Iran - Re-imposition of US Secondary Sanctions

7th August 2018

Further to the U.S. decision announced in May to withdraw from the JCPOA with Iran and re-impose secondary sanctions, President Trump issued an Executive Order on 6 August 2018 which essentially re-imposes the secondary sanctions against Iran which were contained in the Executive Orders revoked when the JCPOA was implemented in January 2016. A copy of that Executive Order can be found here and updated FAQs issued by OFAC found here.

Sanctions have consequently been imposed against the following as of 6 August:

- 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 aluminium 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
- Transactions with Iran's automotive sector

It should be noted however that the carriage to or from Iran of graphite, raw, or semi-finished metals such as aluminium and steel, coal, and software for integrating industrial processes is permissible if:

- The cargo is not subject of a medium for barter, swap, or any other exchange or transaction.
- it is not listed as an asset of the Government for purposes of the national balance sheet.
- The cargo is not to be used in connection with the energy, shipping, or shipbuilding sectors of Iran or any sector of the Iranian economy determined to be controlled directly or indirectly by Iran's Revolutionary Guard Corps; or if the material is resold, retransferred, or otherwise supplied to an end-user in one of these sectors.
- The cargo is not sold, supplied or transferred to or from a person/entity on the SDN list, or resold, retransferred, or otherwise supplied to such a person.
- The cargo is not determined to be used in connection with the nuclear, military or ballistic missile programs of Iran, or resold, retransferred or otherwise supplied for one of these programs.

The previously announced wind-down period running until November 4 for certain categories of otherwise sanctionable activities remains in effect. This includes all petroleum-related transactions and activities involving Iran's oil and energy sectors. Members are reminded that all such activity must however be carried out pursuant to a contract dated prior to 8 May 2018 and they should not enter into "new business", i.e. pursuant to a contract after that date. To do so may expose them to U.S. secondary sanctions.

Further details on sanctions against Iran can be found on our dedicated sanctions webpage. Any Member with specific questions concerning these measures and any other sanctions matters should contact the Managers.

Iran - Further Advice on Re-imposition of Secondary Sanctions

15th August 2018

Further to our News Item of 7 August 2018, the Club's US attorneys Freehill Hogan & Mahar have now published a helpful Client Alert concerning the re-imposition of U.S. secondary sanctions against Iran, a copy of which can be found here.

Members will note that in relation to the sanctions concerning financial transactions involving petroleum and petroleum products, Freehill's advise that:

"...they will only apply if the President determines that there is a sufficient supply of such commodities from countries other than Iran to permit a significant reduction in the amount of petroleum and petroleum products purchased from Iran."

This refers to the potential for some countries to be granted a waiver under the National Defense Authorization Act ("NDAA") of 2012 to continue buying Iranian oil as long as there was evidence that there was not a sufficient supply on the world market to replace their Iranian supply. Members will recall that when secondary sanctions were previously in place prior to January 2016 six countries - China, India, Japan, the Republic of Korea, Taiwan, and Turkey – held such a waiver.

There is however no current indication from the U.S. administration of whether any countries will be granted a similar waiver under the re-imposed sanctions and Members should therefore assume until informed otherwise that the prohibitions on the purchase and carriage of Iranian crude oil, petroleum products and petrochemicals apply in full and without waiver.

Members should also take note of the caveats expressed by Freehill's in their summary:

"Since the U.S. has not been joined by the EU, Russia and China in re-imposing the pre-JCPOA sanctions, it seems likely that in order to exert maximum pressure OFAC will apply a strict interpretation of the sanctions and will enforce them with renewed vigor.

Any parties trading with Iran should now exercise caution and carefully review the status of the U.S. secondary sanctions against Iran to determine whether their activities may expose them to penalties."

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