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The Changing Landscape of U.S. Sanctions in 2018

The U.S. Government made significant changes to some of its economic sanctions programs in the first half of 2018, including the reimposition of sanctions against Iran (in light of the Trump Administration's decision to withdraw from the Iran nuclear deal), expanded sanctions against Russia, and revised sanctions against North Korea.

Both U.S. and non-U.S. persons should take care to ensure that they understand the sanctions. Most U.S. sanctions apply to U.S. persons (defined as U.S. citizens or permanent resident aliens, persons in the United States, entities organized under the laws of the U.S., and subsidiaries or

branches of foreign companies located in the U.S.). The Iran, Russia and North Korea sanctions are more extensive than most others imposed by the U.S., as they include both "blocking" sanctions (which prohibit transactions by U.S. persons with, and block the property and property interests of, particular designated individuals and entities) and other types of sanctions, including "secondary sanctions," which apply to persons (including non-U.S. persons) that engage in certain transactions not requiring a U.S. nexus. U.S. persons are also prohibited from facilitating transactions by non-U.S. persons that would be prohibited for U.S. persons.

Iran Sanctions

The U.S. has maintained a comprehensive embargo against Iran, prohibiting nearly all transactions and trade with Iran by U.S. persons, directly or indirectly.¹ Most of these prohibitions remained in effect even while the U.S. had lifted certain sanctions pursuant to the Iran nuclear deal – formally known as the Joint Comprehensive Plan of Action (JCPOA).

On May 8, 2018, the President announced his decision to withdraw the U.S. from the JCPOA and to reinstate U.S. nuclear-related sanctions on Iran that had been lifted as part of the JCPOA, following wind-down periods.

After a 90-day wind-down period ending on August 6, 2018, the U.S. government reinstated sanctions on:

- the purchase or acquisition of U.S. dollar banknotes by the government of Iran;
- Iran's trade in gold or precious metals;
- the direct or indirect sale, supply or transfer to or from Iran of graphite, raw or semi-finished metals, such as

aluminum and steel, coal and software for integrating industrial processes;

- significant transactions related to the purchase or sale of Iranian rials, or the maintenance of significant funds or accounts outside the territory of Iran denominated in the Iranian rial;
- the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt; and
- Iran's automotive sector.

The U.S. government also ceased authorizations for imports of carpets and foodstuffs and certain related financial transactions, and relating to exports or reexports of commercial passenger aircraft and related parts and services and contingent contracts.²

After a 180-day wind-down period ending on November 4, 2018, the U.S. government will reinstate sanctions on:

- Iran's energy sector;
- petroleum-related transactions with, among others, the National Iranian Oil Company, Naftiran Intertrade Company, and National Iranian Tanker Company, including the purchase of petroleum, petroleum products or petrochemical products from Iran;
- Iran's port operators, and shipping and shipbuilding sectors;
- certain transactions by foreign financial institutions with the Central Bank of Iran and designated Iranian financial institutions;
- the provision of specialized financial messaging services to the Central Bank of Iran and Iranian financial institutions;
- the provision of underwriting services, insurance or reinsurance; and



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- various persons that had been removed from blocking designations.³

Moreover, after November 4, 2018, *non-U.S. entities* that are owned or controlled by a U.S. person again will be generally prohibited from knowingly engaging in any transaction, directly or indirectly, with Iran that would be prohibited if engaged in by a U.S. person.⁴ Pursuant to the JCPOA, the U.S. government had issued Iran General License H, which authorized most transactions between U.S.-owned or -controlled foreign entities and Iran. That license has now been revoked.

In response to the U.S. decision to withdraw from the JCPOA, the European Union (EU) has launched the formal process to activate its Blocking Statute, which would forbid EU persons from complying with the reinstated U.S. sanctions.⁵ This may leave businesses located or incorporated in EU countries in the Catch-22 situation of being prohibited from engaging in transactions with Iran under the U.S. sanctions on the one hand and being required not to comply with U.S. sanctions on the other. In such circumstances, licenses may need to be obtained from the U.S. government and/or foreign governments.

Russia Sanctions

In addition to blocking and secondary sanctions, the Russia sanctions program includes “sectoral sanctions,” which prohibit only certain types of transactions with designated entities operating in the financial services, energy and defense sectors of the Russian economy.

Throughout 2018, the U.S. has designated additional individuals and entities under the Russia sanctions. For example, in April 2018, The U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) designated seven Russian oligarchs, 12 companies they own or control, 17 senior Russian government officials, and a state-owned Russian weapons trading company and its subsidiary, a Russian bank.⁶ The companies included United Company RUSAL, which is “one of the world’s largest aluminum producers” and “responsible for seven percent of global aluminum production,” and GAZ Group, “Russia’s leading manufacturer of commercial vehicles.”⁷

OFAC subsequently issued general licenses allowing for certain time periods for winding down activities with, or divesting or transferring to non-U.S. persons debt, equity, or other holdings of, some of the designated companies.

In response, on June 4, 2018, Russian President Vladimir Putin signed a counter-sanctions law granting his government broad authority to retaliate against U.S. and EU sanctions with regard to various economic activities, including trade bans.⁸ At this point, however, it is unclear what measures (if any) President Putin may choose to implement.⁹ Russian lawmakers have also introduced a draft bill that would impose criminal liability for complying with U.S. or EU sanctions, but, as of the time of writing, that bill had not moved forward since late May 2018.¹⁰

North Korea Sanctions

The U.S. imposes comprehensive sanctions banning, absent specific authorization (i.e., by license), nearly all dealings by U.S. persons with North Korea.¹¹

In February 2018, OFAC issued an advisory to alert persons globally to deceptive shipping practices used by North Korea to evade sanctions, including obfuscating the identity of the vessels, the goods being shipped, and the origin or destination of cargo. These practices are intended to circumvent existing sanctions compliance controls used by – and may create significant sanctions risk for – parties involved in the shipping industry, including insurers, flag registries, shipping companies, and financial institutions.¹²

In early March, OFAC amended the North Korea Sanctions Regulations, and reissued them in their entirety, in light of numerous changes.¹³

Penalties for Failure to Comply with U.S. Sanctions

The U.S. imposes severe penalties for sanctions violations. Persons that violate most U.S. sanctions, including the three sanctions programs discussed above, may be subject to civil monetary penalties equal to the greater of twice the value of the underlying transaction or \$289,238 USD, per violation. Criminal penalties of up to \$1 million USD, imprisonment for up to 20 years, or both, may be imposed for willful sanctions violations.

Compliance

U.S. persons, and many non-U.S. persons, must understand and comply with the changing U.S. sanctions. Even more changes may come in the future.

To minimize the risk of major penalties for sanctions violations, businesses should implement rigorous compliance programs, including due diligence procedures and screening of all transactions, and update them where necessary to reflect changes in the sanctions. Businesses should clearly communicate sanctions and compliance obligations to other parties involved in international transactions. Multinational businesses in particular should be aware of the risks they may face under both the U.S. sanctions and blocking laws of other countries. They should exercise extreme caution about potentially engaging in transactions that would cause them to become subject to U.S. secondary sanctions. Businesses should seek advice from legal professionals or OFAC, if needed. 

1 31 C.F.R. Part 560.

2 OFAC, Frequently Asked Questions Regarding the Re-Imposition of Sanctions Pursuant to the May 8, 2018 National Security Presidential Memorandum Relating to the Joint Comprehensive Plan of Action (JCPOA) (May 8, 2018) at 1-2, [treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_winddown_faqs.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_winddown_faqs.pdf).

3 *Id.* at 2-3.

4 31 C.F.R. § 560.215.

5 European Commission, Press Release, “European Commission acts to protect the interests of EU companies investing in Iran as part of the EU’s continued commitment to the Joint Comprehensive Plan of Action” (May 18, 2018), [available at europa.eu/rapid/press-release_IP-18-3861_en.htm](https://ec.europa.eu/rapid/press-release_IP-18-3861_en.htm).

6 U.S. Department of the Treasury, Press Release, “Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity” (Apr. 6, 2018), [available at home.treasury.gov/news/press-releases/sm0338](https://www.treasury.gov/news/press-releases/sm0338).

7 *Id.*

8 See Orrick, Herrington & Sutcliffe LLP, *Further Update – Russian Counter-Sanctions Measures and New U.S. Sanctions Against Russia*, JDSUPRA (June 18, 2018), [jdsupra.com/legalnews/further-update-russian-counter-28262/](https://www.jdsupra.com/legalnews/further-update-russian-counter-28262/).

9 See *id.*

10 See *id.*

11 See Countering America’s Adversaries Through Sanctions Act § 302A, 22 U.S.C. § 9241a (2017); OFAC, North Korea Sanctions Program (Nov. 2, 2016) at 4-7, [available at treasury.gov/resource-center/sanctions/Programs/Documents/nkorea.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/nkorea.pdf); Department of the Treasury, North Korea Sanctions Advisory, “Sanctions Risks Related to North Korea’s Shipping Practices” (Feb. 23, 2018) at 6, [available at treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/dprk_vessel_advisory_02232018.pdf](https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/dprk_vessel_advisory_02232018.pdf).

12 See Department of the Treasury, North Korea Sanctions Advisory, *supra* note 11, at 1-3.

13 See *North Korea Sanctions Regulations*, 33 Fed. Reg. 9182 (Dep’t Treasury Mar. 5, 2018) (final rule).