

Sanctions, Sanctions and More Sanctions!

Updates: Iran, Venezuela and Russia

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In early November 2018, the US Department of the Treasury's Office of Foreign Assets Control ("OFAC") took a number of actions in connection with the re-imposition, or "snap-back," of sanctions on Iran. As Nov. 4, 2018 marked the end of the 180-day wind-down period, all US sanctions lifted or waived in connection with the Joint Comprehensive Plan of Action ("JCPOA") were re-imposed and in full effect as of that date.¹ On Nov. 5, 2018 — a day that OFAC called "its largest ever single-day action targeting the Iranian regime" — OFAC sanctioned over 700 individuals, entities, aircraft and vessels, including the designation of over 70 Iran-linked financial institutions, to the Specially Designated Nationals and Blocked Persons List ("SDN List").²

In addition, on Oct. 11, 2018, the Financial Crimes Enforcement Network ("FinCEN") issued an advisory regarding the Islamic Republic of Iran's illicit activities in the exploitation of the international financial system.³ The advisory describes typologies used by the Iranian regime to abuse financial systems, red flags that both US and foreign financial institutions should consider in identifying suspicious activity involving the Iranian regime, and, as a reminder, an overview of applicable Iran-related sanctions.

Separately, on Nov. 1, 2018, President Trump signed an Executive Order "Blocking Property of Additional Persons Contributing to the Situation in Venezuela,"⁴ which specifically targets corruption within Venezuela's gold sector, and other sectors of the Government of Venezuela to be identified by the Treasury as involved in corruption.

Lastly, with respect to Russia-related sanctions, in October and November, 2018, OFAC issued General Licenses that temporarily extend the time periods allowing US persons to divest holdings and wind-down operations or existing contracts that would otherwise violate Russia-related sanctions.

I. Iranian sanctions updates

Changes with Respect to the "Snap-Back"

On Nov. 5, 2018, in an effort to exert "maximum pressure" on the Iranian regime, OFAC sanctioned more than 700 individuals, entities, aircraft and vessels.⁵ In furtherance of the withdrawal from the JCPOA, OFAC also amended the Iranian Transactions and Sanctions Regulations, 31 C.F.R. part 560 ("ITSR"), to reflect the re-imposition of sanctions.⁶ OFAC revised § 560.211 (c) to authorize the blocking of:

All property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any US person, including any foreign branch, of a person upon determining that: (i) on or after August 7, 2018, the person has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the purchase or acquisition of US bank notes or precious metals by the Government of Iran, or (ii) on or after November 5, 2018, the person has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the National Iranian Oil Company (NIOC), the Naftiran Intertrade Company (NICO) or the Central Bank of Iran.

The provisions shall not apply to persons conducting or facilitating a transaction involving the Shah Deniz natural gas field in Azerbaijan's sector of the Caspian Sea and related pipeline projects to bring the gas from Azerbaijan to Europe and Turkey.

OFAC also amended an existing general license contained within § 560.543 of the ITSR to authorize certain US persons to sell personal property in Iran and transfer the proceeds to the United States if the personal property was acquired before the individual became a US person or inherited from persons in Iran. Previously, US persons could only sell real

property in Iran and transfer the proceeds to the US under those circumstances.

OFAC has issued new FAQs, updated existing FAQs and archived outdated FAQs relating to these changes. Notably, new FAQs related to the "snap-back" of Iranian sanctions clarify that the provision or delivery of goods or services and/or the extension of additional loans or credits to an Iranian counterparty after Nov. 4, 2018 is sanctionable activity.⁷ Non-US, non-Iranian persons may receive payment for goods or services fully provided or delivered prior to the end of the wind-down period.⁸ However, US persons or US-owned or US-controlled foreign entities may not, after the relevant wind-down period, receive payments for Iran-related goods or services, including Iran-related insurance or reinsurance claims, even if fully provided or delivered during the relevant wind-down period⁹ and payments involving SDNs, regardless of whether they were previously on the Executive Order 13599 List, are not permitted.¹⁰ OFAC does provide certain authorizations and exceptions, such as for the provision of humanitarian and consumer goods to Iran,¹¹ and OFAC will consider requests to engage in transactions outside of these parameters on a case-by-case basis.¹²

FinCEN's Advisory

On Oct. 11, 2018, FinCEN issued an Advisory to assist firms in detecting potentially illicit activities related to Iran. First, the Advisory describes methods used by Iran to access international financial systems. For example, the Iranian regime has a history of masking its illicit transactions by using senior officials at the Central Bank of Iran ("CBI") to conduct transactions. Other methods used by the Iranian regime include transactions involving exchange houses, procurement networks, shipping companies, funds transfers, precious metals and virtual currency. The Advisory then describes red flags associated with each of

these methods. For example, the use of shell companies is a potential red flag associated with procurement networks used by Iran. Iran has used shell companies, front companies and general trading companies to procure goods and services related to currency counterfeiting, dual-use equipment and the commercial aviation industry. Opaque ownership structures, individuals or entities with obscure names that direct the company or business addresses that are residential or co-located with other companies are all indicators of possible shell companies.

Lastly, the Advisory provides an overview of relevant US sanctions against Iran and regulatory obligations applicable to US financial institutions, including regarding due diligence, the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 (“CISADA”) and Suspicious Activity Reporting.

In light of President Trump’s recent withdrawal from the JCPOA and the re-imposition of sanctions that had been lifted under the JCPOA, firms should consider closely the tips and recommendations provided in the Advisory.

II. Venezuela-Related Executive Order and FAQs

On Nov. 1, 2018, President Trump issued a new Executive Order, “Blocking Property of Additional Persons Contributing to the Situation in Venezuela,”¹³ designed to “counter rampant corruption within the Government of Venezuela.”¹⁴ The order blocks:

Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State: (i) to operate in the gold sector of the Venezuelan economy or in any other sector of the Venezuelan economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State; (ii) to be responsible for or complicit in, or to have directly or indirectly engaged in, any transaction or series of transactions involving deceptive practices or corruption and the Government of Venezuela or projects or programs administered by the Government of Venezuela, or to be an immediate adult family member of such

a person; (iii) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any activity or transaction described in subsection (a)(ii) of this section, or any person whose property and interests in property are blocked pursuant to this order; or (iv) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

OFAC has not yet designated persons in connection with this order.

The new order also suspends the entry of persons blocked pursuant to the order into the United States, prohibits making certain donations to such blocked persons, prohibits making contributions or providing funds, goods or services by, to or for the benefit of any such blocked person, and prohibits receiving the same from any such person. It also prohibits any transaction that evades or avoids, or has the purpose of evading or avoiding, such prohibitions, as well as conspiracies to violate the prohibitions.

Two new FAQs were published contemporaneously with the issuance of the Executive Order: FAQ No. 628 addresses the objective of the Executive Order and FAQ No. 629 explains how OFAC will target those who are operating corruptly in sectors of the Venezuelan economy.

Firms should be cautious when engaging with persons or entities in Venezuela, particularly with respect to the gold industry. OFAC may also target additional industries determined by Treasury to be corrupt. The Secretary of the Treasury was given the express authority to impose sanctions on other sectors of the Venezuelan economy, and will do so by targeting “persons engaging in dishonest or fraudulent conduct, illicit activity, or deceptive transactions ... with the purpose or effect of misappropriating Venezuelan resources in those sectors for personal, professional, or political gain.”¹⁵

III. OFAC Temporarily Extends Russia-Related General Licenses¹⁶

On Nov. 9, 2018, OFAC issued General License 13G, which, among other things, authorizes through Jan. 7, 2019, all otherwise prohibited transactions and activities that are ordinarily incident and necessary (1) to divest or transfer debt, equity or other holdings in EN+ Group PLC, GAZ Group and United Company RUSAL PLC to a non-US person; or (2) to facilitate the transfer of debt, equity or other holdings in such entities by a non-US person to another non-US person.¹⁷

OFAC also issued General Licenses 14C, 15B and 16C, which authorize, through Jan. 7, 2019, all otherwise prohibited transactions and activities that are ordinarily incident and necessary to the maintenance of the wind-down of operations, contracts or other agreements, including the importation of goods, services, or technology into the United States, involving, respectively, United Company RUSAL PLC,¹⁸ GAZ Group¹⁹ and EN+ Group PLC or JSC EuroSibEnerg²⁰ (or any other entity in which one of those entities owns, directly or indirectly, a 50 percent or greater interest) and that were in effect prior to April 6, 2018.

US persons participating in transactions authorized by these general licenses are required, within 10 business days after the expiration of the general license, to file a comprehensive, detailed report of each transaction with OFAC.

OFAC’s continued efforts to update general licenses reflect a recognition that compliance with the Russia-related sanctions can be complex and that it may take time to fully divest. Even though OFAC has issued these general licenses granting additional time to comply, US persons may need to obtain specific licenses to fully divest their interests. **THFJ**

Firms should carefully scrutinize customers and transactions and proceed with caution when dealing with entities with possible ties to the countries discussed above. Likewise, firms should ensure that their sanctions-screening filters are updated to include persons recently designated to the SDN List, keep an eye out for updates from OFAC relating to these sanctions, and, when in doubt, consult counsel.

FOOTNOTES

1. For a fuller explanation of US sanctions lifted in connection with the JCPOA, see “‘Implementation Day’ Marks Rollback of Significant Nuclear-Related Sanctions on Iran,” SRZ Alert, Jan. 20, 2016, available here. For a fuller explanation of the sanctions re-imposed by President Trump, see “Sanctions Update: Iran, Global Magnitsky and Sudan,” SRZ Alert, July 24, 2018.
2. US Dep’t of Treasury, Press Release, “US Government Fully Re-Imposes Sanctions on the Iranian Regime As Part of Unprecedented US Economic Pressure Campaign,” (Nov. 5, 2018).
3. FinCEN Advisory, “Advisory on the Iranian Regime’s Illicit and Malign Activities and Attempts to Exploit the Financial System,” FIN-2018-A006 (Oct. 11, 2018).
4. Executive Order, “Blocking Property of Additional Persons Contributing to the Situation in Venezuela,” (Nov. 1, 2018).
5. OFAC also added to the SDN List certain individuals and entities that were previously blocked pursuant to the Executive Order 13599 List (which was created to continue to block the property and interests in property of the Government of Iran and Iranian financial institutions after their removal from the SDN List in connection with the roll back of sanctions in January 2016). To this end, OFAC removed reference to the Executive Order 13599 List by revising notes in §§ 560.211, 560.304, 560.324 and appendix A to 31 C.F.R. chapter V, and removing it from its website. OFAC issued new FAQs in connection with the new order (OFAC FAQ Nos. 638, 639 and 640) and a technical notice to explicitly address the listing changes. The technical notice also links to a “mapping table” for users of OFAC’s sanctions list data files to cross-reference the listed entities’ new unique identification numbers (“UIDs”) with their old UIDs. See U.S. Dep’t of Treasury, “Technical Notice About List Changes Related to OFAC’s November 5, 2018 Action,” (Nov. 5, 2018).
6. US Dep’t of the Treasury, Iranian Transactions and Sanctions Regulations, 83 FR 55269 (Nov. 5, 2018).
7. OFAC FAQ No. 630 (Nov. 5, 2018).
8. OFAC FAQ Nos. 631 and 634 (Nov. 5, 2018).
9. OFAC FAQ Nos. 635, 643 and 644 (Nov. 5, 2018).
10. OFAC FAQ No. 636 (Nov. 5, 2018).
11. OFAC FAQ No. 637 (Nov. 5, 2018).
12. Additional FAQs address the significant reduction exception (“SRE”) under section 1245(d)(4)(D) of the National Defense Authorization Act for Fiscal Year 2012 and the provision of specialized financial messaging services to Iranian financial institutions. See OFAC FAQ Nos. 641, 642 and 645 (Nov. 5, 2018).
13. Executive Order, “Blocking Property of Additional Persons Contributing to the Situation in Venezuela,” (Nov. 1, 2018).
14. OFAC FAQ No. 628 (Nov. 1, 2018).
15. OFAC FAQ No. 629 (Nov. 1, 2018).
16. For a fuller explanation of prior Russia-related sanctions, see “New Licenses Ease Ukraine, Russia Business Wind-Downs,” (June 19, 2018).
17. General License No. 13G, (Nov. 9, 2018).
18. General License No. 14C, (Nov. 9, 2018).
19. General License No. 15B, (Nov. 9, 2018).
20. General License No. 16C, (Nov. 9, 2018).

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