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DOING BUSINESS DESPITE THE SANCTIONS AGAINST IRAN

The consequences of Mr. Trump's latest decision

Tehran, May 13th, 2018





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INTRODUCTION

1. **How the U.S. sanctions should be re-imposed?**
2. **What are these U.S. sanctions?**
3. **What are the possible reactions of the other parties to the JCPOA?**
4. **Any possible way to continue doing business with Iran?**

Sum-up

Introduction: JCPOA at glance



UN Sanctions

- Termination of UN Resolutions

European Sanctions

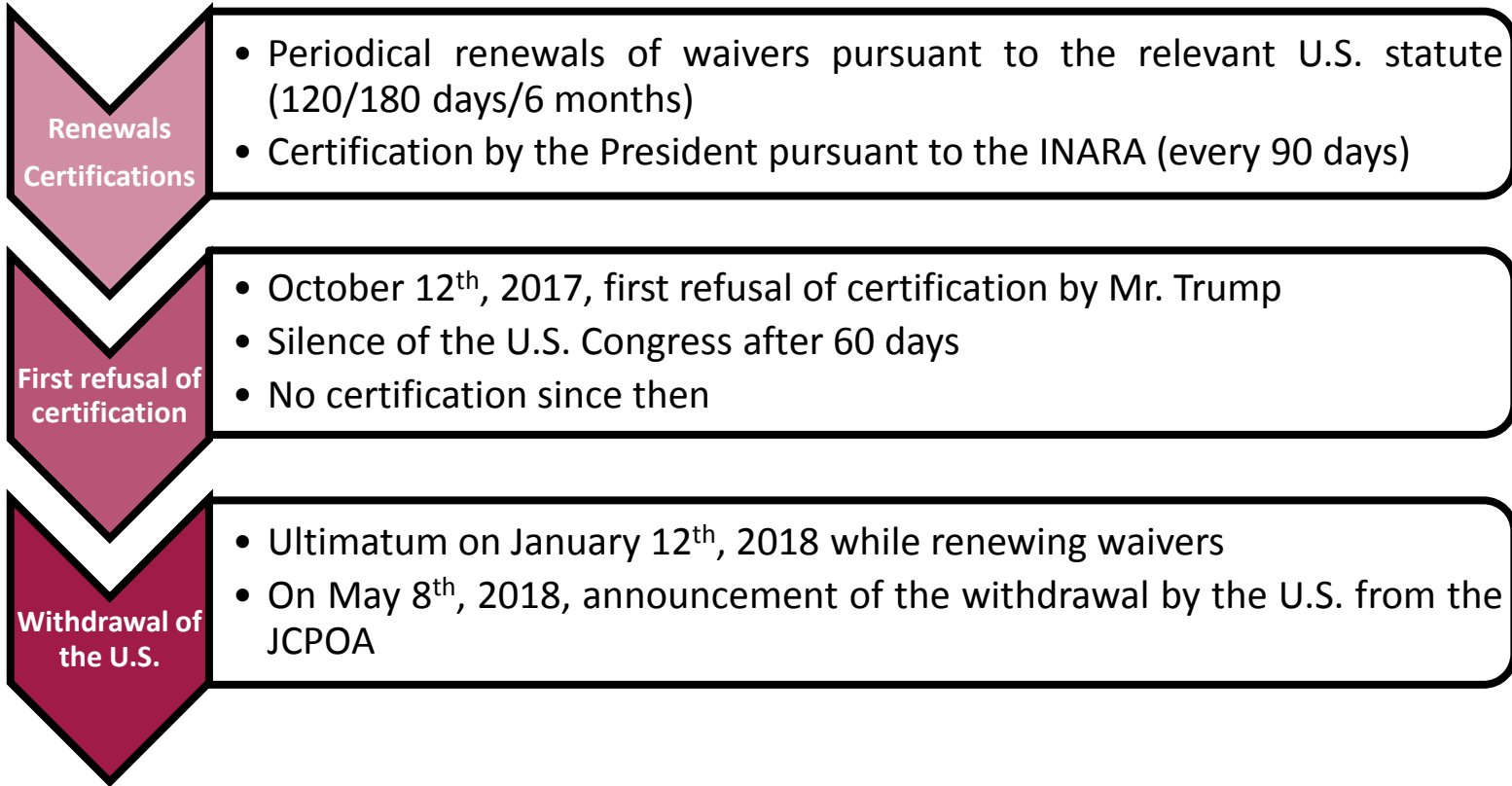
- Termination of some provisions of the Council Regulation (EU) No 267/2012
- Suspension of some provisions of the Council Decision 2010/413/CFSP

US Sanctions

- Waiver of the application of sanctions provided for by 4 U.S. statutes to be renewed periodically
- Termination/suspension of 5 Executive Orders



Introduction: US steps... towards the exit





1. *How to re-impose: the textual grounds*

As of now, the re-imposition of the U.S. sanctions has not yet been enacted.

Two documents, with no legal force, issued on May 8th, 2018:

Supposedly, two actions have already been taken by the U.S. Government:

National Security
Presidential
Memorandum

Office of Foreign
Assets Control's
statement and
Frequently Asked
Questions.

Statutory sanctions
waivers replacing the
waivers in force on
May 8th, 2018

OFAC rescinded the
JCPOA Statement of
Licensing Policy (SLP)



1. How to re-impose: the overall mechanism

A comprehensive reinstatement of the U.S. sanctions :

- Re-imposition of all the U.S. sanctions waived pursuant to the JCPOA
- Revocation of the licenses granted pursuant to the JCPOA and issuance of narrowed licenses
- Progressive re-listing of individuals and entities delisted pursuant to the JCPOA

Through two main “winding down periods”

- Ending August 6th, November 4th, 2018 depending on the field of activity



1. How to re-impose: by a winding down process

What action to take during the “winding down period”?

No “winding down procedure” clearly defined

At the discretion of each concerned entity/person

Progressive decrease of the sanctionable activities during the applicable winding down period

Any person carrying out sanctionable activity after the relevant deadline (i.e. August 6th or November 4th, 2018) will be exposed to sanctions

What if any payments or re-payments are still owed after the applicable deadline?

Such payments or repayments will not be sanctionable provided that the following conditions are met

Contract conditions

The payment or repayment is due pursuant to a written contract

The payment or repayment is due pursuant to a contract entered into before May 8th, 2018.

Performance condition

The goods or services were fully provided or the extension of loans or credits extended prior the relevant deadline.

Compliance conditions

The contract was compliant with the US sanction program in force at the time it was entered into

The payment or repayment is consistent with U.S. sanctions (e.g. cannot involve U.S. persons or the U.S. financial system)

1. How to re-impose: by sector of activities

The following activities and associated services are subject to the corresponding winding down period:

90 days (i.e. August 6th, 2018) for 6 sectors:

Purchase or acquisition of U.S. dollar banknotes by the Government of Iran / Trade in gold or precious metals / Sale, supply, or transfer to or from Iran of graphite, metals, and software for integrating industrial processes / Significant transactions related to IRR, or the maintenance of significant funds or accounts outside the territory of Iran denominated in IRR / Iranian sovereign debt / Sanctions on Iran's automotive sector.

180 days (i.e. November 4th, 2018) for 6 sectors:

Ports operation, shipping and shipbuilding / Petroleum-related transactions and purchase of petroleum, petroleum products, or petrochemical products from Iran / Transactions by foreign financial institutions with the Central Bank of Iran and designated Iranian financial institutions / Provision of specialized financial messaging services to the Central Bank of Iran and certain Iranian financial institutions / Provision of underwriting services, insurance, or reinsurance / Iran's energy sector.

The sanctions applicable to each of the targeted sector of activities are covered by different US regulations



For each sector the corresponding legal basis shall be checked to understand:

- (i) if the concerned activity is sanctionable; and
- (ii) if so, what sanctions may apply



1. How to re-impose: by revocation of licenses and re-listing

Revocation of the OFAC's licenses	Following August 6 th , 2018	General licenses under the Iranian Transactions and Sanctions Regulations: Iranian-origin carpets; foodstuffs and related financial transactions
		Specific licenses issued in connection with the Statement of Licensing Policy (SLP): activities related to the export or re-export to Iran of commercial passenger aircrafts and related parts and services
		General License I: contingent contracts for activities eligible for authorization under the SLP licenses
	By November 5 th , 2018	General License H: authorization for U.S.-owned or -controlled foreign entities to undertake certain activities with the Government of Iran or persons subject to the jurisdiction of the Government of Iran
Re-Listing of delisted entities and individuals	OFAC will gradually re-list the persons/entities removed from the sanction lists pursuant to the JCPOA's provisions following the same schedule as the sectorial re-imposition of sanctions and in any case no later than November 5 th , 2018	



2. *What sanctions: the principle of imposition of sanctions*

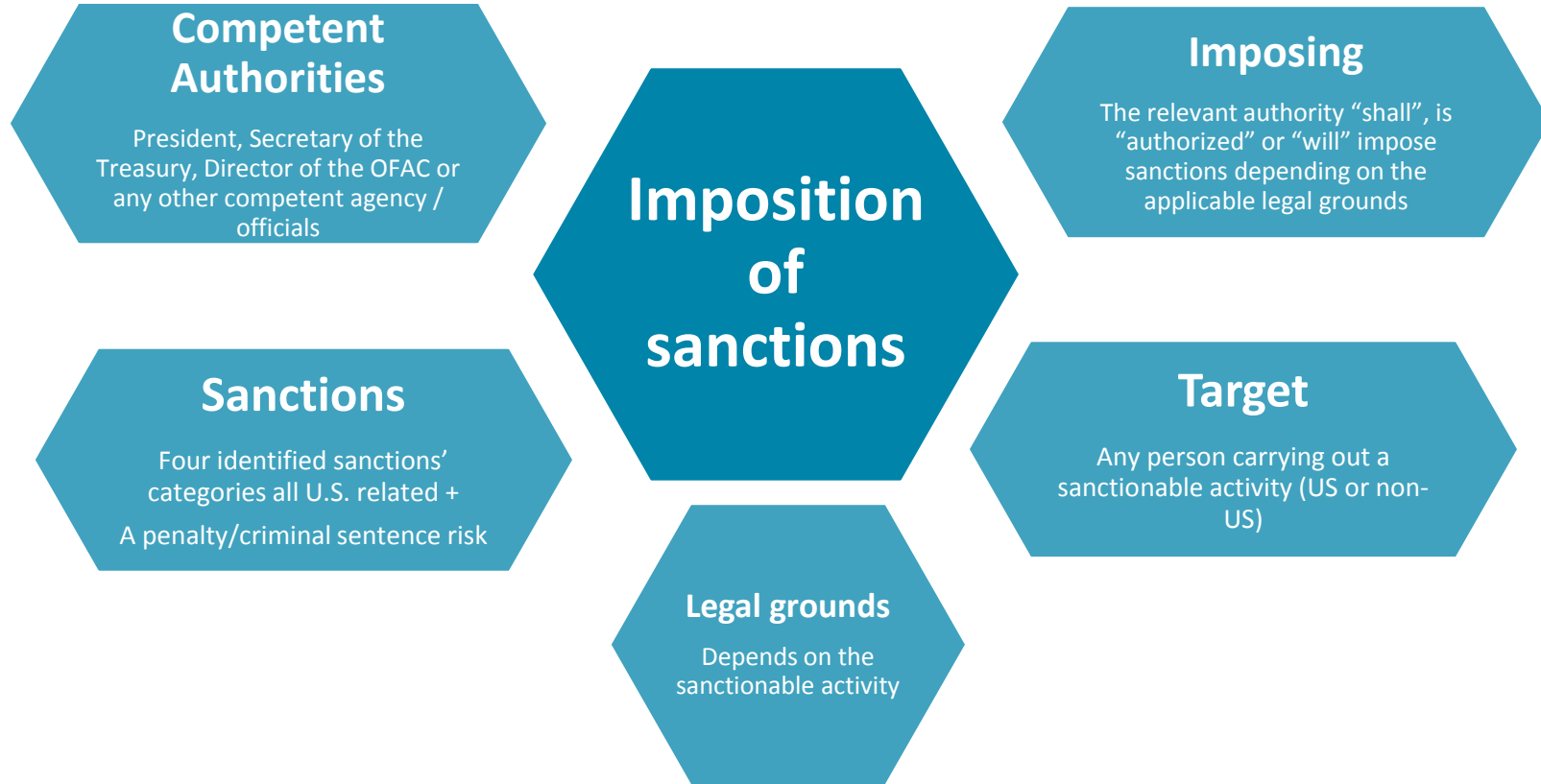
The US sanctions to be re-imposed, when secondary sanctions, do not provide for prohibitions as the United States may not prohibit the behavior of a non-US person that has no link with the US jurisdiction.

Consequently, the United States define “sanctionable action” instead of “prohibitions” for non-US persons.

The imposed sanctions will depend on:

- (i) The sanctionable action; and;
- (ii) In some cases, the choice of the relevant authority.

2. What sanctions: the mechanism of imposition of sanctions





2. What sanctions: the sanctions' panel

Financial sanctions

- Prohibition for U.S. financial institution to grant any loan or credit above 10 000 000 USD over a 12 month period to any sanctioned party.
- Prohibition for any U.S. person from purchasing a significant amounts of equity or debt instruments of a sanctioned person.
- Prohibition for a sanctioned foreign financial institution to open and maintain a correspondent account or a payable-through account in the U.S.
- No issuance of any guarantee, insurance, extension of credit in connection with the export of any goods or services to any sanctioned person by the Exim Bank.

Administrative sanctions

- No issuance of US government specific licenses, permission or authority to export of goods and services
- Banned from being:
 - primary dealer of the U.S. Government debt instruments;
 - agent of US Government; repository of US Government funds;
 - contractor of the US Government for any goods or services.
- For any corporate officer or shareholder of sanctioned person:
 - US visa ban; and
 - expulsion from the US territory.

Trade sanctions

- Prohibition of any transactions in foreign exchange, transfers, credit, or payments subject to the US jurisdiction in which the sanctioned person has any interest or is involved in.

Asset blocking

- Blocking of any property that is subject to the jurisdiction of the United States and with respect to which the sanctioned person has any interest.



2. *What sanctions: civil and criminal sanctions*

International
Emergency
Economic
Powers Act's
sanctions:

Civil grounds:

Penalty amounting to (whichever is the highest):

USD 200,000 to 295,000 or

Twice the transaction's amount with respect to which the penalty is imposed.

Criminal grounds:

Penalty up to USD 1,000,000 and/or

Prison sentence up to 20 years.

In principle and according to U.S. constitutional law, such civil and criminal penalties/sentence may only apply to a person which is subject to the US jurisdiction.



3. Other parties to the JCPOA: Iran's reaction

US shall “*cease the application [of sanctions], and will continue to do so*”.

JCPOA art 21



Reinstating the sanctions lifted pursuant to the JCPOA, without confirmation by the IAEA that Iran has breached its commitments = Breach of US commitments under the deal.

Iran's
options to
answer the
breach:

Cease performing its commitments under the JCPOA (JCPOA art. 26 or 37)

Activate the Dispute Resolution Mechanism (JCPOA art. 36)

Seek for a UN Snap-Back (JCPOA art. 37)

Continue performing the JCPOA with other parties to the JCPOA



3. Other parties to the JCPOA: EU's options

The Blocking Regulation (Council Regulation (EC) No. 2271/96 of November 22nd, 1996):

- With regard to individual resident of an EU Member State or any legal entity-incorporated in an EU Member State:
 - Obligation to inform the European Commission if its economical or financial interests are impaired by a Blocked Sanction;
 - Prohibition from complying with requirement or prohibition resulting from a Blocked Sanction; and
 - Possibility to recover any damages caused by the application of Blocked Sanctions.
- No judgment and no decision of an administrative authority giving effect to a Blocked Sanction will be recognized or enforceable within the EU.

Governmental guarantee to pay for U.S. penalties imposed on their nationals



3. Other parties to the JCPOA: EU, China, Russia

Activation of the WTO settlement of dispute procedure

- All parties to the JCPOA except Iran are member of the World Trade Organization (“**WTO**”)
- General Agreement on Trade in Services (“**GATS**”) [appendix to the Agreement Establishing the WTO]:
 - Article XI: “a Member [to the WTO] shall not apply restrictions on international transfers and payments for current transactions”.
 - Article XXIII: If any WTO Member considers that any other WTO Member fails to carry out its obligations or specific commitments under the agreement, it may have recourse to the Dispute Settlement Understanding (“**DSU**”) procedure.
- DSU procedure:
 - Priority: amicable settlement through consultations
 - Procedure: in case of failure of the consultation the procedure may lead to the issuance of a binding report by the Dispute Settlement Body of the WTO.



4. Continuing doing business with Iran: Un-sanctioned activities

Certain activities with Iran which were not subject to sanctions prior to the adoption of the JCPOA will remain free from sanctions on and after November 4th, 2018.

Notably with regards to the following General Licenses which are expected to remain in force:

- Iran General License No. G Academic Exchanges and the Exportation or Importation of Educational Services
- Iran General License No. F: Services in Support of Professional and Amateur Sports Activities and Exchanges Involving the United States and Iran
- Iran General License No. E: Services in Support of Nongovernmental Organizations' Activities in Iran
- Iran General License - Related to Consular Funds Transfers and to the Transportation of Human Remains
- Iran General License Related to Personal Communication Services - Exportation of certain services and software over the internet
- Iran General License No. 2 - U.S. employees or contractors of six international organizations

Certain exceptions are expressly stated in the U.S. law (e.g. regarding humanitarian activities).



4. Continuing doing business with Iran: obtaining a license

Grounds :

General ground 31 C.F.R § 501.801.

Specific grounds under each E.O.

Scope:

Any non-authorized/sanctionable transaction, which is not authorized by a general license, may only be validly undertaken under a specific license.

Specific license:

Written document issued by OFAC to a particular person or entity, authorizing a particular transaction in response to a written application.

Probability of approval:

Based on various factors (OFAC's discretion)

Potential appeal to U.S. District Court:

Receivable in case of a refusal but unlikely to succeed, except in egregious circumstances.

4. Continuing doing business with Iran: How to limit your exposure

Reinstated sanctions mainly target U.S.-based activities or U.S. assets



Re-structuring the way of doing business with Iran is one of the solutions to limit your exposure

Successor entities of the person subject to sanctions
(following a transaction)

Person owning or controlling the person subject to sanctions

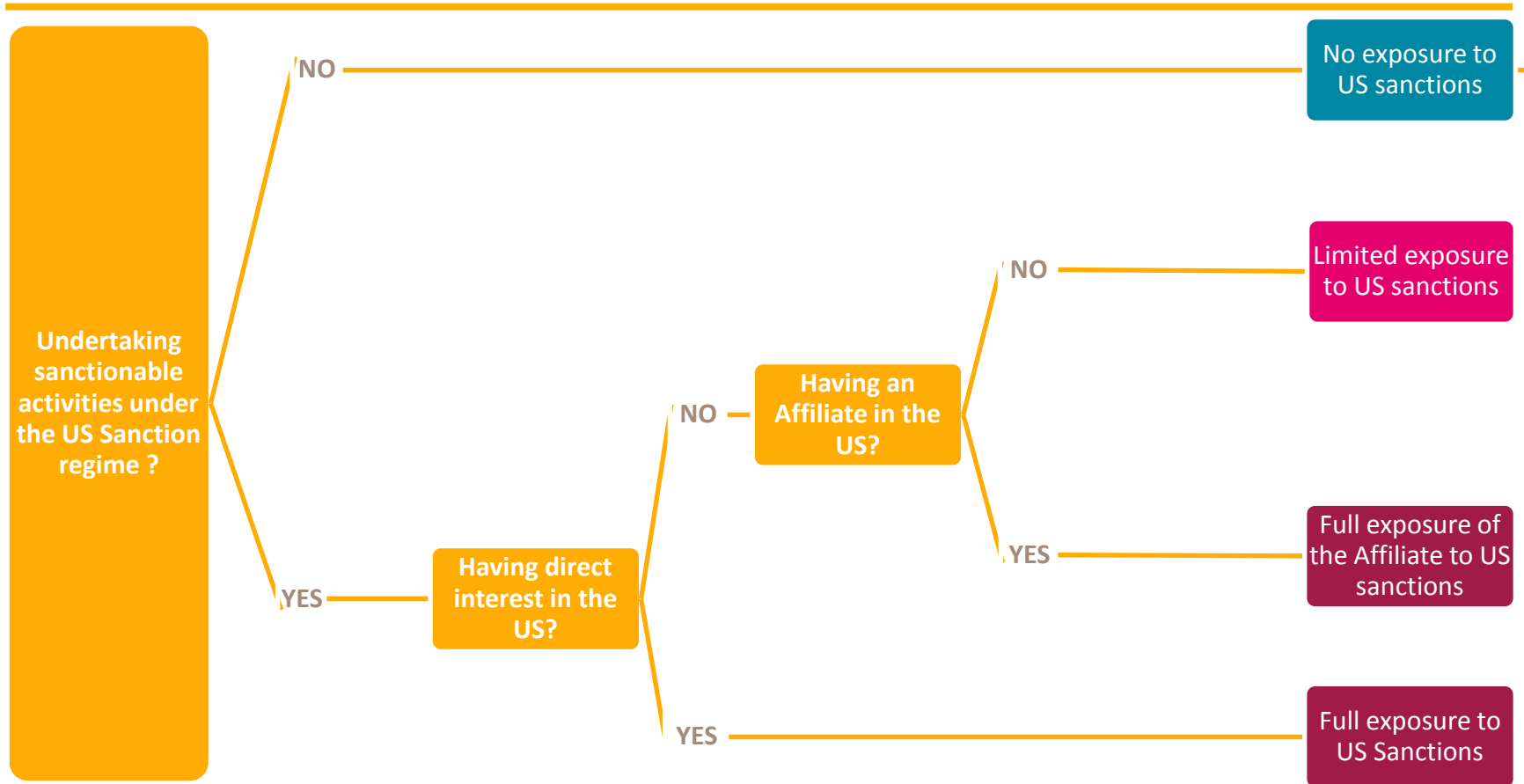
Person owned or controlled by the person subject to sanctions

Person under common ownership with the person subject to sanctions



**Sanctions may
be extended to**

4. Continuing doing business with Iran: exposure to US sanctions






SUM-UP

To keep in mind:

- JCPOA remains in force
- Only U.S. sanctions would be re-imposed. UN and EU sanctions would continue being lifted.
- Unique situation regarding the sanctions towards Iran.

To be answered in order to understand if and how you should wind-down your business:

- Is my activity subject to U.S. sanctions?
- If so, which sanctions?
- Do these sanctions impact my business/life (e.g. do I have any affiliate, interest, asset under U.S. jurisdiction?)



Right by your side

