CLIENT ALERTS

New U.S. Sanctions on Iran: What Does it Mean for You?

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Summary: On the anniversary of the announcement that the United States was withdrawing from the Joint Comprehensive Plan of Action (JCPOA) that relaxed sanctions on Iran, the United States announced new sanctions on Iran's iron, steel, aluminum, and copper sectors. Who do the new sanctions affect and what do they mean going forward?

First, the new sanctions freeze the property in the United States of anyone that the Department of Treasury Office of Foreign Assets Control ("OFAC") determines is

- "operating in the iron, steel, aluminum, or copper sector of Iran" or
- "owns, controls, or operates an entity that is part of the iron, steel, aluminum, or copper sector of Iran."

The May 8, 2019 executive order that establishes the new sanctions states that its purpose is to reduce the Government of Iran's revenues from the export of these metals in order to deny Iran access to a nuclear weapon and intercontinental ballistic missiles, among other things. Several news outlets reported the U.S. government's claim that these metals account for 10% of Iranian exports. The focus of the sanctions, then, is on curtailing Iran's metal exports and is aimed both at the companies that comprise those sectors and the companies that do business with them.

In addition to the sanctions described above, the executive order also freezes property and interests of anyone who

- "knowingly engage[s]" in "a significant transaction" for the purchase, acquisition, sale, transport, or marketing of any of these metals from Iran or any products from Iran containing these metals;

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- knowingly engages in "a significant transaction" for the sale, supply, or transfer of "significant goods or services" used in connection with metal sectors of Iran's economy,
- materially assists anyone blocked by the sanctions; or
- is a foreign financial institution that "knowingly" conducts or facilitates any of the types of transactions described above.

For purposes of the sanctions, "knowingly" includes not only someone who has actual knowledge, but also anyone who should have known of the relevant facts. The term "significant transaction" is not defined. At least for the time being, companies and financial institutions should assume that "significant" will be interpreted at least as restrictively as the same term is interpreted for financial sanctions on Iran. As such, it is likely to encompass repetitive conduct, policies, practices, or transactions that by their nature are directed at the Iranian sectors affected by the new sanctions.

All of these sanctions take effect immediately and reach any business deal consummated on or after May 8, 2019. Although OFAC has published FAQs indicating that companies have 90 days to wind down any existing agreements, OFAC has made it clear that the wind-down period applies only to agreements that were already in effect. Any new business or agreements are prohibited.

It should be noted that none of these sanctions are automatically imposed on any individuals or companies who may be subject to them. The sanctions do not go into effect against an individual or company until OFAC determines that the individual or company has engaged in the prohibited conduct. In most cases, OFAC will communicate that determination by listing the individual or company on OFAC's Specially Designated Nationals and Blocked Persons List ("SDN List"). The risk of being placed on that list should cause individuals and companies to carefully consider avoiding any activities that could result in being added to the SDN List.

And although the executive order never uses the term "secondary sanctions" (the buzzwords used to describe sanctions aimed at foreign businesses and individuals doing business with Iran), it is clear that this executive order is intended to expand United States secondary sanctions. United States individuals and companies are already prohibited from engaging in most business transactions in Iran, and the restrictions that are adopted are targeted primarily at foreign entities and individuals.

This announcement was a fairly aggressive move by the U.S. government to tighten sanctions on Iran at a time that the European Union, Russia, China, and others have been resisting existing sanctions. At the same time, the European Union continues to express its determination to oppose the U.S. sanctions. In addition to the E.U. amending its statutes to prohibit E.U. businesses from cooperating with the U.S., three member states – France, Germany, and the United Kingdom – have also recently created INSTEX, a new financing mechanism for trade with Iran in an effort to bypass U.S. sanctions. While the U.S. is likely to continue to take a hard line against Iran, it may need to carefully balance its policy to avoid further alienating the E.U.

This delicate environment continues to place a premium on skillful maneuvering through the regulatory shoals. For the time being, OFAC is likely to continue to concentrate most of its enforcement efforts on the oil industry and on Asian countries and companies. But OFAC will continue to look for opportunities to prosecute enforcement actions that advance United States policies broadly without risking too great a confrontation with the E.U. Companies operating in any of the economic sectors affected by U.S. sanctions on Iran (including the automotive industry) should be prepared for any potential developments. Butzel Long is prepared to assist you in navigating these waters and will continue to monitor the situation and bring you up to date as developments warrant.

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