

# CLIENT ALERTS

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## What Next on Iran?

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On Friday, October 13, President Trump announced that he was refusing to certify Iran's compliance with the Joint Comprehensive Plan of Action ("JCPOA") that President Obama negotiated in 2015 with Iran, Great Britain, France, Germany, the European Union, Russia, and China. President Trump's action opens up the possibility that the United States will withdraw from a deal that was designed to keep Iran from obtaining nuclear weapons within the next decade. Although President Trump has the legal authority to terminate the agreement himself (and has reserved the right to do so in the future), he has turned to Congress to take the next step.

Leading members of Congress appear unwilling to act quickly and have expressed concerns about alienating European allies and encouraging Iran to accelerate its nuclear program. But Congress has consistently shown a greater appetite for increasing sanctions on Iran rather than decreasing them, as it demonstrated last July by passing the Countering America's Adversaries through Sanctions Act. Nor can it be ruled out that the Trump Administration might take other measures, either through more aggressive enforcement of existing trade sanctions or by promulgating more restrictive regulations, to tighten U.S. sanctions against Iran.

What does this all mean for U.S. companies and for companies based in other countries that have U.S. affiliates? U.S. individuals and companies continue to be prohibited, with certain narrow exceptions, from engaging in any business transactions with the Iranian government or with individuals, companies, or other entities in Iran. Those prohibitions will continue and perhaps tighten. But for foreign companies with U.S. affiliates, or which include U.S. nationals among their officers, directors, or employees, the situation is more delicate and uncertain.

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Prior to the JCPOA, the U.S. had “secondary” sanctions that prohibited *non-U.S.* companies in certain industries from engaging in transactions with Iran. The secondary sanctions covered foreign companies operating in six industries: financial, insurance, and brokerage services; oil and energy exploration and sales; commercial aviation; trade in gold and precious metals or other metals with industrial uses; computer software for integrating industrial processes; and automotive. When those sanctions were lifted under the JCPOA, foreign companies – particularly European companies like Renault – began to look more seriously into investing in Iran. President Trump’s decision to decertify Iran’s compliance with the JCPOA means that the United States could withdraw from the JCPOA and reinstitute or “snap back” those secondary sanctions into place with little advance warning.

But even if European opposition deters the United States from invoking the “snap back” provisions of the JCPOA, there are other significant pitfalls that foreign companies with U.S. affiliates or U.S. nationals must avoid. U.S. law prohibits U.S. citizens, green-card holders, and companies from assisting their non-U.S. foreign affiliates from engaging in most transactions with Iran. In addition, many goods manufactured abroad are made in part or whole of U.S.-manufactured components. If more than 10% of a product is U.S.-origin goods, U.S. trade sanctions prohibit it from being exported or re-exported to Iran.

How should companies exploring investments in Iran prepare for the future? Given the uncertain environment, companies considering transactions with Iranian entities should carefully consider the risks. At a minimum, companies should maintain sufficient compliance programs to ensure that any officer, director, or employee who is a U.S. citizen or green card holder is walled-off from any transactions or projects involving Iran. They should make certain that they have similar policies to prevent U.S. affiliates from being involved in any manner that could be construed as facilitating a transaction with Iran, which in most cases continues to be illegal under U.S. law. Businesses need to review their product offerings to confirm that products destined for Iran (even products sold to distributors or other intermediaries outside Iran) are not considered to be of “U.S. origin” under U.S. law. And all companies should review their contracts to verify they have adequate protections, including good termination clauses, to stay nimble in what remains an uncertain economic atmosphere.

Butzel Long will continue to monitor the situation closely. If you have any questions concerning these matters, please contact the author of this article or your regular Butzel Long attorney.

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