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WHITE PAPER

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Potential Options for U.S. Sanctions on Iran Under the Trump Administration

Despite the substantial relaxation of international sanctions on Iran, U.S. primary sanctions on Iran—including programs targeting Iran’s support for terrorism, human rights abuses, and ballistic missile programs—remain in place and continue to offer avenues through which additional sanctions might be imposed in compliance with the Joint Comprehensive Plan of Action (“JCPOA”). Against this backdrop, the United States has several—occasionally overlapping—paths available as its relationship with Iran develops during the Trump Administration, including: (i) maintaining the status quo; (ii) imposing additional targeted sanctions against individuals and entities; (iii) increasing non-nuclear sanctions while keeping the JCPOA intact; (iv) renegotiating the JCPOA; and (v) dismantling or withdrawing from the JCPOA. The path that the Trump Administration will take remains uncertain. Accordingly, international companies should consider and prepare for the ramifications of all possible outcomes.

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In response to reports that Iran conducted a ballistic missile test launch in February 2017, a former senior U.S. government official announced—and President Trump later echoed over Twitter—that the United States is “officially putting Iran on notice.” International companies that have re-entered the Iranian market over the past year should be no less clearly on notice. It remains uncertain, however, what the practical ramifications of being “on notice” may be.

Indeed, with respect to Iran and its “terrible deal” with the United States, over the course of his presidential campaign, President Trump: (i) variously vowed to enforce a deal—which he repeatedly denounced as disastrous—openly “like you’ve never seen a contract enforced before”; (ii) suggested that he would “double up and triple up sanctions”; (iii) promised to force “the Iranians back to the bargaining table”; and (iv) stated that his “number-one priority is to dismantle the disastrous deal with Iran.” Since taking office, however, President Trump has maintained the status quo, and members of his Administration have indicated, in strong terms, that the United States intends to abide by its commitments under the Joint Comprehensive Plan of Action (“JCPOA”) (on which we reported [here](#)). Therefore, it remains difficult to predict how the Trump Administration will approach relations with Iran as events unfold over the coming months and years, but it is equally important to try to do so as tensions continue to rise and Iran rejoins the global market.

In light of President Trump’s remark that “nothing is off the table” with respect to Iran, this *White Paper* explores the array of sanctions options available to the Trump Administration.

OVERVIEW OF U.S. SANCTIONS REGIME TARGETING IRAN

The United States has long maintained an extensive and complex sanctions regime targeting Iran. The *primary* and oldest component of that regime has been, and continues to be, a comprehensive embargo that generally prohibits U.S. persons from engaging in almost all transactions with or involving Iran. Over the past 20 years, the United States continually expanded its sanctions regime from that foundation with extraterritorial or *secondary* sanctions designed to influence the behavior of non-U.S. companies and restrict certain sectors of the Iranian economy. Over the past decade, other nations, including the

European Union (as a bloc), joined the United States in imposing broad sanctions on Iran in an effort to, among other things, pressure Iran into abandoning its nascent nuclear program.

That combined effort culminated early last year with implementation of the JCPOA, which dramatically eased international sanctions against Iran. In particular, in accordance with its obligations under the JCPOA, the United States has—through a combination of partial and complete revocations of executive orders, waivers, and certifications: (i) lifted most of its secondary nuclear-related sanctions on Iran; (ii) removed certain individuals and entities from its sanctions-related prohibited parties lists; and (iii) implemented general licenses or licensing regimes that opened opportunities for, among others, non-U.S. subsidiaries of U.S. companies to engage in business with Iran, subject to certain conditions. In concert, the European Union lifted virtually all of its sanctions against Iran and removed numerous individuals and entities from its sanctions-related prohibited parties lists.

Despite the substantial relaxation of international sanctions, U.S. primary sanctions—including U.S. programs targeting Iran’s support for terrorism, human rights abuses, and ballistic missile programs—remain in place and effectively ensure that U.S. companies continue to be prohibited from engaging in almost all business dealings involving Iran. Further, as discussed below, these sanctions continue to offer avenues through which additional sanctions might be imposed in compliance with the JCPOA.

In addition, the JCPOA itself offers channels through which non-compliance can trigger a “snap back” of international sanctions.

THE PATHS FORWARD

Against this backdrop, the United States has several—occasionally overlapping—paths available as its relationship with Iran develops during the Trump Administration.

Maintain the Status Quo

Despite statements to the contrary by President Trump and his surrogates during the campaign and since taking office, the Trump Administration may opt to maintain the status quo with respect to the JCPOA and U.S. sanctions against Iran. As noted above, U.S. primary sanctions against Iran remain in force. As a

result, U.S. companies remain generally prohibited from entering the Iranian market, and all parties, whether U.S. or non-U.S., remain generally restricted, as a practical and regulatory matter, from access to the U.S. financial system in connection with any dealings with Iran. While these restrictions may pale in comparison to the comprehensive international sanctions Iran faced a little over a year ago, they still have affected the potential growth of the Iranian economy and remain powerful leverage.

Accordingly, merely maintaining the status quo continues to offer a viable approach to restricting Iran in furtherance of all relevant U.S. foreign policy interests without undermining the JCPOA. Nevertheless, even the current status quo likely will involve some, albeit limited, new sanctions measures—namely, as noted immediately below, the imposition of sanctions against additional individuals and entities.

Additional Targeted Sanctions Against Individuals and Entities

As noted above, notwithstanding the sanctions relief provided under the JCPOA, U.S. sanctions related to Iran's support for terrorism, human rights abuses, and ballistic missile programs, as well as certain secondary sanctions related to dealings with designated individuals and entities, remain in force. Significantly, pursuant to its authority under these continuing sanctions, the Trump Administration, like the Obama Administration before it, retains the ability to impose targeted restrictions on dealings by U.S. and non-U.S. persons with designated individuals and entities without breaching the JCPOA. Indeed, the Trump Administration has already done so, having designated 25 parties on the List of Specially Designated Nationals and Blocked Persons on February 3, 2017, in response to Iran's ballistic missile test two days earlier and an additional 11 individuals and companies on March 21, 2017, in connection with transfers to Iran's ballistic missile program. In at least the near term, if not the longer term, the Trump Administration likely will continue employing this targeted approach.

Iran, however, appears unlikely to accept even such targeted sanctions quietly. Indeed, Iran has already retaliated against the latest round of U.S. sanctions by imposing sanctions on 15 U.S. companies on March 26, 2017. That response indicates that tensions between the United States and Iran are unlikely to abate in the near future and could portend consequential,

even if reciprocal, responses to any U.S. efforts to impose additional, more significant sanctions.

Increase Non-Nuclear Sanctions While Keeping the JCPOA Intact

In addition to designating additional individuals and entities on U.S. prohibited parties lists, the United States arguably also could increase the scope of its non-nuclear sanctions on Iran without breaching the JCPOA. Preliminary steps already have been taken to do so.

In late January 2017, U.S. Senators Marco Rubio (R-FL), Todd Young (R-IN), and John Cornyn (R-TX) reintroduced the Iran Non-Nuclear Sanctions Act in the Senate, and a similar bill was introduced in the House of Representatives in February 2017. According to the senators who reintroduced the bill, the legislation "would impose harsh financial and economic sanctions countering Iran's non-nuclear provocations, including its ballistic missile violations, human rights abuses and support for international terrorism." In particular, the Iran Non-Nuclear Sanctions Act contemplates:

- Expanding current and imposing new human rights-related sanctions;
- Imposing new sanctions against Iran's Islamic Revolutionary Guard Corps ("IRGC") and Mahan Air, including creating a watch list for entities in which the IRGC holds an ownership interest of less than 25 percent;
- Imposing new sanctions against persons that knowingly aid Iran's ballistic missile program;
- Imposing new sanctions against persons involved in sectors of Iran's economy that support, directly or indirectly, Iran's ballistic missile program, including mandating sanctions against entities in which Iran's key ballistic missile organizations hold a 25 percent or greater ownership interest;
- Requiring a presidential certification that persons identified in UN Security Council Resolutions are not engaged in activities related to Iran's ballistic missile program (and requiring the imposition of sanctions if that certification cannot be made); and
- Codifying current prohibitions against Iran's direct and indirect access to the U.S. financial system and strengthening the requirements necessary to remove Iran or any other country from the state sponsors of terrorism list.

Both the Senate and House versions of the legislation remain pending. Regardless, the new legislation aside, President Trump could impose new categories of sanctions related to Iran's support for terrorism, human rights abuses, and ballistic missile programs by executive order under existing authorities.

Any attempts to significantly expand the scope of U.S. sanctions would almost certainly be met with resistance from Iran and likely accusations that the increased sanctions violate the JCPOA. Indeed, Iran has already accused the United States of a "lack of compliance with the JCPOA" in connection with its ongoing primary sanctions and heatedly argued that renewal of the Iran Sanctions Act late last year constituted a breach, even where no sanctions were reimposed.

Iran would have two obvious avenues through which it might respond to significant additional U.S. sanctions. First, even where new legislation or regulations purport only to expand support for terrorism, human rights, and ballistic missile sanctions, Iran might seek to challenge the new sanctions through the dispute resolution mechanism provided by the JCPOA, which would trigger a month-long process that may, ultimately, leave the fate of the agreement with the UN Security Council. The outcome of that process will, of course, depend on the nature and extent of the increased sanctions and, therefore, is impossible to predict. Second, before or after triggering the JCPOA dispute resolution process, Iran could take the position that, in light of the new sanctions, it no longer is bound by the JCPOA. Indeed, Iran has expressly indicated that it may do so should new sanctions be imposed.

Given the potential international repercussions of walking away from the agreement (which would include a snap back of all international sanctions), Iran is unlikely to take such an approach before attempting to address any new sanctions through the JCPOA dispute resolution mechanism. As such, although the Trump Administration may increase non-nuclear sanctions on Iran in a manner that does not clearly violate the JCPOA, any attempt to do so undoubtedly would spark significant turmoil to an uncertain end.

Renegotiate the JCPOA

During his presidential campaign, President Trump repeatedly and sharply criticized the JCPOA, describing it as "the worst deal ever negotiated," and stating that a "Trump presidency

will force the Iranians back to the bargaining table to make a much better deal."

Any attempt to meaningfully renegotiate the JCPOA will depend significantly on the other parties to the agreement (the United Kingdom, Germany, France, Russia, and China, which, along with the United States, collectively are referred to as the "P5+1"), none of which appears to be interested in returning to the "bargaining table." Significantly, it was the combined leverage of both U.S. and EU sanctions that led to implementation of the JCPOA—and indeed, brought Iran to negotiate—in the first place, and based on recent statements, the European Union appears unlikely to entertain a similarly combined effort to renegotiate the agreement.

In fact, as recently as last month, the European Union reiterated its commitment to protecting and preserving the JCPOA, and absent a significant change in circumstances, it seems unlikely to alter that position. In addition to the European Union and EU members of the P5+1, participation by the remaining members (Russia and China) in any such renegotiations would be essential. In light of the increased business and diplomatic dealings Russia and China have had with Iran over the past year, their participation seems similarly unlikely.

Finally, Iran itself, absent concerted international effort, likely would resist a return to negotiations. By many accounts, President Hassan Rouhani has pinned his political fortunes to the success of the JCPOA and, as the May 2017 Iranian presidential elections approach, is unlikely, absent the promise of additional sanctions relief, to undermine the JCPOA—his signature diplomatic achievement. Moreover, although the lifting of international sanctions, in many respects, has yet to have a far-reaching impact in Iran, no political faction in the country is likely to trade the certain economic benefits of the current agreement for the somber prospects offered by a new agreement that, based on President Trump's statements, promises harsher terms. Accordingly, in light of the vested commercial and diplomatic interests each of the P5+1 and Iran have in the JCPOA and the current status quo, the likelihood of bringing all parties back to the negotiating table seems dim.

In any case, to the extent President Trump is able to gain support from the other signatories to the JCPOA to renegotiate the deal, the exact terms that President Trump would seek in

connection with any renegotiations and what, if any, type of sanctions relief the United States would propose remain unclear.

Dismantle or Withdraw from the JCPOA

President Trump has the authority to unilaterally withdraw the United States from the JCPOA, and nothing in the JCPOA or related U.S. legislation formally requires the United States to abide by the agreement.

International law likely would not pose a significant obstacle if the United States opts to dismantle or withdraw from the JCPOA. As noted above, the JCPOA already provides a dispute resolution mechanism, which, if triggered, could result in the reimposition of all international sanctions against Iran. To trigger the reimposition of sanctions through this mechanism, the United States need only notify the JCPOA Joint Commission (which is composed of representatives of Iran and the P5+1) that the United States believed Iran “was not meeting its commitments” under the agreement. Although participants are subject to an obligation to resolve concerns through this mechanism in good faith, the process itself appears vulnerable to intractable parties, and it is therefore possible that the United States would be able to engineer reimposition of sanctions through the dispute resolution mechanism. Regardless, notwithstanding the JCPOA dispute resolution mechanism, there is nothing within the terms of the agreement that precludes the United States from merely walking away.

Similarly, domestic law does not pose an obstacle to President Trump withdrawing the United States from the JCPOA. First, the Iran Nuclear Agreement Review Act of 2015 appears to provide the president discretionary authority to reimpose as well as lift sanctions. As a result, President Trump already would have the statutory authority to unilaterally reimpose sanctions.

Second, as noted above, U.S. sanctions relief under the JCPOA was effected through a combination of executive orders and statutory waivers and certifications, all of which might be relatively easily unraveled. To the extent that U.S. sanctions relief relies on executive orders issued by President Obama, those orders can be reversed by new executive orders and, therefore, can be undone at any time. Although the statutory waivers and certifications may not be so quickly or affirmatively rescinded, they must be periodically renewed, and thus mere inaction ultimately will be sufficient to dispose of them. Indeed, depending on when the relevant waivers and certifications

were last renewed, they will be up for renewal within, variously, the first four to 12 months of the Trump Administration. As a result, the first relevant waivers and/or certifications may require renewal within the next two months, posing the first imminent test of the JCPOA under the Trump Administration.

Significantly, any effort by the United States to unilaterally reimpose sanctions is likely to have significant consequences for global businesses and U.S. international relations. First, as discussed above (and previously discussed [here](#)), the effects of unilaterally reimposing sanctions (or seeking reimposition through the JCPOA) will depend, to a great extent, on the actions of the other signatories to the JCPOA, none of which appears poised to likewise reimpose sanctions. Accordingly, Iran’s ability to continue trade with the European Union, Russia, and China could dampen the effect of a U.S. withdrawal from the JCPOA on Iran’s economy.

Second, any effort to unilaterally reimpose sanctions may strain relations between the United States and its allies should the United States seek to enforce secondary sanctions against third-country companies, which would confront blocking legislation prohibiting compliance with any requirements or prohibitions imposed under the U.S. sanctions on Iran. Further, renouncing its obligations under the JCPOA also may undermine the Trump Administration’s efforts to negotiate new treaties, including bilateral trade deals, or enforce U.S. rights under existing international agreements.

Third, as we have discussed [here](#), although the reimposition of sanctions likely will have minimal impact on U.S. companies in light of the continuing primary sanctions, it may nevertheless have a short-term chilling effect on U.S. manufacturing and export sectors. In that regard, over the past year, pursuant to general licenses and favorable licensing policies implemented under the JCPOA, foreign subsidiaries of U.S. companies have begun to reenter the Iranian market, and some U.S. companies have reached agreements with Iran. Rescinding the authorizations that have permitted such business to proceed undoubtedly will have immediate and detrimental consequences.

Moreover, to the extent that U.S.-based international businesses find themselves caught between rigorous U.S. sanctions on the one hand and permissive third-country trade policies or blocking legislation on the other, they will confront

a significant regulatory compliance burden of the sort that President Trump argues must be dismantled domestically. Finally, even though, prior to the change in Administration, regulators indicated that the United States will provide a wind-down period in the event sanctions are reimposed (as we previously reported [here](#) and [here](#)), it is unclear whether this policy would be maintained under the Trump Administration.

CONCLUSION

Given the continued uncertainty regarding the future of U.S. sanctions against Iran and potentially dramatic impact of any U.S. effort to reimpose its sanctions, international companies should consider and prepare for the ramifications of all possible outcomes.

LAWYER CONTACTS

Jones Day will continue to closely monitor developments with respect to U.S. sanctions on Iran as the policies, priorities, and initiatives of the Trump Administration take shape. For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our “Contact Us” form, which can be found at www.jonesday.com/contactus/.

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