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U.S. Withdraws from Iran Deal: What It Means for Businesses and Individuals

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Summary: President Donald Trump's announcement on May 8, 2018, that the United States will withdraw from the Joint Comprehensive Plan of Action (JCPOA) that relaxed sanctions on Iran are already having significant diplomatic effects around the world. But what does it mean for the auto sector, the energy and transportation industries, Iranian immigrants to the United States, and other businesses and individuals with interests in Iran?

First, it means that by the end of the year, the United States will reimpose all sanctions that it lifted under the JCPOA. Anyone who was relying on sanctions relief under the JCPOA will need to react quickly – in most cases before August 6, 2018 – to ensure that they remain in compliance with United States law. Second, it means that many non-U.S. banks, companies, and individuals with interests in Iran will need to evaluate quickly what they need to do to remain in compliance with the law. The measures that the United States will take will not only affect Americans, but will also reimpose secondary sanctions that are aimed at punishing non-U.S. companies – including companies in the automotive, petrochemical, and airlines industries – that fail to comply. Finally, while certain transactions are not directly affected (including the right of individuals to move inheritances out of Iran or send remittances to their relatives in Iran), there may be other indirect effects that will make it more difficult to engage in those transactions.

The directive that President Trump signed on May 8 is broad and leaves it to the Department of State and the Department of Treasury Office of Foreign Asset Controls (“OFAC”) to work out critical details – such as how long companies will have to unwind deals they made under the JCPOA. And although it may take weeks or months for those agencies to promulgate regulations and other legal documents to articulate and

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Joseph G. Cosby
Of Counsel

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implement the President's directive, they have already begun to provide written and oral guidance. Many of the details, of course, must still be worked out, but here are the highlights of what we know now.

Immediate Action Required: Both OFAC and the Department of State have made it clear that companies will have 90 to 180 days (depending on the type of transaction) to unwind transactions that would otherwise violate the reinstated sanctions. But OFAC's written guidance suggests that it will grant extra time to unwind only those transactions that companies entered into before May 8, 2018. That means that although companies will have time to unwind existing relationships, they should *immediately* postpone or cancel plans to enter any new contracts that could violate the sanctions.

Most U.S. individuals and companies that have no foreign affiliates will be relatively unaffected by the reimposed sanctions. Even under the JCPOA, it was illegal, with few exceptions, for U.S. persons to do business in Iran or with companies or individuals based in Iran. That continues to be the case and will not change. The only significant exceptions are (a) commercial airlines and others that obtained special licenses from the U.S. government to do business in Iran (most of which the government intends to terminate before August 6, 2018) and (b) companies that trade in Iranian foodstuffs or Persian rugs. Otherwise, the changes will primarily impact U.S. companies with foreign affiliates and foreign companies in certain industries.

Secondary Sanctions on Foreign Companies Doing Business with Iran: The resurrected sanctions are mainly secondary sanctions that prohibit foreign companies in certain industries from doing "significant" business in Iran or contracting with Iranian nationals and businesses located in Iran. The legal authorities that President Trump is reestablishing reinstitute a menu of sanctions that the OFAC and the Department of State can impose on any foreign company that engages in "significant transactions" in any of six industries, including:

- Automotive;
- Banking, insurance, brokerage, and other financial services;
- Commercial aviation (including both the sale of airplanes and parts and the operation of commercial airlines);
- Oil and energy exploration and sales;
- Trade in gold and precious metals or other metals (including graphite) with industrial applications; and
- Computer software for integrating industrial processes.

The regulations prior to the JCPOA, which are now likely to be reinstated in some form, did not provide a clear definition of what constituted a "significant transaction" in most of these sectors, including the automotive sector. The most serious available sanction against a company that violates these secondary sanctions will be to (a) prohibit that company from doing business with U.S. banks, companies, and individuals and (b) freeze all of the company's U.S. assets, including bank accounts and interests in subsidiaries and other affiliates. This sanction would also effectively cut the company

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off from many financial services and from engaging in transactions in U.S. dollars since any bank doing business with the company would effectively be barred from maintaining correspondent bank accounts in the United States.

The United States will not begin sanctioning foreign companies that do business in Iran immediately, but it is granting only a short period to unwind existing arrangements before it begins designating companies to be sanctioned. Only companies doing business in the energy and transportation sectors (and the insurance and financing arrangements supporting those transactions) will have 180 days – until November 4, 2018 – to unwind. All other companies, including companies engaged in the automotive and civil aviation industries, will have only 90 days – until August 6, 2016 – to disengage from their investments in Iran and transactions with Iranian companies.

Foreign Subsidiaries of U.S. Companies: Before the JCPOA went into effect, United States law treated any foreign subsidiaries of U.S. companies as U.S. persons. Regardless of where those subsidiaries were based or under which laws they were organized, they were subject to the same absolute prohibitions on doing business in Iran or with Iranian persons that applied to other U.S. companies and individuals. Under the JCPOA, foreign subsidiaries of U.S. companies were treated as foreign entities not subject to the stricter prohibitions that governed their U.S. parents. Now that the United States has withdrawn from the JCPOA, the former regulatory regime is in the process of being reinstated and any foreign subsidiary of a U.S. company must cease doing business in Iran or with Iranian persons.

And on or before November 4, 2018, OFAC will revoke General License H, which permits U.S. companies to engage in certain automated back-office and support functions for their foreign subsidiaries doing business in Iran as long as those functions broadly support their subsidiaries' activities and are not specifically targeted to supporting business with Iran. With the revocation of General License H, it will be much more problematic for U.S. companies to continue to engage in those activities.

Reinstatement of Companies and Individuals Removed from U.S. Sanctions List: No later than November 5, 2018, OFAC will reinstate hundreds of individuals, companies, and other entities that it removed from the Specially Designated Nationals ("SDN") List to comply with the JCPOA. U.S. law prohibits U.S. businesses and individuals from doing business with anyone on the SDN List. Foreign companies must also pay close attention to the SDN List because companies doing business with individuals and entities on the SDN List risk being sanctioned and barred from doing business in the United States or with U.S. persons. Under certain circumstances, companies doing business with individuals and entities on the SDN List also risk civil fines or criminal prosecution in the United States.

It is therefore extremely important for both U.S. and foreign companies to obtain a copy of anyone removed from the SDN List under the JCPOA and begin to unwind transactions with those individuals and companies. It is also important to keep a close watch on the SDN List, especially over the next few months, as OFAC revises the SDN List to return it to its status prior to the JCPOA.

Personal Inheritances and Remittances: Although individuals seeking to repatriate inheritances from Iran or seeking to send or receive personal remittances from Iran are not directly affected, they may be indirectly affected. By withdrawing from the JCPOA, the United States is preparing to reinstitute

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sanctions against Iran's banks, especially the Central Bank of Iran. Because the entire Iranian banking sector is subject to these sanctions, it will make it very difficult if not impossible to move funds from an Iranian bank to banks in other countries. That is a consequence of other financial sector sanctions, under which foreign banks that do business with Iranian banks will risk losing correspondent banking privileges in the United States.

The United States is Unlikely to Invoke the "Snap-Back" Provisions in the JCPOA: Companies should not confuse the steps that the United States is taking with the "snap-back" process that the JCPOA outlines for reinstituting sanctions. Although the United States will argue that Iran has violated the JCPOA and might argue that the JCPOA "snap-back" provisions would justify reinstituting sanctions, the United States is withdrawing from the JCPOA, not relying on it.

The Process is Still Fluid and Open to Change: It is also important to note that the political and diplomatic situation remains fluid and that the position of the United States will be shaped and potentially changed by events, especially in response to actions taken by Iran and by America's European allies. At least some of what has been outlined above is likely to be modified, but it is impossible to predict with any confidence what might be modified or how. OFAC might, for example, issue temporary licenses, either on a general or an individual basis, to ease the transition. Both the Department of State and OFAC have publicly stated that they anticipate working with our allies, and President Trump continues to leave open the possibility of renegotiating the JCPOA to make it acceptable to the United States. But by adopting an aggressive schedule for companies to unwind their existing contracts, both the Department of State and OFAC have also signaled that they intend to move forward as the President has directed and to enforce the sanctions aggressively once they are back in place. It is, therefore, most important for companies and individuals to prepare and be ready for that eventuality.

As indicated above, the regulations that will implement these policy changes have not been released, and the regulatory and diplomatic environment remains fluid. Butzel Long will continue to monitor the situation and to bring you updates as the situation warrants.

If you or your company has any questions concerning these issues, please feel free to contact the author (listed below) or your regular Butzel Long attorney.

Joseph Cosby
202.454.2880
cosby@butzel.com