

## Trump Ushers In New Sanctions Era With Iran Clampdown

By Alex Lawson

*Law360 (November 2, 2018, 8:13 PM EDT)* -- When the Trump administration reinstates hefty sanctions to complete its exit from the Iran nuclear deal on Monday, it will offer a glimpse of exactly how hard a line it intends to take as crucial U.S. allies still hold out hope for commercial engagement with Tehran.

The Iran deal lifted the U.S. secondary sanctions — those applying to non-U.S. companies — on Iran. With President Donald Trump's move to leave the deal, those measures are set to “snap back” into place, returning the trading community to the same set of rules it was subject to before the deal took effect in early 2016.

But there are signs that Trump has more in mind than a return to the status quo. Morrison & Foerster LLP partner John E. Smith said he is anticipating an even stronger show of force from the White House come Monday.

“‘Snap back’ is a bit of a misnomer here,” Smith told Law360. “It would seem to indicate a return to what the Obama administration had imposed prior to the Iran deal, and now those sanctions seem set to be the floor, not the ceiling, of where the administration is going to go. This seems to be an aggressive, maximum-pressure campaign and not simply a return to business as usual.”

The deal, in which Iran agreed to curb its nascent nuclear weapons program in exchange for certain international sanctions being lifted or suspended, with the U.S., China, France, Germany, Russia and the U.K. all signing on, was politically tenuous from the moment it was struck. As a result, many companies declined to immediately begin doing business with Iran for fear of an abrupt change in policy. But even the companies that exercised caution will need to keep their wits about them come Monday, according to Eversheds Sutherland partner Ginger Faulk.

"Even companies who have made the decision to cease business with Iran still have to police sanctions compliance heavily because there will certainly be players who will circumvent the sanction and attempt to sell Iranian-origin crude through other channels," Faulk told Law360.

One of the most tangible policy changes imposed under the Iran deal was to move a slew of Iranian banks, energy firms, shipbuilders and other companies off the U.S. Treasury Department's blacklist of entities banned from doing business with U.S. companies.

But while the Iran deal moved about 300 entities off the list, the White House has said it plans to move

more than 700 individuals and businesses back onto the list Monday, signaling an even tighter grip on Iran than existed before the agreement was struck.

The scope and coverage of the Treasury's Specially Designated Nationals list is just one area marked by uncertainty as the administration prepares to bring the sanctions hammer back down on Iran. Beyond the mere expansion of the list, there are also questions about exactly how aggressive the administration will be in enforcing its secondary sanctions.

This has mostly been a mystery for the entirety of the Trump presidency, but Gibson Dunn & Crutcher LLP partner Adam M. Smith said there is a chance that the administration will want to make a strong enforcement statement soon after it puts the Iran sanctions back in place.

"We don't know how enforcement will work," Adam Smith said. "Maybe the idea is to shock and awe the world by [reinstating sanctions] and doing major enforcement actions over the next few days."

Perhaps the most pressing matter is what will happen to European companies who still have a green light to operate in Iran from their own governments, but are now on the hook for punishment from the U.S.

Further complicating that dynamic is the European Union's so-called blocking statute, which forbids European companies from changing their commercial plans to comply with new U.S. sanctions rules.

"European companies that transact with Iran will try to comply with both regimes, but doing so could be challenging, especially for European companies that have U.S. connections," Kirkland & Ellis LLP partner Mike Casey said. "Abiding by both U.S. sanctions and the EU blocking statute might not be possible in some circumstances."

U.S. National Security Adviser John Bolton offered a faint bit of reprieve to companies that may be caught in that crossfire, saying earlier this week that the administration wants to exert "maximum pressure, but we don't want to hurt friends and allies."

That's likely to be cold comfort for businesses who have seen Trump take a stern posture toward Iran in the run-up to the sanctions trigger, which happens to take effect just one day before Tuesday's midterm elections. On Friday, the president tweeted an image of himself emblazoned with the words "Sanctions Are Coming," the message and font aping HBO's "Game of Thrones."

That message, combined with its open defiance of the EU and the other countries still adhering to the Iran deal, tabs Monday as something of a line in the sand for the Trump administration.

"Here you have the United States deciding to go it alone over the objections of a number of its key allies around the world, particularly in Europe. That's a relatively unique feature," John Smith of Morrison & Foerster said. "The U.S. is telling them, 'It doesn't matter what you view as fundamental to your own national security and foreign policy. You need to listen to us.'"

--Editing by Jill Coffey and Aaron Pelc.