

## **Alert** | **Export Controls & Economic Sanctions**



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### **U.S. Withdrawal from Iran Nuclear Deal to Trigger Additional Sanctions**

On May 8, 2018, President Trump announced his decision to withdraw the United States from the Iran Joint Comprehensive Plan of Action (JCPOA), the multilateral nuclear agreement signed on July 14, 2015, between Iran, the P5+1 (China, France, Russia, the United Kingdom, the United States, and Germany), and the European Union. The move sets the stage for the re-imposition of all U.S. sanctions against Iran that were waived under the JCPOA when it **became effective on Jan. 16, 2016**.

#### **Background – U.S. Sanctions Relief under the JCPOA**

For practical purposes, the effect of the JCPOA on “primary” sanctions imposed by the United States on Iran was relatively minor. Specifically, after implementing the JCPOA on Jan. 16, 2016, the United States continued to maintain its comprehensive embargo against Iran, prohibiting U.S. individuals and entities from engaging in most Iran-related dealings. However, the JCPOA did require the United States to provide certain limited Iran-related sanctions relief for U.S. persons, as well as significant relief from “secondary” sanctions that targeted non-U.S. persons doing business with Iran.

The president’s decision to withdraw the United States from the JCPOA reverses these sanctions relief measures. As described in greater detail below, President Trump has ordered the re-imposition of the following categories of U.S. sanctions that were waived under the JCPOA, subject to either a 90-day or 180-day grace period for wind-down activities:

## **Sanctions Re-Imposed after 90-day Wind-Down Period Ending Aug. 6, 2018**

- **U.S. Commercial Aircraft Sales**

For the first time in decades, the JCPOA authorized the issuance of licenses for U.S. persons to engage in the sale and export to Iran of commercial aircraft, commercial aircraft parts and components, and the provision of related services, including aircraft leasing services. Following the 90-day wind-down period, U.S. persons will once again be prohibited from engaging in Iran-related commercial aircraft sales and service, and no specific licenses will be issued. Any specific licenses issued while the United States remained a party to the JCPOA will be revoked following the 90-day wind-down period.

- **Importation of Iranian Products**

The JCPOA also authorized the importation of certain Iranian food products and carpets into the United States. Following the 90-day wind-down period, these imports will once again be prohibited.

- **Additional Sanctions Measures**

In addition, the following sanctions will be re-imposed following the 90-day wind-down period:

- 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, 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.

## **Sanctions Re-Imposed after 180-day Wind-Down Period Ending Nov. 4, 2018**

- **Foreign Subsidiary Liability Provisions**

Before the JCPOA, a U.S. entity's foreign subsidiaries were subject to the provisions of the U.S. embargo against Iran, as if they were U.S. entities. The JCPOA waived these foreign subsidiary liability provisions, allowing U.S. companies' foreign subsidiaries to do business with Iran in many cases, provided no U.S. persons were involved.

Following a 180-day wind-down period, the non-U.S. subsidiaries of U.S. companies will once again be subject to all restrictions and prohibitions of the U.S. embargo against Iran, regardless of any U.S. person involvement. In the event a U.S. company's foreign subsidiary engages in transactions that would be prohibited if undertaken by a U.S. persons, the foreign subsidiary's U.S. parent company could be held liable for the resulting Iran sanctions violations.

- **Iranian Financial Institution Designations**

The JCPOA required the United States to remove several hundred Iranian financial institutions, including many of Iran's largest banks, from various U.S. sanctions lists, including the Specially Designated Nationals (SDN) list. These sanctions designation removals allowed many Iranian banks to regain access to the global financial system. As a result of the U.S. withdrawal from the JCPOA, all parties that were removed from the SDN list effective Jan. 16, 2016, will be returned to the SDN list.

- **Secondary Sanctions Relief**

The JCPOA waived many of the U.S. "secondary" sanctions aimed at wholly non-U.S. persons that transacted with Iran. Non-U.S. persons engaged in the certain categories of transactions with Iran were no longer subject to U.S. sanctions measures under the JCPOA. Following the 180-day wind down period, non-U.S. individuals and entities may themselves be exposed to U.S. sanctions measures for engaging in transactions in the following general categories, even if no U.S. persons are involved:

- Dealings in Iranian oil, gas, and petrochemicals;
- Transactions with Iran's shipping, shipbuilding, and port sectors;
- Certain transactions with, or on behalf of, Iranian financial institutions;
- Investment in Iran's energy sector;
- Transactions with Iran's shipping, shipbuilding, and port sectors;
- Underwriting or insurance services in connection with Iran's shipping and energy sectors.

### **Sanctions Implications for other JCPOA Signatories**

At this time, it is not clear whether the U.S. withdrawal will result in a total collapse of the JCPOA, and if so, whether any other P5+1 signatories will restore sanctions against Iran. Notably, the JCPOA required the European Union to extend significant sanctions relief to Iran.

### **Compliance with U.S. Sanctions**

At this time, no U.S. sanctions measures have yet been re-imposed on Iran. With respect to business dealings impacted by the re-imposed U.S. sanctions, for the next 90 or 180 days (depending on the applicable wind down period) U.S. and non-U.S. persons may proceed with existing Iran-related transactions and take measures to wind down those activities.

Going forward, all U.S. and non-U.S. companies doing business with Iran, the government of Iran, or Iranian individuals/entities (whether directly or indirectly) should determine to what extent, if any, the re-imposed U.S. sanctions measures may impact or prohibit those dealings. In certain cases, parties will be required to terminate their Iran-related business. We note that determining the applicability of U.S. sanctions measures is an extremely fact-specific exercise, so entities with any Iran nexus should begin this analysis as soon as possible.

Finally, apart from the authorized wind down periods, parties should not expect that the United States government to issue "grandfathering" exemptions in connection with Iran-related transaction that were already underway before the U.S. withdrawal from the JCPOA. Even Iran-related dealings that were lawful pursuant to the JCPOA sanctions relief may once again become impermissible once the applicable wind down period expires.

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## Authors

This GT Alert was prepared by **Renée A. Latour<sup>†</sup>** and **Cyril T. Brennan**. Questions about this information can be directed to:

- [Renée A. Latour<sup>†</sup>](#) | +1 202.533.2358 | [latourr@gtlaw.com](mailto:latourr@gtlaw.com)
- [Cyril T. Brennan](#) | +1 202.533.2342 | [brennanct@gtlaw.com](mailto:brennanct@gtlaw.com)
- [Sonali Dohale](#) | +1 202.533.2381 | [dohales@gtlaw.com](mailto:dohales@gtlaw.com)
- [Kara M. Bombach](#) | +1 202.533.2334 | [bombachk@gtlaw.com](mailto:bombachk@gtlaw.com)
- [Sandra D. Gonzalez](#) | +1 512.320.7234 | [gonzalezsd@gtlaw.com](mailto:gonzalezsd@gtlaw.com)
- [Michael X. Marinelli<sup>‡</sup>](#) | +1 512.320.7236 | [marinellimx@gtlaw.com](mailto:marinellimx@gtlaw.com)
- [Sonali Dohale](#) | +1 202.533.2381 | [dohales@gtlaw.com](mailto:dohales@gtlaw.com)
- [Daniel E. Parga](#) | +1 202.533.2355 | [pargad@gtlaw.com](mailto:pargad@gtlaw.com)
- Or your [Greenberg Traurig](#) attorney

<sup>†</sup>Admitted in Virginia. Practice in the District of Columbia limited to matters and proceedings before Federal courts and Agencies.

<sup>‡</sup>Admitted in the District of Columbia. Not admitted in Texas.

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