

CLIENT MEMORANDUM

OFAC Issues New Guidance and Commitments on Winding Down Business in Iran in the Event of “Snapback”

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On December 15, 2016, the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) issued new guidance regarding OFAC’s approach to companies doing business in Iran in the event that the United States re-imposes the sanctions lifted in January 2016 under the so-called “snapback” provisions of the nuclear agreement with Iran.

OFAC lifted a number of sanctions on Iran in January 2016 as part of the implementation of the international agreement relating to Iran’s nuclear program, known as the Joint Comprehensive Plan of Action (“JCPOA”). The JCPOA provides for the snapback of those sanctions if Iran fails to comply with its obligations under the agreement. Principally, snapback would result in (1) the re-imposition of “secondary sanctions,” where the U.S. threatens to impose sanctions against non-U.S. companies for activities in Iran’s financial, energy, automotive and other sectors; and (2) the withdrawal of General License H, which authorizes the non-U.S. subsidiaries of U.S. companies to generally engage in business in Iran.

OFAC’s guidance provides a significant new commitment regarding the potential re-imposition of those sanctions and a meaningful “wind-down” period. The guidance states that the U.S. government would provide non-U.S., non-Iranian persons with a 180-day period to wind down operations in or business involving Iran undertaken pursuant to a written agreement entered into prior to snapback so long as such activities were consistent with U.S. sanctions lifted under the JCPOA. This wind-down period would apply to the imposition of secondary sanctions and activities undertaken pursuant to either a general license, such as General License H, or a specific license.

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The guidance also states that a non-U.S., non-Iranian person, including individuals and companies, could collect payments from Iran owed at the time of snapback for goods or services fully provided or delivered to an Iranian counterparty prior to the snapback, and pursuant to a written agreement entered into prior to snapback. Similarly, a non-U.S., non-Iranian person could collect repayment for loans or credits extended to an Iranian counterparty prior to snapback pursuant to a written agreement entered into prior to snapback. Companies would also be able to receive and provide goods or services necessary to wind down operations in or business involving Iran during the 180-day period. Importantly, these authorizations only apply to activities that were consistent with U.S. sanctions in effect at the time the activities were undertaken.

Once U.S. sanctions are reimposed, additional goods or services would be subject to sanctions even if provided pursuant to a written agreement entered into prior to snapback. In other words, the wind-down period would not allow the delivery of goods or services or the extension of additional loans or credits to an Iranian counterparty after snapback, regardless of the existence of a written agreement.

More detail on OFAC’s guidance can be found in Frequently Asked Question M.5, available here: https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_faqs.pdf.

The new guidance appears to be an effort by OFAC and the Obama Administration to provide additional clarity on the JCPOA sanctions relief and assure non-U.S. companies that they will not face sudden, unrecoverable losses in the event of snapback. Companies considering business in Iran should remain up-to-date on the OFAC guidance, which OFAC continues to expand and revise almost a year after implementation of the JCPOA.

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