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Policy Update:

Businesses need to be prepared for the Impact of Recent Changes in U.S. Strategy

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Latest from Washington, DC

Despite some uncertainty of when talks with North Korea will take place, there is a flurry of activity in Washington surrounding the expansion of relations with North Korea and the withdrawal from "the Iran deal". The White House also remains focused on re-negotiating the terms of the NAFTA agreement and is considering several high profile tariff initiatives.

With trade, security, and the renegotiation of terms of international operations as common themes, what does it all mean for business interests? The short answer is that it is very hard to tell at this point. An indication likely will be global crude oil prices. Should the price of crude increase due to tariff sanctions on Iran, there could be an adverse effect on the U.S. economy – in particular manufacturing. This in turn would likely carry U.S. political ramifications, while buoying the Russian economy. The potential increase of oil prices would also have implications for the Chinese as their manufacturing costs would increase.

The bottom line is that businesses should prepare for possible headwinds depending on how the oil market responds to actions that occur in the wake of U.S. withdrawal from the NAFTA agreement.

Implications of U.S. Withdrawal from Iran Deal

Iran is an oil and gas power house, located in a critical location. The Iranian population of 80 million citizens is largely educated, with many harboring pro-western aspirations that are repressed by the current regime's tight control over the population.

Iran in and of itself is a sizeable market for international goods; however, years of crushing sanctions have eroded much of the financial infrastructure of Iran. When the Iran deal was announced many western companies rushed in to take advantage of the Iranian domestic market. The Obama Administration had hoped that by opening the market to the west, over time the influx of western goods and services would help moderate the country.

President Trump has withdrawn the U.S. from the "Iran Deal", formally known as the Joint Comprehensive Plan of Action (JCPOA). Unless there is a renegotiation of this deal, former sanctions will kick back or "snap back" into effect with many consequences for businesses operating in the country.

Most observers believe the west is at risk of losing access to this market, its people, and the key geographic cross roads on in which it lies. Hope lies in the remaining possibility that some sort of "better" deal can be struck that preserves the positive dialogue and engagement between Iran and the west which was underway.

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Current CFIUS Activity

The Committee on Foreign Investments in the United States (CFIUS) is a formally charted interagency committee tasked with reviewing all potential acquisitions of American companies or investments by a foreign company into the U.S.

Most of the activity we have seen from CFIUS has targeted potential Chinese acquisitions of assets such as Hollywood companies, ports, and high tech companies. Also high on the list of concern are real estate transactions located near U.S. military bases or other critical infrastructure.

The current Administration – with bipartisan support – intends to strengthen and expand the CFIUS charter.

So what does this mean for U.S. companies? If the old terms of the deal are reinstated, then U.S. companies, and their foreign subsidiaries, will be required to withdraw from all work in country.

What remains to be seen is how the White House handles the European companies that choose to remain. Thus far, there has been no sign that the European Governments intend to require their companies to withdraw. However, if the old sanctions language remains in play the Europeans will still be penalized by the U.S. Government through their activities in the U.S.

This is complicated to say the least, and it is critically important that companies engaged in international business remain engaged, and up-to-date regarding potential business risk and legal liabilities.

Foreign Investment Risk Reduction Modernization Act

The Foreign Investment Risk Reduction Modernization Act (FIRRMA), formally known as H.R. 4311, and its companion in the Senate, S. 2098, remain in play. The intent of FIRRMA is to increase and strengthen the "reach" of the Committee on Foreign Investments in the United States (CFIUS) as it relates to U.S. technology and intellectual property (IP). Previously, CFIUS reviewed foreign investments in the United States or potential acquisitions of American companies. If the review process determined the deal was not in the best interest of U.S. National Security, the deal or acquisition would be either outright denied or only allowed under specified conditions. FIRRMA extends this authority much further, requiring the U.S. Government to review the transfers of certain U.S. technology and knowhow overseas. It also looks to expand the review to include maintaining U.S. technical advantages from both a national and economic perspective.

"FIRMMA dramatically increases the reach of the U.S. Government on overseas deals."

The potential technologies to be reviewed under FIRRMA include items that are not covered under the various U.S. licensing regimes, often because they are emerging technologies such as artificial intelligence, robotics, application level security, nanotechnology, 5G telecommunications, and the Internet of Things.

Going forward, as new overseas joint ventures are considered, one must consider how investments will be evaluated in light of what technologies will be transferred and how this transfer will be viewed in light of this proposed new law and other policies reflective of the same focus. Business operations will need to prepare for this new level of review in all overseas expansion plans.

VNF Partners with Larkin International

To assist our clients in addressing these new policies and potentially new regulations, VNF is teaming with Larkin Trade International (LTI), which has a long history of evaluating and addressing the impact of national security, especially dual-use export controls, on the plans of U.S. companies for expansion overseas. Together, VNF and LTI can help analyze business plans and develop a strategy for moving forward with investments that are in compliance with both current and future regulations and policies.

FOR MORE INFORMATION

Van Ness Feldman monitors and advises clients on the actions of the Administration and Congress and the implications for regulated businesses. The professionals at Van Ness Feldman help businesses understand and navigate federal policy and the complex intersection between business and government.

For additional information regarding the impact of recent developments in Washington, DC on your organization, please contact Eric Wagner at (202)298-1953 or ewagner@vnf.com, or Ben McMakin at (202)-298-1956 or blm@vnf.com.

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