

President Trump Issues New Iran Executive Order and Reimposes First Set of Sanctions Following JCPOA Withdrawal

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Key Points

- On August 6, 2018, following President Trump's decision to withdraw the United States from the JCPOA, the U.S. government announced the reimposition of sanctions on Iran's automotive sector, its trade in gold and precious metals, and sanctions related to the Iranian rial, as well as several other bases, effective August 7, 2018.
- The President also issued [the New Iran E.O.](#), which reinstated provisions of several executive orders that had been revoked before the implementation of the JCPOA and provides authority for the reimposition of various sanctions on August 7, 2018, as well as November 5, 2018. OFAC also issued [FAQs](#) concerning the New Iran E.O.
- The European Union has also expanded the scope of its EU Blocking Regulation, which now also prohibits EU persons from complying with the reinstated U.S. extraterritorial sanctions against Iran. EU Member States must now decide how to penalize noncompliance with the EU Blocking Regulation and may differ in their various approaches.
- Companies should review their compliance and diligence policies and procedures to ensure that they do not run afoul of the reimposed U.S. sanctions while balancing and navigating a permissible course in relation to the amended EU Blocking Regulation, in appropriate consideration of relevant business and political, as well as legal, risk considerations. The Trump administration has, in its own words, applied "unprecedented financial pressure on the Iranian regime." Accordingly, companies should be prepared for aggressive enforcement of the U.S. sanctions by the Department of the Treasury and the State Department that are intended to deter companies from continuing or entering into business in Iran.

On August 6, 2018, President Trump issued Executive Order 13846 titled "Reimposing Certain Sanctions with Respect to Iran" (the "New Iran E.O.").¹ This executive order sets forth the legal authority to reimpose sanctions on Iran consistent with the decision

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by the Trump administration on May 8, 2018, to cease participation in the Joint Comprehensive Plan of Action (JCPOA). The New Iran E.O. consolidates and expands on certain legal provisions authorizing sanctions on Iran, effective August 7 and November 5, depending on the activity involved. In connection with the release of the New Iran E.O., the Treasury Department's Office of Foreign Assets Control (OFAC) also issued a new series of Frequently Asked Questions (FAQs) that shed light on aspects of U.S. sanctions that will be reimposed in connection with JCPOA withdrawal.

Background

The New Iran E.O. follows the May 8, 2018, decision by the Trump administration to cease America's participation in the JCPOA. Recent remarks by the U.S. State Department describe this decision as part of a broad strategy to apply "unprecedented financial pressure on the Iranian regime" in order to halt Iran's "malign behavior" and "deny them any path to a nuclear weapon."² Sanctions that will be reimposed on Iran follow either a 90-day or 180-day wind-down period depending on the activity targeted by the U.S. government. The first of these wind-down periods concluded on August 6, 2018. The next set of sanctions will go into effect three months later, on November 5, 2018.

For an in-depth discussion on the May 8, 2018, decision and its implications for U.S. and non-U.S. persons, please see our prior client alert [here](#).

Sanctions Reimposed on August 7, 2018

The New Iran E.O. reinstates sanctions pursuant to various legal authorities that were lifted or waived as part of U.S. commitments under the JCPOA. The first set of these sanctions became effective August 7, 2018. These sanctions target the following activities:

- transactions involving the sale, supply, or transfer to Iran of significant goods or services used in connection with the Iranian automotive sector
- trading in Iranian gold or precious metals
- direct or indirect sale, supply, or transfer to or from Iran of graphite; raw or semifinished metals, such as aluminum and steel; coal; and software for integrating industrial processes
- significant transactions related to the purchase or sale of Iranian rials or a derivative, swap, future, forward or other similar contract whose value is based on the exchange rate of the Iranian rial; or the maintenance of significant funds or accounts outside Iran denominated in the Iranian rial
- purchase, subscription to or facilitation of the issuance of Iranian sovereign debt
- transactions involving the purchase or acquisition of U.S. dollar banknotes by the government of Iran.

Sanctions targeting transactions involving the Iranian energy sector, shipping sector, shipbuilding sector, petroleum, petrochemicals and the Central Bank of Iran will go into

effect November 5, 2018. For a full discussion of these sanctions, please refer to our prior alert [here](#).

Significance of New Iran E.O. and FAQs

In addition to the sanctions described above, the following aspects of the New Iran E.O. and accompanying FAQs are notable:

- The New Iran E.O. consolidates provisions in various laws and executive orders that authorize sanctions on Iran under a single executive order. In this regard, the New Iran E.O. revokes certain previous executive orders and carries forward their sanctions provisions. It also provides for a range of blocking sanctions (e.g., placement on the SDN List), correspondent and payable-through account sanctions (specific to foreign financial institutions), and menu-based sanctions (allowing OFAC to select from a list of sanctions) that were provided in pre-JCPOA executive orders.³
- The New Iran E.O. broadens the scope of certain Iran-related sanctions. This includes new menu-based sanctions for persons that engage in significant transactions relating to Iranian petroleum, petroleum products and petrochemicals (after November 5, 2018), as well as new authority for blocking sanctions on persons that provide material support to persons blocked for engaging in sanctionable activities.⁴
- FAQ No. 600 specifies that the New Iran E.O. provides authority for blocking sanctions **before** November 5, 2018 on persons that provide significant support to persons on the SDN List determined to be part of the energy, shipping and shipbuilding sectors of Iran or that operate a port in Iran.⁵
- The New Iran E.O. targets transactions not only with the National Iranian Oil Company (NIOC) and the Naftiran Intertrade Company (NICO), but also with entities **owned or controlled** by these entities. While this broad scope is not new (it was defined in E.O. 13622 before the JCPOA), the New Iran E.O. and FAQs draw attention to the risks of engaging in transactions with subsidiaries. Importantly, OFAC does not define the term “control” as applied in this context, which creates risk for transacting with entities in which NIOC or NICO owns less than 50 percent.⁶
- Regarding sanctions on Iran’s automotive sector, OFAC confirms that goods for maintenance of finished vehicles are not considered “significant” goods; however, the export, sale or distribution of goods (e.g., auto parts and accessories) or services that would contribute to Iran’s ability to manufacture or assemble vehicles could expose persons and foreign financial institutions to sanctions.⁷

Additional Guidance on Payments After Wind-Down Periods

In the guidance issued on May 8, 2018, OFAC stated that, “[i]n the event that a non-U.S., non-Iranian person is owed payment after the conclusion of the wind-down period on August 6, 2018, or November 4, 2018, as applicable, for goods or services *fully provided or delivered* to an Iranian counterparty prior to August 6, 2018 or November 4, 2018, as applicable, pursuant to a written contract or written agreement entered into prior to May 8, 2018, and such activities were consistent with U.S.

sanctions in effect at the time of delivery or provision, the U.S. government would allow the non-U.S., non-Iranian person to receive payment for those goods or services according to the terms of the written contract or written agreement”(emphasis added).⁸

OFAC has now clarified that goods or services will be considered “fully provided or delivered” when “the party providing or delivering the goods or services has performed all the actions and satisfied all the obligations necessary to be eligible for payment or other agreed-to compensation.”⁹ OFAC further states that, “[w]ith respect to goods exported to or from Iran, at a minimum, title to the goods must have transferred to the relevant party.”¹⁰

EU Developments

The EU Blocking Regulation *inter alia* prohibits EU persons from complying with certain U.S. extraterritorial sanctions, allows companies to recover damages arising from such sanctions and nullifies the effect in the EU of any foreign court judgment giving effect to the same sanctions. On August 7, the EU published [Regulation 2018/1100](#), which amends the scope of the EU Blocking Regulation by updating the list of U.S. laws and regulations whose extraterritorial application is targeted by the EU Blocking Regulation to include the reinstated U.S. extraterritorial sanctions against Iran. The EU also published a [Guidance Note](#) on how certain provisions of the EU Blocking Regulation should be applied and interpreted.

In a statement on August 6, 2018, EU High Representative Federica Mogherini and the Foreign Ministers of France, Germany and the United Kingdom stated that the EU Blocking Regulation is aimed to “protect EU companies doing legitimate business with Iran from the impact of US extra-territorial sanctions.”¹¹ An aide to High Representative Mogherini clarified that, “[i]f EU companies abide by U.S. secondary sanctions they will, in turn, be sanctioned by the EU.”¹² It remains to be seen how strictly the EU Blocking Regulation will be enforced, in particular, given the divergence in penalties between the different EU Member States for noncompliance therewith.

Practical Implications

The actions taken by the President and his administration on August 6 closely track OFAC’s guidance from May 8 and do not appear to significantly depart from prior guidance. Now that certain sanctions have been reimposed, OFAC and the State Department may aggressively enforce the provisions to deter companies from doing business with Iran. President Trump has reinforced this sentiment, [tweeting](#) on August 7 that “[a]nyone doing business with Iran will NOT be doing business with the United States.”

Looking forward to November 5 and beyond, companies conducting business in Iran should carefully review their compliance and diligence policies and ensure that they do not run afoul of the reimposed sanctions. In doing so, companies should also seek to balance and navigate a permissible course in relation to the amended EU Blocking Regulation, in appropriate consideration of relevant business and political, as well as legal, risk considerations.

¹ Executive Order 13846, *Reimposing Certain Sanctions with Respect to Iran*, 84 Fed Reg. 38939 (Aug. 6, 2018), <https://www.federalregister.gov/documents/2018/08/07/2018-17068/reimposing-certain-sanctions-with-respect-to-iran>.

² U.S. Department of State, *Senior Administration Officials Previewing Iran Sanctions* (Aug. 6, 2018), <https://www.state.gov/r/pa/prs/ps/2018/08/284955.htm>.

³ FAQ No. 597, https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_iran.aspx#eo_reimposing.

⁴ FAQ No. 601; § 4 of the New Iran E.O.

⁵ FAQ No. 600.

⁶ Executive Order 13846 §§16(J)-(k); FAQ No. 617.

⁷ FAQ No. 613.

⁸ OFAC, *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 2.3 (May 8, 2018) (emphasis added), https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_winddown_faqs.pdf.

⁹ *Id.* at FAQ 2.3.

¹⁰ *Id.*

¹¹ Press Release, European Union External Action Service, *Joint Statement on the Re-Imposition of US Sanctions Due to its Withdrawal from the Joint Comprehensive Plan of Action (JCPOA)*, (Aug. 6, 2018), https://eeas.europa.eu/headquarters/headquarters-homepage/49141/joint-statement-re-imposition-us-sanctions-due-its-withdrawal-joint-comprehensive-plan-action_en.

¹² F. Brinley Bruton, Andy Eckardt and Carlo Angerer, *E.U. Threatens Firms That Stop Doing Business with Iran Over Trump Sanctions*, NBC News (Aug. 7, 2018), <https://www.nbcnews.com/news/world/e-u-threatens-firms-stop-doing-business-iran-over-trump-n898226>.