

US imposes new trade sanctions on Iran

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Executive summary

The United States (US) Government expanded its economic and trade sanctions against Iran on 10 January 2020. Concurrent with the blocking and addition of 27 targets to the Specially Designated Nationals and Blocked Persons (SDN) List by the US Department of the Treasury's Office of Foreign Assets Control (OFAC) pursuant to existing sanctions authorities,¹ US President Donald Trump issued Executive Order (EO) 13902, authorizing the imposition of sanctions against additional sectors of the Iranian economy. These new sectors include the construction, mining, manufacturing, and textiles sectors of the Iranian economy.

Detailed discussion

EO 13902 of 10 January 2020, *Imposing Sanctions with Respect to Additional Sectors of Iran*,² blocks all property interests of persons determined by the Secretary of Treasury (Treasury), in consultation with the Secretary of State (State): (1) to operate in the construction, mining, manufacturing, or textiles sectors of the Iranian economy, or any other section of the Iranian economy as may be determined by Treasury, in consultation with State; (2) to knowingly³ engage in a significant transaction for the sale, supply, or transfer to or from Iran of significant goods or services used in connection with the foregoing sectors; (3) to have materially assisted, sponsored, or provided financial,

material, or technological support for, or goods or services to or in support of, any person blocked pursuant to the order; (4) to be owned or controlled by, or to have acted or purported to act for or on behalf, directly or indirectly, any person blocked pursuant to the order.

Pursuant to EO 13902, US persons⁴ must block, report to OFAC,⁵ and not otherwise deal in the property interests of any persons blocked and designated on the SDN List pursuant to the order, unless the transaction is authorized by OFAC. The scope of this broad prohibition on US persons includes: (1) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person blocked pursuant to the order; and (2) the receipt of any contribution or provision of funds, goods, or services from any such person. Furthermore, pursuant to Section 6 of EO 13902, no person may engage in any transaction that evades or avoids, or causes a violation of, the order's prohibitions.

In addition, Sec. 2 of the order further authorizes Treasury, in consultation with State, to impose on foreign financial institutions (FFI) certain forms of sanctions specified therein, e.g., prohibiting or restricting the maintaining of any correspondent accounts in the US, upon determining that the FFI has after issuance of the order, knowingly conducted or facilitated any significant financial transaction: (1) related to the transfer or supply of significant goods or services used in connection with the specified sectors of the Iranian economy; or (2) on behalf of any person blocked pursuant to the order.⁶

On 16 January 2020, OFAC issued a new Iran-related frequently asked questions (FAQs), which sets forth the scope of a 90-day wind-down period for EO 13902. The new FAQ 816 provides that persons currently engaged in transactions that could be sanctioned under the provisions of EO 13902, with respect to construction, mining, manufacturing, and textiles sectors of the Iranian economy, have from 10 January 2020 until before 9 April 2020 to wind down those transactions without sanctions exposure under the order.⁷ The FAQs also clarify that entering into any new business during the wind-down period remains sanctionable under the order.

Implications and considerations for US and non-US companies

Although US companies must ensure that they do not engage in any transactions or dealings with persons blocked and designated on the SDN List, including any that may be blocked in the future under EO 13902, they and their foreign-owned or controlled subsidiaries are already prohibited from engaging in nearly all transactions and dealings with Iran under OFAC's Iranian Transactions and Sanctions Regulations (ITSR), 31 C.F.R. Part 560. Therefore, EO 13902 may have little to no practical impact for US companies and their foreign subsidiaries that otherwise ensure compliance with OFAC's Iran sanctions program. However, non-US companies must ensure that they do not engage in any transactions that cause a US person to violate the prohibitions of EO 13902, which may itself be deemed a prohibited act under Section 6 of the order, including during OFAC's prescribed 90-day wind-down period.

Non-US companies must ensure that their business operations and day-to-day transactions do not involve the construction, mining, manufacturing, or textiles sectors of the Iranian economy, as it may be deemed sanctionable conduct under the order. Certain key terms, including "significant transaction," "significant financial transaction," or "significant goods or services," have not yet been defined interpreted by OFAC in any implementing regulations for the order, any published guidance, or FAQs, as the agency has done with other sanctions authorities.

Notwithstanding EO 13902's specific targeting of Iran's construction, mining, manufacturing, and textile sectors, it also leaves it to the discretion of Treasury to impose the order's blocking authorities and prohibitions on any "other sectors of the Iranian economy." Non-US companies should consider of this open-ended aspect of the order's blocking authority, as other sectors of the Iranian economy not already specified in EO 13902 or in any other legal authorities, e.g., EO 13846 and EO 13871, may become the target of sanctions in the future under Treasury's sole discretion. In consideration of the new economic sectors identified under EO 13902, and its open-ended nature, this new order is likely to have a further challenging effect on foreign companies intending or already doing business with Iran.

Endnotes

1. <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20200110.aspx>. The 10 January 2020 designations were made pursuant to existing sanctions authorities with respect to Iran, EO 13846 and EO 13871. In addition to the 27 designations, two Iranian individuals and one entity previously identified on the SDN List were also further designated on 10 January 2020 pursuant to such existing executive orders.
2. <https://www.govinfo.gov/content/pkg/FR-2020-01-14/pdf/2020-00534.pdf>.
3. Section 7(e) of the new EO defines the key term “knowingly,” with respect to conduct, a circumstance, or a result, to mean that a person has actual knowledge, or should have known of the conduct, the circumstance, or the result.
4. The term “US person” means any US citizen, permanent resident alien, entity organized under the laws of the US or any jurisdiction within the US (including foreign branches), or any person in the US.
5. See 31 C.F.R. § 501.603.
6. Sec. 11 of EO 13902 notes that the order is not intended to apply with respect to any person for conducting or facilitating a transaction for the provision (including any sale) of agricultural commodities, food, medicine, or medical devices to Iran. Persons intending on engaging in the supply of such items to Iran, particularly considering the order’s targeting of Iran’s manufacturing sector, should refer to other relevant legal authorities and published guidance of the Iran sanctions program administered by OFAC.
7. https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_iran.aspx#816.

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