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End-of-Year Changes in Iran, Russia Sanctions, Cyber Sanctions

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January 4, 2017 — In the final two weeks of 2016, the Obama Administration made changes to the U.S. Iran and Russia sanctions, including the imposition of cyber sanctions. Specifically, the Treasury Department's Office of Foreign Assets Control (OFAC) published guidance concerning the potential "snapback" of Iranian sanctions relief promulgated under the Iran nuclear deal (the Joint Comprehensive Plan of Action or JCPOA), modified the definition of Iranian origin goods in the U.S. Iranian sanctions regulations, made additional designations under the Ukraine/Russia sanctions, and imposed targeted cyber sanctions against Russia for its attempts to interfere with the 2016 U.S. elections. In making these changes, the Administration tacitly acknowledged that the Trump Administration is likely to alter the Obama sanctions policies.

I. OFAC Guidance on Reinstitution of Iran Sanctions

As part of the U.S. commitments under the JCPOA, the United States suspended certain secondary nuclear sanctions measures that had targeted economic activity in Iran by non-U.S. companies and foreign subsidiaries of U.S. companies. In apparent response to President-elect Trump's comments about re-negotiating the Iran deal, on December 15 OFAC issued new JCPOA guidance addressing the potential snapback of U.S. nuclear sanctions measures. The guidance states that OFAC will not prosecute companies engaged in lawful trade while the sanctions were suspended, and the agency would provide a 180-day wind-down period for persons to cease operations in Iran after any snapback, including allowing companies to be paid for goods and services provided to Iran before snapback.

II. Iranian Transactions and Sanctions Regulations

On December 22, OFAC modified the Iranian Transactions and Sanctions Regulations (ITSR) to revise the definition of Iranian-origin goods and expand the scope of the existing general license for medical and agricultural products.

Iranian Origin Goods

The ITSR generally prohibit U.S. persons from dealing in Iranian-origin goods, defined to include items grown, produced, manufactured, extracted or produced in Iran, as well as goods that have entered into Iranian commerce. Provided that regulatory conditions are met, the amendments will now allow items exported to Iran to be serviced and repaired outside of Iran, and for vessels with U.S.-origin goods en route to third-country destinations to stop at Iranian ports.

Specifically, in its revised definition, OFAC clarified that the term "Iranian-origin goods" does not include the following items, provided they were not grown, produced, manufactured, extracted or processed in Iran:

- Items exported or reexported to Iran under an OFAC general or specific license, once those goods have left Iran; or
- Items not destined for Iran onboard vessels or aircraft (as well as the vessels or aircraft themselves) that pass through Iranian controlled territory en route to a third country, provided that the goods do not otherwise come into contact with Iran.
 - This exclusion from Iranian-origin goods includes goods that are temporarily offloaded from a vessel in Iranian territorial waters or at a port in Iran and reloaded onto the same vessel or another vessel in the same location en route to a destination outside of Iran.

Medical Devices and Agriculture

OFAC expanded the scope of the ITSR's medical and agricultural general licenses. For medical devices, OFAC revised its definition of medical devices to follow the definition of medical devices in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321). OFAC also made changes to cover repair of medical equipment, recalls and use of software in medical devices. For agriculture, OFAC expanded the definition of agricultural commodities to include shrimp.

III. Ukraine/Russia Sanction Expansions

OFAC continued to enforce and expand its sanctions programs targeting Ukraine and Russia for Russia's occupation and annexation of Crimea. On December 20, 2016, OFAC added seven individuals, eight entities and two vessels to the Specially Designated National (SDN) list and twenty-six entities to the Sectoral Sanctions Identifications list. In a parallel action, the Commerce Department's Bureau of Industry and Security added twenty-three Russian and Crimean companies to the BIS Entity List.

IV. Cyber Sanctions

In response to the alleged Russian Government-backed attempt to manipulate the 2016 U.S. presidential election, including hacking into the Democratic National Committee emails, on December 28, 2016, President Obama for the first time used his authority to impose cyber sanctions against persons engaged in significant malicious cyber-enabled activities. The U.S. added five Russian intelligence agencies and six individuals associated with the agencies to the OFAC SDN list. The U.S. also expelled Russian diplomats and announced that additional covert measures would be imposed.

Russian President Putin said that for now he would not retaliate. However, a Vermont official blamed attempts to hack into the U.S. power grid on Russia, adding additional uncertainty to the situation.

V. Conclusion

The outgoing administration's expansion of authorizations for trading with Iran and increased targeting of Russian entities could be potentially inconsistent with sanctions policy statements made by President-elect Trump. It

remains to be seen how the new administration will use sanctions as a tool to impact U.S. diplomacy, and whether the new administration will continue or seek to reverse President Obama's measures to ease restrictions with Iran and increase pressure on Russia.

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