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Companies' Calls Growing More Urgent on How to Navigate Latest Trade Sanctions

This week, the first phase of Iran sanctions from the Trump administration went into effect, and companies are certainly phoning their lawyers to figure out how to navigate it all.

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The snapback of U.S. economic sanctions on Iran this week created “quite an introduction to the private sector” for John Smith, the former director of the U.S. Treasury Department’s Office of Foreign Assets Control who became a partner at Morrison & Foerster three weeks ago.

Smith said Tuesday his phone has been ringing frequently with inquiries that he characterized as “urgent”—from corporations and their general counsel seeking guidance on navigating the sanctions. The calls have been from all industries, he said, but especially the financial and trade sectors.

Since May, when President Donald Trump announced he

was withdrawing from the international Iran nuclear deal of 2015 and reimposing economic sanctions, there has been an increasing corporate focus on how to handle the legal risk of sanctions as well as anti-sanction legislation in Europe. The focus reached a peak this week.

Not only did the first phase of the U.S. sanctions go into effect on Monday, but so did the European Union’s updated blocking statute, which forbids companies that do business in affected EU states from obeying the U.S. sanctions.

The sanctions “put the U.S. government on a collision course with many of its partners around world, and in

particular with the EU,” Smith said. “That’s the real impact on corporate America.”

He explained, “The difficulty for companies here is really for the first time in decades we have a U.S. sanctions policy that so fundamentally conflicts with our closest allies and partners.”

The Iran nuclear deal did not have a large direct impact on U.S. companies, which still were banned from doing business with Iran. However, it did allow overseas subsidiaries of U.S. companies to engage in business with Iran. It also granted certain licenses and exceptions in some industries, such as letting U.S. aircraft companies sell passenger planes and

parts, and allowing the sale of humanitarian staples such as food and medicine.

But under this week's secondary sanctions, those U.S. subsidiaries will no longer be allowed to do business with Iran and many licenses are suspended. The first phase of the sanctions primarily affects the automotive industry, some parts of the financial sector, the trading of Iranian gold or precious metals, and the sale or supply from Iran of aluminum, steel, coal, graphite and industrial software.

The next phase, which goes into effect on Nov. 4, imposes secondary sanctions for doing business with a broader section of the financial industry, the Iranian energy sector including oil, plus the shipping and shipbuilding sectors.

In May Akin Gump Strauss Hauer & Feld issued a 14-page international trade alert outlining the details of the sanctions. Wynn Segall, an Akin partner who focuses on economic sanctions and other international policies issues, said the U.S. government is warning its allies in Europe that they

should take the secondary sanctions seriously because they will be enforced aggressively.

The EU blocking statute, Segall said, has created a legal landscape fraught with conflict of law issues for U.S. companies with EU subsidiaries.

"It is an open question in what way different EU states will implement and enforce those blocking statutes," he said. "It is a field of uncertainty."

The sanctions vs. statute standoff creates a catch-22 for general counsel, he said. "We are working with companies in the EU right now facing exactly those issues."

His advice to companies is to approach it as a compliance risk, and to analyze the situation like any other business risk. The EU allows a company to make a business decision not to do business somewhere if the risk outweighs the business interests.

"But the way in which a company's decision is made is very important to navigate safely between the U.S. sanctions and the blocking statutes so as not to incur liability," Segall said.

"It's sort of like one of those trick water fountains that is set up like a chessboard," he explained. "If you step on the wrong square, you get very, very wet. You need to be well-informed and guided."

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