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President Trump Withdraws From JCPOA; Reimposes Iran Sanctions—Six Key Takeaways

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Introduction

On Tuesday, May 8, 2018, President Donald Trump announced that the United States would not sign a 120-day waiver of U.S. sanctions against Iran, effectively withdrawing from the Joint Comprehensive Plan of Action (JCPOA). Although the United States is one of six signatories, including China, United Kingdom, Germany, France and Iran, President Trump's unilateral decision to withdraw from the agreement puts the fate of the JCPOA in jeopardy.

The implications for the region and for U.S. foreign policy more broadly are profound, but, more immediately, President Trump's decision triggers an end to U.S. sanctions relief granted as part of the agreement.

Prior to January 2016, U.S. so-called "secondary sanctions" exposed non-U.S. persons, including non-U.S. subsidiaries of U.S. companies, to civil and criminal liability if they did business in certain Iranian business sectors or with particular Iranian individuals and entities. The JCPOA lifted certain specified provisions and also established a permissive licensing policy for U.S. persons seeking to engage in certain, favored activities, such as export of commercial aircraft. However, most "primary" sanctions—those applicable directly to U.S. persons—remained in place.

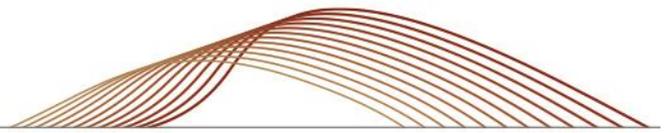
In his announcement, President Trump also stated that the United States will implement new sanctions against Iran. In conjunction with the announcement, the Office of Foreign Assets Control (OFAC) issued FAQs explaining the impact of the presidential decision and also holding out the prospect of additional measures.

Six Key Takeaways

1. The Wind-Down Period Starts Now.

Because many businesses entered into commercial relationships and activities in reliance on the JCPOA sanctions relaxation, and consistent with usual practice when sanctions are imposed, OFAC has established two wind-down periods—of 90 and 180 days, respectively—within which newly prohibited activities involving Iran that were consistent with the JCPOA relief must be ended.

Measures that will be re-imposed at the end of the 90-day wind-down period include:



- Sanctions on the purchase or acquisition of U.S. dollar banknotes by the Government of Iran;
- Sanctions on Iran's trade in gold or precious metals;
- Sanctions on 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;
- Sanctions on 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;
- Sanctions on the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt;
- Sanctions on Iran's automotive sector;
- A ban on the importation into the United States of Iranian-origin carpets and foodstuffs and certain related financial transactions; and
- Activities undertaken pursuant to specific licenses or "General License I" to allow export or re-export of aircraft and related parts.

Measures that will be re-imposed at the end of 180 days include:

- 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 and their affiliates;
- Sanctions on petroleum-related transactions with, among others, 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;
- Sanctions on certain transactions, including the provision of specialized financial messaging services, by foreign financial institutions with the Central Bank of Iran and designated Iranian financial institutions;
- Sanctions on the provision of underwriting services, insurance, or reinsurance; and
- Sanctions on Iran's energy sector.

2. Non-U.S. Subsidiaries of U.S. Persons Must Exit Iran.

One key change as a result of the President's decision is the end of OFAC's "General License H," which authorized "an entity owned or controlled" by a US person and "established or maintained outside of the United States . . . to engage in transactions, directly or indirectly, with the Government of Iran or any person subject to the jurisdiction of the Government of Iran." The revocation of General License H will be effective November 5, 2018.

3. U.S. Persons Operating Under JCPOA Licenses Must Wind Down Their Activities.



Pursuant to the JCPOA, OFAC issued licenses to U.S. persons to engage in certain, designated activities. Those activities must now be wound down, and, for U.S. persons, all payments must be received not later than the end of the applicable wind-down period. (That is an interesting distinction from how non-U.S. persons are treated. Those entities engaged in activities that are now prohibited nonetheless may continue receiving payment after the wind-down date, so long as they have fully performed their underlying contractual obligations by that date.)

The implications of this change are significant. For example, Boeing previously announced a deferred deal—pursuant to an OFAC license—to sell as many as 80 aircrafts to Iran Air for \$16.6 billion. Companies with licenses for Iran-related activities should assess any outstanding financial commitments and contracts and analyze the feasibility of finalizing these deals within the authorized wind-down period.

4. Even Non-U.S. Persons Are Impacted.

Businesses with no operations in the United States that operate in a country that will continue to uphold the JCPOA also must consider winding down all Iranian operations. As recent OFAC enforcement actions suggest, U.S. authorities have been aggressive in pursuing broader theories of liability against companies with no U.S. operations. For example, OFAC has now widened its enforcement to target foreign non-financial companies that “cause” U.S. persons to violate sanctions by making U.S. dollar-denominated payments through the U.S. financial system to sanctioned jurisdictions or parties. Given the ever-broadening scope of liability, non-U.S. companies must be mindful of how the new sanctions may affect their business.

5. Some Authorizations Remain Unaffected – for Now.

At the same time, sanctions relief that pre-dates the JCPOA—such as “General License D-1,” which authorizes transactions relating to personal communications—remains in effect. In assessing the impact of today’s action, it is important to differentiate between those pre-JCPOA measures and the liberalizing measures that are being withdrawn.

6. It Is Necessary To Be Nimble.

The Trump Administration action illustrates what has become emblematic of sanctions compliance in recent years: it is necessary to be nimble. Once a relatively straightforward exercise targeting a defined group of countries, with little change from year to year, U.S. sanctions compliance over the past several years has become increasingly complex. The focus of many efforts has shifted from nations to individuals or entities, and the variety of tools employed has become more diverse.

At the same time, the identities of countries that are the subject of sanctions also has undergone significant change—with the removal of Sudan, the addition of many sanctions targeting Russia and the relaxation and now reimposition of sanctions against Iran. Compliance professionals could be forgiven for experiencing professional whiplash.

The new Administration action will require substantial retrofitting of many companies’ compliance programs, back to a pre-JCPOA posture, while remaining alert to the potential new sanctions the Administration has promised.

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For more information concerning the president's announcement and its implications, please contact any of the below members of Paul Hastings' National Security and Global Trade Controls practice.



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings Washington, D.C lawyers:

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