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Recent Developments: Iranian Sanctions

On 16 January 2016, 'Implementation Day', the United Nations, the European Union and the United States lifted their nuclear related economic sanctions on Iran in accordance with the Joint Comprehensive Plan of Action agreed in July 2015 (JCPOA).

While the US nuclear economic sanctions have now been lifted, the US primary sanctions in relation to Iran remain. As a result, financial institutions and insurers must remain cautious when seeking to re-engage in business activity with Iran, particularly those with a US base/nexus, and continued due diligence is recommended when dealing with Iranian counterparties and/or interests.

Sanction Relief: What has been lifted?

Implementation Day removed all UN sanctions in relation to Iran's nuclear programme and EU sanctions relating to, amongst other areas, Iran's oil, gas, shipping, petrochemical, insurance and finance sectors. In addition, over 300 Iranian individuals and companies have been removed from the EU sanctions list.

The US has broadly lifted its 'nuclear related secondary sanctions' which applied to non-US companies/persons dealing with Iran's energy, shipping, financial, insurance, shipbuilding, automotive and extraction (including precious metals). The US has also delisted over 400 individuals and entities from its sanctions regime.

Importantly, the primary sanctions against Iran remain applicable for transactions between US persons (including banks, insurers and reinsurers or those with a US connection) and Iran. This will continue to restrict any transaction involving US financial institutions, US Dollar transactions (transactions cannot be processed to or through the US) and provisions of insurance by US insurers and reinsurers. The prohibition on funds transiting the US financial system is of particular importance in shipping and trade contracts. The aviation industry is exempted from this and is now subject to a favorable license regime regulated by the Office of Foreign Assets Control (OFAC). Unfortunately, there is no similar carve out for the shipping industry, perhaps due to the fact that the US is not a major shipbuilding nation in the same way it is a major player in aviation manufacturing.

Under JCPOA this sanction relief is subject to a 'snap back' provision. If Iran violates the JCPOA the sanctions will be reinstated. Consideration should be given addressing this 'snap back' risk in contracts.

Impact of Sanction Relief

Generally, the removal of sanctions will restore much trade to and from Iran and facilitate its return to the global energy market. It is anticipated that Iran's oil revenue will increase next year and foreign reserves currently frozen in accounts will be returned to Iran.

Iran will be permitted to export as much crude oil as the market requires and has suggested it will aim to increase sales by 500,000 barrels per day over the course of the year, resulting in significantly more oil being available in a very soft market.

Practical Guidance/executive summary

Companies trading to Iran should note particularly:

Despite the relaxation in the sanctions regime, it remains important to exercise enhanced due diligence when concluding contracts or conducting business with Iranian entities.

Consideration should be given as to whether there are any pre-existing covenants or contractual warranties or restrictions (for example reviewing current banking documentation for lender imposed restrictions that may need to be amended or checking policies of insurance for restrictions) which may continue to limit the ability to trade with Iran.

Prohibitions will continue for US financial institutions, funds transiting the US financial system (US Dollar transactions) and the provision of insurance services by US providers. It will therefore be necessary to clearly identify whether any US persons are involved at any stage of the transaction, whether payments will be required in US Dollars, counterparties for all trades and whether a transaction would involve the supply of any goods originating from the US or with US content.

There remain a number of Iranian persons and businesses blacklisted by the US and the EU. Due diligence should therefore also be exercised to ascertain whether any of the Iranian counterparts involved at any stage of the transaction are blacklisted.

Financial institutions, insurers and reinsurers should remain cautious in business ventures with Iranian interests. It is vital that early enquiries are to identify any issues with regards to cover, payment or support of a transaction prior to entering any arrangement involving Iranian interests.

As the sanctions programme may be reinstated, contracts should be reviewed to ensure clear provisions are included to

manage the reimplementation of sanctions (such as short notice provisions for termination).



Further Information

In connection with the lifting of the sanctions OFAC has issued detailed guidance, including a FAQ sheet, to assist in the interpretation of the revised regime, with particular attention on the primary sanctions which remain in force. The EU has also provided similar guidance. These can be located via the below links:

https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/jcpoa_implementation.aspx

http://eeas.europa.eu/top_stories/pdf/iran_implementation/information_note_eu_sanctions_jcpoa_en.pdf

For further information or should you have any questions, please contact your usual CJC contact.