

United States Fully Re-imposes Iran Sanctions and Expands Designations

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On November 5, 2018, the United States re-imposed all remaining secondary sanctions on Iran that were previously lifted under the Joint Comprehensive Plan of Action (JCPOA).¹ This is the final action required to re-impose Iran sanctions since President Trump's May 8, 2018 announcement of the United States' withdrawal from the JCPOA.² The United States initially re-imposed certain sanctions on August 7, 2018.

On August 6, 2018, President Trump issued Executive Order 13846 (EO 13846), entitled "Reimposing Certain Sanctions with Respect to Iran,"³ consistent with the May 8, 2018 announcement of withdrawal from the JCPOA. EO 13846 provides for the re-imposition at 12:01 a.m. Eastern Daylight Time (EDT) on November 5, 2018, of certain sanctions that were subject to a 180-day wind-down period, following the re-imposition of other sanctions at 12:01 a.m. EDT August 7, 2018, after a 90-day wind-down period. The re-imposed sanctions are largely secondary sanctions targeting activities of non-US persons with no connection to the United States. The United States also designated more than 700 individuals, entities, aircraft, and vessels to the List of Specially Designated Nationals and Blocked Persons (SDN List). A General License issued by the US Department of Treasury, Office of Foreign Assets Control (OFAC) to authorize certain wind-down activities related to limited activities involving US persons that were permitted under the JCPOA expired at 11:59 p.m. EDT on November 4, 2018. OFAC issued new guidance on the November 5 sanctions in the form of non-binding Frequently Asked Questions (FAQ).⁴

¹ <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20181105.aspx>.

² Please see our prior alert discussing the US withdrawal from the JCPOA [here](#).

³ Please see our prior alert discussing EO 13846 and initial round of "snapback" sanctions [here](#).

⁴ All OFAC FAQs on Iran sanctions are available [here](#).

Re-Imposition of Secondary Sanctions

On November 5, 2018, the United States re-imposed certain sanctions targeting activities of non-US persons with no connection to the United States. These sanctions were re-imposed pursuant to EO 13846 and relevant statutory authorities, and include:

- Sanctions on Iran's port operators and shipping and shipbuilding sectors, including on the Islamic Republic of Iran Shipping Lines (IRISL), South Shipping Line Iran, and their affiliates⁵
- Sanctions on petroleum-related transactions with the National Iranian Oil Company (NIOC), Naftiran Intertrade Company (NICO), and the Central Bank of Iran (CBI)⁶
- Sanctions on transactions by foreign financial institutions (FFIs) with the Central Bank of Iran (CBI) and designated Iranian financial institutions under section 1245 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA 2012)⁷
- Sanctions on the provision of specialized financial messaging services to the CBI and Iranian financial institutions⁸
- Sanctions on the provision of underwriting services, insurance, or reinsurance⁹
- Sanctions on Iran's energy sector¹⁰

OFAC stated that the United States will allow non-US, non-Iranian persons to receive payments for goods or services "fully provided or delivered"¹¹ prior to the end of the wind down periods on August 7, 2018 or November 5, 2018 if payment is due pursuant to a written contract or agreement entered into prior to May 8, 2018. The activities must be consistent with US sanctions in effect at the time of contracting and provision or delivery. Non-US, non-Iranian persons can receive such payment according to the written contract or agreement's terms.¹² The United States will also allow repayment for loans or credits extended to Iranian counterparties prior to August 7 or November 5, 2018 by non-US, non-Iranian persons under a written contract or agreement predating May 8, 2018. OFAC will evaluate requests for payment of US persons or US-owned or controlled foreign entities for goods and services fully provided or delivered before August 7 or November 5, 2018 on a case-by-case basis, to grant specific licenses.¹³

OFAC's guidance advised that financial messaging services should discontinue service to designated institutions following the re-imposition of sanctions on November 5, 2018, to avoid potential sanctions exposure.¹⁴ Such

⁵ EO 13846 Subsection 1(a)(iv) and Section 5.

⁶ EO 13846 Subsections 1(a)(ii), 1(a)(iv), 2(a)(iii)-(a)(v), 3(a)(ii)-(a)(iii), and Sections 4 and 5; EO 13846 defines NIOC and NICO as including any entity owned or controlled by, or operating for or on behalf of NIOC or NICO. <https://www.federalregister.gov/d/2018-24058/p-10>.

⁷ EO 13846, Section 5.

⁸ EO 13846 Section 5, described in Subsection 104(c)(2)(E)(ii) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA).

⁹ EO 13846 Section 5.

¹⁰ EO 13846 Subsection 1(a)(iv) and Section 5.

¹¹ The industry standard informs the definition of this term. As a general matter, goods or services are "fully provided or delivered" when the providing or delivering party has performed all actions and satisfied all obligations necessary to be eligible for payment or agreed-upon compensation. For goods exported to or from Iran, "at a minimum," title to the goods must be transferred to the relevant party. OFAC FAQ #633.

¹² OFAC FAQ #634.

¹³ OFAC FAQ #635.

¹⁴ The advice specifically includes disconnecting the Central Bank of Iran and other Iranian financial institutions designated pursuant to non-proliferation, international terrorism, or human rights abuse authorities.

<https://www.state.gov/secretary/remarks/2018/11/287090.htm>

designated institutions will be marked with “Subject to Secondary Sanctions” in the SDN List identification.¹⁵ Following the guidance and comments by Treasury Secretary Steven Mnuchin, the financial messaging service SWIFT announced that it is disconnecting newly designated Iranian financial institutions.

Designation of Iranian Parties

As part of the re-imposition of the Iran sanctions on November 5, 2018, OFAC designated more than 700 entities, individuals, aircraft, and vessels on the SDN List. These designations include persons that had been granted sanctions relief under the JCPOA either due to (1) complete de-listing, or (2) removal from the SDN List and designation on the EO 13599 List identifying Government of Iran entities not subject to secondary sanctions. OFAC also designated more than 300 new persons that previously had not been targeted by the United States.¹⁶ Designated persons subject to secondary sanctions will have a notation of “Additional Sanctions Information – Subject to Secondary Sanctions” in their SDN List entry.

All property and interests in property of a party on the SDN List located in the United States or in the possession or control of a US person¹⁷ is blocked and cannot be dealt with. Any entity in which one or more blocked persons directly or indirectly holds a 50 percent or greater ownership interest in the aggregate is itself considered blocked by operation of law. Any person meeting the definition of the “Government of Iran”¹⁸ or an “Iranian Financial Institution”¹⁹ is also considered blocked for the purposes of Iran sanctions, even if not specifically designated on the SDN List.²⁰ For purposes of secondary sanctions, however, non-US persons (that are not owned or controlled by US persons) would not risk secondary sanctions exposure solely by virtue of dealing with a Government of Iran entity or Iranian Financial Institution that is not specifically designated on the SDN List.

Non-US persons could risk US secondary sanctions exposure if they knowingly engage in significant transactions with Iranian parties designated on the SDN List. This includes significant transactions with persons moved from the EO 13599 List to the SDN List, other than non-designated Iranian financial institutions.²¹ Transactions with non-designated Iranian financial institutions and other entities by non-US persons would not trigger secondary sanctions exposure. Non-US persons, including foreign financial institutions (FFIs), may risk secondary sanctions exposure for knowingly engaging in certain significant transactions involving an Iranian person on the SDN List that do not fall within the parameters stated above.²²

Payment of Iran-related insurance or reinsurance claims for incidents prior to November 5, 2018 may create secondary sanctions exposure for non-US persons if payment involves either an Iranian designated person that was designated on the SDN List pursuant to non-proliferation or terrorism authorities or an Iranian person on the

¹⁵ OFAC FAQ #645.

¹⁶ https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20181105_names.aspx;
<https://www.state.gov/secretary/remarks/2018/11/287090.htm>.

¹⁷ “US person” is defined to include US citizens and permanent resident aliens, wherever located, entities organized under US law (including foreign branches), and individuals and entities located in the United States.

¹⁸ “Government of Iran” includes the state and the Government of Iran, as well as any political subdivision, agency, or instrumentality thereof; any person owned or controlled, directly or indirectly by the foregoing; any person to the extent that they are or have acted, directly or indirectly, for or on behalf of the foregoing; and any other person determined by OFAC to be included in those three groupings. 31 CFR § 560.304(a)-(d).

¹⁹ “Iranian Financial Institution” includes any entity (including foreign branches), wherever located, organized under the laws of Iran or any jurisdiction within Iran, or owned or controlled by the Government of Iran, or in Iran, or owned or controlled by any of the foregoing, that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. Iranian Financial Institution includes but is not limited to depository institutions, banks, savings banks, money service businesses, trust companies, insurance companies, securities corporations, investment companies, employee benefit plans, and holding companies, affiliates, or subsidiaries of any of the foregoing. 31 CFR § 560.324.

²⁰ Amended note 1 to § 560.304; amended note 1 to § 560.324.

²¹ OFAC FAQ #638.

²² OFAC FAQ #636.

SDN List other than a non-designated financial institution.²³ Additionally, if the activity underlying an insurance claim was otherwise sanctionable or involved persons designated on the SDN List (other than non-designated Iranian financial institutions) when the activity occurred, then secondary sanctions risk may arise for payment of the claim.²⁴

US persons and non-US, non-Iranian persons may face sanctions exposure if they provide or deliver goods or services or extend loans or credit to Iranian persons designated on the SDN List on or after November 5, 2018. Absent OFAC authorization, this includes activities pursuant to written contracts or agreements entered into prior to May 8, 2018, not concluded before August 7 or November 5, 2018.²⁵ Secondary sanctions risk does not arise in the case of certain transactions authorized under the sanctions, such as certain transactions related to the sale of agricultural commodities, foods, medicine, or medical devices to Iran.²⁶

A Treasury Department press release highlights the designation of the following persons in the banking, aviation, shipping, and energy sectors,²⁷ but the Iran-related designations are much broader and include hundreds of persons:

Banking

- Bank Melli and its subsidiary Arian Bank, along with 12 entities owned or controlled by Bank Melli or its subsidiaries (Bank Kargoshaee, Melli Bank PLC, Tose-E Melli Group Investment Company, Tose-E Melli Investment Company, National Industries and Mining Development Company, Behshahr Industrial Development Corp., Cement Industry Investment and Development Company, Melli International Building & Industry Company, BMIIC International General Trading LLC, Shomal Cement Company, Persian Gulf Sabz Karafarinan, and Mir Business Bank (MB Bank))
- Future Bank B.S.C.
- The Export Development Bank of Iran (EDBI) and three entities owned or controlled by, or acting on behalf of EDBI (EDBI Stock Exchange, EDBI Exchange Brokerage, and Banco Internacional de Desarrollo, C.A.)
- The Iran-Venezuela Bi-National Bank
- Ghavamin Bank
- Bank Sepah
- Bank of Industry and Mine (BIM)
- Europaisch-Iranische Handelsbank AG (EIH)
- Post Bank of Iran
- Bank Tejarat and Trade Capital Bank (TC Bank), which was determined to be owned or controlled by Bank Tejarat
- Ayandeh Bank
- Day Bank and 14 entities owned or controlled by Day Bank (Atieh Sazan Day, Buali Investment Company, Tejarat Gostar Fardad, Day Exchange Company, Day Leasing Company, Day Bank Brokerage Company, Tose-e Didar Iranian Holding Company, Royay-e Roz Kish Investment Company, Day E-Commerce, Tose-e Donya Shahr Kohan Company, Damavand Power Generation Company, Omid Bonyan Day Insurance

²³ OFAC FAQ #643.

²⁴ OFAC FAQ #643.

²⁵ OFAC FAQ #630; OFAC FAQ #636.

²⁶ OFAC FAQ # 598.

²⁷ <https://home.treasury.gov/news/press-releases/sm541>.

Services, Omran Va Maskan Abad Day Company, and Day Iranian Financial and Accounting Services Company)

- Persia International Bank PLC
- First East Export Bank PLC
- Mellat Bank Closed Joint-Stock Company
- 92 entities owned or controlled by Ghadir Investment Company²⁸

Aviation

- Iran Air and 67 aircraft operated by Iran Air

Shipping

- The Islamic Republic of Iran Shipping Lines (IRISL), 65 subsidiaries and associated individuals (for example, Valfajr Shipping Company PJS and Havez Darya Arya Shipping Company) and 122 related vessels
- National Iranian Tanker Company (NITC, oil transport company) and 37+ affiliated entities and vessels

Energy

- The Atomic Energy Organization of Iran (AEOI) and 23 subsidiaries and associated individuals
- Morteza Ahmadali Behzad²⁹

Revocation of General License H “Wind-Down General License”

General License H, which was revoked on June 27, 2018, authorized non-US entities owned or controlled by US persons to engage in certain transactions with Iran. In June 2018, OFAC issued a general license authorizing a wind-down period for these transactions. On November 5, 2018, OFAC revoked the wind down general license issued in June 2018 to replace General License H.³⁰ As a result of the revocation of the wind down general license, non-US entities owned or controlled by US persons are no longer permitted to engage in activity with Iranian parties absent authorization from OFAC.

Issuance of Eight Waivers for Iranian Oil Imports

The United States announced it would grant temporary sanctions waivers (Significant Reduction Exceptions, SREs³¹) allowing for the continued importation of Iranian-origin oil, which would otherwise be prohibited under various secondary sanctions authorities, to: China, India, Italy, Greece, Japan, South Korea, Taiwan, and Turkey.³² According to Secretary of State Michael Pompeo, the State Department granted these waivers because the receiving countries demonstrated significant reductions in Iranian oil importation, with ending importation as the objective of granting the SREs.³³ The SREs are temporary, lasting 180 days from November 5, 2018, and are

²⁸ A holding investment company previously identified by Treasury as affiliated with the Execution of Imam Khomeini's Order.

²⁹ An individual designated by Treasury for acting or purporting to act on behalf of Pishro Company, a nuclear research and development company.

³⁰ Please see our prior alert on the wind-down general license for further detail [here](#).

³¹ The relevant exception, National Defense Authorization Act for Fiscal Year 2012 § 1245(d)(4)(D), may be found [here](#).

³² <https://www.dvidshub.net/video/637815/secretary-pompeo-and-secretary-treasury-mnuchin-press-briefing-update-iran-policy-and-sanctions>.

³³ The Trump Administration has said that it treats crude and condensate the same for purposes of these negotiations. <https://www.state.gov/secretary/remarks/2018/11/287090.htm>.

subject to renewal by the US President. According to Secretary Pompeo, two of the SRE recipients will completely end Iranian oil imports as part of their agreements. The other six will import Iranian oil at greatly reduced levels.³⁴

FFIs that are under the primary jurisdiction of an SRE country will not face secondary sanctions exposure for processing oil-related financial transactions between that SRE recipient and Iran. To remain exempt from sanctions exposure, FFIs must ensure that they credit any funds owed Iran resulting from the trade to an account located in the SRE country. Funds may not be repatriated to Iran under this waiver.³⁵ The SRE does not extend to FFIs that are under the primary jurisdiction of an SRE recipient if the FFIs are processing transactions for third-party countries, even if the third-party country also has an SRE. The SRE does not extend to FFIs located outside of SRE countries processing Iran-related financial transactions for SRE countries.³⁶ The services used to import petroleum or petroleum products from Iran under these SREs, including services provided by the Iranian shipping sector and port operators, would not trigger secondary sanctions exposure for non-US entities involved in the importation of petroleum products into the SRE countries provided the Iranian entities involved are not designated in connection with Iran's support of international terrorism or its proliferation of weapons of mass destruction.³⁷

Separate from the SRE waivers, the United States also announced in a press briefing that it would grant an exemption for Iraq to continue electricity imports from Iran without violating the re-imposed sanctions on Iran's energy sector.³⁸

Authorization for Sale of Personal Property in Iran

OFAC also amended an existing general license to allow US persons to sell certain personal property in Iran and transfer the proceeds to the United States.³⁹ The general license previously authorized US persons to engage in transactions "necessary and ordinarily incident" to the sale of real property located in Iran, if the individual acquired the property before becoming a US person or if the individual inherited the property from persons in Iran. The amendment will expand this authorization to cover not only real property, but also all personal property in Iran acquired before becoming a US person or inherited from persons in Iran.⁴⁰

Revision of EU Blocking Regulation and Related Measures

The revised EU Blocking Regulation – which was updated to include the re-imposed US sanctions on Iran described above (listed in a Regulation annex) – entered into force on August 7, 2018.⁴¹ Under this Regulation, covered EU nationals, residents, and companies (EU parties) are generally prohibited from complying with, actively or by deliberate omission, the US sanctions re-imposed on August 7 and November 5, 2018 to the extent such US sanctions apply extraterritorially and affect the interests of EU parties (i.e., involve "secondary sanctions").

The Blocking Regulation (and related guidance) also establish the following:

- Any foreign judgment or administrative decision based on the covered US Iranian sanctions is unenforceable in the EU, so Member States must shield EU parties from decisions seeking, for example, asset seizure

³⁴ Secretary Pompeo did not identify which two of the eight countries were ending imports of Iranian oil and which countries were greatly reducing imports.

³⁵ NDAA 2012 § 1245(d)(4)(D)(ii); OFAC FAQ #254; OFAC FAQ #255.

³⁶ NDAA 2012 § 1245(d)(4)(D); the waiver only extends to financial institutions located in SRE-recipient countries.

³⁷ OFAC FAQ #642.

³⁸ <https://www.state.gov/r/pa/prs/dpb/2018/11/287201.htm>.

³⁹ ITSR § 560.543.

⁴⁰ <https://www.federalregister.gov/d/2018-24058/p-12>.

⁴¹ The Blocking Regulation may be found [here](#).

- EU parties may seek compensation before EU Member State courts for damages caused by application of the covered US Iran sanctions (or actions based thereon, or resulting therefrom)
- EU subsidiaries of US companies are covered by and must comply with the Blocking Regulation, but EU branches of US companies are not covered by the Blocking Regulation
- The European Commission can authorize exceptional compliance requests if non-compliance with the covered US Iran sanctions would “seriously damage” the interests of EU parties or the EU as a whole⁴²

Certain EU Member States are working to establish a “Special Purpose Vehicle” (SPV) as a system to enable payments related to “legitimate transactions” involving Iran's exports (including oil) and imports.⁴³ The SPV would operate to mitigate the effect of the re-imposed US Iran sanctions on EU parties.⁴⁴ A French finance ministry official stated that the EU is working to swiftly implement the SPV, focusing on where the SPV will be located, who will participate, and how to create a registration system for it.⁴⁵ French Economy Minister Bruno Le Maire commented that the SPV may be set up as a limited company which will be given a banking license later.⁴⁶ Whether this SPV will be established in the near future, however, remains unclear.

Statements by JCPOA-Parties

The remaining JCPOA parties have released statements in response to the US re-imposition of sanctions previously lifted under the JCPOA. A joint statement by the EU and E3 (France, UK, and Germany) issued on November 2, 2018 confirms that these parties expect Iran to continue implementing all its nuclear commitments in full, as set out by the JCPOA.⁴⁷ In turn, the EU and E3 will “aim to protect European economic operators engaged in legitimate business with Iran,” in part by working on “the preservation and maintenance of effective financial channels with Iran, and the continuation of Iran’s export of oil and gas.” This includes ongoing technical discussions on the SPV, which “will enable continued sanctions lifting to reach Iran and allow for European exporters and importers to pursue legitimate trade.” In a July press release, Switzerland affirmed its commitment to the JCPOA and its efforts to continue bilateral trade with Iran in light of the US sanctions.⁴⁸

A spokesperson for the Chinese Foreign Ministry in a November 5, 2018 press conference reiterated a commitment to “uphold the JCPOA and firmly safeguard its own legal and legitimate interests.”⁴⁹ A press release by the Russian Foreign Ministry on November 3, 2018 framed the US action as a “blow to the Treaty on the Non-Proliferation of Nuclear Weapons.”⁵⁰ The Iranian Foreign Ministry issued a statement on November 3, 2018 harshly condemning the re-imposition of sanctions and welcoming the statements issued by other JCPOA participants, as described above.⁵¹

⁴² Exceptional compliance requests would not be an everyday mechanism, and the decision to authorize such requests is not expected to be announced to the public.

⁴³ https://eeas.europa.eu/headquarters/headquarters-homepage/53230/joint-statement-high-representative-federica-mogherini-and-foreign-ministers-jean-yves-le_en; https://eeas.europa.eu/headquarters/headquarters-homepage/51040/remarks-hrvp-mogherini-following-ministerial-meeting-e3eu-2-and-iran_en.

⁴⁴ https://eeas.europa.eu/headquarters/headquarters-homepage/51040/remarks-hrvp-mogherini-following-ministerial-meeting-e3eu-2-and-iran_en.

⁴⁵ <https://www.ft.com/content/644d3400-e045-11e8-a6e5-792428919cee>.

⁴⁶ <https://www.ft.com/content/e75b91b2-e1cf-11e8-a6e5-792428919cee>.

⁴⁷ https://eeas.europa.eu/headquarters/headquarters-homepage/53230/joint-statement-high-representative-federica-mogherini-and-foreign-ministers-jean-yves-le_en.

⁴⁸ <https://www.eda.admin.ch/eda/en/home/suche/suchresultat.html/content/eda/en/meta/news/2018/7/3/71436>.

⁴⁹ https://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1610459.shtml.

⁵⁰ http://www.mid.ru/ru/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/3399007?p_p_id=101_INSTANCE_cKNonkJE02Bw_101_INSTANCE_cKNonkJE02Bw_languageld=en_GB.

⁵¹ <http://en.mfa.ir/index.aspx?siteid=3&fkeyid=&siteid=3&pageid=36409&newsview=543101>.

Conclusion

The United States advises that it will pursue full enforcement of all US sanctions on Iran, including adding offenders to the SDN List and enforcing against incomplete wind-down efforts.⁵² Companies involved in business activities related to Iran should carefully consider their obligations under both US and EU law (and any other applicable laws), as the ramifications of these conflicting rules can vary depending on a company's particular circumstances. Companies considering engaging in Iran-related business should exercise caution to ensure compliance with all applicable sanctions, including sanctions relating to persons designated on the SDN List. We will be monitoring how these various provisions are enforced and implemented in practice, including in the United States and the EU.

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⁵² <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-reimposing-sanctions-lifted-unacceptable-iran-deal/>.