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# Forecasting International Risk Climate Under President Trump

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Niels Bohr famously observed that "predictions are hard, especially about the future." The results of last week's presidential election confirmed this adage, as prognosticators in the media, both political parties, and the financial and legal industries seemingly *all* failed to envisage Donald Trump's victory. The aftermath of the election has indicated that a corollary to Bohr's maxim also is true: commentators of all stripes will continue to try to forecast the future, regardless of the difficulty of doing so. In this article, we offer our best guesses about potential regulatory and enforcement changes that might occur in the international risk landscape after Inauguration Day.

## I. Iranian Sanctions

On January 16, 2016 ("Implementation Day"), the United States and the European Union lifted or amended many nuclear proliferation-related sanctions against Iran pursuant to the Joint Comprehensive Plan of Action ("JCPOA"). The United States eliminated most of its secondary sanctions, and also scaled back certain parts of its primary sanctions regime. Most notably, the Office of Foreign Assets Control ("OFAC") within the U.S. Department of Treasury issued a general license ("General License H") that permits foreign entities owned or controlled by U.S. companies ("Foreign Entities"), including foreign subsidiaries of U.S. companies and foreign portfolio companies of U.S. private equity sponsors, to conduct business with Iran, subject to various restrictions. The European Union significantly scaled back its sanctions against Iran as part of the JCPOA, and General License H permits, to some extent, Foreign Entities to compete alongside European companies to win new business in Iran.

During the election campaign, Mr. Trump sharply criticized the JCPOA. After becoming President, Mr. Trump could end the United States' participation in the JCPOA. But as the JCPOA was negotiated in partnership with five other countries, it seems unlikely that President Trump would withdraw the United States from the JCPOA in its entirety. A more plausible scenario is that President Trump may undo certain aspects of the sanctions relief that the United States has granted Iran since Implementation Day, such as revoking General License H. This act alone would have significant consequences, as many Foreign Entities have spent significant time and money establishing policies and procedures designed to ensure compliance with General License H, developing relationships with Iranian counterparties, and even making capital investments in Iran. Some companies have approached new business opportunities in Iran cautiously, while others have jumped more aggressively. Regardless, a forced and time-limited wind-down of Iranian business dealings would impose financial and operational costs for even the best-prepared companies.

Alternatively, the Trump administration might accuse Iran of violating its obligations under the JCPOA, potentially resulting in the "snap back" of all of the U.S. sanctions that were in place prior to Implementation Day. This strategy—which Mr. Trump foreshadowed during an August 2015 interview ("I would police that contract so tough that they don't have a chance")—may earn President Trump the approbation of Republican lawmakers, many of whom vigorously opposed the JCPOA and favored imposing additional, new sanctions on Iran.

## II. Russian Sanctions

Following Russia's annexation of Crimea in March 2014, President Barack Obama issued an executive order authorizing the Treasury Department to impose sanctions on individuals and entities that operate in certain sectors of the Russian economy. Pursuant to the executive order, OFAC has issued sectoral sanctions targeting Russian financial institutions, defense companies, and energy firms. In addition, OFAC has targeted a number of persons in Russian President Vladimir Putin's inner circle with list-based sanctions and imposed comprehensive sanctions on the Crimea region of Ukraine. The European Union imposed sanctions that are similar to the measures imposed by OFAC.

The European Union responded to the annexation of Crimea by Russian forces in a similar way and imposed sanctions against Russian and Crimean entities and individuals that are broadly similar to the measures imposed by OFAC. Russia's response to these European sanctions has been to impose a ban on certain food and agricultural products from European countries.

Mr. Trump has indicated that he wishes to improve U.S. relations with Russia and both Mr. Trump and President Putin have spoken with apparent admiration for each other. In Europe, where the continuation of sanctions against Russia in 2017 will require the approval of all 28 Member States, there are signs that countries such as Italy, Cyprus and Greece favor relaxing some or all of the current sanctions in place. Many other European countries, however, have made it clear that they are unwilling to relax sanctions until Russia has demonstrated improved compliance with the Minsk Agreement, which calls for a cessation of hostilities in eastern Ukraine. Senior U.S. government officials in the Obama administration—including Secretary of State John Kerry—also have expressed skepticism about the continuing utility of at least some of these sanctions.

Against this backdrop, President Trump may unilaterally elect to end the U.S. sanctions on Russia, irrespective of contrary views expressed by NATO allies in Europe. Alternatively, he could seek to engage the Kremlin in negotiations over sanctions relief in exchange for (1) increased cooperation with respect to the ongoing Syrian conflict and/or (2) Russia's agreement to reverse its military buildup in the Baltic region. Indeed, both President Putin and President Trump may view a negotiated solution as politically expedient. President Putin would achieve the lifting (or relaxation) of sanctions that have damaged the Russian economy, and Mr. Trump could claim that he defused an inherited political crisis.

## III. Cuban Sanctions

Since December 2014, President Obama has significantly changed the United States' policy toward Cuba through modifications to the Cuban Asset Control Regulations and the Export Administration Regulations. These changes have created significant new opportunities for U.S. companies and some foreign companies to engage in certain types of business in and with Cuba and to export particular types of U.S.-origin products to Cuba.[1] With the most recent amendments to the Cuban Assets Control Regulations, announced in October 2016, President Obama has taken virtually every step within his authority to relax the Cuban embargo; any further loosening—or the termination of—the Cuban sanctions would require Congressional action (for which there appears to be limited political appetite).

During the election campaign, Mr. Trump pledged to "reverse" President Obama's executive orders related to Cuba, thereby reverting to the U.S. policy of non-engagement that prevailed from the early 1960s through 2014. This shift in U.S. policy toward Cuba would represent a significant setback for U.S. companies—including airlines and hospitality companies—that have made sizeable investments in anticipation of increased engagement with Cuba.

[1] Even with these recent changes, primarily accomplished via executive orders, the Cuban sanctions continue to prohibit most transactions by U.S. companies (as well as U.S. companies' foreign subsidiaries) involving Cuba.

## IV. Scrutiny of Foreign Investors and Investments in the United States

Throughout his campaign, Mr. Trump repeatedly denounced the impact of foreign government and foreign commercial interests on the U.S. economy. One way in which President Trump may seek to address these perceived problems is by mandating increased scrutiny of prospective foreign investors and investments through the Committee on Foreign Investment in the United States ("CFIUS") and Defense Security Service ("DSS") review processes.[2]

After Mr. Trump becomes President, CFIUS might have the authority to review a wider range of transactions. Indeed, during the last few months, some (mostly Republican) Congress members have sought to increase the scope of CFIUS's power in order to allow the interagency committee to address perceived national security concerns more effectively. Mr. Trump's victory increases the likelihood that CFIUS's power will be expanded.

Even if CFIUS's or DSS's jurisdiction remains the same, each may adopt a more aggressive approach when reviewing relevant transactions. Importantly, CFIUS and DSS each exercise considerable discretion in reviewing transactions within their jurisdiction. The Trump administration may encourage increased scrutiny of proposed transactions involving foreign entities, which, in turn, may result in CFIUS blocking more covered transactions and DSS imposing more onerous mitigation measures on transactions that result in U.S. companies coming under foreign ownership or control. Based on comments made during Mr. Trump's campaign, it seems possible that CFIUS and DSS could take a particularly hard look at transactions involving foreign investors from China.

## V. Conclusion

During his campaign, Mr. Trump signaled dramatic changes to U.S. foreign policy that, if implemented, could produce significant financial, operational, and compliance-related consequences for U.S. and international companies. While it is too early to assess the impact of a Trump presidency on U.S. foreign policy, the next 70 days present an opportunity for companies to consider how to respond to the potential changes outlined above.

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[2] CFIUS is an interagency committee of the U.S. government authorized to review transactions that could result in control of a U.S. business by a foreign person. DSS is responsible for administering facility clearances (i.e., permission to access classified information of the U.S. government). When a foreign entity obtains a five percent or greater interest in a U.S. company that holds a facility clearance, the foreign entity's interest must be reported to DSS, which may require the U.S. company to implement mitigation measures.