

Everything Old is New Again: US Iran Sanctions to "Snap-Back"

On May 8, 2018, President Trump announced that the United States is withdrawing from the Joint Comprehensive Plan of Action, more commonly known as the Iran nuclear deal. He also announced that the US will reinstitute its previous "powerful sanctions" against Iran. By 2016 when the Iran nuclear deal went into effect, the US sanctions regime extended past its borders to reach foreign financial institutions and insurers who did business with Iran – particularly Iran's government, petroleum and shipping sectors, and any Iranian on the US "specially designated nationals" list. Simultaneous with today's announcement by the President, the US Treasury Department's Office of Foreign Asset Control issued guidance and "Frequently Asked Questions" addressing the manner in which these "snap-back" sanctions would be reimposed.

The short answer is that the US is turning back the clock to reapply the same sanctions that were in place on the day the Iran nuclear deal went into effect. This includes sanctions applicable to US persons (which were never lifted except in certain industry categories), to foreign subsidiaries of US companies, to foreign financial institutions, and to foreign underwriters and insurers. OFAC's guidance specifically states that among the transactions that will be prohibited going forward are the sale of US airplanes and airplane parts to Iran, which had been specially licensed as part of the nuclear deal. This is predicted to cost American aircraft manufacturer Boeing, alone, around \$20 billion.

Because the easing of sanctions under the Iran nuclear deal was implemented through the issuance of general and specific licenses, the reimposition of sanctions will not require new legislation or regulations. The previous licenses will simply be revoked, modified or replaced, bringing back into effect the US regulations and statutes that have remained on the books. OFAC has announced that sanctions will be reinstated following wind-down periods, to permit Iran-related transactions and contracts to be completed or terminated in an orderly fashion. Most sanctions affecting US persons, including those related to the sale of aircraft and parts, will be reinstated on August 6, 2018, after a 90-day wind-down period. Other sanctions – particularly those related to Iran's petroleum and shipping

industries, and those aimed at foreign financial institutions and insurance companies – will go into effect on November 4, 2018, after a 180 day wind-down period.

Sanctions have remained fully in force with respect to most US persons, with the exception of Boeing and other aircraft and parts manufacturers. Accordingly, the greatest effect of the “snap-back” sanctions is likely to be felt outside the US, as foreign banks, insurers and other companies try to ascertain what transactions can and cannot be undertaken without risk of sanctions. Imposition of sanctions in many cases is discretionary and the level of sanctions varies considerably. At their most severe, sanctions could block all of an entity’s assets in the US or preclude a foreign party from utilizing the US banking system. In many instances, however, existing regulations provide for a safe harbor that would prevent the imposition of sanctions if foreign insurers or other entities have and enforce clear policies to avoid sanction violations. Foreign entities would thus be well advised to seek legal counsel concerning their wind-down efforts and their potential future exposure to snap-back sanctions.

Lewis Baach Kaufmann Middlemiss's experienced team advises and represents financial institutions, insurers, and other businesses in the US and around the world in connection with compliance and regulatory policies, programs and investigations.

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