US Sanctions Against Iran: The Outlook Under President Trump

Donald J. Trump's presidential victory is almost certain to mean a marked change in the use of sanctions targeting Iran. While it is not yet clear how Mr. Trump intends to implement the more combative approach toward Iran that he promised during his campaign, we examine below the options for the president-elect and Congress to make changes to current US sanctions against Iran or to impose new sanctions.

Iran Nuclear Sanctions

Over the course of the presidential campaign, President-elect Trump sharply criticized the nuclear deal with Iran under which the United States and other countries lifted economic sanctions against Iran in exchange for Iran's halting of its nuclear weapons program. Mr. Trump called it "one of the worst deals ever."[1] But what the president-elect plans to do about the nuclear agreement, known as the Joint Comprehensive Plan of Action ("JCPOA"), is still far from clear. During the campaign, he alternatively promised to "dismantle" the JCPOA,[2] renegotiate a better deal and vigorously enforce the current agreement. Since the election, the president-elect has not indicated that he intends to scrap the deal immediately upon taking office.[3] However, Mr. Trump's pick to head the CIA, Kansas Congressman Mike Pompeo, tweeted that he looked forward to "rolling back this disastrous deal with the world's largest state sponsor of terrorism."[4]

The JCPOA is an agreement between Iran, on the one hand, and the P5+1 group (the United States, the United Kingdom, France, Germany, Russia and China) and the European Union, on the other hand. Under the JCPOA, the United States has lifted its nuclear-related secondary sanctions against Iran that were designed to discourage non-US persons from engaging in business with Iran. The United States also has authorized foreign subsidiaries of US parent companies to engage in transactions with Iran (including the Government of Iran), subject to certain limitations. However, US primary sanctions against Iran, which prohibit US persons from conducting business with Iran, remain in place with limited exceptions (most notably, a favorable licensing policy for exports of US commercial aircraft to Iran).

If a President Trump wished to unwind the JCPOA, there are several ways in which he could do so through executive action. The JCPOA is not a treaty or an executive agreement or even a signed document. As the US State Department has described it, the JCPOA reflects political commitments by the parties. Although the UN Security Council approved the JCPOA, it did so using procedures that do not make the agreement legally binding under international law. Under the JCPOA, the United States may "snap back" sanctions if Iran does not meet its commitments. Section 36 of the main text of the JCPOA provides that any party to the JCPOA may treat noncompliance "as grounds to cease performing its commitments in whole or in part and/or notify the UN Security Council that it believes the issue constitutes significant non-performance.” Thus, if the Trump administration considered Iran to be in violation of the JCPOA, it could snap back all or some US sanctions or go to the UN Security Council to seek snapback of all previous UN Security Council sanctions against Iran. Moreover, the Trump administration, through executive action, could reverse the waivers and executive orders that President Obama used to implement US commitments under the JCPOA, relaxing US secondary sanctions against Iran as well as some primary sanctions.

In short, a President Trump could unilaterally pursue any of the courses of action he called for during his campaign: pull out of the JCPOA outright, seek to renegotiate its terms, or aggressively enforce it with the goal of forcing the Iranians back to the negotiating table or dismantling some or all of the US commitments. In addition, as discussed below, Congress has recently extended the Iran Sanctions Act of 1996 (“ISA”), legislation that authorizes the United States to impose secondary sanctions against Iran. The ISA is potentially a significant tool to re-impose secondary sanctions quickly if Iran violates the JCPOA or if Iran engages in other actions contrary to US interests.

Legal considerations aside, practical considerations will also influence the Trump administration’s approach to the JCPOA and any re-imposition of sanctions. Already, US critics of the deal have urged Mr. Trump not to withdraw from it because of the risk that Iran could resume its nuclear weapons program. Even if the United States did withdraw, there is no assurance that the other parties to the agreement would follow suit. To the contrary, EU foreign ministers reaffirmed their commitment to the deal at a November meeting. Other US allies are urging the incoming administration not to walk away from the deal but instead to impose sanctions on Iran for its non-nuclear related activities, such as its development of ballistic missiles. Indeed, there are several congressional proposals to impose non-nuclear related sanctions on Iran that we examine below.

Iran Non-Nuclear Sanctions

Notwithstanding the president-elect’s threats of executive action, we believe that most of the sanctions activity regarding Iran is likely to originate in Congress, where Republican leaders have been calling for additional sanctions for some time. Republican congressional leadership has, over the past two years, repeatedly sought to pass sanctions bills targeting Iran and Iranian entities. Additional non-nuclear sanctions could also provide a means for Congress to exert leverage over Iran apart from the nuclear-focused JCPOA.

To set the stage for additional sanctions bills in 2017, Congress passed a 10-year extension, through December 31, 2026, of the ISA, which was set to expire at the end of 2016. The ISA provides the framework for a variety of secondary sanctions against Iran, and lawmakers in both the House of Representatives and the Senate approved a “clean” extension of the law by an overwhelming margin. President Obama let the bill become law without his signature on December 15, 2016. In line with his administration’s argument that renewal of the ISA could undermine the JCPOA, President Obama declined to sign the bill. The move was symbolic, however, since his failure to sign the bill for 10 days following its passage by Congress resulted in the law taking effect.

In addition to the ISA extension, Congress was busy late this year introducing or passing Iran sanctions legislation that fell short of enactment into law but that set the stage for action next year. For example, the House approved several measures:

- H.R. 5715, the No Ex-Im Assistance for Terrorism Act, which would prohibit the Ex-Im Bank from guaranteeing, insuring, extending credit, or participating in the extension of credit in connection with the export of US goods or services sought by the Government of Iran or its entities.[5]
- H.R. 5711, which would prohibit the US Treasury Department from authorizing US financial institutions to engage in transactions ordinarily incident to the export or re-export of commercial passenger aircraft to Iran. This bill targeted Boeing's recently licensed sale of aircraft.
- H.R. 5931, the Preventing Future Ransom Payments to Iran Act, targeted possible payment from the US government to the Government of Iran. It would also impose sanctions against Iranian persons involved in the kidnapping or detention of US nationals or permanent resident aliens.
- H.R. 5732, the Caesar Syria Civilian Protection Act of 2016, is intended to target Iran's and Russia's support for the Syrian government. The bill would impose a number of new sanctions regarding Syria and, in part, would do so through the imposition of secondary sanctions on certain Iranian parties that interact with Syria. For example, the bill would sanction those who provide "financial, material, or technological support" (including "engaging in or facilitating a significant transaction") to the Government of Syria, the Central Bank of Syria, or other parties that are already sanctioned with respect to Syria. Senators Marco Rubio (R-FL) and Bob Casey (D-PA) introduced a similar bill, the Preventing Destabilization of Iraq and Syria Act, in the Senate, and such legislation could very well serve as a starting point for congressional action next year.

Though the Senate did not take up many of these bills before adjourning for the year, these types of bills could be speedily introduced and passed in 2017. While we believe that the House is likely to take the lead in sanctions legislation in 2017, the body may well find a willing partner among Senators looking to take decisive action to direct the Trump administration's Iran policies. Given the ambiguities of Mr. Trump's Iran policies, we believe that Congress may move aggressively to shape US policy toward Iran rather than waiting for direction from the new administration. Sanctions legislation provides ample opportunities for Congress to do so.

In sum, US policy toward Iran may well change during the Trump administration, perhaps drastically. Though the details are still unknown, sanctions legislation is likely to serve as a key tool for shaping and implementing that change.

See also *US Sanctions Against Cuba: The Outlook Under President Trump*.

For more information about the topics raised in this Legal Update, please contact any of the following lawyers.

Simeon M. Kriesberg
+1 202 263 3214
skriesberg@mayerbrown.com

Margaret-Rose Sales
+1 202 263 3414
msales@mayerbrown.com

Mickey Leibner
+1 202 263 3711
mleibner@mayerbrown.com

For information about the EU sanctions against Iran, please contact Paulette Vander Schueren at +32 2 551 5950, pvanderschueren@mayerbrown.com.

Endnotes

[1] Transcript of Presidential Debate (Sept, 26, 2016), available at https://www.washingtonpost.com/news/the-fix/wp/2016/09/26/the-first-trump-clinton-presidential-debate-transcript-annotated/?utm_term=.b9661c674b3c.

[2] Transcript of Donald J. Trump Remarks at AIPAC Policy Conference (March 21, 2016), http://www.policyconference.org/article/transcripts/trump-2016.asp.

[3] *See* Laurence Norman, "Europe Hopeful Trump Will Stick With Iran Deal," *The Wall Street Journal*, Dec. 13, 2016, http://www.wsj.com/articles/europe-hopeful-trump-will-stick-with-iran-nuclear-deal-1481661689; Sam Stein, "Pressure Mounts on Trump to Keep the Iran Deal," *The Huffington Post*, Nov, 30, 2016, http://www.huffingtonpost.com/entry/donald-trump-iran-nuclear-deal_us_583f30a2e4b09e21702c4e27; Eric Cortellesa, "White House: Obama Expected to Sign Renewal of Iran Sanctions Act," *The Times of Israel*, Dec. 2, 2016, http://www.timesofisrael.com/white-house-obama-expected-to-sign-renewal-of-iran-sanctions-act/; Joshua Davidovitch, "Adviser Says Trump Won't Rip Up Iran Deal, Signals He May Not Move Embassy," *The Times of Israel*, Nov. 11, 2016, http://www.timesofisrael.com/adviser-says-trump-wont-rip-up-iran-deal-signals-he-may-not-move-embassy/.

[4] Mike Pompeo (@RepMikePompeo), Twitter (Nov. 17, 2016, 7:01 AM), https://twitter.com/RepMikePompeo/status/799266269853863937.

[5] The text of this bill was combined with that of H.R. 5711 before final passage in the House.