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U.S. Withdraws from Iran Nuclear Deal, Issues Guidance on "Snapback" Sanctions and Wind-Down Activities

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May 9, 2018 – Fulfilling what he has long promised to do, on May 8, 2018, President Trump announced that the United States will no longer participate in the Joint Comprehensive Plan of Action ("JCPOA"), also known as the Iran nuclear deal. In a televised briefing and National Security Presidential Memorandum ("NSPM"), the President directed the U.S. State and Treasury Departments to re-impose sanctions that were lifted or waived as part of the JCPOA by no later than November 4, 2018. While the President hinted at the possibility of negotiating a new deal, he also threatened new sanctions against Iran or any party that assisted them in the continued development of its nuclear or ballistic missile program. In the meantime, U.S. and non-U.S. parties that have relied on the JCPOA waivers will need to quickly assess how the snapback of sanctions may affect them, and how they will respond.

Sanctions "Snapback" and Wind-Down Periods

The May 8, 2018 NSPM directs the Secretary of State and Secretary of Treasury to "immediately begin taking steps to re-impose all United States sanctions lifted or waived in connection with the JCPOA." In Frequently Asked Questions ("FAQs") issued by the U.S. Department of Treasury, Office of Foreign Assets Control ("OFAC") immediately following the President's announcement, OFAC clarified that the U.S. government would establish two periods, of 90 days and 180 days, for parties to wind-down activities involving Iran that would be prohibited under the re-imposed sanctions. The dual-track wind-down periods differs from prior OFAC guidance, which had contemplated a 180-day window to wind-down all activities were there to be a snapback. Additional guidance is likely forthcoming regarding permissible and impermissible activities during the wind-down periods.

90-Day Wind-Down Period

Under the 90-day wind-down period, on August 6, 2018, the U.S. government will re-impose sanctions related to:

- the purchase or acquisition of U.S. dollar banknotes by the Government of Iran;
- Iran's trade in gold or precious metals;
- graphite, raw, or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes;
- purchase, sale, or maintenance of funds in Iranian rails;
- Iranian sovereign debt; and
- Iran's automotive sector.

The U.S. government will also revoke on August 6, 2018 JCPOA-related authorizations involving:

- import of Iranian-origin carpets and foodstuffs and related financial transactions;
- specific licenses issued under the Statement of Licensing Policy for Activities Related to the Export or Re-export to Iran of Commercial Passenger Aircraft and Related Parts and Services ("JCPOA SLP"); and
- activities undertaken pursuant to General License I regarding contingent contracts related to the JCPOA SLP.

To the extent that any specific licenses issued under the JCPOA SLP have not expired, OFAC expects to revoke those authorizations and re-issue new authorizations to provide for a wind-down period until August 6, 2018.

180-Day Wind-Down Period

Under the 180-day wind-down period, on November 4, 2018, the U.S. government will re-impose sanctions related to:

- Iran's port operators, and shipping and shipbuilding sectors;
- petroleum-related transactions;
- transactions by foreign financial institutions with the Central Bank of Iran and providing specialized financial messaging services to the Central Bank of Iran;
- providing underwriting services, insurance, or reinsurance; and
- Iran's energy sector.

On or before November 5, 2018, OFAC will also re-impose "as appropriate" sanctions on Iranian entities that were removed from the Specially Designated Nationals ("SDN") list on January 16, 2016 (but that were still "blocked" for U.S. persons). OFAC specifically indicated that it would re-add to the SDN list persons meeting the definition of "Government of Iran" or "Iranian financial institution" no later than November 5, 2018. This will mean that non-U.S. companies that were able to deal with such persons without being subject to the threat of sanctions for dealing with SDNs will face that threat again.

Revocation of General Licenses

OFAC's FAQs make clear that the general license authorizations for certain civil aircraft trade under General License I, and activities by non-U.S. companies owned or controlled by U.S. persons under General License H, will not survive the withdrawal from the JCPOA. Authorizations for certain transactions related to Iranian-origin carpets and foodstuffs will also be terminated. OFAC has indicated that as soon as feasible, it will replace those authorizations with narrower authorizations limited to transactions ordinarily incident and necessary to wind down activities that were previously authorized.

Non-U.S. parties that are owed payment from Iranian counterparts for services rendered, or are owed repayment from Iranian counterparts for loans or credits, may still receive those payments in accordance with the written contracts, even if the payments are made after the wind-down period. However, the payments must otherwise be

consistent with U.S. sanctions policy (i.e., not involve U.S. persons or the U.S. financial systems without specific authorization).

Possible New Sanctions or New Iran Deal

In his May 8, 2018 press briefing, President Trump hinted at possible new sanctions, promising to implement “the highest level of economic sanction” and warning that “any country that helps Iran in its quest for nuclear weapons could also be strongly sanctioned by the United States.” OFAC’s FAQs also state that OFAC will “target aggressively anyone who engages in . . . sanctionable activity, regardless of whether the individual or entity was removed from the SDN List on Implementation Day.”

While opening the door to new sanctions, President Trump also indicated that he was open to negotiating a new deal with Iran regarding its nuclear development program. Specifically, the President said he was “ready, willing and able” to negotiate a new deal, and promised that “great things can happen” in Iran and the Middle East if a new deal could be reached.

Effect of the Exit from the JCPOA

If President Trump is serious about wanting to negotiate a new deal with Iran, and is able to do so before the end of the wind-down periods, parties engaging in activities involving Iran could potentially stay in the market (if not fully wound down by the time of the new deal) or could re-enter the market. Because of this uncertainty, close observation of the United States’ and other JCPOA parties’ (China, France, Russia, U.K., and Germany) engagement with Iran in the coming weeks is critical.

Nevertheless, parties involved in activities involving Iran that would be affected by the sanctions snapback risk potential future enforcement action if they delay their wind-down, or fail to wind down at all. OFAC’s FAQs state that enforcement actions after the wind-down periods will consider “efforts and steps taken to wind down activities and will assess whether any new business was entered into involving Iran during the applicable wind-down period.” It would be prudent, therefore, to begin wind-down activities well in advance of the end of the wind-down periods.

Parties engaging in wind-down activities should also be vigilant that all activities are consistent with U.S. sanctions policy. Because OFAC could, prior to the end of the wind-down periods, add new sanctions altogether, parties engaged in wind-down activities should carefully monitor updates to the SDN list and other OFAC actions regarding Iran. Enhanced screening of business partners, for example, should be conducted to ensure that wind-down activities would not lead to a sanctions violation.

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