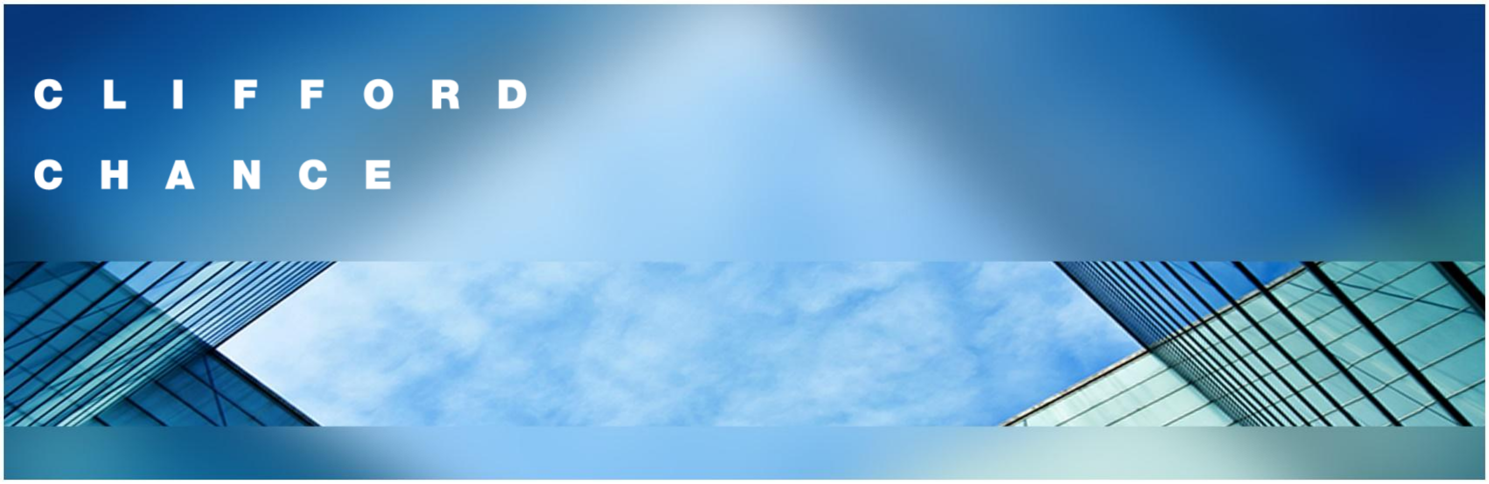

U.S. TREASURY DEPARTMENT ANNOUNCES NEW IRAN POLICY AND SANCTIONS

On October 13, 2017, President Trump's administration announced a shift in US policy toward Iran. President Trump stated that he would not again certify that Iran was in compliance with the JCPOA and further signalled that he is likely to terminate the 2015 nuclear deal set forth in the Joint Comprehensive Plan of Action (JCPOA) unless Iran agrees to additional concessions. And further, the U.S. Treasury Department imposed new sanctions against Iran's Islamic Revolutionary Guard Corp (IRGC) and affiliated entities.

In response to the President's statement, Prime Minister Theresa May, Chancellor Angela Merkel and President Emmanuel Macron issued a joint statement confirming the EU's commitment to the JCPOA and encouraging "the US Administration and Congress to consider the implications to the security of the US and its allies before taking any steps that might undermine the JCPOA, such as re-imposing sanctions on Iran lifted under the agreement."

THE NEW ADMINISTRATION'S JCPOA POSITION

Under the Iran Nuclear Agreement Review Act (INARA), the President must certify to Congress every 90 days that Iran is complying with the 2015 Iran nuclear deal set forth in the JCPOA and that the deal remains in the national security interest of the United States. On October 13, 2017, President Trump announced that the JCPOA was no longer in the United States' interest and declared his intention not to certify Iran's compliance with the JCPOA, stating that the agreement would be terminated in the event a solution could not be reached with Congress and the U.S.'s allies. President Trump said he intended to press Congress to establish "trigger points" for the reimposition of additional sanctions on Iran if it crosses one of the red lines. Such "trigger points" might include continued ballistic missile launches by Iran, a refusal to extend the time-period of the agreement, refusal to grant access to military sites in Iran currently off limits, or a determination that Iran could produce a nuclear weapon in less than one year.

In refusing to certify the agreement, President Trump did not assert that Iran is violating its terms. Rather, he cited a provision of INARA requiring the President to certify whether the deal remains in the United States' national security interests. President Trump answered that question in the negative and directed Congress to attempt to address some of its flaws. Importantly, however, President Trump's refusal to certify that the JCPOA remains in the United States' national security interests has no immediate impact on its status. Rather, the declination to certify simply transfers the next phase of decision-making to Congress with no further 90-day re-certification from the President required. The new sanctions are thus part of a broader strategy not only to renegotiate the JCPOA but also to attempt to address Iran's ballistic missile program and its role in armed conflicts throughout the Middle East.

SANCTIONS

During the same speech on U.S. policy toward Iran, the President said his administration would place "tough sanctions" on the IRGC, a move following from enactment of the "Countering America's Adversaries Through Sanctions Act" (CAATSA), signed into law on August 2, 2017 (read our previous client briefing here). Section 105 of CAATSA requires the imposition of sanctions pursuant to Executive Order E.O. 13244 on the IRGC and foreign persons that are officials, agents, or affiliates of the IRGC.

On October 13, 2017, the United States Treasury's Office of Foreign Assets Control (OFAC) added the IRGC to its antiterrorism sanctions list pursuant to the global terrorism (E.O.) 13244. Citing their technical and financial support to the IRGC, OFAC further added four entities—three based in Iran and one based in China—to its Specially Designated Nationals (SDN) list pursuant to E.O. 13382, targeting weapons of mass destruction proliferators and their supporters.

In announcing the sanctions against the IRGC in accordance with CAATSA, President Trump further noted that additional sanctions would be applied to the IRGC's "officials, agents and affiliates." It is expected that OFAC will implement the remaining requirements of Section 105 with respect to foreign persons that are officials, agents, or affiliates of the IRGC when the authority under section 105 of CAATSA becomes effective on October 31, 2017. While the IRGC was not designated by the State Department as a foreign terrorist organization, Treasury Secretary Steven Mnuchin emphasized that, going forward, "[T]hose who transact with IRGC-controlled companies do so at great risk."

Notably, the IRGC was already blocked by inclusion on the SDN list pursuant to E.O. 13338, E.O. 13553 (Iranian human rights abuses), and E.O. 13606 (Iranian and Syrian human rights abuses by means of information technology). According to OFAC, the new designation under E.O. 13244, the President's counterterrorism authority, simply restricts the applicability of the so-called "Berman exemptions" under the International Emergency Economic Powers Act (IEEPA) allowing for personal communication, humanitarian donations, information or informational materials, and travel.

The Trump administration further indicated that it would press European allies to sanction the IRGC as well. The IRGC presently remains the subject of certain sanctions by the European Union (Council Implementing Regulation (EU) No 668/2010 of July 26, 2010, implementing Article 7(2) of Regulation (EC) No 423/2007 concerning restrictive measures against Iran).

Key Takeaways

As mentioned, the IRGC was already blocked on OFAC's SDN list. OFAC has taken the position that the primary impact of the new designation will be through the removal of the "Berman exemptions." While the full details of OFAC's position have not yet been provided, the removal of these exemptions could have far-reaching consequences, in particular the exemption allowing for the provision of information or informational materials. Moreover, both President Trump's comments coupled with OFAC's announcement presage the impending imposition of more far-reaching sanctions on IRGC-controlled companies and affiliates. It seems clear the U.S government will closely scrutinize any and all transactions going forward with Iranian businesses with even a tenuous connection to the Iranian government or military, let alone the IRGC. It is unclear what impact the new sanctions and Iran policy will have on applications for licenses to transact with Iranian entities that have been languishing at OFAC or the Department of State. However, the Trump administration's new Iran policy sets an even more restrictive tone toward business with Iran.

Even outside the United States, non-U.S. financial institutions will have to scrutinize carefully whether to service financial transactions with Iran given the opaqueness of the IRGC's affiliates and subsidiaries. Financial conduct that may be permissible under EU law could expose non-U.S. financial institutions to secondary sanctions, regardless whether the transaction had a U.S. nexus. Moreover, given the lack of corporate transparency in Iran, it will be particularly challenging for investors and business partners to determine potential affiliates of the IRGC. Indeed, some estimate that over half of Iran's economy is run by semi-private entities connected to "parastatal" organizations like the IRGC. Entities wishing to procure licenses to transact with Iranian concerns in this climate would also be well-advised to conduct enhanced due diligence, consider these developments in their risk calculus, and carefully examine the political and economic risks at issue as the coming months will likely see the imposition of additional sanctions both by Executive Order and possibly Congressional action.

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