

International Trade



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Re-Imposing U.S. Sanctions on Iran: Key Issues for Global Business

Global companies must evaluate complex legal and regulatory risks in the wake of the U.S. decision to re-impose sanctions on Iran. While the White House has set 90- and 180-day transition periods, some measures warrant close attention now.

On May 8, 2018, President Trump announced that the United States will withdraw from the Joint Comprehensive Plan of Action (“JCPOA”), the 2015 agreement among United States, France, Britain, China, Russia, Germany, and Iran that provided for sanctions relief in exchange for curbs on Iran’s nuclear program. After a wind-down period of 90 to 180 days, the United States will begin re-imposing sanctions that were lifted when the JCPOA was implemented. With the phase-in period, the Administration has left the door open to further negotiations with the JCPOA parties, and the sanctions outlook could continue to evolve; however, any efforts at reaching a new multilateral deal will face significant challenges.

The Administration’s move largely impacts non-U.S. businesses, as is it re-imposing “secondary” sanctions on persons and companies overseas dealing with Iran’s government, officials, and key industries, including shipping, ports, shipbuilding, metals, energy, and financial services. The United States’ “primary” sanctions on Iran—

the rules barring U.S. persons from most Iran dealings—have remained in place even after the JCPOA was adopted, holding back Iran’s ability to fully re-integrate into the global economy.

The revival of the suspended secondary sanctions will require non-U.S. companies, including banks, shipping companies, energy, and commodities firms and other businesses, to weigh the possibility of U.S. sanctions enforcement and related risks if they continue to deal with Iran. Such assessments can be complex, as parties must assess not just the U.S. sanctions risks themselves, but also balance their commercial contractual obligations and defenses, the sanctions clauses in their agreements with third parties (lenders, investors, suppliers, insurers, etc.), and the compliance policies of their relationship banks. An additional challenge is presented by potential blocking legislation in the EU, which reportedly is being updated by EU officials, and could make it unlawful for European companies to comply with the U.S. sanctions in many circumstances.

The first phase will occur after a 90-day wind-down period (ending August 6, 2018), when the U.S. government will re-impose sanctions on transactions and trade in currency, gold and precious metals, graphite, raw or semi-finished metals, such as aluminum and steel, coal, certain industrial software, Iranian sovereign debt, and Iran's automotive and aviation sector.

Following the 180-day wind-down period (ending November 4, 2018), the U.S. government will re-impose sanctions on Iran's port operators, and shipping and shipbuilding sectors, petroleum-related transactions, dealings by foreign financial institutions with the Central Bank of Iran and designated Iranian financial institutions, SWIFT messaging, insurance services, and energy.

In addition, Treasury will soon revoke General License H authorizing certain dealings by U.S.-owned and controlled entities with Iran, as well as other general and specific licenses, replacing them with "wind-down" authority effective for the 180-day period. It also will re-designate parties—including "Government of Iran" entities—as Specially Designated Nationals, dealings with which may trigger secondary sanctions after the 180-day period.

While the re-application of sanctions will come in two phases, there are certain petroleum-related provisions that warrant immediate attention. Under Section 1245 of the 2012 National Defense Authorization Act, private financial institutions and all other foreign financial institutions—including central banks or foreign state-owned or-controlled banks—potentially face sanctions if they knowingly conduct or facilitate significant financial transactions for the purchase or sale of petroleum or petroleum products to or from Iran with a U.S.-designated Iranian financial institution or with the Central Bank of Iran. These sanctions can be waived on a country-by-country basis if the Secretary of State makes a determination that a country has

significantly reduced the volume of its Iranian crude oil purchases. According to Treasury's guidance, the State Department will consider waivers based on reductions during the current 180-day wind-down period, creating an immediate pressure to reduce transactions even during this transitional period.

The re-imposition of secondary sanctions on Iran has the potential to give rise to serious conflicts between the United States and its closest trading partners (including the other JCPOA partner countries), who authorized and encouraged key industries to re-engage with Iran on the heels of the nuclear deal. Global companies, including those in the energy, transport, commodities, technology, professional, and financial services sectors, may be caught in the middle of conflicting legal obligations.

Our legal and government relations teams, with years of experience in complex sanctions matters, are able to guide impacted companies through this evolving foreign policy landscape, and work with interested parties and policymakers to identify pragmatic solutions to complex and seemingly intractable problems.

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