

## Focus on Iran: Spring 2018

International and Litigation Alert  
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### Introduction

Since our last issue, there have been several noteworthy Iran-related developments that demonstrate the United States' increasing focus on Iran, and the Department of Justice's (DOJ's) efforts to prosecute violations of Iranian sanctions:

- President Trump continues to criticize the Joint Comprehensive Plan of Action (JCPOA). Although he waived secondary sanctions in January 2018, his recent dismissals of Secretary of State Rex Tillerson and U.S. National Security Advisor Lt. Gen. H.R. McMaster may bring a permanent shift in policy. The next date for renewal of the secondary sanctions is May 12, 2018.
- In February 2018, an Iranian minister revealed that Iran was planning to introduce a cryptocurrency similar to Venezuela's cryptocurrency, the petro. The Office of Foreign Assets Control (OFAC) took aggressive action recently to restrict U.S. access to the petro due to its use as a tool to evade U.S. sanctions and it is very likely that Iran's cryptocurrency could suffer the same fate.
- DOJ successfully prosecuted Mehmet Hakan Atilla, an executive at Halkbank, for violating the International Emergency Economic Powers Act (IEEPA) and for money laundering.
- DOJ indicted nine Iranian nationals affiliated with the Mabna Institute for cyber-related crimes.
- DOJ indicted Iranian national Ali Sadr Hashemi Nejad for evading U.S. economic sanctions against Iran.

Although the future of the JCPOA continues to be uncertain, the DOJ's interest in Iran-related prosecutions will likely continue.

### President Trump Renews Joint Comprehensive Plan of Action (JCPOA) Waivers but Uncertainty Remains:

President Trump has long criticized the JCPOA for being "a bad deal" and the administration continues to threaten to abandon it. On January 12, 2018, in a [statement](#) issued by the White House, President Trump [waived secondary sanctions](#) against Iran for an additional 120 days, providing a "last chance" for U.S. allies to agree to "fix the terrible flaws" of the 2015 JCPOA. The waiver of secondary sanctions extends through May 12, 2018, although the permanence of this relief is still largely uncertain. The president challenged Congress to pass acceptable Iran sanctions legislation and stated that the president requires that any bill must require that the sanctions (a) require Iran to allow "immediate inspections at all sites upon request by international inspectors;" (b) ensure that Iran does not "even come close" to possessing a nuclear weapon; (c) include severe consequences to deter Iran's development and testing of long-range missiles; and (d) remain in place "forever," without an expiration date. Simultaneously, OFAC [announced](#) the designation of 14 entities and individuals under existing executive orders that target human rights abuses, censorship, and proliferation of weapons of mass destruction (WMD).

The president's statements in January are consistent with his previous decision [not to certify](#) Iran's compliance with the JCPOA in October 13, 2017. The president's non-certification stopped short of explicitly declaring that Iran is out of compliance with the deal. Congress had 60 days during which it could have re-imposed nuclear sanctions on Iran, but Congress did not act. (More information can be found in Miller & Chevalier's [October 2017 Trade Compliance Flash](#).)

The actions and statements of the president have implications for the future of the JCPOA, the future of Iran sanctions more broadly, and the evolving compliance challenges that U.S. and non-U.S. companies face with respect to U.S. primary and secondary sanctions against Iran. A withdrawal from the JCPOA would affect the tens of billions of dollars in investment made by European, Russian, and Chinese companies in Iran following the suspension of U.S. secondary sanctions. Sectors that saw the

biggest uptick in investment in Iran — and now face the greatest uncertainty — include oil and gas, aviation, railways, the automotive industry, and banking. (Practical steps non-U.S. companies can take to prepare for withdrawal can be found in [Managing the Risks of A U.S.-Iran Nuclear Deal Withdrawal](#).)

European allies continue to support the JCPOA. They are considering reaching a supplemental agreement with Iran that addresses the U.S.'s concerns, in an effort to prevent the U.S. from abandoning the agreement. If Europe and the U.S. agree to a supplemental agreement, the challenge will be convincing Iran to agree to it and abide by it.

**Iran Considering Cryptocurrency:** In February 2018, the Information and Communications Technology Minister of Iran [announced](#) that the Central Bank of Iran was planning to develop a cryptocurrency. If successful, this would be the latest effort to create a state-backed digital currency. Such an action by Iran's government could spur an aggressive response from OFAC. State-sponsored cryptocurrencies have been greeted with skepticism among digital currency experts and investors, due at least in part to the purpose they serve in evading U.S. sanctions. Recently, Venezuela introduced a state-backed cryptocurrency, the petro. This prompted the U.S. to impose sanctions related to the petro and any other digital currency the Venezuelan government issues in the future. If Iran follows Venezuela's lead, it seems likely that OFAC will impose similar restrictions. OFAC also issued [guidance](#) related to virtual currency that would be equally applicable to any Iranian virtual currency. This guidance makes clear that OFAC's expectations of risk-based compliance remain unchanged for digital currencies. Those seeking to trade or invest in digital currencies, whether in connection with Iran or any other country, must be mindful of the potential risks if they fail to heed OFAC's warnings. (More information can be found in Miller & Chevalier's [March 2018 Trade Compliance Flash](#) and [Sanctions Showdown Looms for U.S. and Cryptocurrency](#).)

## Notable 2017-2018 Enforcement Actions:

### Civil

**U.S. Dental Supply Company, Accused of Violating Iran Sanctions, Reaches Settlement with OFAC:** In December 2017, Dentsply Sirona Inc. (DSI) [agreed](#) to pay over \$1.2 million for violating Iranian sanctions. OFAC alleged that between 2009 and 2012 DSI subsidiaries exported dental equipment and supplies to third-party countries while knowing that the products would ultimately be sent to Iran. OFAC alleged that senior management had actual knowledge of the violations and concealed the exports from others in the organization.

**Bureau of Industry and Security (BIS) Renews Order Denying Export Privileges for Mahan Air and Related Companies:** In December 2017, BIS [renewed](#) its order against Mahan Air denying all export privileges. BIS first issued the Mahan Air order on March 17, 2008. The Mahan Air order prevents the airline and other designated parties from engaging in activities including applying for, obtaining, or using any license, license exception, or U.S. export control document, and prohibits any person from directly or indirectly engaging in or facilitating transactions with designated parties that involve items subject to the Export Administration Regulations (EAR).

In a related action, on January 26, 2018, BIS issued an order denying all export privileges against Turkish national Gulnihal Yegane and several logistics and cargo companies owned by Yegane as a result of their involvement in procuring and supplying U.S.-origin aircraft engines and parts for or on behalf of Iranian airlines, including Mahan Air. These orders illustrate the U.S. government's continued focus on Mahan Air and its interest in evading U.S. export controls laws and serve as notice to any party that deals in U.S.-origin items that it may not provide or facilitate the acquisition of such items by Mahan Air or other parties subject to a similar order.

**OFAC Finds International Shipping Registry Contracted with Blocked Iranian Entity:** In November 2017, OFAC [found](#) that Dominica Maritime Registry, Inc. (DMRI) violated Iranian sanctions. DMRI executed an agreement with the National Iranian Tanker Company (NITC), an entity on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List).

Because OFAC considers binding memorandums of understanding to be contingent contracts, the agreement constituted a prohibited transaction. OFAC identified mitigating factors, including: (1) DMRI had no prior violations; (2) DMRI is a small company; and (3) DMRI took remedial actions, including engaging trade counsel, updating OFAC compliance procedures, and implementing an OFAC compliance training program.

**Indian Engineering Company Settles Iranian Sanctions Violations Allegations:** In August 2017, Narender Sharma and his India-based company, Hydel Engineering Products (Hydel), reached a \$100,000 [settlement](#) with BIS, which included denial of U.S. export privileges for five years. BIS suspended \$70,000 of the fine and agreed to waive it if Hydel complies with the settlement agreement. BIS alleged that Hydel conspired to unlawfully re-export items in violation of the EAR and Iranian sanctions, both of which prohibit unauthorized export or re-export to Iran or the government of Iran. According to the settlement agreement, Hydel conspired to evade U.S. sanctions on Iran in order to export U.S.-origin waterway debris systems and system components to Iran via shipment through third-party countries including the United Arab Emirates. Mahab Ghodss, an Iranian government entity on OFAC's SDN List (and which OFAC moved to the 13599 List in January 2016), was one of the alleged customers. In conversations with co-conspirators Paul Meeks and Worthington Products, Inc. (Worthington) of Canton, Ohio, Hydel allegedly discussed omitting any references to Iran in transaction documentation and proposed routing schemes to obscure the ultimate destination for the shipments. Hydel also made false or misleading representations to BIS that a shipment was destined for the United Arab Emirates for use in Dubai. BIS reached a \$250,000 [settlement](#) with Meeks and Worthington, the terms of which also included a five-year denial of export privileges.

**For Re-Exports to Iran, D.C. Circuit Addresses "Know or Reason to Know" Requirement in *Epsilon v. U.S. Department of Treasury* and Finds Lack of Evidence of Knowledge For Some Shipments:** Last year, the D.C. Circuit [upheld](#) the U.S. District Court for the District of Columbia's holding that *knowledge or reason to know* that goods will end up in Iran is sufficient to establish a violation of 31 C.F.R. § 560.204 of the Iranian Transactions and Sanctions Regulations. In 2014, OFAC imposed penalties against Epsilon for violating Iranian sanctions, finding that Epsilon had reason to know that 39 shipments of car audio and video equipment were intended for re-export to Iran. The D.C. Circuit affirmed that OFAC had enough evidence that the first 34 of the 39 shipments violated Iranian sanctions. However, with respect to five of the shipments, the Court held that OFAC failed to consider evidence that showed Epsilon lacked knowledge that the products would be resold in Iran. Because OFAC failed to consider the evidence, the Court remanded the case for further fact-finding. The case shows that U.S. exporters must continue to conduct due diligence to confirm that their products are not being re-exported to Iran and, where a U.S. exporter can make the argument that it could not reasonably have known that a third party would ship to Iran, it may have a defense under the regulations.

**\$1 Billion Iran Asset Fight:** After nearly a decade of litigation in Manhattan, the \$1 billion case against an Iran-linked charity, Alavi, might reach resolution. The case began in 2008 when the United States sought to [seize](#) assets of a dozen properties, including the Manhattan office tower at 650 Fifth Avenue, which the government alleged violated the 1995 U.S. sanctions against Iran. Last summer, the charity [lost at trial](#). The jurors found that the charity operated its real estate portfolio, worth roughly \$1 billion, to benefit Iran and Bank Melli in violation of the sanctions against Iran. The defendants have since appealed to the Second Circuit and were granted a stay of the dispersion of assets. The charity already prevailed before the Second Circuit in this case in 2016, with the Circuit reversing a grant of summary judgment.

**Iranian Artifacts to Satisfy Terrorism Judgment:** In *Rubin v. Islamic Republic of Iran*, the Supreme Court ruled that under the Foreign Sovereign Immunities Act (FSIA) plaintiffs cannot obtain Iranian artifact collections located in the United States to satisfy a judgment that Iran has not paid. Over a decade ago, the plaintiffs received a \$71.5 million judgment against Iran for its material support of a 1997 suicide bomb attack by Hamas. Plaintiffs sought to fulfill its judgment through Iranian antiquities held at the University of Chicago and the Chicago Field Museum. Plaintiffs [argued](#) that revisions to the FSIA permitted plaintiffs to seize property of a foreign state or its agencies and instrumentalities without having to satisfy the usual conditions. Defendants, [Iran](#) and the [University of Chicago](#), argued that plaintiffs' interpretation of the provision was too broad. The Supreme Court rejected the plaintiffs' arguments and [held](#) that the artifacts could not satisfy the judgment because they did not fall within an exception to the

rule that a foreign state's property in the United States is immune from attachment and execution. The United States filed a friend of the court [brief](#) in support of the defendants.

## Criminal

### *Notable Indictments:*

**Nine Iranian Nationals Indicted for Cyber Crimes:** In March 2018, nine individuals affiliated with the Mabna Institute, an Iranian company, were [indicted](#) for conspiracy to commit cyber intrusions, conspiracy to commit wire fraud, wire fraud, computer fraud, and identity theft. The DOJ [alleges](#) that the defendants accessed, on behalf of the Iranian Revolutionary Guard Corps (IRGC), the computer systems of 144 universities in the United States, 176 universities in foreign countries, multiple U.S. federal and state government agencies, and domestic and foreign private sector companies. OFAC has since [designated](#) the Mabna Institute and the nine defendants for sanctions.

**Iranian National Indicted and Arrested for Evading Sanctions:** In March 2018, Ali Sadr Hashemi Nejad (Sadr), an Iranian national, was [arrested and charged](#) with conspiracy to evade sanctions against Iran, to commit money laundering, and to commit bank fraud in connection with receiving \$115 million in payments through U.S. banks for a Venezuelan housing project. According to the indictment, the Sadr family-controlled company, Stratus Group, founded Iranian International Housing Corp. to enter into a deal with a Venezuelan state-owned energy company to build housing units for approximately \$475 million. The [indictment](#) alleges that Sadr evaded the U.S. sanctions on Iran by using a United Arab Emirates address to incorporate two entities which would receive payments for the housing deal. According to the indictment, the two entities were owned and controlled by Sadr and his family in Iran. The indictment further alleges that Sadr opened U.S. bank accounts for each company, through which it received approximately 15 payments totaling \$115 million.

### *Notable Convictions and Sentencings:*

**Dual Citizen of the U.S. and Iran Sentenced to 25 Years for Attempting to Sell to Iran:** In March 2018, Reza Olangian, a former electrical engineer, was sentenced to 25 years in prison for conspiring and attempting to acquire and transfer surface-to-air missiles (SAMs) and military aircraft parts to Iran in violation of IEEPA. [According to the DOJ](#), in 2012 Olangian made contact several times with a confidential source who was working with the Drug Enforcement Administration to negotiate a missile deal. Olangian was also working with the confidential source to acquire other items, such as commercial aircraft for use by Iranian airlines. In 2012, Olangian traveled to Estonia to obtain the SAMs, but was arrested and later extradited to the United States.

**Turkish Banker Convicted for Conduct Claimed to Lack a U.S. Nexus:** In January 2018, a jury in the Southern District of New York convicted Mehmet Hakan Atilla — the former deputy general manager for international banking at Halkbank — of conspiracies to defraud the United States, violate IEEPA, and commit money laundering and bank fraud, as well as for one substantive count of bank fraud. The indictment alleged that Atilla participated in a scheme to launder Iranian funds out of Turkey and Dubai to avoid U.S. sanctions, and that he did so on behalf of the Iranian government. The [indictment](#) also alleged that Atilla created fraudulent documents to disguise the financial transactions as shipments of food and medicine (which are exempt from the U.S. sanctions regime). Before trial, Atilla moved to dismiss charges against him on jurisdictional grounds, arguing that the alleged activity occurred entirely outside of the United States and had no U.S. nexus. The court denied Atilla's motion. Atilla is scheduled to be sentenced on April 11, 2018. He has [argued](#) that a proper guideline range is between 46 and 57 months and that his sentence should be below the guidelines range.

The government's star witness and Atilla's alleged co-conspirator, Reza Zarrab, [pled guilty](#) in October to seven related charges.

**CEO Gets Five Years in Prison for Exporting Specialty Metals to Iran:** In September 2017, Erdal Kuyumcu, the

former CEO of Global Metallurgy LLC, was [sentenced](#) to 57 months in prison after pleading guilty to one count of conspiring to violate IEEPA. Kuyumcu [pled guilty](#) to conspiring with Mehmet Cingi, the owner of Turkish company Era Metalurji, to export 1,000 pounds of specialized U.S. metallic powders to Iran through Turkey without obtaining a license from OFAC. At a presentence evidentiary hearing, the government argued that the metallic powder had potential military and nuclear applications and that Kuyumcu knew that the shipment of metallic powder was destined for Iran and worked with co-conspirators to fabricate end-user information.

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