They’re Back…renewed U.S. Sanctions Imperil Canadian Business With Iran

August 10, 2018

Introduction

On August 7, 2018, the United States ("U.S.") began re-imposing "secondary" sanctions targeting non-U.S. persons engaged in commercial activities with Iran. Canadian and other companies that violate these sanctions face potential prosecution in the United States or exclusion from the U.S. market. In this post, we describe the sanctions that have come back into force, the response from Canada and other countries, and how Canadian businesses can determine if they are at risk.

The U.S. Announcement

On May 8, 2018, the United States announced its unilateral withdrawal from the Joint Comprehensive Plan of Action ("JCPOA"), the nuclear agreement between Iran and the United States, China, Russia, France, Germany, the United Kingdom and the European Union ("EU"). Under the JCPOA, the United States had lifted its secondary sanctions on Iran; that is, those addressing the activities of non-U.S. entities and individuals. (Most U.S. prohibitions on engagement with Iran by U.S. businesses and individuals remained in place despite the JCPOA.)

As part of the U.S. withdrawal, the U.S. Department of the Treasury’s Office of Foreign Assets Control ("OFAC") has implemented 90-day and 180-day wind-down periods for activities involving Iran. At the end of the wind-down periods, applicable U.S. secondary sanctions come back into force. The first of those wind-down periods ended on August 6, 2018. The second will end on November 4, 2018.

Secondary Sanctions

Under an Executive Order issued by President Trump on August 6, 2018 and entitled Reimposing Certain Sanctions With Respect to Iran, as of 12:01 a.m. on August 7,

2018, the United States has re-imposed sanctions on the following activities by non-U.S. persons and on services related to these activities; these sanctions apply even if there is no nexus between the sanctioned activities and the United States:

the purchase or acquisition of U.S. bank notes 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 aluminum and steel, coal, and software for integrating industrial processes;
significant transactions related to the purchase or sale of Iranian rials or a derivative, swap, future, forward, or other similar contact whose value is based on the exchange rate of the Iranian rial;
the maintenance of significant funds or accounts outside the territory of Iran denominated in Iranian rials;
the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt; and
the sale, supply, or transfer of significant goods or services used in connection with the Iranian automotive sector.

Following the 180 day wind-down period ending on November 4, 2018, the United States will re-impose sanctions on transactions with certain Iranian entities or activities in connection with Iran and related services as described below:

Iran's port operators, and shipping and shipbuilding sectors, including the Islamic Republic of Iran Shipping Lines ("IRISL"), South Shipping Line Iran, or their affiliates;
petroleum-related transactions with, among others, the National Iranian Oil Company ("NIOC"), Naftiran Intertrade Company ("NICO"), and National Iranian Tanker Company ("NITC"), including the 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;
the provision of specialized financial messaging services to the Central Bank of Iran and Iranian financial institutions;
the provision of underwriting services, insurance, or reinsurance; and
the sale, supply, or transfer of significant goods or services used in connection with the Iranian energy sector.

Additionally, the U.S. will re-impose sanctions that applied to persons removed from the List of Specially Designated Nationals and Blocked Persons and other lists maintained by OFAC or other government departments.

The legal consequences for a non-U.S. company that violates these prohibitions can be severe and may include:

seizure of its property in the United States;
freezing of its assets by the U.S. government or U.S. financial institutions;
inability to receive U.S. regulatory approvals;
prohibition on maintaining correspondent or payable-through accounts in the United States;

As recently as January 2017, the Toronto-Dominion Bank paid more than US$500,000 to OFAC to settle civil claims after self-disclosing that it had violated the United States' Iran and Cuba sanctions regimes through services it provided to its Canadian customers.

Worldwide Response

On June 6, 2018 the EU updated the blocking legislation (amending the Annex to Council Regulation No 2271/96) to cover a number of U.S. laws that give effect to the Iran sanctions. The amendment, which is effective as of August 7, makes it illegal for EU entities to comply with the U.S. secondary sanctions.

Nevertheless, many EU-based companies look set to cease their Iran-linked activities, including French oil giant Total, Dutch shipping company Maersk, and German industrial heavyweight Seimens.

China has stated that it will maintain normal trade ties with Iran and will continue to import Iranian oil. Chinese companies recently met to review their operations in Iran and strategize ways to continue operating there.

Canada's Response

To date, Canada's position on Iran has been mixed. Canada has continued to publically support the JCPOA, most recently following the latest G7 meeting: Canada reaffirms support for Joint Comprehensive Plan of Action. At the same time, the Government supported a Conservative opposition motion (June 12, 2018) that, among other things, condemned the Iranian regime for its ongoing sponsorship of terrorism and called on the government to abandon current plans to restore diplomatic relations.

Canada has its own blocking legislations, the Foreign Extraterritorial Measures Act, which in principle it could use in response to the re-imposition of U.S. sanctions. However, Canada has not given any indication that it intends to do so, nor is there any indication that it will, for a variety of legal and political reasons.

In addition, Canada continues to maintain various restrictions on dealings with Iran, largely involving trade in military or nuclear-related goods or with specific persons and entities linked to the Iranian government. Global Affairs Canada maintains an overview of these Canadian sanctions related to Iran.

What Should Canadian Businesses Do?

Whether or not it has U.S. affiliates or operations, any Canadian company that does business in Iran or with Iranian entities, or is considering doing so, should seek legal advice regarding its exposure to U.S. secondary sanctions. Companies should also

assess potential commercial risk from disruption to their supply chains and other business relationships as a result of the re-imposition of U.S. sanctions.

How We Can Help

BLG's leading international trade team has the expertise and global network to provide your business with strategic, practical advice on how to navigate and comply with Canadian and foreign economic sanctions. For more information, please contact our partners Matthew Kronby, Milos Barutciski and Jesse Goldman.

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