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NO MORE "SIGNIFICANT REDUCTION WAIVERS" – THE TRUMP ADMINISTRATION FURTHER STRENGTHENS SANCTIONS AGAINST IRAN

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Legal Briefings – By **Susannah Cogman, Daniel Hudson, Jonathan Cross, Geng Li and Christopher Milazzo**

On April 22, 2019, the White House announced that the Trump administration will not issue further "significant reduction waivers" exempting specified countries from the threat of secondary sanctions based on their purchases of Iranian crude oil. The move signals the Trump Administration's intention to utilize economic sanctions to bring Iran's level of oil exports to zero. The announcement follows the recent determination to designate the Islamic Revolutionary Guard Corps as a foreign terrorist group, both forming part of the Administration's "maximum pressure" campaign with respect to Iran. The campaign aims to push Iran to take action in response to the Trump Administration's "twelve demands," which relate both to nuclear issues and to other aspects of Iran's behavior, such as its involvement in conflicts in Syria and Yemen and tensions with US allies in the region.

"Significant reduction waivers" have been issued to several countries to allow them (and financial institutions over which these countries have primary jurisdiction) to engage in limited petroleum or petroleum product purchase transactions with Iran without facing the threat of US secondary sanctions. Most recently, in November 2018, when the second wave of US secondary sanctions against Iran was imposed pursuant to the US withdrawal from the Iran nuclear deal, the administration issued "significant reduction waivers" to eight importers, including China, Greece, India, Italy, Japan, South Korea, Taiwan and Turkey. These waivers are effective for 180 days and will expire on May 2, 2019. According to the State Department, as of early April, three of these importers have already reduced their Iran oil imports to zero.

The announcement also suggests a heightened degree of secondary sanctions risk concerning Iran, especially for non-US companies dealing with the National Iranian Oil Company and its affiliates. Even though the US has not aggressively imposed secondary sanctions targeting non-US, non-Iranian entities since the re-imposition of the energy-related secondary sanctions, any party that continues to be active in energy-related trade with Iran could face greater secondary sanctions risks once the waivers have expired. Underlining these dangers, the State Department warned that "[a]ny nation or entity interacting with Iran should do its diligence and err on the side of caution. The risks are simply not going to be worth the benefits."

Based on the Secretary of State's statement accompanying the announcement, the State Department may be willing to grant exemptions for certain individual transactions, but the mechanism for such exceptions is unclear.

It remains to be seen what practical impact the updated EU Blocking Regulation (which since summer 2018 prohibits EU persons from making decisions not to trade with Iran based on certain US secondary sanctions against Iran) will have, where EU persons are involved in transactions that were previously authorized under the significant reduction waivers. Another area to watch will be the development of the EU special purpose vehicle, the Instrument in Support of Trade Exchanges (INSTEX), set up to assist EU companies wanting to conduct trade between the EU and Iran without relying on direct international financial transactions (which have seen a very significant reduction since the US withdrew from the Joint Comprehensive Plan of Action). The E3 have indicated that in the first instance INSTEX will focus on trade in pharmaceutical, medical devices and agri-food goods, but they have indicated that in the long term the aim is for INSTEX to be open to economic operators from third countries who wish to trade with Iran. If that were to happen, and if INSTEX were to expand the goods it will cover so as to facilitate payment for oil exports, secondary sanctions risks (in particular following the removal of the significant reduction waivers) would need to be considered.

We continue to monitor developments in this area. Please contact the authors or your usual Herbert Smith Freehills contact for more information.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.

SUSANNAH COGMAN
PARTNER, LONDON

+44 20 7466 2580
Susannah.Cogman@hsf.com

DANIEL HUDSON
PARTNER, LONDON

+44 20 7466 2470
Daniel.Hudson@hsf.com

JONATHAN CROSS
COUNSEL, NEW YORK

+1 917 542 7824
jonathan.cross@hsf.com

CHRISTOPHER MILAZZO
ASSOCIATE, NEW YORK
+1 917 542 7807
christopher.milazzo@hsf.com

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