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Doing Business in Iran: Life After (Secondary) Sanctions

By Shahram Safai | February 2, 2016

The legal landscape for doing business in Iran has changed significantly in the past seven months. On July 14, 2015, the P5+1 (the United States, the United Kingdom, Germany, France, China and Russia), the European Union and Iran agreed and signed a Joint Comprehensive Plan of Action (“**JCPOA**”) contemplating the easing of certain Iran related sanctions. On October 18, 2015, Adoption Day, the JCPOA came into effect and signatories began embarking on the steps necessary for implementation of the JCPOA. Recently, on January 16, 2016, and after the International Atomic Energy Agency’s verification of Iran’s commitments under the JCPOA, the United Nations, the European Union and the United States ceased the application of sanctions relating to certain sectors of business activity with respect to Iran (i.e. no longer restricting non-US persons from engaging in the following activities) including:

- Finance and banking;
- Insurance;
- Oil, gas and petrochemicals;
- Shipping and ship building;
- Transport;
- Gold and other precious metals, bank notes and coinage;
- Other metals;
- Automotive sector;
- Software; and
- Dealings with certain previously prohibited individuals and entities.

In subsequent years, further existing sanctions shall cease upon verification and compliance pursuant to the JCPOA (or certain sanctions may “snap back” due to non-compliance).

United States Sanctions

It is important to note that the US sanctions on Iran restricting US persons from dealings related to Iran (“**US Primary Sanctions**”) continue in full force and are not affected by the JCPOA (as opposed to the U.S. sanctions regime concerning non-US persons’ dealings related to Iran (“**US Secondary Sanctions**”); such US Secondary Sanctions largely ceased to apply as of January 16, 2016, as contemplated by the JCPOA and as discussed above). Most interestingly though, a foreign entity owned or controlled by a US entity may now engage in transactions, directly or indirectly, with the Government of Iran or any person subject to the jurisdiction of the Government of Iran (pursuant to ‘General License H’ as stipulated by the Office of Foreign Assets Control of the US Department of the Treasury (“**OFAC**”)), which activities were all previously prohibited. Also, US persons may now apply to OFAC for a license for the sale, lease or servicing of commercial passenger aircraft with respect to Iran. However, dealings with US dollar transactions will continue to be effectively prohibited for non-US persons and US persons given that the US Primary Sanctions pertaining to prohibitions on US dollar clearing continue and have not ceased. As a result, the foreign currency of choice in doing business in Iran will likely be the Euro which is not subject to such restrictions.

United Arab Emirates Sanctions

In the United Arab Emirates, much of the previously applicable United Nations sanctions which restricted business with Iran (as discussed above) are no longer applicable. As a result, individuals and entities are no longer generally restricted from dealings related to Iran, subject to any remaining sanctions regimes relating to Iran (such as if a person resident in the UAE is a US citizen and hence restricted by the continuing US Primary Sanctions).

Doing Business in Iran

Given the above opportunities created by the JCPOA, a primer on Doing Business in Iran is warranted.

Iran has one of the largest economies in the Middle East, and it has the second largest population in the region, with about 80 million people. Iran ranks second in the world in natural gas reserves, and fourth in crude oil reserves. The economy is dominated by direct and indirect revenues from the petroleum and natural gas sectors, although the agricultural and service sectors in the country are active, and there has been an increase in the manufacturing and financial sectors as well.

As discussed, Iran had been under a strict international sanctions regime for over three decades, which is now easing given the JCPOA. The opportunities in oil, gas, retail, manufacturing, financial, shipping and many other sectors are vast. Recent opportunities include the sale of commercial aircraft, the joint venture development of oil and gas fields, investments into the hospitality sector, shipping sector transactions and dealings with Iran's private financial institutions. However, an investor must remember that certain Iranian business sectors are subject to entrenched monopolies, duopolies or other opaque, hard wired business alliances which will be difficult to penetrate. Also, doing business in Iran requires compliance with Iranian business etiquette and traditional cultural norms which are distinctly different. Language skills (Farsi) are also strongly recommended at this very early stage in Iran's economic re-opening to global markets.

Foreign businesses generally establish a presence in Iran through branches and representative offices. Alternatively, certain foreigners elect to conduct business through a limited liability company or a private joint stock company, often times with seasoned local partners.

In addition, the Government of Iran has established various free zones, regulated by relevant free zone authorities. Free zones allow foreign companies to form wholly owned subsidiaries. Certain free zones like the Kish Free Zone offer a 15 year tax exemption to all investors and protections for foreign investment. Other incentives include an exemption from customs duty on certain imported products.

As a further incentive for foreign investment in Iran, the Foreign Investment Promotion and Protection Act allows repatriation of sales related profits for foreigners; provides for fair compensation in the event of nationalization; allows for international arbitration in the event of disputes; and provides for other investment incentives for foreigners.

The JCPOA contains the implied promise of business opportunities in Iran for many foreign businesses and the exciting prospects of improving the business capabilities and infrastructure of a nation. However, entrenched Iranian business alliances, traditional business culture, language requirements and distinctive laws and regulatory practices may serve as hurdles. Such opportunities (and hurdles) also carry with them the hope of increased cultural and political understanding through mutual business prosperity.

The Author



Shahram Safai

Partner

ssafai@afриди-angell.com

Tel: +971 4 330 3900

Shahram's practice consists of corporate law, real estate law, disputes, and advising on the legal aspects of doing business in Iran. He also advises on private equity and venture capital transactions. He heads the firm's Iran, real estate and venture capital teams and has been highly sought after by boards and shareholders for strategic legal advice. He is active in lobbying for, providing constructive feedback to and advising government organizations regarding regional laws and regulations pertaining to doing business, real estate and venture capital investment.

His Iran practice involves advising clients with respect to investments, joint ventures, as well as introduction to sector specific private and public entities in Iran. Such advice generally involves franchise and agency matters, build-operate-transfer transactions, regulatory and legal compliance and strategies, foreign investment protection regimes, sanctions and anti-money laundering implications. Shahram is fluent in Farsi and he is qualified as a solicitor in England and Wales and is a member of the California State Bar. He is also a registered professional engineer.

Shahram's specific Iran related work has included advice relating to:

- Manufacturing sector joint ventures, commercial agency arrangements and local partner introduction.
- Free zone entry advice, incorporation and liaison.
- Private equity transactions involving financial institutions.
- Build-operate-transfer arrangements related to the oil and gas sector.
- Hospitality industry legal and regulatory matters as well as related construction matters.

Shahram is described as "a cut above the rest with thorough knowledge, sharp analytical prowess, understanding of the industry, good relationships with government authorities and the best of communication skills" (Legal 500 EMEA). He is described as "quick, responsive and forthright" and a "Leader in [his] Field" (Chambers Global).

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