

CLIENT ALERT

President Trump Refuses to Certify Iran Nuclear Deal, but Makes No Immediate Changes to U.S. Sanctions Regime

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On October 13, 2017, President Trump announced that, pursuant to the Iran Nuclear Agreement Review Act (“INARA”), he will not certify to Congress that Iran is in compliance with the Joint Comprehensive Plan of Action (“JCPOA”). Despite the President’s pointed criticism of the JCPOA in his October 13 speech, he did not reinstate any of the sanctions on Iran that were relaxed in order to implement the JCPOA in January 2016. Instead, the President called upon Congress to pass legislation to demand additional actions by Iran, and the U.S. Department of the Treasury, Office of Foreign Assets Control (“OFAC”) announced several designations related to Iran’s support for international terrorism and ballistic missile program. As a result, the President’s announcement makes no immediate and material change to the U.S. sanctions program toward Iran, although Congress will now consider legislation to threaten the reimposition of nuclear-related sanctions if Iran does not take additional steps to limit its nuclear program beyond those called for in the JCPOA.

Consequences of Decertification

INARA requires the President to confirm to Congress every 90 days that, among other things, Iran is implementing the JCPOA and that continued suspension of sanctions is appropriate and proportionate to the measures taken by Iran.¹ President Trump has made this certification twice since he took office in January. Failure to certify Iran’s compliance with the deal triggers a 60-day expedited process for Congress to consider legislation to reinstate sanctions on Iran, including the imposition of secondary sanctions that would threaten restrictions on non-U.S. entities doing business in Iran. President Trump’s failure to certify does not end U.S. participation in the deal and does not automatically reinstate sanctions against Iran.

¹ Pub. Law. 114-17.

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President Trump Calls for Congressional Action

While President Trump did not announce his intention to reimpose sanctions, he called on Congress to pass legislation that would require Iran to take certain actions beyond those required by the JCPOA to limit its nuclear and ballistic missile programs, or would otherwise reimpose sanctions on Iran that were eased in January 2016. This legislation would not qualify for the 60-day expedited process under INARA and would instead go through the regular legislative process.

Ahead of the President's announcement, Senator Bob Corker (R-TN) released a [plan](#) to introduce legislation that would seek the elimination of the sunset provisions of the JCPOA, which wind down some of Iran's commitments over a specified period of time, and would end the 90-day recertification process under INARA. Any amendments to the JCPOA, however, would have to be agreed to by Iran and the members of the "P5+1."

Additional OFAC Designations

Also on October 13, 2017, OFAC [designated](#) Iran's Islamic Revolutionary Guard Corps ("IRGC") pursuant to Executive Order ("E.O.") 13224 for its support of the IRGC-Qods Force. The IRGC is already blocked pursuant to E.O.s 13382, 13553, and 13606 for proliferation-related activities and human rights abuses and subject to secondary sanctions through various authorities, so the new designation under the global terrorism E.O. has no new legal implications.

OFAC also designated an additional four entities under E.O. 13382, which targets the proliferation of weapons of mass destruction and their means of delivery, for their support of the IRGC and designated elements of Iran's military. The four newly designated entities are Shahid Alamolhoda Industries, Rastafann Ertebat Engineering Company, Fanamoj, which is the parent company of Rastafann Ertebat Engineering Company, and Wuhan Sanjiang Import and Export Co., Ltd. The property interests subject to U.S. jurisdiction of each of the designated entities are blocked and U.S. persons are prohibited from engaging in any transactions in which any designated entity has an interest.

So-called "secondary" sanctions also apply to certain transactions with the designated entities. For the designated Iranian entities, non-U.S. persons could be sanctioned pursuant to Section 1244(c)(1) of the Iran Freedom and Counter-Proliferation Act of 2012 for knowingly providing support to, or goods or services in support of any activity or transaction on behalf of or for the benefit of, those entities.² With respect to China-based Wuhan Sanjiang Import and Export Co., Ltd., foreign financial institutions may be subject to sanctions for knowingly facilitating a significant financial transaction or providing significant financial services for Wuhan Sanjiang pursuant to Section 104(c)(2)(E) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010.³

² Pub. Law. 112-239.

³ Pub. Law. 111-195.

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Conclusion

For now, the President's announcement resulted in no major changes to the U.S. sanctions regime for Iran. Ultimately, any changes to the Iran sanctions framework by Congress will take time, and we will follow the debate and legislative process closely. Companies should continue to implement their sanctions compliance policies and procedures with respect to potential and known contacts with Iran, including screening counterparties and assessing the implications of various designation categories.

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