

CLIENT ALERT

Trump Administration Threatens Sanctions Against Companies Operating in Iranian Metals Industries

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On May 8, 2019, President Trump issued an Executive Order (“E.O.”) imposing additional sanctions on Iran, available [here](#). This action follows the administration’s “maximum pressure” policy towards Iran, following the U.S. withdrawal from the Joint Comprehensive Plan of Action (“JCPOA”) one year ago. The sanctions imposed under this E.O. are so-called “secondary sanctions” that threaten sanctions against non-U.S. persons involved in the described activity. Non-U.S. persons may be sanctioned for activity even where there is no U.S. nexus to the activity.

The newest sanctions employ the authorities of Section 1245 of the Iran Freedom and Counter-Proliferation Act of 2012 (“IFCA”), which authorizes sanctions on the sale, supply, or transfer, directly or indirectly, to or from Iran of certain materials, including raw and semi-finished metals such as aluminum and steel.¹ The newly issued E.O. threatens sanctions on the steel and aluminum sectors more broadly than the current provisions in IFCA, as well as on the iron and copper sectors of Iran, by authorizing the Secretary of the Treasury to impose sanctions on the following persons:

- Any person determined to be operating in the iron, steel, aluminum, or copper sector of Iran or any person that owns, controls, or operates an entity that is part of the iron, steel, aluminum, or copper sector of Iran;

¹ Public Law 112-239.

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- Any person determined to have knowingly engaged in a significant transaction for the sale, supply, or transfer to Iran of significant goods or services used in connection with the iron, steel, aluminum, or copper sectors of Iran; or
- Any person determined to have knowingly engaged in a significant transaction for the purchase, acquisition, sale, transport, or marketing of iron, iron products, aluminum, aluminum products, steel, steel products, copper, or copper products from Iran.

Alongside the executive order, the U.S. Department of the Treasury's, Office of Foreign Assets Control ("OFAC") issued guidance, available [here](#), stating that any person engaged in the specified activity will have 90 days from the date of the order, May 8, 2019, to wind down such activity before risking sanctions for continuing the activity. In addition, OFAC stated that any newly initiated activity is sanctionable, even if it falls within the 90-day wind-down period.

OFAC also advised that it would determine whether a transaction is "significant" by evaluating the totality of the circumstances, specifically weighing the factors set forth in the Iranian Financial Sanctions Regulations, at 31 C.F.R. § 561.404: (1) the size, number, and frequency of transactions; (2) the nature of the transaction(s); (3) the level of awareness of management and whether the transaction was a part of a pattern of conduct; (4) the nexus between the transaction and a blocked person; (5) the impact of the transaction on the objectives of the sanctions; (6) whether any deceptive practices were involved in the transaction; and (7) any other relevant factors as determined on a case-by-case basis.

Ultimately, whether a transaction with Iran that otherwise meets the criteria of sanctions rises to the level of "significant" is a risk-based determination that should be seriously evaluated before beginning or continuing any potentially covered activity. This action follows a series of recent announcements by the Trump administration tightening sanctions against Iran, and non-U.S. companies should ensure that they are keeping up to date with these changes, because continuing to engage in activity subject to secondary sanctions may result in sanctions against a company itself.

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