



Persian Progress: new sanctions guidance and commentary underlines opportunities for foreign businesses to engage with Iran

Nearly a year after the landmark nuclear deal was reached with the signature of the Joint Comprehensive Plan of Action ("the JCPOA") and six months after the JCPOA was implemented, the Iranian economy is picking up steam. Following our Briefing Note in February 2016 "[Persian Prospects](#)" which examined the changes to EU and US sanctions we now look at developments over the past few months and recent guidance issued by the US Treasury Department's Office of Foreign Assets Control (OFAC), which removes some concerns particularly in respect of multinational banking and the involvement of US persons and US owned foreign subsidiaries in transactions with Iran.

Economic developments over the past six months demonstrating the opportunities in Iran include:

- Iranian statistics reveal that the country has attracted \$3.4 billion in foreign investment since the implementation of the JCPOA in January and that oil production has been boosted to 3.8 million barrels per day, with exports reaching 2.3 million barrels per day;
- Shell, Spanish company Repsol, Japanese companies Mitsui and Chiyoda Corporation and Turkish company Unit International, are just some of the companies to have engaged in business and projects with Iran in the oil and gas sector;
- Both Boeing and Airbus have announced deals with Iran Air worth \$25 billion and \$27 billion respectively (subject to OFAC authorisation), and foreign businesses have signed dozens of major deals for future business and investment;
- UK Trade & Investment continue to actively encourage business with Iran and opened an office in Tehran in January;
- Iranian banks have been reconnected to SWIFT and 350 new foreign correspondent accounts have been opened; and
- There are plans to set up a financial centre on Qeshm Island to facilitate access to international capital and serve as a gateway for overseas banks to gain access to the Iranian market. Iranian officials are already in talks with Chinese, Russian and Japanese

banks on establishing a presence.

Major international banks still continue to take a cautious approach towards transactions with Iran. This is not surprising given that it was always expected that smaller to medium financial institutions and banks would test the Iranian market first. Major institutions continue to cite a fear of breaching US sanctions as an explanation for not engaging in Iranian business and allege that the remaining US sanctions regime is too complex. No doubt some banks are still stinging from the multi-million dollar fines imposed by US regulators for sanctions breaches and some are subject to settlement agreements with US enforcement agencies in which they have agreed not to engage in transactions with Iran.

However, alleged concerns by non-US companies regarding US sanctions, frequently actually boil down to concerns centered more around Iran's anti-money laundering (AML) deficiencies, lack of corporate transparency and its status on the Financial Action Task Force (FATF) blacklist. FATF, an intergovernmental organisation that sets standards and promotes measures for combatting money laundering has recently announced that for 12 months it has suspended its requirement that member states impose counter-measures on Iran for deficiencies in its AML regime. FATF has welcomed Iran's adoption of and commitment to an action plan to address the deficiencies in its AML regime and its decision to seek technical assistance in its implementation, which should at least provide a level of comfort to financial institutions.

Further, when speaking at a recent symposium, John Smith, the Acting Director of OFAC, emphasised that the US sanctions regime for non-US persons and businesses seeking to engage in business with Iran is straightforward. To ensure compliance with US sanctions there are only two rules for non-US persons/entities to follow:

1. Do not do business with Iranian persons or entities that remain on the Specially Designated Nationals List (SDN). This does not cause any particular further burden as many of those who remain on the SDN list also remain sanctioned by the EU; and
2. Do not involve a US person, the US financial system or the US in any way when engaging in a transaction with Iran.

Further guidance has also been published by OFAC in response to questions from business communities and other governments and offers further clarity particularly in relation to the effect of US sanctions on foreign entities and the lifting of certain financial and banking sanctions. The key points to draw from this updated guidance are:

- **Correspondent accounts for foreign banks:** US financial institutions may transact with, including by opening or maintaining correspondent accounts for, non-US, non-Iranian financial institutions that do business with Iranian financial institutions that are not on the SDN list. Provided they are not involved with Iranian transactions themselves, US financial institutions do not have to distance themselves from those foreign financial institutions which are engaging with Iran. Following from this, foreign financial institutions may do business with both Iranian and US financial institutions so long as this business is kept separate. As made clear in the original guidance, Iran related transactions must not be routed through US financial institutions;
- **Scope of General Licence H:** As explained in our previous guidance note, General Licence H allows US owned or controlled foreign entities to engage in business with Iran. OFAC Guidance stated that a company will be US owned if a US person holds a 50% or greater shareholding or holds a majority of seats on the board of directors. Some confusion has therefore arisen in regard to foreign entities with multiple US person owners. The new guidance has clarified that a foreign entity will be US owned or controlled if, in aggregate one or more US persons hold(s) a 50% or greater equity interest or if one or more US persons hold(s) a majority of seats on the board of directors of the entity. However, foreign entities which are publicly traded or whose ownership interests are widely dispersed will not be US owned, solely because US persons, in the aggregate, passively hold more than 50% of the shares of the entity, but no one US person holds a controlling share in the entity;
- **Scope of US involvement in US owned foreign subsidiaries**

engaging in business with Iran: US persons are permitted to amend the policies and procedures of US entities that own foreign subsidiaries, as well as the policies and procedures of the foreign entity itself, to the extent necessary to allow the foreign subsidiary to engage in authorised transactions with Iran. A US person may change the operating policies and procedures of a US entity or a foreign entity multiple times, so long as such changes are not intended to facilitate any particular Iran related transaction;

- **US persons serving on the board or in a senior management capacity of a foreign entity:** Foreign entities may engage in Iranian transactions even if US persons serve in senior positions such as director, CEO, CFO etc. However, any US persons, whether senior executives, compliance officers or employees must be walled off from Iran related business. The guidance suggests that foreign entities consider instituting a blanket recusal (i.e. disqualification) policy for US persons with respect to Iran related matters (as opposed to case by case abstentions) to avoid the risk of US persons facilitating Iranian transactions;
- **Involvement of US parent companies in foreign subsidiaries engaging in business with Iran pursuant to General Licence H:** The board members, senior management and employees of a US parent company that owns a foreign subsidiary engaging in Iranian business may continue to be involved in the foreign subsidiary's day to day operations related to non-sanctioned jurisdictions. A US person may receive reports from foreign entities that include details on transactions with Iran pursuant to General Licence H. US parent companies are not required to abstain from all management or corporate governance of foreign entities that engage in Iran-related business but they may not attempt to influence or otherwise approve, process or finance Iranian transactions or Iran related business decisions.

This additional OFAC guidance, commentary from OFAC and the examples of businesses leading the way in Iran, should act as further encouragement for UK and foreign companies to seek out new opportunities in Iran. With extensive experience of acting for Middle Eastern clients and with offices in the UK, Germany, Italy, Paris and Brussels we are uniquely placed to assist those interested in forging links with Iran. If you would like to discuss any aspect of the Iranian sanctions or are exploring business opportunities in Iran, please do not hesitate to contact us.

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