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May 9, 2018

## **President Trump Withdraws the United States from the Iran Nuclear Deal**

### **U.S. and Non-U.S. Companies Now Face Deadlines for Winding Down Iran-Related Business**

On May 8, 2018, President Trump announced the unilateral withdrawal of the United States from the Joint Comprehensive Plan of Action (“JCPOA”), the multi-lateral commitment under which the United States, the European Union, and five other countries<sup>1</sup> agreed to lift certain economic sanctions against Iran in exchange for Iran’s implementation of nuclear-related commitments.

In conjunction with his announcement, President Trump issued a National Security Presidential Memorandum (“NSPM”) directing the reinstatement of *all* U.S. sanctions against Iran that had been waived or otherwise lifted as part of the JCPOA.<sup>2</sup> President Trump stated that the United States “will be instituting the highest level of economic sanction[s]” against Iran, and threatened that “[a]ny nation that helps Iran in its quest for nuclear weapons could also be strongly sanctioned by the United States.”<sup>3</sup>

The President’s announcement follows months of speculation and uncertainty regarding the future of the Trump Administration’s Iran policy. We describe the President’s decision and the new U.S. government guidance in more detail below, and discuss its implications for U.S. and non-U.S. companies.

### **Background**

As described in more detail in prior Paul, Weiss memoranda,<sup>4</sup> prior to the JCPOA, the U.S. government maintained various “secondary sanctions” that targeted Iran to discourage its nuclear, terrorist, and other malign activities. As a means of pressuring Iran, these secondary sanctions threatened to impose sanctions (including prohibitions on imports and exports into and out of the United States, denial of entry into the United States, and other measures designed to cut off access to the United States and its financial system) on non-U.S. persons who engaged in certain Iran-related activities, even when those activities had no U.S. nexus. Through these secondary sanctions threats, the U.S. government effectively gave non-U.S. persons the choice between dealing with Iran and having access to the U.S. economy. These threats discouraged non-U.S. financial institutions and other major companies from engaging with Iran and helped bring Iran to the nuclear bargaining table.

On the implementation day of the JCPOA (January 16, 2016), the United States issued a series of waivers, effectively lifting its nuclear-related secondary sanctions (the bulk of its secondary sanctions) against Iran,

allowing non-U.S. persons to engage in a wide variety of business activities (not involving a U.S. nexus) with Iran without the threat of being sanctioned by the United States.

The JCPOA largely kept in place U.S. primary sanctions, which broadly prohibit U.S. persons or U.S. nexus transactions involving Iran, but did provide some limited relief. Accordingly, the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") took various actions, including the issuance of General License H, which authorized non-U.S. companies owned or controlled by U.S. companies to engage in Iranian business under certain conditions. Some U.S.-owned or -controlled overseas companies took advantage of the authorization in General License H to engage in business with Iran. OFAC further adopted a favorable licensing policy toward requests for specific licenses for the export or re-export to Iran of commercial passenger aircraft and related parts and services. Additionally, OFAC authorized by general license the importation of Iranian carpets and certain Iranian foodstuffs into the United States.

### **Re-Imposition of Sanctions**

President Trump's national security directive directs re-imposition of all U.S. sanctions that were lifted or waived in connection with the JCPOA "as expeditiously as possible" and no later than 180 days from the date of that May 8, 2018 directive. In addition, the U.S. State Department revoked certain statutory waivers issued to implement JCPOA-related sanctions relief and issued the necessary statutory waivers to provide for two wind-down periods, a 90-day period ending August 6, 2018 and a 180-day wind-down period ending November 4, 2018 for activities involving Iran that were undertaken pursuant to JCPOA-related sanctions relief.<sup>5</sup> In parallel, OFAC published guidance (the "OFAC Guidance") regarding the re-imposition of sanctions, stating that all sanctions will be re-imposed and in "full effect" following the 180-day wind-down period's expiration on November 4, 2018.<sup>6</sup>

Below, we summarize key parts the OFAC Guidance addressing the re-imposition of sanctions and the two wind-down periods.

### ***Sanctions to be Re-imposed After the 90-day Wind-down period***

On August 6, 2018, following the 90-day wind-down period, the following secondary sanctions authorities will again be in effect:

- Sanctions on the purchase or acquisition of U.S. dollar banknotes by the Government of Iran;
- Sanctions on Iran's trade in gold or precious metals;
- Sanctions on 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;

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- Sanctions on 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 Iranian rial;
  - Sanctions on the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt; and
  - Sanctions on Iran's automotive sector.<sup>7</sup>

OFAC stated that, to avoid secondary sanctions risk, non-U.S. persons engaging in the activities listed above should take steps necessary to wind down those activities by August 6, 2018.<sup>8</sup>

Additionally, the following JCPOA-related relief under U.S. primary sanctions will be revoked on August 6, 2018:<sup>9</sup>

- The importation into the United States of Iranian-origin carpets and foodstuffs<sup>10</sup> and certain related financial transactions<sup>11</sup> pursuant to general licenses;<sup>12</sup>
- Activities undertaken pursuant to specific licenses issued in connection with 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 Aircraft Policy");<sup>13</sup> and
- Activities undertaken pursuant to General License I relating to contingent contracts for activities eligible for authorization under the JCPOA Aircraft Policy.<sup>14</sup>

OFAC stated that persons engaging in the activities listed above should take steps necessary to wind down those activities by August 6, 2018 to avoid violating primary sanctions and risking an enforcement action.<sup>15</sup>

***Sanctions to be Re-imposed After the 180-day Wind-down period***

On November 4, 2018, following the 180-day wind-down period, the following secondary sanctions authorities will again be in effect:<sup>16</sup>

- Sanctions on Iran's port operators, and shipping and shipbuilding sectors;<sup>17</sup>
- Sanctions on 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;

- Sanctions on transactions by foreign financial institutions with the Central Bank of Iran and other sanctioned Iranian financial institutions;<sup>18</sup>
- Sanctions on the provision of specialized financial messaging services to the Central Bank of Iran and Iranian financial institutions;<sup>19</sup>
- Sanctions on the provision of underwriting services, insurance, or reinsurance; and
- Sanctions on Iran's energy sector, including those targeted at efforts to reduce Iran's sale of crude oil (including limitations on the quantity of crude that can be purchased)<sup>20</sup> and against investments in and the provision of goods and services to the oil, gas, and petrochemical sectors in Iran.

OFAC stated that, to avoid the risk of secondary sanctions, non-U.S. persons engaging in the activities listed above undertaken pursuant to JCPOA-related sanctions relief should take steps necessary to wind down those activities by November 4, 2018.<sup>21</sup>

In addition, OFAC intends to revoke General License H, which authorizes non-U.S. entities owned or controlled by U.S. persons to engage in certain activities involving Iran, as soon as administratively feasible.<sup>22</sup> OFAC intends to issue a revised authorization for the wind down of activities involving Iran previously authorized pursuant to General License H. Such wind-down activities must conclude by November 4, 2018.<sup>23</sup>

### ***OFAC Guidance on Activities that May be Undertaken During the Wind-down Periods***

OFAC's Guidance advises non-U.S., non-Iranian persons to use the wind-down periods to wind down their Iran-related activities that will become subject to secondary sanctions at the end of the applicable wind-down period.<sup>24</sup> The wind-down periods apply to activities involving Iran that were consistent with the relief provided under the JCPOA.<sup>25</sup> The JCPOA Guidance and JCPOA FAQs issued on January 16, 2016, as amended, remain available on OFAC's website only to assist persons in determining which activities were not sanctionable or prohibited between January 16, 2016 and May 8, 2018, and to determine how best to wind down such activities.<sup>26</sup>

It is unclear to what extent new business (initiated after May 8, 2018) with Iran may be conducted by a non-U.S. person during the wind-down periods. The OFAC Guidance notes only that, persons engaging in activity consistent with the U.S. sanctions relief specified in the JCPOA should take the steps necessary to wind down operations by the required date to avoid exposure to sanctions. The OFAC Guidance does state, however, that when considering the potential imposition of sanctions for Iran-related activity that occurs following the applicable wind-down period, OFAC will consider—presumably as an adverse factor—whether “new business” was entered into involving Iran after May 8, 2018.<sup>27</sup> Although unclear,

this may suggest that OFAC does not intend to impose sanctions for “new business” that is consistent with JCPOA relief that concludes during the applicable wind-down periods, but will view such activity as an aggravating factor if Iran-related business continues past the applicable wind-down periods. The OFAC Guidance also states that OFAC will consider the “efforts” made by companies in winding down Iran-related business during the wind-down periods, suggesting that companies should document their efforts.<sup>28</sup>

With respect to primary sanctions, OFAC’s Guidance provides that, as soon as administratively feasible, OFAC will replace General Licenses H and I with more narrow authorizations to allow all transactions with a U.S. nexus ordinarily incident and necessary to wind down activities that were previously authorized pursuant to the JCPOA-related general licenses and to receive payments according to the terms of the written contract or written agreement entered into prior to May 8, 2018, for goods or services fully provided or delivered pursuant to an OFAC authorization.<sup>29</sup>

#### ***Permissible Non-U.S., Non-Iranian Persons’ Receipt of Payments After the Applicable Wind-down Periods***

OFAC’s Guidance provides that non-U.S., non-Iranian persons may continue to receive certain payments or repayments after the expiration of the applicable wind-down periods, as follows:

- *Payments.* Non-U.S., non-Iranian persons owed payment after the conclusion of the applicable wind-down period for goods or services fully provided or delivered to an Iranian counterparty prior to the conclusion of the applicable wind-down period pursuant to a written contract entered into prior to May 8, 2018, may receive payment for those goods or services according to the terms of the written contract or written agreement.<sup>30</sup>
- *Repayments of Loans or Credits.* Non-U.S., non-Iranian persons owed repayment after the conclusion of the applicable wind-down period for loans or credits extended to an Iranian counterparty prior to the end of the applicable wind-down period and pursuant to a written contract or written agreement entered into prior to May 8, 2018, may receive repayment of the related debt or obligation according to the terms of the written contract or written agreement.<sup>31</sup>

These allowances are intended to allow non-U.S., non-Iranian persons to be “made whole” for debts and obligations owed or due to them for goods or services fully provided or delivered or loans or credit extended to an Iranian party prior to the conclusion of the applicable wind-down period. Any payments or repayments would need to be consistent with U.S. sanctions (*i.e.*, not involve a U.S. nexus, unless the transactions are exempt from regulation or authorized by OFAC).

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***Sanctions Related to Designated Persons***

Pursuant to the sanctions relief under the JCPOA, on January 16, 2016, OFAC had removed more than 400 persons from its SDN List to allow non-U.S. persons to conduct business with these persons without the risk of secondary sanctions. These persons, identified as meeting the definitions of “Government of Iran” or “Iranian financial institution” and re-listed on the “List of Persons Identified as Blocked Solely Pursuant to Executive Order 13599” (the “E.O. 13599 List”<sup>32</sup>) remained subject to U.S. blocking sanctions even though they no longer appeared on the SDN List; however, pursuant to JCPOA relief, secondary sanctions did not attach to transactions involving these persons.

Pursuant to President Trump’s decision, no later than November 5, 2018, the U.S. government will re-impose the sanctions that applied to persons who had been removed from the SDN List on January 16, 2016.<sup>33</sup>

OFAC’s Guidance states that, beginning November 5, 2018, secondary sanctions will once again apply to non-U.S. persons who knowingly facilitate significant financial transactions with or provide certain material or certain other support with “most”<sup>34</sup> persons moved from the E.O. 13599 List to the SDN List.<sup>35</sup> SDNs subject to secondary sanctions will have a notation of “Additional Sanctions Information—Subject to Secondary Sanctions” in their SDN List entry.<sup>36</sup>

Additionally, OFAC’s Guidance warns that persons conducting activities in Iran or with Iranian persons during the wind-down periods should conduct due diligence in order to ensure that they are not knowingly engaging in transactions with persons on the SDN List or in activities that would be sanctionable under non-nuclear-related authorities targeting Iran that were not subject to relief under the JCPOA.<sup>37</sup>

**Implications**

The United States’ withdrawal from the JCPOA and the re-imposition of U.S. sanctions will likely cause considerable political tension with key U.S. allies. Leaders from other JCPOA signatory countries had pressed President Trump to uphold the United States’ JCPOA commitments in the weeks and months leading up to the United States’ withdrawal. For example, French President Emmanuel Macron had recently attempted to persuade President Trump to consider supplementing, but not replacing, the JCPOA, stating that “we should not tear apart the JCPOA and have nothing else . . . I would like [us] to work . . . on a new deal with four pillars, including what is already covered by the JCPOA . . . .”<sup>38</sup>

President Trump’s decision does not necessarily signal the total collapse of the JCPOA. European signatories to the JCPOA have said they will maintain their commitments and France, Germany, and the United Kingdom have issued a joint statement urging Iran to continue to meet its JCPOA commitments.<sup>39</sup> Iranian President Hassan Rouhani has also stated that Iran will uphold its JCPOA commitments.<sup>40</sup>

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However, the Trump Administration's decision could lead to disputes with U.S. allies regarding whether companies based in or operating within their territories should continue to do business with Iran in line with those countries' policies, despite the substantially expanded threat of U.S. secondary sanctions. This will require non-U.S. persons—amidst conflicting signals from multiple world leaders—to weigh the benefits of business with Iran and local legal requirements against the risk of potentially being cut off from the U.S. economy.<sup>41</sup>

U.S. persons (including non-U.S. entities owned or controlled by U.S. persons) have no choice but to eliminate, by the end of the applicable wind-down period, Iran-related business previously authorized pursuant to the JCPOA, including under General License H. This creates unique compliance and business challenges for U.S. persons that, in reliance upon General License H, changed their policies and procedures to allow their non-U.S. subsidiaries to do business with Iran, and for the non-U.S. subsidiaries that will now need to disengage from Iran-related business.

OFAC has advised that both U.S. and non-U.S. persons who seek to wind down their Iran-related activities should carefully consider the Iran-related activities they will undertake during the applicable wind-down period.<sup>42</sup> As noted above, OFAC has not, to date, specifically provided guidance on whether new business with Iran (consistent with JCPOA relief) may be undertaken during the wind-down periods.<sup>43</sup> OFAC has only stated that if Iran-related activity continues past the applicable wind-down periods, OFAC will take into account whether new business was conducted during the wind-down periods as an adverse factor in determining whether to impose sanctions.<sup>44</sup> Given these uncertainties, companies may want to consider implementing controls to avoid any new Iran-related business during the wind-down periods, at least pending further OFAC guidance. It is also important for companies to be mindful of OFAC's warning to be diligent during the wind-down periods to not conduct business with Iran-related SDNs or engage in activities that are subject to existing non-nuclear secondary sanctions.

Another area of uncertainty is to what degree OFAC will be receptive to requests for specific licenses or guidance to address special circumstances that arise. Given the current demands on OFAC personnel, we expect it to be difficult to obtain specific licenses or guidance as to whether particular activities would violate primary sanctions rules or create secondary sanctions risk. It is likely, however, that OFAC will issue guidance on some issues that are brought to its attention by publishing additional responses to Frequently Asked Questions on its website.

We expect the U.S. government to maintain its current stance of vigorous enforcement of primary sanctions rules. To what degree the Trump Administration will be aggressive in actually using the reinstated secondary sanctions authorities against non-U.S. entities and individuals remains to be seen.

We will continue to monitor these developments and look forward to providing you with further updates.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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- <sup>1</sup> The other parties to the JCPOA are China, France, Germany, Russia, and the United Kingdom.
- <sup>2</sup> Presidential Memoranda, Ceasing U.S. Participation in the JCPOA and Taking Additional Action to Counter Iran’s Malign Influence and Deny Iran All Paths to a Nuclear Weapon, May 8, 2018, available [here](#).
- <sup>3</sup> Remarks by President Trump on the Joint Comprehensive Plan of Action, May 8, 2018, available [here](#).
- <sup>4</sup> We discuss sanctions relief under the JCPOA and the implications of snapback in previous Paul, Weiss memoranda, available [here](#) and [here](#).
- <sup>5</sup> See U.S. Department of State, Background Briefing on President Trump's Decision To Withdraw From the JCPOA, May 8, 2018, available [here](#).
- <sup>6</sup> Frequently Asked Questions Regarding the Re-Imposition of Sanctions Pursuant to the May 8, 2018 National Security Presidential Memorandum Relating to the Joint Comprehensive Plan of Action (“FAQ”), available [here](#).
- <sup>7</sup> See OFAC Guidance, FAQ 1.2.
- <sup>8</sup> See *Id.*
- <sup>9</sup> See *Id.*
- <sup>10</sup> Currently authorized by the Iranian Transactions and Sanctions Regulations, 31 C.F.R. 560.534.
- <sup>11</sup> Currently authorized by the Iranian Transactions and Sanctions Regulations, 31 C.F.R. 560.535.

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- <sup>12</sup> These authorizations (31 C.F.R. 560.534 and 31 C.F.R. 560.535) will be amended as soon as administratively feasible to narrow their scope to authorize the wind-down of activities by August 6, 2018. OFAC Guidance, FAQ 4.5.
- <sup>13</sup> See Statement of Licensing Policy for Activities Related to the Export or Re-Export to Iran of Commercial Passenger Aircraft and Related Parts and Services, available [here](#). OFAC's Guidance states that OFAC expects to revoke the specific licenses issued pursuant to the JCPOA Aircraft Policy and issue authorizations to provide for a wind-down period that will end on August 6, 2018. See OFAC Guidance, FAQ 4.2.
- <sup>14</sup> See General License I, Authorizing Certain Transactions Related to the Negotiation of, and Entry into, Contingent Contracts for Activities Eligible for Authorization 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, available [here](#). OFAC expects to revoke General License I as soon as administratively feasible and issue a revised authorization for the wind-down of activities previously authorized under General License I. See OFAC Guidance, FAQ 4.3.
- <sup>15</sup> See OFAC Guidance, FAQ 1.2.
- <sup>16</sup> The secondary sanctions described in this memorandum are often limited conduct that is "knowing" or "significant" in nature, or subject to other caveats. OFAC generally interprets its secondary sanctions authorities broadly to maintain maximum discretion.
- <sup>17</sup> Including sanctions on the Islamic Republic of Iran Shipping Lines, South Shipping Line Iran, or their affiliates.
- <sup>18</sup> See Section 1245 of the National Defense Authorization Act for Fiscal Year 2012 ("NDAA").
- <sup>19</sup> See Section 104(c)(2)(E)(ii) of the Comprehensive Iran Sanctions and Divestment Act of 2010 ("CISADA").
- <sup>20</sup> See OFAC Guidance, FAQ 1.3; NDAA for Fiscal Year 2012. Prior to the JCPOA, countries could qualify for an exemption from these secondary sanctions risks by achieving "significant reductions" in the volume of their purchases in Iranian crude oil over the prior 180-day period. See section 1245(d)(4)(D) of the NDAA. The State Department will make new determinations with respect to "significant reduction exceptions" at the end of the 180-day wind-down period, and countries intending to such exceptions are advised by OFAC in its guidance to reduce their purchases from Iran during this period.
- <sup>21</sup> OFAC Guidance, FAQ 1.3.
- <sup>22</sup> See OFAC Guidance, FAQ 4.4.
- <sup>23</sup> *Id.*
- <sup>24</sup> See OFAC Guidance, FAQ 2.1.
- <sup>25</sup> *Id.*
- <sup>26</sup> See JCPOA Guidance, available [here](#), and JCPOA FAQs, available [here](#). To the extent there are inconsistencies between the JCPOA FAQs, including guidance on wind-down, and other guidance provided by the Department of State or the Department of the Treasury on or after May 8, 2018, the later-issued guidance governs.
- <sup>27</sup> See OFAC Guidance, FAQ 2.2.
- <sup>28</sup> *Id.*
- <sup>29</sup> See OFAC Guidance, FAQ 2.1.

30 *Id.*

31 *Id.*

32 The 13559 List is available [here](#).

33 *See* OFAC Guidance, FAQ 1.3 and FAQ 3.2.

34 The OFAC Guidance does not explain the significance of “most,” but it may be related to 2013 NDAA’s exclusion from the secondary sanctions authority prescribed therein activities or transactions on behalf of SDNs that are Iranian financial institutions designated solely under the Iran sanctions program. *See* section 1244(c).

35 *See* OFAC Guidance, FAQ 3.1.

36 *Id.*

37 For example, authorities targeting Iran’s support for terrorism, ballistic missiles program, human rights abuses, and destabilizing activity in the Middle East. *See* OFAC Guidance, FAQ 3.2.

38 Remarks by President Trump and President Macron of France in Joint Press Conference, Apr. 24, 2018, transcript available [here](#).

39 Joint statement from Prime Minister May, Chancellor Merkel and President Macron following President Trump’s statement on Iran, available [here](#).

40 *See* Washington Post, Iran to negotiate with Europeans, Russia and China about remaining in nuclear deal, May 8, 2018, available [here](#).

41 Companies will also need to consider the risk of liability for breach of contract from terminating Iran-related business within the applicable wind-down period. Depending on what the parties were able to negotiate, these contracts may have contained provisions allowing for termination or other relief in the event of a “snapback” of U.S. sanctions in place prior to the JCPOA.

42 *See* OFAC Guidance, FAQs 2.1 and 2.2.

43 As was recently seen with experiences in connection with OFAC’s recently issued wind-down authorizations with respect to its recent round of designations pursuant to the Ukraine-related sanctions, interpretive questions can often arise as to which activities are considered part of wind-down. We note that, because secondary sanctions by their nature impose risk (rather than prohibitions), the U.S. Government is unlikely to provide wind-down “authorizations” in the context of secondary sanctions—to a large extent the “risk” of secondary sanctions is either present or not. We expect that OFAC will provide additional guidance regarding the scope of the primary sanctions-related wind-down authorizations it intends to issue.

44 *Id.*