

# KIRKLAND ALERT

May 10, 2018

## President Trump Withdraws U.S. from the Iran Nuclear Deal and Sets in Motion Re-Imposition of Comprehensive Economic Sanctions

On May 8, 2018, President Trump announced that the U.S. was ending its participation in the Iran nuclear deal, known formally as the Joint Comprehensive Plan of Action (“JCPOA”), and instructed the Administration to take steps to re-impose economic sanctions broadly targeting the Iranian economy. Simultaneous with the President’s announcement, the U.S. Department of the Treasury Office of Foreign Assets Control (“OFAC”) announced that sanctions that had been lifted under the JCPOA would be re-instated, some on August 6, 2018, and others on November 4, 2018. Unless a renegotiation can be achieved before these deadlines, most openings for U.S. companies and their non-U.S. subsidiaries will be closed, and the return of U.S. sanctions will also have a ripple effect on non-U.S. companies, in particular with regard to financing transactions related to Iran. This “hard exit” from the deal forces companies and their investors to review the Iran risk profile in their value chains with urgency.

**This “hard exit” from the deal forces companies and their investors to review the Iran risk profile in their value chains with urgency.**

### *The View from Washington*

President Trump’s withdrawal of the U.S. from the JCPOA follows his long-standing criticism that “[t]he Iran Deal was one of the worst and most one-sided transactions the United States has ever entered into.”<sup>1</sup> In making the announcement, the President stated that “[t]he deal lifted crippling economic sanctions on Iran in exchange for very weak limits on the regime’s nuclear activity, and no limits on its other malign behavior.”<sup>2</sup> As a result, the Presidential Memorandum he signed after making the announcement provides, “I have determined that it is in the national interest of the United States to re-impose sanctions lifted or waived in connection with the JCPOA as expeditiously as possible.”<sup>3</sup> The Trump administration is of the view that a better arrangement with Iran can be reached taking actions to remove the benefits of the JCPOA than by continuing to provide them, though what comes next on that front is uncertain.

The U.S. withdrawal sets up a particularly interesting challenge with respect to Europe. France, Germany and the UK all urged the United States to stay in the agreement, and after the U.S. announcement, these countries affirmed that they are remaining part of the JCPOA and urged Iran to do the same.<sup>4</sup> It is possible those governments could seek to issue or enforce rules “blocking” European companies and banks from complying with U.S. sanctions. This could put the U.S. and its al-

lies on a collision course, as President Trump stated that “[a]ny nation that helps Iran in its quest for nuclear weapons could also strongly be sanctioned by the United States.”<sup>5</sup> Otherwise, European companies and financial institutions may retreat from business with Iran and prioritize their interest in preserving access to the U.S. market and to U.S. dollars.

### *Roadmap for Re-Imposition of Sanctions*

Depending on the nature of the activities and the type of entity involved, OFAC has issued guidance providing for a period of either 90 days or 180 days to wind down the applicable Iran business.<sup>6</sup> The announcement does not establish new sanctions on Iran, but re-imposes in concrete fashion sanctions that had been revoked previously. Notably, at the end of this wind down period, hundreds of Iranian counterparties whose sanctioned status had been lifted pursuant to the JCPOA will once again be formally designated by the U.S. government as restricted parties (“Specially Designated Nationals” or “SDNs”) with which U.S. persons are broadly prohibited from doing business. New Iranian entities and persons could also be designated during this period. Also, at the end of this period, OFAC will revoke the general authorization (“General License H”) which allows non-U.S. companies owned or controlled by U.S. companies to engage in certain business with Iran.

#### **August 6, 2018 Deadline (90-day wind down period)**

After the 90-day wind down period ends on August 6, 2018, OFAC will re-impose the following sanctions that were lifted pursuant to the JCPOA (including sanctions on associated services related to the activities below):

- 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;
- 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 the Iranian rial;
- Sanctions on the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt; and
- Sanctions on Iran’s automotive sector.

Also, on August 6, 2018, OFAC has indicated that it will cease its favorable licensing policy with regard to the export or reexport of commercial passenger aircraft (and related parts and services), including the revocation of (i) General License I

**European companies and financial institutions may retreat from business with Iran and prioritize their interest in preserving access to the U.S. market and to U.S. dollars.**

and (ii) several specific licenses issued by OFAC pursuant to this favorable licensing policy. Finally, on August 6, 2018, restrictions will be re-imposed on the importation into the United States of Iranian-origin carpets and foodstuffs and related financial transactions.

Given that U.S. persons, even after the JCPOA, remained broadly prohibited from conducting any business or dealings with Iran (except under certain specific authorizations) most of the sanctions re-imposed on the 90-day timeline will have greatest effects on non-U.S. entities and financial institutions doing business in Iran. Several of the sanctions to be re-imposed carry as penalties the risk of extraterritorial or “secondary sanctions,” in which an entity violating these U.S. sanctions could itself be designated as an SDN or otherwise subjected to U.S. economic sanctions. Though the Treasury Department has discretion whether or not to impose secondary sanctions, these risks are particularly acute for non-U.S. financial institutions.

#### **November 4, 2018 Deadline (180-day wind down period)**

After the 180-day wind down period ends on November 4, 2018, OFAC will re-impose the following sanctions that were lifted pursuant to the JCPOA (including sanctions on associated services related to the activities below):

- Sanctions on 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;
- Sanctions on petroleum-related transactions with, among others, the National Iranian Oil Company, Naftiran Intertrade Company (NICO), 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 designated Iranian financial institutions under Section 1245 of the National Defense Authorization Act for Fiscal Year 2012;
- Sanctions on 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 the Comprehensive Iran Sanctions and Divestment Act of 2010 (CISADA);
- Sanctions on the provision of underwriting services, insurance, or reinsurance; and
- Sanctions on Iran’s energy sector

Additionally, effective November 5, 2018, as part of the re-imposition (or as at times described by OFAC, “snap back”) of sanctions, OFAC will terminate General License H, which generally permits non-U.S. entities owned or controlled by U.S. persons or entities to conduct certain business dealings in Iran. Therefore the wind-

**OFAC will revoke the general authorization (“General License H”) which allows non-U.S. companies owned or controlled by U.S. companies to engage in certain business with Iran.**

down of activities authorized pursuant to General License H will have to be completed by then. Any companies relying on General License H should carefully consider whether any of their specific activities in Iran may also implicate sanctions to be re-imposed more quickly during the 90-day wind down period and, if so, note the August 6, 2018, deadline to terminate such specific activities.

Finally, for persons and entities formerly designated as SDNs who had such designations removed as a part of the JCPOA, by November 5, 2018, OFAC will re-designate such individuals and entities, including several Iranian banks. These designations at least in part relate to several members of and entities controlled by the Iran Revolutionary Guard Corps (“IRGC”). Given the uncertain designation timing and in light of the wind down period provided and significant presence that the IRGC has throughout the Iranian economy, between now and then it is essential that entities doing business in Iran frequently perform sanctions-related screening of their counterparties and closely monitor all designations made by OFAC.

Under either timeframe, there is only a short runway to terminate such Iran business or else risk non-compliance with U.S. sanctions, and there is no grandfathering even for business that was first undertaken in compliance with U.S. sanctions. Thus, steps to wind down such business should be considered immediately.

### *Key Takeaways*

- U.S. companies are and continue to be largely prohibited from any dealings with Iran.
- U.S. operating companies and their private equity sponsors that own or control non-U.S. companies have an important interest in ensuring that Iran business by those portfolio companies is wound down in a timely fashion, including payments.
- All companies and investors will need to carefully vet their counterparties including for beneficial ownership to safeguard against involvement by Iranian individuals and entities that the U.S. government will once again consider to be restricted parties.
- Non-U.S. financial institutions, particularly major European banks, seem likely to comply with the U.S. sanctions unless specifically instructed not to do so by their own governments, in order to preserve their access to the U.S. market and to U.S. dollars.
- The risk that the U.S. will seek more aggressively to impose secondary sanctions on non-U.S. companies doing business with Iran, particularly non-U.S. financial institutions, has now returned.

**The risk that the U.S. will seek more aggressively to impose secondary sanctions on non-U.S. companies doing business with Iran, particularly non-U.S. financial institutions, has now returned.**

Anchored in Washington, D.C., Kirkland & Ellis' [International Trade and National Security Practice](#), in coordination with the Firm's [global offices](#) and [related practice areas](#), serves as a trusted adviser to companies, private equity sponsors and financial institutions to identify, assess and mitigate the complex international risks of operating and investing across national borders.

We focus on U.S. and EU economic sanctions (OFAC, EU), export controls (ITAR, EAR), anti-money laundering (AML), national security investment reviews (CFIUS) and related areas. We regularly work with our clients on a global basis on transactional, regulatory counseling, and investigative and enforcement matters, providing seasoned, holistic and sound advice.

If this publication was forwarded to you and you would like to receive similar future client alerts directly, please subscribe [here](#).

- 
- <sup>1</sup> Fact Sheet, *President Donald J. Trump is Ending United States Participation in an Unacceptable Iran Deal*, The White House (May 8, 2018), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-ending-united-states-participation-unacceptable-iran-deal/>.
  - <sup>2</sup> Remarks by President Trump on the Joint Comprehensive Plan of Action, (May 8, 2018), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-joint-comprehensive-plan-action/> (hereinafter "Remarks by President Trump").
  - <sup>3</sup> Memorandum from President Trump on 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), <https://www.whitehouse.gov/presidential-actions/ceasing-u-s-participation-jcpoa-taking-additional-action-counter-irans-malign-influence-deny-iran-paths-nuclear-weapon/>.
  - <sup>4</sup> Jeremy B. White, "UK, France and Germany Issue Joint Statement Attacking Trump's Withdrawal from Iran Nuclear Deal," *The Independent* (May 8, 2018), <https://www.independent.co.uk/news/world/iran-nuclear-deal-latest-trump-macron-us-theresa-may-merkel-europe-response-a8342126.html>.
  - <sup>5</sup> Remarks by President Trump.
  - <sup>6</sup> Office of Foreign Assets Control, 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 (JCPOA), [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa\\_winddown\\_faqs.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_winddown_faqs.pdf) (last visited May 9, 2018).

If you have any questions about the matters addressed in this *Kirkland Alert*, please contact the following Kirkland authors or your regular Kirkland contact.

Mario Mancuso, P.C.  
Kirkland & Ellis LLP  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
[www.kirkland.com/mmancuso](http://www.kirkland.com/mmancuso)  
+1 202 879 5070

Zachary S. Brez, P.C.  
Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, NY 10022  
[www.kirkland.com/zbrez](http://www.kirkland.com/zbrez)  
+1 212 446 4720

Michael S. Casey  
Kirkland & Ellis International LLP  
30 St Mary Axe  
London EC3A 8AF  
[www.kirkland.com/mcasey](http://www.kirkland.com/mcasey)  
+44 20 7469 2255

Sanjay J. Mullick  
Kirkland & Ellis LLP  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
[www.kirkland.com/smullick](http://www.kirkland.com/smullick)  
+1 202 879 5111

Joanna M. Ritcey-Donohue  
Kirkland & Ellis LLP  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
[www.kirkland.com/jritcey-donohue](http://www.kirkland.com/jritcey-donohue)  
+1 202 879 5980

Joshua R. Thompson  
Kirkland & Ellis LLP  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
[www.kirkland.com/jthompson](http://www.kirkland.com/jthompson)  
+1 202 879 5179

*This communication is distributed with the understanding that the author, publisher and distributor of this communication are not rendering legal, accounting, or other professional advice or opinions on specific facts or matters and, accordingly, assume no liability whatsoever in connection with its use. Pursuant to applicable rules of professional conduct, this communication may constitute Attorney Advertising.*

© 2018 Kirkland & Ellis LLP. All rights reserved.

[www.kirkland.com](http://www.kirkland.com)