

## Focus on Iran: Fall 2018

International and Litigation Alert  
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### Introduction

As of November 5, 2018, the U.S. sanctions on Iran are now back in full force. Sanctions re-imposition has proceeded as expected, following President Trump's [announcement](#) of the U.S.'s formal withdrawal from the Joint Comprehensive Plan of Action (JCPOA) on May 8, the [publication](#) of the new Executive Order 13846 (E.O. 13846 or the New Iran E.O.) on August 6, and the designation or [re-designation](#) of over 700 Iran-connected individuals, entities, vessels, and aircraft as Specially Designated Nationals (SDNs) and Blocked Persons on November 5. Iran transactions now carry clear U.S. sanctions risk, which sophisticated parties inside and outside the U.S. must keep in mind if they continue to do business in the country.

The renewed secondary sanctions target certain actors within the Iranian government, as well as certain sectors of the Iranian economy, such as energy, financial, precious metals, shipping, insurance, and automotive sectors. However, the re-imposed sanctions are not comprehensive and some sectors of the Iranian economy are not targeted. For example, even U.S. persons may take advantage of certain exemptions that remain in place for agricultural commodities, food, medicine, and medical devices. For most non-U.S. persons, the scope of permissible transactions is even broader, generally permitting transactions in many other sectors of the Iranian economy not targeted by the sanctions, and even permitting some transactions in targeted sectors as well.

Nonetheless, all Iranian transactions present sanctions risk, even those by non-U.S. persons entirely outside the targeted sectors. Most notably, the renewed secondary sanctions may apply to any Iranian transactions that involve certain types of SDNs or activities that U.S. authorities deem "malign," such as the proliferation of weapons of mass destruction (WMDs), Iran's ballistic missile program, or support for international terrorism. Recent U.S. enforcement appears to have focused on front companies for the Islamic Revolutionary Guard Corps (IRGC), which presents high sanctions risk but often seeks to conceal its involvement through shell companies or indirect corporate control. In addition, both the primary and secondary U.S. sanctions can be nuanced and fact-specific, with civil or even criminal liability attaching for non-compliance with the primary sanctions. And enforcement of the Iran sanctions has remained steady even before full re-imposition – a trend we expect to accelerate after full re-imposition of sanctions.

Accordingly, this edition of Focus on Iran, Miller & Chevalier's [third](#), sets forth some of the basics for complying with the new Iran sanctions rules. Our publication proceeds as follows:

- First, we summarize the new sanctions re-imposed in full on November 5, 2018.
- Second, we provide sector-by-sector guidelines for key sectors of the Iranian economy, including energy, agricultural and pharmaceutical products, the automotive sector, hardware and software, metals, shipping, and shipbuilding.
- Third, we discuss some of the particular intricacies regarding transactions in connection with SDNs designated under the Iran sanctions programs, in particular the differences between SDN financial institutions blocked solely pursuant to Executive Order 13599 and other designated SDN financial institutions.
- Fourth, we review guidance issued by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) on receiving outstanding payments for goods and services delivered prior to the full re-imposition of sanctions.
- Finally, we list the Iran-related enforcement actions that OFAC, the U.S. Department of Commerce's Bureau of Industry and Security (BIS), and the U.S. Department of Justice (DOJ) have carried out since our most recent Focus on Iran publication this spring.

## I. Summary of Re-Imposed Iran Sanctions

On May 8, 2018, President Trump announced that the United States would withdraw from the JCPOA and re-impose those Iran sanctions lifted pursuant to U.S. commitments as part of the nuclear deal. The newly re-imposed sanctions did not take effect immediately but instead after two wind-down periods. As set forth in simultaneously issued [OFAC guidance](#), the first wind-down period lasted 90 days, ending on August 6, 2018, and the second lasted 180 days, ending on November 4, 2018. OFAC made clear that parties could continue most Iran transactions during the wind-down periods, so long as all goods and services were delivered or performed before the relevant deadline.

On August 6, 2018, President Trump issued the [New Iran E.O.](#), which provides a comprehensive description of the new U.S. sanctions that went into effect after August 6, 2018, and November 4, 2018, respectively. Both the August 6 and November 4 sanctions can be divided into three categories, as discussed in our [previous alert](#) on the subject and set forth below:

First, there are the **blocking sanctions** – the most restrictive available – which authorize OFAC to designate any person as an SDN effectively cutting them off from the U.S. economy and financial system. Under the New Iran E.O., blocking sanctions may be imposed against any person deemed to:

- Have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of:
  - The purchase or acquisition of U.S. bank notes or precious metals by the Government of Iran;
  - The National Iranian Oil Company (NIOC), Naftiran Intertrade Company (NICO), or the Central Bank of Iran (CBI or a/k/a Bank Markazi);
  - Any Iranian SDN – except certain Iranian financial institutions designated solely under Executive Order 13599 for being Iranian financial institutions (see discussion of Iranian SDN below); or
  - Any other SDN designated pursuant to the New Iran E.O. or other Iran-related sanctions authorities – except certain Iranian financial institutions designated solely under Executive Order 13599 for being Iranian financial institutions.
- Be part of the energy, shipping, or shipbuilding sectors of Iran or operate a port in Iran; or
- Have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of persons deemed to be part of the energy, shipping, or shipbuilding sectors of Iran or operate a port in Iran.

Second, there are the **"menu-based" sanctions** that authorize OFAC to select from a "menu" of potential sanctions – such as, among other things, denial of import privileges, denial of visas to the United States, U.S. government procurement prohibitions, or a policy of denial for all export licenses to the sanctioned person. Menu-based sanctions may be imposed against any person deemed to have:

- Engaged in a "significant transaction" for the sale, supply, or transfer to Iran of significant goods or services used in connection with the automotive sector of Iran; or
- Engaged in a significant transaction for the purchase, acquisition, sale, transport, or marketing of petrochemical products from Iran; or petroleum or petroleum products from Iran, subject to a Significant Reduction Exemption (SRE) waiver, discussed in greater detail below.

Third, there are **correspondent and payable-through account sanctions**, which authorize OFAC to prohibit foreign financial institutions (FFIs) from maintaining the correspondent or payable-through banking relationship that many banks rely on for access to U.S. dollars. Correspondent and payable-through account sanctions may be imposed against FFIs deemed to have

facilitated any "significant financial transaction" that is:

- On behalf of any Iranian SDN or any other SDN designated pursuant to the New Iran E.O. or other Iran-related sanctions authorities – except certain Iranian financial institutions designated solely under Executive Order 13599 for being Iranian financial institutions;
- For the sale, supply, or transfer to Iran of significant goods or services used in the automotive sector of Iran;
- For the purchase, acquisition, sale, transport, or marketing of petrochemical products from Iran; or
- For the purchase, acquisition, sale, transport, or marketing of petroleum or petroleum products from Iran or with NIOC or NICO, subject to an SRE waiver.

In addition, FFIs deemed to (1) knowingly conduct or facilitate any transaction related to the purchase or sale of Iranian rials or (2) maintain significant funds or accounts outside the territory of Iran denominated in Iranian rial may be subject to blocking or correspondent/payable-through account sanctions.

The New Iran E.O. also consolidates various authorities into a single executive order, with the result that certain sanctions previously authorized under other executive orders now are authorized by the New Iran E.O. (*e.g.*, blocking authority targeting corruption, diversion of goods intended for the people of Iran, human rights abuses, and censorship previously found in Executive Orders 13628 and 13645). In particular, the New Iran E.O. makes clear that U.S. primary sanctions now apply to U.S. companies and their foreign subsidiaries owned or controlled by U.S. companies, consistent with the revocation of the previous [Iran Transactions and Sanctions Regulations General License H](#) permitting certain activities in connection with foreign subsidiaries of U.S. companies in Iran.

Finally, on [November 5, 2018](#), OFAC completed the wind-down of the sanctions, designating over 700 individuals, entities, aircraft, and vessels connected with Iran as SDNs. These designations trigger certain of the sanctions provisions noted above, notably those targeting material assistance to, sponsorship of, support to, or facilitation of a significant financial transaction on behalf of an SDN.

Apart from identifying conduct that is sanctionable even without any U.S. nexus, the New Iran E.O. also includes prohibitions that apply to U.S. persons and to conduct with a U.S. nexus. Violation of any of the prohibitions in the New Iran E.O. may result in civil or even criminal liability if the conduct is "willful." In addition, as discussed in Miller & Chevalier's [Money Laundering Enforcement Trends](#) publication, U.S. authorities may use other prosecutorial tools such as money laundering or conspiracy statutes to enforce the sanctions set forth in the New Iran E.O.

## II. Sector-by-Sector Analysis of Iran Sanctions

The re-imposed sanctions will undoubtedly limit future business in Iran. As with pre-JCPOA Iran sanctions, U.S. companies and their foreign subsidiaries generally will be [prohibited](#) from conducting such business. Non-U.S. companies and individuals will also face sanctions risk for conducting business in targeted Iranian sectors – for example, for transactions in sectors of the Iranian economy targeted by the U.S. government – such as energy, finance, shipping, automotive, certain software, and gold and precious metals.

Nevertheless, it is important to note that the re-imposed sanctions are not intended to prohibit *all* business in Iran. Since the first Iran sanctions statute in 1996, U.S. policymakers have carefully crafted statutes, executive orders, regulations, and guidance to permit or even incentivize certain Iranian dealings that either advance U.S. foreign policy interests in the country or have no connection to the malign activities of the Iranian government that the United States seeks to target through sanctions.

To begin with, approximately 70 percent of the \$45 billion worth of [Iran's imports in 2016](#) have no direct connection to the targeted sectors listed above, including, for example, Iranian imports of some types of industrial machinery, consumer electronics, plastics, iron and steel, home goods, and textiles. Transactions in connection with the sale of such goods are generally permissible, so long as there is no U.S. involvement in the transaction, the transactions do not involve any SDNs such as the IRGC or its front companies, and payment can be received from Iran without passing through either the U.S. financial system or a U.S.-sanctioned Iranian financial institution.

Against this general baseline risk for Iran transactions, certain sectors or transactions have higher or lower risk profiles. **We provide background guidelines for each of these sectors/transactions below, although we again caution that U.S. sanctions law can be very nuanced and fact-specific and that readers should not engage in a particular Iran-related transaction based on these general guidelines.** The descriptions below merely highlight what transactions generally may or may not be permissible, but determination of whether a particular transaction actually **is or is not** permissible always requires a detailed examination of the facts and the applicable law.

## Energy Sector

Sanctions on Iran's energy sector are the centerpiece of the U.S. efforts to cut off funding to Iran's weapons programs, ballistic missile testing, and IRGC-supported terrorism, and are therefore some of the strictest and most well-enforced in the entire U.S. arsenal. For example, the [re-imposed sanctions](#) target "financial, material, or technological support for" or "goods or services to or in support of" the NIOC, NICO, or any other person deemed to be part of the "energy sector of Iran." Notably, these sanctions on support, goods, and services have no materiality or other threshold for sanctionability: technically, *any* support, goods, or services could trigger sanctions, regardless of value.

In addition, the re-imposed sanctions also target FFIs that facilitate "significant transactions" for the purchase, acquisition, sale, transport, or marketing of petroleum, petroleum products, or petrochemical products from Iran. While also targeting Iran's energy sector, these FFI sanctions differ from the sanctions discussed above in key ways. First, the FFI sanctions largely target Iran's *export* of petroleum products or petrochemical products, while the sanctions discussed above target Iran's *imports* of goods and services that help produce energy resources. In addition, the FFI sanctions apply only to "significant" transactions, which means that there is some threshold for sanctionability: lower value, infrequent, or relatively benign may be less likely to trigger sanctions, depending on circumstances. Finally, while these petroleum sanctions may technically apply only to FFIs, as a practical matter they will likely make financial transactions and payment processing in connection with such activities extremely difficult.

Even within the energy sector, however, certain transactions may be permissible. Currently, the president has issued SRE waivers to China, India, Italy, Greece, Japan, South Korea, Taiwan, and Turkey, which means that persons in those jurisdictions may, in certain circumstances, engage in transactions in connection with NICO, NIOC, or Iranian petroleum or petroleum products. Nevertheless, persons seeking to take advantage of an SRE waiver must follow other sanctions provisions – such as the prohibitions on dealings with SDNs – and must follow the precise conditions of permissible transactions under the waiver. The United States may also rescind the SREs in the future, for example, if the country fails to draw down its purchases of Iran oil over time.

In addition, OFAC has released [guidance](#) defining the term "energy sector" to include "activities involving the exploration, extraction, production, refinement, or liquefaction of petroleum, natural gas, or petroleum products in Iran." While this definition is not necessarily exhaustive, it potentially excludes other activities that might, upon first glance, appear to fall within the energy sector of Iran, such as transactions in connection with the country's numerous hydroelectric, biogas, and waste incineration power plants, as well as transactions in connection with Iran's emerging renewable energy sector.

## Agricultural and Pharmaceutical Products

U.S. sanctions include broad [exemptions](#) covering sales of agricultural commodities, food, medicine, and medical devices to Iran. In contrast to most of the other sanctions discussed herein, these exemptions apply even to U.S. persons, making agricultural products and pharmaceuticals two of the only sectors that are permissible when there is a direct U.S. connection. The exemptions for U.S. persons protect non-U.S. persons as well, by reducing the sanctions risk of a U.S. "touch points" – *e.g.*, U.S. persons (including U.S. financial institutions), goods, services, or technology – that can inadvertently subject a transaction to U.S. jurisdiction for sanctions enforcement purposes.

U.S. authorities have also specifically permitted certain financial transactions in connection with these sectors, even when the payment originates from certain Iranian financial institutions, including CBI or Bank Markazi accounts. Moreover, because these exceptions are set forth in the [Trade Sanctions Reform and Export Enhancement Act of 2000 \(TSRA\)](#), the Trump administration cannot unilaterally rescind them, in contrast to many of the other sanctions provisions that a U.S. president may impose or waive without congressional approval.

Nevertheless, restrictions apply even to transactions in the agricultural and pharmaceutical sectors. The [exemption](#) for agricultural commodities, medicine, and medical devices does not apply to certain items – such as castor beans, dried egg albumin, live animals, rosary/jequirity peas, or certain medical devices – likely because such commodities may be used in connection with chemical, biological, or other weapons. In addition, only certain payment terms are permitted, limiting options for export credit or insurance. Transactions with non-financial-institution SDNs remain strictly prohibited. And the [re-imposed sanctions](#) cover U.S. and non-U.S. persons who engage in the "corruption or other activities related to the diversion" of agricultural commodities, medicine, and medical devices in support of Iran's malign activities. Just as before the re-imposition of Iran sanctions, care, due diligence, and sound legal advice are necessary to transact successfully in this area.

## Automotive Sector

Transactions in connection with Iran's automotive sector are targeted under the [New Iran E.O.](#) by focusing on persons who knowingly engage in "the sale, supply, or transfer to Iran of significant goods and services used in connection with the automotive sector of Iran," as well as FFIs that knowingly facilitate a "significant financial transaction" in connect with the sale, supply, or transfer to Iran of such goods or services. Notably, all automotive sanctions require that the goods, services, or transaction be "significant," effectively imposing a materiality threshold for sanctionability.

OFAC has also released guidance defining the "automotive sector of Iran" more narrowly than an initial reading of the term might suggest. According to the relevant sanctions provisions and OFAC [guidance](#), the automotive sector of Iran means "the manufacturing or assembling in Iran of light and heavy vehicles including passenger cars, trucks, buses, minibuses, pick-up trucks, and motorcycles, . . . as well as original equipment manufacturing and after-market parts manufacturing relating to such vehicles." In other words, the sanctions target only the manufacturing and assembling of the vehicles and after-market parts in Iran, and not, for example, the sale of finished vehicles to Iran or the sale of after-market parts used for vehicle repair or maintenance. In addition, the automotive sector sanctions allow for menu-based and correspondent/payable through account sanctions, but not blocking sanctions that would cut off a sanctioned person from the U.S. economy entirely.

## Hardware and Software

OFAC explicitly [permits](#) the export or re-export of certain hardware, software, and related services to Iran, even if the software is U.S. origin and the export or re-export is carried out by U.S. persons. Thus, for certain transactions, the rules governing hardware and software are some of the most permissive within the U.S. sanctions regimen, on par with the rules for agricultural and pharmaceutical transactions. However, such hardware, software, and related services must be "incident to the exchange of personal communications over the Internet," defined to mean software associated with "instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, and blogging." Additional restrictions apply to this exemption – in particular, regarding encryption technologies or other software that the U.S. government deems to be of dual military and civilian

use.

Despite the relatively permissive rules described above, OFAC imposes [secondary sanctions](#) on non-U.S. persons who knowingly sell, supply, or transfer certain "software for integrating industrial processes" to an SDN, one of the targeted sectors discussed above, or in connection with Iran's nuclear, military, or ballistic missile programs. While the relevant statutory and regulatory provisions do not make clear precisely what "software for integrating industrial processes" means, the phrase is likely a reference to combined hardware and software systems such as Supervisory Control and Data Acquisition (SCADA) systems, whose connection to the Iranian nuclear program was revealed several years ago. Similarly, the [re-imposed sanctions](#) also target certain hardware, software, or related services in connection with goods or technologies transferred to Iran that are likely to be used by the Government of Iran to "commit serious human rights abuses against the people of Iran," a provision likely intended to target the sale of telecommunications hardware and software to Iran used in the country's nationwide surveillance system.

## Metals Sanctions

The [re-imposed sanctions](#) also target the sale of gold or other precious metals to Iran, particularly in connection with the Government of Iran's efforts to purchase or acquire such precious metals in order to finance its malign activities or shore up the country's balance of payments. The U.S. government [continues to impose](#) sanctions for the sale, supply, or transfer to or from Iran of graphite and raw or semi-finished metals such as aluminum and steel – which can be used in connection with certain nuclear-related malign activities – to an SDN, one of the targeted sectors discussed above, or in connection with Iran's nuclear, military, or ballistic missile programs. In addition, on October 16, 2018, OFAC [designated](#) several Iranian lead and zinc mining, smelting, and production companies based on alleged connection between these companies and the IRGC. These designations suggest that the IRGC may have infiltrated the Iranian lead and zinc mining sectors, such that transactions with Iranian parties in those industries may be high-risk, as well.

## Shipping and Shipbuilding Sectors

The U.S. sanctions on Iran's shipping and shipbuilding sectors apply broadly to the provision of any "financial, material, or technological support for" or "goods or services to or in support of" a person deemed to be part of the shipping or shipbuilding sectors of Iran, as well as a person deemed to operate a port in Iran. Like the sanctions on support, goods, or services in connection with the energy sector, discussed above, these shipping and shipbuilding sanctions have no materiality or other threshold for sanctionability.

However, OFAC has released guidance defining the shipping and shipbuilding sectors in a relatively narrow manner. Notably, OFAC [guidance](#) defines the "shipping sector of Iran" to include "activities involving the transportation of goods by seagoing vessels, including oil tankers and cargo vessels, flying the flag of the Islamic Republic of Iran, or owned, controlled, chartered, or operated directly or indirectly by the Government of Iran."

Similarly, OFAC guidance defines the "shipbuilding sector of Iran" to include "activities involving the construction of seagoing vessels, including oil tankers and cargo vessels, in Iran." By negative inference, this language would not apply to transactions for the maintenance, repair, or upgrading of seagoing vessels in Iran, so long as the transaction would not fall under the shipping sector sanctions noted above.

## III. Dealings with SDNs in Connection with Iran

The re-imposed sanctions also increase the already considerable risk of dealing with SDNs. As noted above, blocking sanctions may attach to financial, technological, or material support for or the delivery of goods and services to or in support of Iranian SDNs and non-Iranian SDNs designated under one of the Iran sanctions authorities (*e.g.*, for being owned by the Government of Iran or assisting Iranian entities in malign activities). In addition, OFAC may impose correspondent/payable payable-through

account sanctions on FFIs that facilitate or conduct a significant financial transaction on behalf of such SDNs. Furthermore, in connection with the re-imposition of sanctions, OFAC has recently [designated or re-designated](#) over 700 individuals, entities, aircraft, and vessels connected with Iran as SDNs.

However, not all SDNs are created equal. The secondary sanctions discussed above apply to all SDNs except "Iranian depository institution[s] whose property and interests in property are blocked solely pursuant to Executive Order 13599." In effect, this language divides Iranian financial institutions into two categories:

- SDN depository institutions blocked *solely* under [Executive Order 13599](#) – *i.e.*, which applies to all Iranian financial institutions simply for being Iranian financial institutions – which are *not* subject to secondary sanctions; and
- SDN financial institutions blocked under Executive Order 13599 as well as designated under at least one additional sanctions authority, such as WMD proliferation, support for terrorism, etc., which *are* subject to secondary sanctions.

Thus, when considering whether to engage in a transaction in which an Iranian financial institution will play a role – for example, as a payment processor or underwriter of credit risk – it is extremely important to understand which U.S. sanctions authority provides the basis for the institution's designation. Depository institutions blocked solely Executive Order 13599 present relatively lower sanctions risk; financial institutions designated under any other authority present significantly higher risk.

There are also hundreds of non-financial institution SDNs whose involvement in a transaction can trigger secondary sanctions. Notably, based on recent designations, OFAC currently appears to be focused on designating individuals and entities associated with the IRGC. The IRGC owns or controls numerous front companies in Iran that it uses to finance its malign activity, which can create risk for even entirely legitimate-seeming transactions.

A recent round of OFAC designations demonstrates how far OFAC is willing to go to impose sanctions for seemingly attenuated connections to the IRGC. As discussed in greater detail below, on [October 16, 2018](#), OFAC sanctioned Basij Resistance Force – an IRGC-related paramilitary organization – as well as Bonyad Taavon Basij (BTB) – a network of financial institutions and corporations that allegedly support the Basij and the IRGC's activities. Not content to stop there, however, OFAC also sanctioned the BTB-owned Mehr Eqtesad Bank (MEB) for allegedly providing dividends and interest-free loans to BTB, as well as MEB's subsidiary Mehr Eqtesad Iranian Investment Company (MEIIC), an investment firm that invests in several Iranian companies and other investment firms. OFAC further designated several entities ultimately owned by MEIIC, including Technotar Engineering Company (TEC), TEC's subsidiary Taktar Investment Company (TIC), TIC's subsidiary Iran's Zinc Mines Development Company (IZMDC), and IZMDC's subsidiary Andisheh Mehvaran Investment Company (AMIC), which serves as the investment arm for IZMDC. OFAC then designated two Iranian financial institutions, Parsian Bank and Sina Bank, that had received investments from AMIC. In other words, these two banks are now subject to U.S. sanctions in connection with the IRGC, despite nine degrees of separation between the banks and the revolutionary guard itself, as set forth below:

**IRGC → Basij → BTB → MEB → MEIIC → TEC → TIC → IZMDC → AMIC → Parsian Bank; Sina Bank**

In such an environment, non-U.S. companies seeking to continue to do business in Iran should take great care to ensure that they carry out sufficient due diligence on Iranian partners.

## IV. Outstanding Payments for Pre-Sanctions Contracts

November 4, 2018 was the last day of the wind-down period OFAC first announced on May 8, after which the delivery of goods and services to Iran may, depending on the circumstances discussed above, subject a party to sanctions. However, in guidance accompanying both the [May 8](#) announcement and the final re-imposition of sanctions on [November 5](#), OFAC has suggested that it will allow non-U.S., non-Iranian parties to receive payments from Iranian counterparties even after the end of the wind-down

period, so long as certain conditions are met:

- Payment is in connection with goods or services fully provided or delivered to an Iranian counterparty prior to August 6, 2018 or November 4, 2018 (depending on the date of re-imposition of the relevant sanctions);
- Payment is pursuant to a written contract or written agreement entered into prior to May 8, 2018; and
- Payment is in connection with activities that were consistent with U.S. sanctions in effect at the time of delivery or provision.

Even though this payment exception is spelled out in the relevant OFAC guidance, parties should proceed with caution. Critically, the goods and services must be "fully" delivered or provided, which OFAC will assess based on "the industry standard" for the relevant goods or services, potentially turning on a difficult, fact-specific inquiry. Likewise, non-U.S., non-Iranian persons should also proceed cautiously if they are considering seeking guidance from OFAC or the State Department, as encouraged by the applicable Frequently Asked Question, in connection with the potential to receive post-wind-down payments involving a person just added to the SDN List for activities undertaken during the wind-down period. Again, whether to pursue such a payment or seek such guidance is a highly fact-specific question that may require consultation with U.S. legal counsel.

In addition, U.S. persons may not collect payment under this exception, and instead must seek a specific license from OFAC. Failing to comply with all the conditions of this guidance may also result in a potential enforcement action, even if OFAC might otherwise have permitted payment through a request for a license or interpretive guidance.

## V. Iran-Related Enforcement Actions

Finally, since our most recent publication in the [Spring of 2018](#), OFAC, BIS, and the DOJ have continued to aggressively enforce the Iran sanctions, with sanctions designations, civil fines, and criminal charges. We expect such sanctions enforcement to increase now that the full Iran sanctions have been re-imposed following the U.S. withdrawal from the JCPOA. The Iran-related enforcement, litigation, and prosecutions are set forth below:

### Civil Enforcement Actions

- **OFAC Fines JPMorgan Chase for Engaging in Transactions that Violated ITSR and Other Sanctions Programs:** JPMorgan Chase (JPMC) entered into a [settlement](#) with OFAC for \$5.26 million for violating the Iranian Transactions and Sanctions Regulations (ITSR), the Cuban Assets Control Regulations, and the Weapons of Mass Destruction Proliferators Sanctions Regulations. Specifically, between January 3, 2008 and February 8, 2012, JPMC processed 87 transactions on behalf of airlines through the U.S. financial system without properly screening them against OFAC's SDN and Blocked Persons lists. JPMC had the requisite information needed to conduct screening and ignored several red flag notices and other warning signs, including two specific warnings that OFAC-sanctioned entities were participating in the transactions. OFAC considered the following as mitigating factors: 1) no JPMC managers or supervisors were aware of the conduct or transactions; 2) the total harm to OFAC's sanctions program was significantly less than the value of the transactions; and 3) JPMC implemented compliance program improvements, including increasing its compliance staff, implementing new sanctions-screening software, and enhancing its training program. This case demonstrates the importance of having and using screening programs to ensure compliance with U.S. sanctions laws.
- **OFAC Designates Parsian Bank and Sina Bank for Supporting Islamic Revolutionary Guard Corps:** Ahead of the November 4, 2018 wind-down deadline, OFAC [designated](#) Parsian Bank and Sina Bank, along with other financial institutions and businesses, as Specially Designated Global Terrorists (SDGTs) – which are included on the SDN List – for connections to the Iranian Revolutionary Guard and the Basij Resistance Force. The Basij Resistance Force is a paramilitary force that has been under the control of the IRGC since 2007. It is financially supported by the BTB, which is comprised of 20 corporations and financial institutions. As noted above, Parsian and Sina were included as part of the network despite being nine

degrees removed from the IRGC and eight degrees removed from the Basij. Previous to the JCPOA, Parsian and Sina were not designated and were relied upon to facilitate permissible transactions. Now, any non-U.S. persons who conduct business with it risk being subject to secondary sanctions. Its designation demonstrates that OFAC will likely be far more aggressive with designations under the Trump administration and banks that were previously non-designated cannot rely on being returned to their previous status after the wind-down period.

- **BIS Lifts ZTE Denial Order:** As previously [reported](#), BIS, DOJ, and OFAC fined Chinese telecommunications corporation Zhongxing Telecommunications Equipment Corporation (ZTE) and several of its subsidiaries over \$1.2 billion. In addition to monetary penalties, ZTE agreed to various compliance requirements and a seven-year suspended denial of export privileges. In April 2018, BIS determined that ZTE had made numerous false statements before settlement negotiations, during settlement negotiations, and during its probationary period. As a result, BIS issued an order denying export privileges to ZTE. The denial order was predicted to have a severe impact on the company's survival. Earlier this summer, after ZTE placed \$400 million in escrow in a U.S. bank, BIS [announced](#) it was entering into a superseding settlement with ZTE and would lift the denial order. As part of the superseding settlement, ZTE is required to replace its board of directors and senior leadership, retain a team of special compliance officers answerable to BIS, and continue to meet various compliance obligations for a period of 10 years.

## Criminal Enforcement Actions and Litigation Developments

- **Turkish Banker Appeals Conviction in Iran Sanctions Case:** As previously [reported](#), former Halkbank manager Mehmet Hakan Atilla was convicted in January 2018 by a federal jury of bank fraud and conspiracies to defraud the United States, violate the International Emergency Economic Powers Act (IEEPA), and commit money laundering bank fraud. The charges stemmed from Atilla's involvement in a scheme to launder Iranian funds out of Turkey and Dubai to avoid U.S. sanctions. In May 2018, Atilla was sentenced to 32 months in prison, far less than the more than 15-year sentence prosecutors had sought. The same month, Atilla appealed his convictions to the Second Circuit.
- **Three Executives Indicted for Evading U.S. Sanctions against Iran:** In April 2018, three U.S. citizens, all executives of Iranian manufacturing company Ghare Sabz Company, were arrested in California and [charged](#) with conspiring to evade U.S. export control laws. According to the indictment, Sadr Emad-Vaez, Poursan Aazad, and Hassan Ali Moshir-Fatemi purchased automobile components from companies both inside and outside the United States and shipped the items to Iran from 2012 to 2018 without having first obtained a license from OFAC. The government also alleges that the men used elaborate systems of international wire transfers – including through prohibited financial institutions – to fund the effort. The defendants are awaiting trial.
- **Two Iranians Nationals Charged with Conspiracy:** In August 2018, the United States [arrested and charged](#) two Iranian nationals, Ahmadreza Mohammadi-Doostdar, who is a U.S. citizen, and Majid Ghorbani, who is a U.S. resident, with conspiracy to defraud the United States as agents of the Iranian government. The criminal complaint alleges that Doostdar and Ghorbani conducted covert surveillance of Israeli and Jewish facilities in the United States and of Iranian exiles in the United States who are members of People's Mujahedin of Iran (MEK). The complaint quotes conversations between Doostdar and Ghorbani, collected through electronic surveillance conducted pursuant to the Foreign Intelligence Surveillance Act (FISA). Doostdar and Ghorbani were both arrested in August and currently await trial.
- **Iranian National Pleads Guilty to Conspiracy to Commit Sanctions and Export Controls Violations:** In November 2018, Iranian national Arash Sepehri pled guilty to one count of conspiracy to unlawfully export U.S. goods to Iran in violation of IEEPA and ITSR, as well as to defraud the United States. According to the DOJ's [press release](#), Sepehri was an employee and board member of the Iranian company Tajhiz Sanat Company (TSS), separately sanctioned in the European Union for involvement in the procurement of components for Iran's nuclear weapons program. In the United States, TSS was allegedly at the center of a scheme to export high-resolution sonar equipment, data input boards, rugged laptops, acoustic transducers, and other controlled technology from the United States to Iran. Sepehri and his co-conspirators sought to export these items through a series of evasive measures, including by using United Arab Emirates (UAE)-based front companies and an intermediary shipping company based in Hong Kong. Sepehri's sentencing is scheduled for January 19, 2019. He faces a

statutory maximum of five years.

## Other Iran-Related Developments

- **International Court of Justice Orders the United States to Lift Iran Sanctions Related to Food and Medicine:** In July 2018, Iran filed suit against the U.S. in the International Court of Justice (ICJ) alleging that the U.S.'s decision to remove itself from the Iran nuclear deal and reimpose sanctions on Iran violated multiple articles of the Amity Treaty of 1955 between the United States and Iran. Earlier this month, the ICJ [ruled](#) that the U.S. could not restrict exports to Iran of food, medicine, and civil aviation parts necessary to ensure safety. The ICJ's decision fails to change the status quo in part because exports of food, agricultural commodities, medicine, and medical products by U.S. and non-U.S. persons are permissible under the TSRA. Therefore, the president cannot unilaterally change the rules governing such transactions without congressional approval. TSRA, however, does not contain a special exception for civil aviation parts necessary for safety. After the ICJ's decision, the U.S. terminated the Treaty of Amity, signaling that it will not be entertaining the ICJ's decision.
- **New Legislation Likely to Increase Due Diligence Requirements on Correspondent Accounts:** The U.S. Congress is currently considering new legislation called the [Hizballah International Financing Prevention Amendments Act of 2017](#) that will heighten due diligence for correspondent accounts. Section 203 of the proposed legislation imposes stricter due diligence requirements for U.S. banks that hold correspondent accounts for foreign financial institutions that, in turn, provide significant financial services in certain jurisdictions that are "hospitable" to Hizballah, an Islamist political party and paramilitary group based in Lebanon and supported by Iran. Under the proposed legislation, the president will determine the specific jurisdictions that are considered hospitable to Hizballah. Syria and Venezuela are likely to be included as hospitable jurisdictions, but Lebanon has been carved out. The additional due diligence requirements will be: ascertaining the owners of the foreign bank and the extent/nature of ownership; enhanced scrutiny of the account to guard against money laundering and suspicious transactions; and ascertaining whether the foreign bank provides correspondent accounts to other foreign banks, and then the ownership of those additional foreign banks. These are the same controls the United States requires for banks that provide correspondent accounts to non-U.S. persons in the United States. *See* 31 U.S.C. § 5318(i)(2)(B).

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