

Withdrawal of US From Iran Nuclear Deal and the Impact on US and Non-US Companies



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On May 8, President Trump announced the withdrawal of the U.S. from the Iran nuclear deal (the Joint Comprehensive Plan of Action or JCPOA), starting a countdown on the re-imposition of certain Iranian sanctions waived by the U.S. in January 2016. To implement the president's decision, the U.S. Departments of State and Treasury have established 90-day and 180-day wind-down periods for certain transactions involving Iran. The U.S. Treasury Department's Office of Foreign Assets Control (OFAC) has released FAQ guidance regarding the re-imposition of sanctions.

To avoid exposure to penalties or sanctions, persons (including individuals and companies) engaging in activities with Iran under the JCPOA's sanctions relief should take the steps necessary to wind-down their activities by the deadlines discussed below.

Here are key takeaways from the president's announcement and OFAC's guidance for U.S. and non-U.S. companies:

1. Impact on U.S. Companies

Business as Usual for Most U.S. Companies – Meaning No Business with Iran. Under

the JCPOA, the U.S. agreed to waive primarily its extraterritorial or “secondary sanctions,” which largely benefitted non-U.S. companies. The JCPOA offered little relief for U.S. companies, with the notable exceptions discussed below. The president’s May 8 announcement does not change the status of sanctions applicable to U.S. companies, who will generally continue to be prohibited from conducting virtually all business with or involving Iran with very narrow exceptions such as for food, medical supplies and personal internet equipment.

U.S. Aircraft and Parts Industry Must Wind Down Authorized Transactions in 90 Days. Under the JCPOA, OFAC issued specific licenses authorizing exports and re-exports to Iran of U.S. commercial passenger aircraft and related parts and services. The purpose of those licenses was to update the civil aviation fleet of Iran to promote air safety. OFAC’s General License I also authorized U.S. persons to enter into and engage in transactions ordinarily incident to the export or re-export to Iran of commercial passenger aircraft and related parts and services. In its guidance, OFAC indicated it will no longer issue these aircraft-related licenses, will also revoke previously issued licenses, and will revoke General License I following a 90-day wind-down period. Thus, U.S. companies must wind-down current aircraft-related business with Iran by Aug. 6, 2018.

U.S. Imports of Iranian Carpets and Certain Food Must Wind Down in 90 Days. Under the JCPOA, OFAC authorized imports into the United States of carpets and certain food from Iran as well as transactions related to those importations. The new guidance describes that U.S. companies must wind down these transactions by Aug. 6, 2018.

2. Impact on Foreign Companies

Foreign Companies (e.g., Subsidiaries) Owned or Controlled by U.S. Persons. Under the JCPOA and OFAC’s “General License H,” foreign subsidiaries and other companies owned or controlled by U.S. persons were authorized to engage in many transactions involving Iran, with certain limitations. OFAC is revoking this authorization generally following a 180-day wind-down period (although foreign subsidiaries engaged in specific activities, such as aircraft and food imports, will be subject to the shorter 90-day period). As outlined in the new guidance, any activities by such U.S.-owned or controlled foreign companies that continue after the applicable wind-down deadline, in most cases Nov. 4, 2018, will be subject to enforcement action.

Other Foreign Companies. Prior to the negotiation of the JCPOA, the United States enforced a number of extraterritorial or “secondary sanctions” against non-U.S. companies that chose to do business with certain Iranian industry sectors or persons. Although the secondary sanctions were enacted under a variety of laws and Executive Orders, they are commonly referred to as “CISADA” sanctions. Those secondary sanctions will be reactivated at the end of a wind-down period. Non-U.S. companies that engage in such transactions with Iran after the wind-down deadline will be at risk for imposition of sanctions by the U.S. government.

The applicable sanctions vary, but they can include loss of access to U.S. foreign monetary exchange, a prohibition on imports into the U.S. of the non-U.S. company’s

products, and refusal of visas to the non-U.S. company's senior officers, among other possible sanctions. In effect, these secondary sanctions often force a choice between doing business with Iran and doing business with the United States. By "winding down" Iranian activities within the applicable wind-down period, non-U.S. companies can avoid secondary sanctions. Highlights of the non-U.S. company transactions that could trigger secondary sanctions if they involve Iran, and the applicable wind-down periods, are set forth below:

90-Day Wind-down (Aug. 6, 2018)

- Gold and precious metals
- Graphite, raw or semi-finished metals (e.g., aluminum, steel, coal)
- Software for integrating industrial processes
- Significant transactions in Iranian currency
- Iranian sovereign debt
- Iran's automotive sector

180-Day Wind-down (Nov. 4, 2018)

- Iran's Energy, Insurance and Shipping Sectors, including the National Iranian Oil Company (NIOC), among others
- Transactions with Persons Previously Removed from OFAC's "Specially Designated Nationals" (SDN) List and other OFAC lists, who will be re-listed no later than Nov. 5, 2018
- Transactions with the Central Bank of Iran and certain other Iranian financial institutions

3. What Exactly Does it Mean to "Wind-Down" Transactions?

The initial guidance issued by OFAC suggests that "wind-down" activities must be undertaken pursuant to a written contract or written agreement entered into prior to May 8, 2018. OFAC has indicated that any new business engaged in during the applicable wind-down period will be viewed negatively in an enforcement or sanctions proceeding. All aspects of the wind-down transactions must occur prior to the deadline, e.g., all products sold must be delivered to the customer before the wind-down period expires. However, in some instances, OFAC has indicated that it would permit receipt of payment after the end of the wind-down period for previously completed transactions. OFAC is expected to issue more definitive guidance in a subsequent Federal Register notice.

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