

**Baker
McKenzie.**

Iran & EU Blocking Regulation

Sven Bates, Kerry Contini and Mattias Hedwall

11:15-12:15



Iran

Baker
McKenzie.

US Sanctions

Background

- Primary Sanctions (Embargo)
 - US jurisdiction
 - Civil and criminal penalties
 - Complete embargo
- Secondary Sanctions
 - Extraterritorial
 - No traditional penalties but possibility of being sanctioned
 - Target certain sectors and activities
- Joint Comprehensive Plan of Action
 - Signed 2015, implemented January 2016

Trump withdraws the US from the JCPOA



After these consultations, it is clear to me that **we cannot prevent an Iranian nuclear bomb under the decaying and rotten structure of the current agreement.** The Iran deal is defective at its core. If we do nothing, we know exactly what will happen. In just a short period of time, the world's leading state sponsor of terror will be on the cusp of acquiring the world's most dangerous weapons. Therefore, **I am announcing today that the United States will withdraw from the Iran nuclear deal.**

President Donald Trump, May 8, 2018

Snap-back of US Sanctions

- Secondary sanctions
- Revoking general licenses, specific licensing policy
 - *General License H: authorized non-US owned/controlled subsidiaries of US companies to conduct business with Iran*
 - *General License I: authorized US persons to engage in transactions that are ordinarily incident to the negotiation of and entry into, contingent contracts for activities relating to commercial passenger aircraft and related parts and services*
 - *Importation into the US of Iranian-origin foodstuffs and carpets*
- Re-listing of SDNs

What is not changing?

> Ag/Med licenses

> General License D-1

> General License J-1



General License H Wind-Down

- June 27, 2018: General License H revoked and replaced with a limited wind-down authorization
- Only activities "**ordinarily incident and necessary**" to wind-down authorized
- Expires November 4
- OFAC FAQs
 - Payments must be received before November 4
 - Entering into new contracts OK **only** if in furtherance of pre-May contract and "ordinarily incident and necessary" to wind-down

Secondary sanctions wind-down periods

August 6, 2018 – 90 day period	November 4, 2018 – 180 day period
Purchase of US dollar banknotes by the Government of Iran	Iran's port operators, shipping and shipbuilding sectors
Iran's trade in gold or precious metals	Petroleum related transactions, including purchase of petroleum, petroleum products, or petroleum products from Iran
Sale, supply, transfer to or from Iran of graphite, aluminium, steel, coal, and software for integrating industrial processes	Transactions by foreign financial institutions with the Central Bank of Iran and designated Iranian financial institutions
Significant transactions related to purchase or sale of Iranian rials; or maintenance of significant funds or accounts outside the territory or Iran denominated in Iranian rials	Provision of specialized financial messaging services to the Central Bank of Iran and Iranian financial institutions
Purchase, subscription to, or facilitation of issuance of Iranian sovereign debt	Provision of underwriting services, insurance, or reinsurance
Iran's automotive sector	Iran's energy sector

What Now?

- Enforcement of secondary sanctions?
- Waivers?
- International Court of Justice ruling
 - Interim order for US to lift sanctions related to humanitarian concerns and civil aviation
- Trump demanding a new deal

US Sanctions

Responses to US Announcement

Statements from EU and France/Germany/UK on/after 8 May 2018:

- *“As long as Iran continues to implement its nuclear related commitments, as it is doing so far, the European Union will remain committed to the continued full and effective implementation of the nuclear deal”*
- *“We urge the US to ensure that the structures of the JCPOA can remain intact, and to avoid taking action which obstructs its full implementation by all other parties to the deal”*
- Similar positions from Canada, Russia, Switzerland, Japan and elsewhere

”

Iran statements to the UN and remaining JCPOA participants:

- *“...urge the United Nations to keep the United States accountable for its unilateral and irresponsible conduct which will detrimentally affect the rule of law, multilateralism, and the very foundations of diplomacy”*
- *“..it is Iran’s unquestionable right – recognised also under the JCPOA and UNSCR 2231 to take appropriate action in response to persistent, numerous unlawful acts by the U.S.; particularly its withdrawal and re-imposition of all sanctions”*
- *“If the JCPOA is to survive, the remaining JCPOA participants need to ensure that Iran is unconditionally compensated”*

Possible JCPOA Scenarios

- > Remaining participants to the JCPOA continue its implementation?
- > Iran stops meeting its commitments, JCPOA fails, UN, EU and other sanctions “snap back”?
- > Iran agrees to negotiate revised deal?



EU Ministers' Letter to US

EU Ministers letter to Steve Mnuchin and Mike Pompeo on 4 June 2018:

- *“ We strongly regret the decision... to withdraw from the.. JCPOA”*
- *“As close allies we expect that the extraterritorial effects of US secondary sanctions will not be enforced on EU entities and individuals”*
- Request for the US to (amongst others):
 - *“grant exemptions for EU companies that initiated or concluded their contracts after JCPOA Implementation Day”*
 - *“grant exemptions to allow for economic relationships in key sectors, in particular in the fields of energy, automotive, civil aviation and infrastructure”*
 - *“grant exemptions to maintain banking channels ... with Iran”*
 - *“prolong General License H”*

US rejection of request in July 2018

EU Blocking Regulation: Overview

- EU Blocking Regulation first introduced in 1996 to counter extraterritorial effects of US sanctions
- Primary purpose to act as political signal and protective shield for EU companies, rather than enforcement tool
- Following US decision to reimpose sanctions against Iran and withdraw from JCPOA, European Commission began process to update the Regulation on 6 June 2018
- Revised Annex restricts compliance with the following US Iran sanctions:
 - US primary sanctions against Iran
 - US secondary sanctions against Iran
 - US prohibition on causing a violation of US sanctions
 - US re-export controls applicable to Iran
 - ...or any extraterritorial act of law including judgments based on them
- Updates entered into force on 7 August 2018

EU Blocking Regulation: Application

- > EU entities
- > EU residents
- > EU nationals based outside the EU
- > Other persons located within the EU and acting in a professional capacity

Non-EU subsidiaries of EU entities are not required to comply



Framework and Key Provisions (1)

Blocked US measures



- Iran Sanctions Act of 1996
- Iran Freedom and Counter-Proliferation Act of 2012
- National Defense Authorization Act for Fiscal Year 2012
- Iran Threat Reduction and Syria Human Rights Act of 2012
- Iranian Transactions and Sanctions Regulations

EU Blocking Regulation Framework and Key Provisions (2)



Prohibition on compliance (Article 5)

- Prohibition on compliance directly or indirectly (including through third parties) with the listed US measures (or requirements resulting therefrom)



Entitlement to claim damages (Article 6)

- Entitlement for EU parties to claim damages resulting from loss caused by the listed US measures



Requirement to notify (Article 2)

- Requirement to notify Commission within 30 days where interests are directly/indirectly affected by the listed US measures (or actions/requirements based thereon)

Framework and Key Provisions (3)

Authorisation (Article 5, paragraph 2)



- Ability to seek an exceptional authorization from the Commission permitting compliance with the listed US measures – where risk that “non-compliance would seriously damage their interests or those of the Community”
- Implementing Regulation (EU) 2018/1101 sets out certain non-cumulative criteria to be considered by the Commission, including:
 - Existence of ongoing administrative or judicial investigation against the applicant from, or prior settlement agreement with, the relevant third country
 - Existence of a substantial connecting link with third country (e.g. parent companies or subsidiaries)

Key Considerations

- > EU compliance vs. US compliance?
- > Declining Iranian business lawfully with a prospective customer?
- > Enforcing Iran-related contractual restrictions?
- > Messaging of Iran-related policies?



Baker McKenzie.



Mathias Hansson
Partner
Baker McKenzie Stockholm
Mathias.hansson@bakermckenzie.com



Olof König
Senior Associate
Baker McKenzie Stockholm
olof.konig@bakermckenzie.com



Sven Bates
Senior Associate
Baker McKenzie London
Sven.bates@bakermckenzie.com



Mattias Hedwall
Partner
Baker McKenzie Stockholm
mattias.hedwall@bakermckenzie.com



Kerry B. Contini
Partner
Baker McKenzie Washington DC.
Kerry.contini@bakermckenzie.com



Cindy Owens
Senior Associate
Baker McKenzie Singapore
Cindy.owens@bakermckenzie.com



Olof Johanesson
Associate
Baker McKenzie
olof.johanesson@bakermckenzie.com

Baker McKenzie.

www.bakermckenzie.com

Baker & McKenzie Advokatbyrå KB is a member firm of Baker & McKenzie International, a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional service organisations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm. This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

© 2018 Baker & McKenzie Advokatbyrå KB