of such entities to be blocked upon entry into the United States or possession by a U.S. person.

Beyond the sanctions imposed in August on Iran's trade in precious metals (including gold), dealings in U.S. dollar banknotes by the Iranian government, automotive sanctions, and purchase of commercial aircraft with U.S.-origin content, OFAC has stated that following sanctions would also be reimposed by today:

(1) Sanctions 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;

(2) Sanctions on Iran's energy sector, including petroleum-related transactions with entities including the National Iranian Oil Company (NIOC), Naftiran Intertrade Company (NICO), and the National Iranian Tanker Company (NITC), including the purchase of petroleum, petroleum products, or petrochemical products from Iran;

(3) Sanctions on 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);

(4) Sanctions on 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); and

(5) Sanctions on the provision of certain underwriting services, insurance, or reinsurance.

In addition, effective today, General License H, which authorized certain business with Iran by foreign entities owned or controlled by U.S. persons, is fully revoked and OFAC expects that all related wind-down activities for such businesses has concluded. Importantly, the above is not exhaustive and the scope of the new sanctions is broader.

Sales of Agricultural, Pharmaceutical, and Medical Goods

It is critical to note that certain humanitarian transactions by U.S. persons will remain lawful, albeit subject to already existing limitations. While today's actions by OFAC will certainly create additional logistical hurdles for companies engaged in such business, the Trump Administration has indicated that it remains committed to maintaining some channels for the lawful sale of agricultural commodities (including food), medicines, and medical supplies to Iran.

The preservation of such authorizations dovetails actions commenced by the Obama Administration by shifting from a specific licensing policy for such sales to a "general license" approach, whereby transactions are generally deemed lawful (and not in need of a specific OFAC license) if they fall within certain parameters and comply with key requirements set forth by the Iranian Transactions and Sanctions Regulations, 31 CFR Part 560 (the "ITSR").

Companies engaging in such humanitarian transactions with Iran should ensure that their approaches are not only legally compliant in all aspects (*e.g.*, customers, intermediaries, and logistics partners), particularly given the frequent changes in the sanctions and the SDN List, but also that all service providers and vendors, such as banks and shippers, are adequately informed and assured as to the legality of these transactions.

Managing Risk and Bolstering Compliance

The United States' withdrawal from the JCPOA brings with it necessary precautions that businesses around the world must take. Most notably, the reimposition of secondary sanctions should be of concern to non-U.S. businesses as certain transactions with Iran or Iranian entities can expose them to significant civil and criminal liability and/or blocking under U.S. law. Importantly, these restrictions target key sectors of the Iranian economy, and the Trump Administration has indicated it will adhere to a strict policy of enforcement the sanctions regime in place against Iran.

Even those companies in these targeted industries that do not or have not done business with Iran are advised to exercise substantive vigilance as the U.S. withdrawal from the JCPOA may very likely cause Iran to seek new ways to circumvent sanctions. For example, many of the entities added to the SDN List are outside Iran, and therefore, comprehensive due diligence and risk assessment is key even when doing business in third countries. Beyond this, companies should prepare for other types of risks that may be less self-evident but nonetheless pervasive.

Similarly, companies prone to risk exposure would be well advised to reevaluate and strengthen international trade compliance programs, and should immediately adopt such programs if they have not yet done so. Naturally, risk depends on numerous variables, including industry/sector, customers, and geographic regions, and any credible compliance approach must take such factors, among others, into consideration.

Finally, today's announcement by OFAC, while in response to the U.S. withdrawal from the JCPOA, is one step of many that the Administration has recently taken with respect to Iran. Other recent actions include crackdowns on Iran's alleged transfer of illicit funds around the world, an advisory by the Treasury Department's Financial Crime Enforcement Network (FinCen) on such illicit funds transfer methods, and the designation last month of several major Iranian financial institutions under OFAC's Global Terrorism Sanctions Regulations, 31 CFR Part 594 (the "GTSR"). As such, this announcement should not be seen independently but rather as part of a broader, increasingly hardening policy towards Iran by the Administration.

Given the frequency of changes in sanctions laws and regulations, including the ongoing addition of entities to the SDN List, it is critical to remain abreast of such changes to ensure the effectiveness of any compliance approach. This is coupled with addressing shifts in the types of deceptive tactics adopted by parties seeking to circumvent the sanctions, requiring companies to incorporate an understanding of red flags. As such, a dynamic perspective on risk management is critical to ensure full compliance.

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