

IRAN NUCLEAR DEAL “DECERTIFIED” ALTHOUGH IMPACT IS UNCERTAIN

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International Trade Alert

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On October 13, 2017, President Trump [announced](#) that he was "decertifying" Iran's compliance with the Joint Comprehensive Plan of Action ("JCPOA"), the multi-nation agreement on Iran's nuclear program that was implemented in January 2016. Despite its ominous tone, this action stops short of the United States withdrawing from the JCPOA or reversing sanctions relief implemented under the JCPOA. Rather, decertification was issued under the Iran Nuclear Agreement Review Act ("INARA"), a 2015 law that Congress passed to give it oversight over the Obama administration's implementation of the JCPOA, and triggers a 60-day congressional review provision under INARA. During this review period, Congress may (but is not required to) introduce legislation under expedited procedures to reverse some or all of the JCPOA sanctions relief.

Notwithstanding significant criticism of the JCPOA by President Trump and congressional Republicans, at this time it is not clear there is sufficient appetite to reverse the JCPOA sanctions relief or to walk away from the deal. President Trump instead has called for Congress to amend INARA to strengthen enforcement against Iran's development of ballistic missile capabilities, and to "make all restrictions on Iran's nuclear activity permanent under US law." In Congress, Senators Bob Corker (R-TN), the Chair of the Senate Committee on Foreign Relations, and Tom Cotton (R-AR), are working on legislation that would automatically re-impose sanctions should Iran go under a one-year "breakout" period (the time required for Iran to produce enough weapons-grade material for a nuclear weapon) and move closer to development of a nuclear weapon, or other triggers to be determined.

What if the United States Walks Away from the JCPOA?

For now, the Iran deal appears to be staying, as is the sanctions relief. But, if the United States walks away, some or all of the pre-JCPOA sanctions could "snap back" into place, most notably "secondary" sanctions, which are measures applicable to non-U.S. companies for engaging in certain transactions with Iran, even if there is no nexus to the United States. Another potential effect could be the revocation of [General License H](#), which was issued by the Department of the Treasury's Office of Foreign Assets Control ("OFAC") to permit Iran-related transactions, under certain restrictions, by foreign entities that are owned or controlled by "U.S. persons" as defined below.

In December 2015, OFAC issued guidance on the possible effects of snap-back of the Iran sanctions, which we covered in our [prior client alert](#). Although this guidance was only prospective, and actual rules that would be issued in the event of snap-back may differ, OFAC stated at that time it expected to allow for a 180-day period following snap-back for non-U.S., non-Iranian persons to wind down business that was permissible or non-

sanctionable prior to the snap-back, as well as for non-U.S., non-Iranian persons to collect payments for goods and services fully provided under a written contract prior to snap-back, provided the payment does not involve U.S. persons or the U.S. financial system (which, in any case, is not permitted even prior to any snap-back). Also, OFAC stated that the United States has committed not to impose sanctions retroactively for legitimate activity undertaken in accordance with the JCPOA prior to snap-back.

What about other Signatories to the JCPOA?

The Council of the European Union in its October 16 statement referred to President Trump's decision not to certify Iran's compliance with the JCPOA as "an internal US process" and encouraged the United States to consider the implications for the security of the United States, its partners and the region before taking any further steps. The EU reaffirmed their commitment "to the continued full and effective implementation of all parts of the JCPOA" and invited the United States to address concerns related to ballistic missiles and increasing tensions in the region in relevant formats and fora. The Council's statement echoed a joint declaration on President Trump's decision that had also been issued by the UK Prime Minister Theresa May, the German Chancellor Angela Merkel and French President Emmanuel Macron.

Similarly, Russia has openly defended the JCPOA following Trump's "decertification," confirming that they would continue to uphold their commitments even in light of President Trump's threats to terminate it. Alexei Pushkov, a member of the Russian Parliament, stated that "neither Russia nor China supported the U.S." position with respect to withdrawing from the JCPOA. Even though the Chinese government has not released any official statement on these recent developments, it is likely that they'll stand by the rest of the signatories to the JCPOA as the U.S. regulatory process unfolds.

Additional Iran Designations

On the same day that "decertification" was announced, the Trump administration took additional action with respect to Iran:

Designation of the Iranian Revolutionary Guard Corps ("IRGC") under Terrorism Sanctions

Consistent with the requirements of the Countering America's Adversaries Through Sanctions Act, implemented in August 2017 (as covered in our [prior client alert](#)), the Treasury Department designated the IRGC under anti-terrorism sanctions imposed under Executive Order 13224 (September 23, 2001). (In doing so, the Trump administration declined to go a further step of declaring the IRGC as a State Department-designated Foreign Terrorist Organization.) As a result, the IRGC has now also been designated as a Specially Designated Global Terrorist ("SDGT") and becomes subject to the restrictions under the Global Terrorism Sanctions Regulations (31 C.F.R. Part 594) administered by OFAC.

Entities designated under Executive Order 13224 are identified on the OFAC-administered Specially Designated Nationals and Blocked Persons ("SDN") List and are subject to blocking, and "U.S. Persons" are prohibited from dealing directly or indirectly with SDNs or entities owned 50% or more directly or indirectly by one or more SDNs. (For purposes of these sanctions, U.S. Persons include U.S. companies and their overseas branches, U.S. citizens and permanent residents (green card holders), wherever located or employed globally, and foreign persons in the United States including any U.S.-based operations, assets, or facilities of foreign companies.)

Because General License H prohibits transactions involving SDNs, non-U.S. affiliates owned or controlled by U.S. persons likewise are proscribed from such dealings.

The IRGC was previously designated as an SDN under various other OFAC sanctions programs including weapons of mass destruction ("WMD") proliferator sanctions (Executive Order 13382) and sanctions targeting Iranian human rights abusers. As such, U.S. Persons were already prohibited from dealing with the IRGC and entities owned 50% or more directly or indirectly by the IRGC.

According to [FAQs](#) issued by OFAC, the immediate impact of the IRGC's SDGT designation is that the IRGC will no longer qualify for certain exemptions normally applicable under U.S. sanctions laws, most notably for the export of information and informational materials.

A more broad-reaching impact may be to elevate the risks of non-U.S. Persons becoming subject to sanctions for engaging in any business with the IRGC. Even prior to the recent designation of the IRGC as a SDGT, because of the IRGC's designation on the SDN List under other sanctions programs, significant transactions with the IRGC or any IRGC agent or affiliate could result in the imposition of residual secondary sanctions that were not lifted under the JCPOA. Additionally, persons providing financial, material, or technological support to the IRGC or any entity owned 50% or more by the IRGC could become subject to "collateral" designation as an SDN under one of several programs under which the IRGC was previously designated (such as the WMD proliferator sanctions).

As a result of IRGC becoming subject to yet another sanctions regime, and, in particular, given the SDGT sanction regime also authorizes the SDN listing of, or the imposition of lesser sanctions on, persons engaging in business that supports an SDGT, the risk of SDN or secondary sanctions for doing business involving the IRGC presumably will be heightened. The IRGC's broad reach into various sectors of the Iranian economy underscores the importance to non-U.S. Persons of conducting diligence on Iran transactions to confirm if there is any involvement or connection to the IRGC or an IRGC affiliated entity. These diligence undertakings may be more difficult in that the response by the IRGC to the SDGT listing may be to make ownerships and affiliations involving the IRGC less transparent. Additionally, banks and other financial institutions providing financing to authorize Iran-related transactions may apply more strict compliance protocols to ensure there is no connection to or involvement of the IRGC or any IRGC affiliate.

Other Designations

The Treasury Department also designated as SDNs three Iranian entities and one Chinese company under Executive Order 13382, the WMD proliferator sanctions. The Iranian entities were designated for being owned or controlled by the Iranian military or for providing support for the Iranian military or the IRGC. The Chinese entity was designated for providing support for an Iranian company that was previously designated under Executive Order 13382 for being owned or controlled by the Iranian military. These actions, especially with respect to the Chinese company, illustrate the significant risk of "collateral" SDN designation for foreign persons engaging in any transactions in support of the Iranian military or the IRGC.

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The [International Trade practice group of K&L Gates](#) is available to assist with this development and with questions regarding compliance with other international trade laws.

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