

Top 10 Things to Know About President Trump's Decision to Withdraw from the Iran Nuclear Agreement

Withdrawal from the JCPOA will lead to re-imposition of several categories of US sanctions.

On May 8, 2018, [President Trump announced](#) that the United States will withdraw from the [Joint Comprehensive Plan of Action](#) (JCPOA), the nuclear non-proliferation agreement that the P5+1 countries (China, France, Germany, Russia, the United Kingdom, and the US) and Iran implemented in January 2016. During the announcement, the President signaled his intent to impose “the highest level of economic sanction” against Iran, and released a [Presidential Memorandum](#) directing the Secretary of State and the Secretary of the Treasury to “immediately” take the necessary steps to re-impose all US sanctions lifted or waived in connection with the JCPOA. As discussed below, the re-imposed sanctions will have the potential to reach any person or entity in the world that engages in certain types of transactions involving Iran.

Here are answers to 10 key questions about this action.

1. What is the impact of the President's announcement?

All US sanctions that were eased in connection with the JCPOA will be re-imposed “as expeditiously as possible” and “in no case later than 180 days.” Certain activities may continue in the interim pursuant to the terms of defined wind-down periods, as explained in more detail in [Frequently Asked Questions](#) (FAQs) issued by the US Treasury Department's Office of Foreign Assets Control (OFAC) on May 8, 2018. A Department of Treasury [Press Release](#) notes that “[a]t the conclusion of the wind-down periods, the applicable sanctions will come back into full effect. This includes actions under both our primary and secondary sanctions authorities.”

2. What are the US primary sanctions that will be re-imposed, and when will they take effect?

As described in a previous Client Alert on January 19, 2016, US primary sanctions — which were eased modestly pursuant to the JCPOA — are administered and enforced primarily by OFAC. These sanctions apply to the activities of US persons and entities outside the US that are “owned or controlled” by a US person (e.g., foreign subsidiaries of US companies). Although the core of US primary sanctions remained in place following the implementation of the JCPOA on January 16, 2016, OFAC issued several general licenses and a statement of licensing policy in early 2016 that eased primary sanctions pursuant to the

terms of the JCPOA. OFAC reported in its FAQs that it intends to revoke each of these authorizations, following certain wind-down periods that will expire either on August 6, 2018 or November 4, 2018. OFAC is expected to publish these wind-down general licenses in the coming weeks.

- *General License H.* OFAC will revoke [General License H](#) “as soon as is administratively feasible.” This general license currently authorizes non-US entities that are “owned or controlled” by a US person to engage in certain transactions with Iran (subject to several significant limitations). OFAC plans to issue a new general license authorizing the winding down of activities previously authorized under General License H, and these wind-down activities will need to be completed **by November 4, 2018**. It remains unclear whether “new” business will be permitted during the wind-down period, even if this business can be completed by November 4.
- *Commercial Passenger Aircraft and Related Parts and Services.* OFAC plans to revoke [General License I](#), which authorizes US persons to negotiate and enter into contingent contracts related to activities eligible for authorization under an OFAC [Statement of Licensing Policy](#) (SLP). Under the SLP, persons could apply for OFAC licensing to export, reexport, sell, lease, or transfer commercial passenger aircraft and related parts and services to Iran. OFAC has rescinded the SLP, and intends to revoke specific licenses issued pursuant to it. Certain wind-down activities will be permitted **until August 6, 2018**.

OFAC has indicated that the specific licensing policy outlined in [Section 560.528](#) of the [Iranian Transactions and Sanctions Regulations](#) (ITSR) will remain in place, and OFAC will continue to consider specific license applications for activities intended to insure the safety of civil aviation and safe operation of US-origin commercial passenger aircraft. Although OFAC notes that any license applications submitted pursuant to the SLP that are currently pending will be “returned without action,” OFAC advises that applicants may resubmit their applications for consideration under the licensing policy at Section 560.528.

- *Iranian-origin carpets and foodstuffs.* OFAC will amend the general licenses it added to the ITSR pursuant to the JCPOA that authorize US persons to deal in Iranian-origin carpets and foodstuffs, including pistachios and caviar, and to import such products into the US from Iran. OFAC plans to authorize related wind-down activities **until August 6, 2018**.

3. What are the US secondary sanctions that will be re-imposed, and when will they take effect?

Withdrawal from the JCPOA has significant implications for US secondary sanctions, which apply to non-US firms and individuals, even if there is no jurisdictional nexus with the US. All of the secondary sanctions the US suspended under the JCPOA will be re-imposed — some following a 90-day wind-down period, the rest following a 180-day wind-down period. Thus, by the end of these periods, non-US persons and entities will face the threat of secondary sanctions if they engage in certain activities involving Iran.

- Secondary sanctions taking effect **on August 6, 2018** (*i.e.*, after a 90-day wind-down period), include those related to:
 - The purchase or acquisition of US dollar banknotes by the government of Iran
 - Iran’s trade in gold or precious metals

- Trade with Iran in graphite, raw, or semi-finished metals such as aluminum and steel
- Iran's trade in coal
- Iran's trade in software for integrating industrial processes
- Significant transactions relating to the purchase or sale of Iranian rials, or the maintenance of significant funds or accounts outside of Iran denominated in the Iranian rial
- The purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt
- Iran's automotive sector
- Secondary sanctions taking effect **on November 4, 2018** (*i.e.*, after a 180-day wind-down period) include those related to:
 - Iran's port operators, shipping, and shipbuilding sectors
 - Petroleum-related transactions
 - Transactions by foreign financial institutions with the Central Bank of Iran and designated Iranian financial institutions
 - The provision of specialized financial messaging services to the Central Bank of Iran and Iranian financial institutions
 - The provision of underwriting services, insurance, or reinsurance
 - Iran's energy sector

Secondary sanctions relating to Iran are drawn from a predefined menu of sanctions, which include, for instance: a prohibition on foreign exchange transactions subject to US jurisdiction; the denial of Export-Import Bank assistance; the denial of US export licenses; the denial of certain loans from US financial institutions; a ban on US government procurement; and blocking sanctions.

4. Which Iranian parties will be designated for OFAC sanctions?

No later than November 5, 2018, OFAC has announced that it will re-list the more than [400 Iran-related parties](#) that were removed from OFAC's list of [Specially Designated Nationals](#) (SDN List), the [Foreign Sanctions Evaders List](#) (FSE List), and the [Non-SDN Iran Sanctions Act List](#) under the JCPOA. Such parties include many Iranian financial institutions, including the Central Bank of Iran.

Since the implementation of the JCPOA, US secondary sanctions have continued to apply to non-US persons who knowingly facilitate "significant" financial transactions with, or who provide material or certain other support to, (1) Iranian parties on the SDN List; (2) Iran's Islamic Revolutionary Guard Corps (IRGC) and its designated agents or affiliates; or (3) any other person on the SDN List designated under US executive orders relating to Iran's proliferation of weapons of mass destruction or Iran's support for international terrorism. OFAC regulations identify several factors the agency may consider to determine whether transactions are "significant," including the size, number, frequency, and nature of the transactions. See [Section 561.404](#) of the [Iranian Financial Sanctions Regulations](#) (IFSR). In its FAQs, OFAC notes that there may be secondary sanctions exposure for persons that deal with a re-listed party.

Presumably, the same secondary sanctions exposure that currently applies to dealings with Iranian parties on the SDN List will extend to dealings with the re-listed parties.

5. What does OFAC consider to be wind-down activities?

Only certain activities are permitted during the 90-day and 180-day wind-down periods discussed above. Although the wind-down general licenses have yet to be published, and the details of these authorizations are not yet known, OFAC has indicated that the general licenses will authorize US persons and, as appropriate, US-owned or -controlled foreign affiliates, to engage in “all transactions ordinarily incident and necessary to wind down activities that were previously authorized” by General License H, General License I, or the ITSR general licenses related to dealings in Iranian-origin carpets and foodstuffs. OFAC has also provided in its FAQs that US persons and their owned or controlled foreign affiliates will be authorized during the wind-down period to receive payments according to the terms of a written contract or agreement that was entered into before May 8, 2018, for goods or services fully provided or delivered pursuant to OFAC authorization.

In its FAQs, OFAC explained that “non-U.S., non-Iranian person” parties could receive payment for goods or services after the applicable wind-down period, provided the payment is made according to the terms of a written contract or written agreement that was entered into prior to May 8, 2018, and the activities were consistent with the US sanctions in effect at the time the goods or services were delivered or provided. In addition, OFAC explained that non-US, non-Iranian persons also could — after the applicable wind-down period — receive repayment in connection with loans or credits extended to Iranian counterparties before the end of the wind-down period, “provided that such loans or credits were extended pursuant to a written contract or written agreement entered into prior to May 8, 2018, and such activities were consistent with U.S. sanctions in effect at the time the loans or credits were extended.” According to OFAC, the purpose of these allowances is for non-US, non-Iranian persons to be “made whole” for debts and obligations owed to them for goods, services, loans, or credits provided or extended to an Iranian party prior to the end of the applicable wind-down period. OFAC cautions, in its FAQs, that any such payments would need to be consistent with US sanctions, including that “payments could not involve U.S. persons or the U.S. financial system, unless the transactions are exempt from regulation or authorized by OFAC.”

Finally, OFAC stated in its FAQs that the provision or delivery of additional goods or services, as well as the extension of additional loans or credits, to an Iranian counterparty after the expiration of a wind-down period could result in the imposition of US sanctions or an OFAC enforcement action, even if such activities are conducted pursuant to a written contract or agreement entered into prior to May 8, 2018.

6. Will eligible persons continue to be able to export certain medicine, medical devices, and food products to Iran?

Yes. The general license at [ITSR Section 560.530](#) — which permits eligible persons to engage in the sale, export, and reexport to Iran of certain agricultural commodities, medicine, and medical devices — was not issued in connection with the implementation of the JCPOA. As a result, the re-imposition of sanctions announced on May 8, 2018, should not affect the scope of this general license or other provisions in the ITSR that predate the JCPOA. It is possible that retaliatory measures in Iran or elsewhere could impact exports and reexports of these goods.

7. What is the impact on Section 13(r) disclosure requirements?

Neither the President’s announcement nor the staged re-imposition of sanctions will meaningfully affect the disclosure obligations under Section 13(r) to the Securities Exchange Act of 1934, which requires

issuers and their affiliates that engage in even lawful transactions or dealings with the government of Iran, certain parties on the SDN List, or energy-related (and certain other) activities in Iran to disclose that information in public filings made to the Securities and Exchange Commission. However, once these sanctions are re-imposed, certain issuers may be required to disclose conduct that previously did not require disclosure, such as conduct that was consistent with an OFAC general license that is scheduled to be rescinded.

8. Will the European Union re-impose sanctions on Iran?

Following the implementation of the JCPOA on January 16, 2016, the EU lifted most of its sanctions on Iran, including the EU sanctions that targeted the Iranian oil and gas industry and the transfer of funds to and from Iran. The leaders of the UK, France, and Germany have confirmed in a [joint statement](#) that those countries (the E3) will remain parties to the JCPOA. Accordingly, as the [EU has confirmed](#), as long as Iran continues to implement its nuclear related commitments, the EU will remain committed to the JCPOA and will not re-impose the sanctions that it lifted following the JCPOA.

9. Is the European Union considering taking any action in response to President Trump's announcement?

The High Representative of the EU for Foreign Affairs and Security Policy, Federica Mogherini, issued a [statement](#) shortly after President Trump's announcement, that the EU "is determined to act in accordance with its security interests and to protect its economic investments." The EU currently has in place a blocking regulation ([Council Regulation \(EC\) No. 2271/96](#)), which is intended to protect EU nationals from the effect of certain extraterritorial US legislation, including the Iran and Libya Sanctions Act of 1996. Whether the EU will amend the existing blocking regulation to include the US secondary sanctions restored by the US or adopt further legislation to protect the interests of European businesses that have invested in, or otherwise re-engaged in business activities with, Iran in reliance on the JCPOA remains to be seen.

10. What is the prospect for rollback of the President's actions?

Although there is a theoretical possibility that a new nuclear agreement will emerge in the coming months, the current prospects for that result or any easing of the US sanctions appear low. A new agreement would require all of the original parties, including Iran, as well as the US, to reach consensus on terms that would presumably impose more stringent restrictions on Iran than the JCPOA. The current appetite among the non-US parties for renegotiating the original terms does not appear to be high. To the contrary, as noted above, the European parties to the JCPOA have expressed their commitment to adhering to the terms of the JCPOA, and, through the EU, they may even be preparing to take protective or retaliatory measures to counter the effects of US secondary sanctions.

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