

CLIENT ALERT

Implications of the U.S. Withdrawal from the Joint Comprehensive Plan of Action and the Re-Imposition of U.S. Sanctions on Iran

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On May 8, 2018, President Trump announced the United States' withdrawal from the Joint Comprehensive Plan of Action (JCPOA) pursuant to which the United States had provided relief from certain direct sanctions and even more secondary sanctions. Following [his remarks](#), the president signed a [National Security Presidential Memorandum](#) directing the Departments of State and the Treasury to "begin reinstating" U.S. nuclear sanctions that had been lifted in connection with JCPOA implementation.

Immediately following the president's announcement, the Treasury Department's Office of Foreign Assets Control (OFAC) issued guidance regarding the re-imposition of sanctions in the form of [Frequently Asked Questions](#). The FAQs make clear that all sanctions measures that have been lifted pursuant to the JCPOA will be re-imposed following 90- or 180-day wind-down periods, on August 6, 2018 and November 4, 2018, respectively. Key elements of the re-imposed U.S. sanctions, their impact, and the FAQ guidance are summarized below.

Wind-Down Periods

Sanctions targeting the following areas will be reinstated following the 90-day wind-down period (ending on August 6, 2018):

- The purchase or acquisition of U.S. dollar banknotes by the Government of Iran.
- Iran's trade in gold or precious metals.
- 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.
- 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.
- Iran's automotive sector.

Sanctions targeting the following areas will be reinstated following the 180-day wind-down period (ending on November 4, 2018):

- Iran's port operators, and shipping and shipbuilding sectors, including on the Islamic Republic of Iran Shipping Lines, South Shipping Line Iran, or their affiliates.
- Petroleum-related transactions with, among others, the National Iranian Oil Company, Naftiran Intertrade Company, and National Iranian Tanker Company, including the purchase of petroleum, petroleum products, or petrochemical products from Iran.

- Transactions by foreign financial institutions with the Central Bank of Iran and designated Iranian financial institutions under Section 1245 of the 2012 National Defense Authorization Act for Fiscal Year 2012 (NDAA).
- The provision of specialized financial messaging services to the Central Bank of Iran and Iranian financial institutions described in Section 104(c)(2)(E)(ii) of CISADA.
- The provision of underwriting services, insurance, or reinsurance.
- Iran's energy sector.

General and Specific Licenses

Certain general and specific licenses, and related materials, issued pursuant to the JCPOA will be revoked subject to the wind-down periods:

- 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" (the "Aircraft Policy") was revoked on May 8, 2018, and OFAC will no longer consider applications under this Policy, other than applications under the pre-existing "safety of flight statement licensing policy," at 31 C.F.R. § 560.528.
- Specific licenses issued pursuant to the Aircraft Policy will be revoked and replaced with authorizations providing a wind-down period ending on August 6, 2018.
- General License I, which authorized transactions ordinarily incident to negotiating contingent contracts for activities eligible to be licensed under the Aircraft Policy, will be revoked and replaced with wind-down authorization ending on August 6, 2018.
- General License H, which authorized non-U.S. entities owned or controlled by U.S. persons to engage in a range of activities involving Iran, will be revoked and replaced with wind-down authorization ending on November 4, 2018.

General licenses at 31 C.F.R. §560.534 (authorizing the importation into the U.S. of, and dealings in, certain Iranian-origin carpets and foodstuffs) and §560.535 (authorizing certain related letters of credit and brokering services) will be amended to authorize a wind-down period ending August 6, 2018.

Re-Listing of Individuals and Entities

No later than November 5, 2018, OFAC will re-impose "the sanctions that applied to persons removed from the SDN List and/or other lists maintained by OFAC on January 16, 2016." OFAC emphasizes that "[d]epending on the authority or authorities pursuant to which these actions to re-list are taken, there may be secondary sanctions" associated with these persons. (Secondary sanctions in this case are sanctions imposed on non-U.S. persons who engage in specified business in or with Iran). Importantly, this will include re-designating all Government of Iran (GOI) entities as SDNs, by removing them from the Executive Order 13599 list and moving those persons back to the SDN list. The net effect is to expose non-U.S. persons transacting with GOI entities to U.S. secondary sanctions. This would include, but not be limited to, transactions with: (a) the Islamic Republic of Iran Shipping Lines (IRISL), (b) the National Iranian Oil Company (NIOC), (c) Naftiran Intertrade Company (NICO), (d) National Iranian Tanker Company (NITC), (e) the South Shipping Line Iran, (f) Tidewater Middle East Co., and numerous others.

Crude Oil Purchases

The reinstatement of sanctions on transactions by foreign financial institutions with the Central Bank of Iran and designated Iranian financial institutions – critical financial intermediaries for Iran’s petroleum-related transactions – will have a significant impact on the Iranian government’s ability to export oil. The FY2012 NDAA provides that the president “shall prohibit” or strictly limit U.S. correspondent or payable-through accounts for a foreign financial institution that “has knowingly conducted or facilitated any significant financial transaction with the Central Bank of Iran or another [sanctioned] Iranian financial institution,” unless (1) the transaction is for the sale of food, medicine, or medical devices to Iran, or (2) the president determines and reports to Congress every 180 days that the country with primary jurisdiction over the foreign financial institution has significantly reduced its volume of crude oil purchases from Iran.”

Foreign financial institutions operating in countries that “significantly reduce[]” imports of crude oil from Iran will not face the risk of these secondary sanctions. Foreign entities with exposure to Iran’s oil sector should watch closely for U.S. government determinations of which countries qualify for this exemption.

Implications for U.S. Persons

The impact of the U.S.’s withdrawal from the JCPOA on U.S. persons is limited because, with two exceptions, the JCPOA did not lift sanctions prohibiting U.S. persons from conducting business in or with Iran. Those two limited exceptions were: (a) authorization for U.S. Persons to import Iranian-origin carpets and food stuffs; and (b) a specific licensing policy in support of licenses for the sale of civil commercial passenger aircraft and related goods and services. These exceptions will be repealed following the 90-day wind-down period (expiring August 6, 2018). OFAC will no longer consider applications for licenses under the commercial aircraft policy, and existing licenses will be revoked and replaced with authorizations for wind-down activities through August 6, 2018. General License I will be similarly revoked.

Implications for Non-U.S. Entities “Owned or Controlled” by U.S. Persons

The impact on non-U.S. entities owned or controlled by U.S. persons will be significant. As part of the JCPOA, General License H authorized such entities to engage in all activities that would be otherwise prohibited for U.S. persons, subject to certain conditions. General License H will be revoked and replaced with an authorization for wind-down activities through November 4, 2018.

Implications for Other Non-U.S. Persons

Non-U.S. Persons will be most affected by the United States withdrawal from the JCPOA. The JCPOA included a commitment by the United States to lift a range of secondary sanctions associated with specified activities, as identified above. The United States will now re-instate those sanctions following the wind-down periods identified above, meaning that non-U.S. persons engaged in activities subject to those sanctions that do not wind down business with Iran will risk restrictions on their ability to do business in and with the United States. Additionally, non-U.S. persons will need to ensure that their activities involving Iran do not inadvertently also involve U.S. persons or other touch points that could trigger U.S. jurisdiction.

Impact on Other Parties to the JCPOA

The United States' repudiation of the JCPOA does not technically terminate the agreement. At least for now, sanctions relief provided by the European Union, United Kingdom, France, Germany, Russia, and China, as well by the United Nations, remains intact.

Thus far, there has been no indication that European or UN sanctions will be re-imposed in light of the U.S. withdrawal. The leaders of the U.K., Germany, and France swiftly issued a [joint statement](#) reiterating their commitment to upholding the agreement. The EU did [the same](#). UN Secretary-General Antonio Guterres also issued a [statement](#) calling on the remaining parties to the JCPOA to abide by their commitments. The U.S. government has not triggered the "snap back" dispute resolution mechanism that could have resulted in re-imposing suspended UN sanctions, and its repudiation may preclude it from doing so in the future.

This course, if it continues, would set up a difficult dynamic between the U.S. and its partners around the world, because U.S. primary sanctions would apply to any transactions clearing through the U.S. or U.S. banks, and U.S. secondary sanctions could be applied to foreign firms continuing to do business in Iran pursuant to the JCPOA. In particular, to the extent the United States' European partners remain committed to the JCPOA, imposing secondary sanctions penalties on European companies will be an increasing source of friction across the Atlantic, along with presenting companies with complex compliance decisions.

What is Next for the JCPOA?

U.S. withdrawal from the JCPOA takes global business into uncharted territory. As other nations develop new paths forward, businesses will have to be on alert and develop agility in managing complex and evolving requirements, exiting relationships, and seeking different opportunities. Many steps required to implement the changes described above have yet to be taken, and should provide additional clarity. In the meantime, all persons engaging in activities with Iran under the JCPOA sanctions relief should immediately begin assessing and implementing steps to wind-down those activities by the August 6, 2018 and November 4, 2018 deadlines, as necessary.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Carlton Greene

Partner – Washington, D.C.
Phone: +1 202.624.2818
Email: cgreene@crowell.com

Alan W. H. Gourley

Partner – Washington, D.C.
Phone: +1 202.624.2561
Email: agourley@crowell.com

David (Dj) Wolff

Partner; Attorney at Law – Washington, D.C., London
Phone: +1 202.624.2548, +44.20.7413.1368

Email: djwolff@crowell.com