

SECOND WAVE OF UNITED STATES SANCTIONS AGAINST IRAN RE-IMPOSED

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Legal Briefings - By **Susannah Cogman, Jonathan Cross, Daniel Hudson and Christopher Milazzo**

Following President Trump's decision on May 8, 2018 to withdraw the United States from the Joint Comprehensive Plan of Action ("JCPOA"), the US government announced that it would re-impose pre-JCPOA nuclear-related Iran sanctions (both primary and secondary) that were lifted under the JCPOA. As we reported previously, two "wind-down" periods—of 90 and 180 days respectively—commenced from the day of the announcement, during which non-US, non-Iranian companies were encouraged by the US government to withdraw from operations in Iran that would be affected by re-imposed sanctions. OFAC's guidance discouraged non-US persons from engaging in new activity during the wind down periods, and stated that any such new activity may be a factor in connection with future enforcement action for actions taken after the wind-down period.

END OF FIRST WIND-DOWN PERIOD

The first of these two wind-down periods expired on August 6, 2018, and re-imposed sanctions on:

- The purchase or acquisition of US dollar banknotes by the Iranian Government;
- Iran's trade in gold or precious metals;

- The sale, supply, or transfer to or from Iran of graphite, raw, or semi-finished metals such as aluminium and steel, coal, and software for integrating industrial processes;
- 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;
- Purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt; and

Financial or other transactions for the sale, supply, or transfer to Iran of goods and services used in connection with Iran's automotive sector.

END OF SECOND WIND-DOWN PERIOD

Today, the second of these two periods expired.

The US government re-imposed the following sanctions, including sanctions on associated services related to the activities below:

- Sanctions on Iran's port operators, and shipping and shipbuilding sectors, including on the Islamic Republic of Iran Shipping Lines (IRISL) and 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 National Iranian Tanker Company (NITC), including the purchase of petroleum, petroleum products, or petrochemical products from Iran;
- Sanctions on transactions by foreign financial institutions with the Central Bank of Iran and designated Iranian financial institutions in relation to the purchase of crude oil from Iran (subject to country-specific significant reduction exemptions);
- Sanctions on the provision of specialized financial messaging services to the Central Bank of Iran and Iranian financial institutions;
- Sanctions on the provision of underwriting services, insurance, or reinsurance; and
- Sanctions on Iran's energy sector.

The petroleum-related secondary sanctions are expected to be mitigated for certain purchasers by "significant reduction" waivers extended to several countries, including China, Greece, India, Italy, Japan, South Korea, Taiwan and Turkey. These waivers will be in effect for a six-month period and may thereafter be extended.

Prior to the implementation of the JCPOA, European countries and Japan, as well as major Iranian trade partners including China and India, had received such waivers. The waivers do not exempt all transactions relating to the petroleum sector, but only allow purchase of petroleum and petroleum products from Iran subject to specific payment conditions.

US-owned or controlled foreign entities were previously required, prior to yesterday's deadline, to wind down any operations authorized under General License H, which permitted foreign subsidiaries of US companies to engage in certain Iran-related business. OFAC's additional FAQs, released today, note that US-owned or controlled non-US entities are fully subject to the "primary" Iran sanctions applicable to US persons.

In addition, the administration has re-designated the individuals and entities that were delisted in connection with the JCPOA. This date also marks the beginning of the period when secondary sanctions can be imposed for non-US persons' significant dealings with SDNs.

OFAC guidance states that, if after November 4, 2018, non-US, non-Iranian persons are owed payment for goods or services provided to Iranian counterparties before November 4, which are owed pursuant to contracts entered into before May 8, 2018 and which were consistent with US sanctions at the time they were entered into, the US government will permit the non-US, non-Iranian persons to receive payment. The US government will also allow the repayment of loans made in similar circumstances. However, the provision of additional goods or services, or the extension of additional credit to Iranian counterparties after November 4 may result in the imposition of US sanctions.

EFFECT OF AMENDED EU BLOCKING STATUTE

As we previously reported, the amended EU Blocking Statute came into force on August 7, 2018, and may impact the position of European firms seeking compliance with the re-imposed US sanctions. However, it remains to be seen how the Blocking Statute will be enforced, and the statute has left many businesses in the difficult position of seeking to reconcile competing sanctions objectives.

We continue to monitor developments in this area. Please contact the authors of this e-bulletin 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.



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