Miller & Chevalier

Trade Compliance Flash: Reimposition of Iran Sanctions Begins

International Alert

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Following through on the May 8, 2018 announcement of his decision to cease participation in the Joint Comprehensive Plan of Action (JCPOA), on Monday, August 6, 2018, President Trump issued an executive order (the New Iran EO) reimposing sanctions that had been revoked pursuant to the JCPOA, and, in certain instances, broadening the scope of these sanctions. At 12:01 a.m. on August 7, 2018, pursuant to the New Iran EO, the first wave of reimposed secondary sanctions came back into force, as the 90-day wind-down waivers and licenses discussed in previous alerts came to an end. This initial reimposition of sanctions covers diverse sectors of the Iranian economy, including trade in precious and semi-finished metals, transactions involving Iranian sovereign debt, and Iran's automotive sector. While many provisions of the New Iran EO take effect on August 7, 2018, certain provisions—notably, those targeting Iran's financial, insurance, energy, and shipping and shipbuilding sectors—will not take effect until November 5, 2018.

The New Iran EO imposes three types of sanctions—blocking, menu-based, and correspondent and payable-through account sanctions.

Blocking sanctions are authorized against persons who engage in various activities on or after August 7, 2018 or November 5, 2018, as applicable. Persons subject to blocking sanctions on or after August 7 are:

- persons determined to have "materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services (*i.e.*, provided material assistance) in support of," the purchase or acquisition of U.S. bank notes or precious metals by the Government of Iran; and
- foreign financial institutions determined to have (i) knowingly engaged in certain transactions involving the Iranian rial or derivatives or similar contracts whose value is based on the exchange rate of the rial; or (ii) maintained significant funds or accounts outside of Iran denominated in the Iranian rial.

On or after November 5, persons who provide such material assistance in support of the following also will be subject to blocking sanctions:

- the National Iranian Oil Company (NIOC), Naftiran Intertrade Company (NICO), or the Central Bank of Iran;
- any Iranian person on the list of Specially Designated Nationals and Blocked Persons (SDN List) (except Iranian depository institutions blocked solely pursuant to Executive Order 13599, which blocked the Government of Iran and Iranian financial institutions); or
- any other person on the SDN List blocked pursuant to Executive Order 13599 or the New Iran EO (except Iranian depository institutions blocked solely pursuant to Executive Order 13599).

In addition, on or after November 5, blocking sanctions may also be imposed against persons who are part of the energy, shipping or shipbuilding sectors of Iran or who operate a port in Iran, as well as persons who knowingly provide "significant financial, material, technological, or other support to, or goods or services in support of any activity or transaction on behalf of" such persons or, subject to limited exceptions, persons on the SDN List.

Menu-based sanctions will be imposed against persons who:

- on or after August 7, knowingly engage 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 (as defined);

- on or after November 5, knowingly 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 Presidential determination.

The menu-based sanctions also extend to successor entities and affiliates. The "menus" from which these sanctions will be selected are provided by statute and include such actions as denial of Export-Import Bank credit; denial of export licenses; ineligibility for U.S. government procurement; ineligibility for foreign exchange transactions and other transactions with the U.S. financial system; blocking of property; and prohibition of imports from the sanctioned persons.

Correspondent and payable-through account sanctions will be imposed on foreign financial institutions that knowingly conduct or facilitate any significant financial transaction:

- on or after August 7, 2018, for the sale, supply, or transfer to Iran of significant goods or services used in the automotive sector of Iran;
- on or after November 5, 2018, for the purchase, acquisition, sale, transport, or marketing of petrochemical products from Iran;
- on or after November 5, 2018, subject to Presidential determination:
  - on behalf of any Iranian or any other person on the SDN List blocked pursuant to Executive Order 13599 or the New Iran EO (except Iranian depository institutions blocked solely pursuant to Executive Order 13599), with certain exceptions for transactions involving sale, supply, or transfer of natural gas to or from Iran;
  - for the purchase, acquisition, sale, transport, or marketing of petroleum or petroleum products from Iran; or
  - with NIOC or NICO (subject to certain exceptions provided in the Iran Sanctions Act).

However, none of the above correspondent and payable-through account sanctions will apply to financial institutions that conduct or facilitate transactions involving provision or sale of agricultural commodities, food, medicine, or medical devices to Iran. Correspondent and payable-through account sanctions may also be imposed on foreign financial institutions who engage in transactions related to the Iranian rial that are subject to blocking sanctions on or after August 7, as described above.

The New Iran EO extends all sanctions applicable to NIOC and NICO to entities owned or controlled by them, or acting on their behalf. Various other terms are also defined, consistent with previous authorities. The New Iran EO also clarifies that the exceptions related to the pipeline project to supply natural gas from the Shah Deniz gas field in Azerbaijan to Europe and Turkey will be maintained.

In addition to imposing previously waived or revoked sanctions, the New Iran EO 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 EO (*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), as is the extension of the Iran embargo to U.S.-owned or -controlled foreign entities. FAQs issued concurrently with the New Iran EO make it clear that persons previously blocked under these authorities remain blocked and off-limits to transactions with U.S. persons and their owned or controlled foreign entities.

Issuance of the New Iran EO has significant implications for both U.S. and non-U.S. persons. U.S. persons must wrestle with heightened due diligence challenges as they attempt to ensure that they are not doing business with foreign counterparties who may become subject to the reimposed sanctions. Non-U.S. persons, especially companies that are in the process of either winding down their existing Iran business or evaluating the risk of continuing such business at the conclusion of the applicable wind-down period, now have a clearer picture of the scope of the post-JCPOA U.S. secondary sanctions. However, much uncertainty remains for non-U.S. companies with respect to how aggressively the U.S. government will enforce the reimposed secondary sanctions and whether the EU's pledge to protect European companies from these new U.S. sanctions through the EU blocking regulation will have any deterrent effect on U.S. enforcers.

Not coincidentally, in a joint statement also issued on August 6, 2018, by the EU, France, Germany, and the United Kingdom, it was announced that the updated EU blocking regulation goes into force on August 7 "to protect EU companies doing legitimate business with Iran from the impact of US extra-territorial sanctions." Although the EU blocking regulation has been an ineffective tool historically, the European signatories to the JCPOA seem committed to making this a tool with some teeth to combat what they perceive to be U.S. overreach. Nevertheless, the fear of U.S. secondary sanctions runs deep throughout the European business community and only time will tell whether the blocking regulation will actually accomplish its purpose of shielding EU companies doing business with Iran or whether it will impact how the U.S. government chooses to deploy the reimposed sanctions against European companies.

Likewise, it is unclear how the reimposed sanctions will impact Iran business in Asia or whether the U.S. government will target Asian companies doing business with Iran more aggressively than it has in the past. Given the state of U.S.-China trade relations, to take but one example, it would be notable for the U.S. government to impose secondary sanctions on a Chinese company or financial institution doing sanctionable business with Iran. However, Chinese and other Asian companies should recognize that there are clear risks in continuing to conduct sanctionable business with Iran, especially given the current administration's track record with regard to sanctions and other international trade policy matters.

Should you have questions about the reimposed Iran sanctions or any related issues, please contact a member of Miller & Chevalier's trade compliance team.
