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Client alert

Iran sanctions relief implemented

The implementation of the landmark nuclear deal with Iran has arrived. Iran received far-reaching economic and financial sanctions relief on 16 January 2016, after meeting key nuclear commitments set out in the Joint Comprehensive Plan of Action (JCPOA) reached between the P5 + 1 (China, France, Germany, Russia, the United Kingdom, and the United States), the European Union and Iran on 14 July 2015.

On 16 January 2016, the International Atomic Energy Agency confirmed in a report that Iran had fully implemented the JCPOA-required measures necessary for sanctions relief, leading the United Nations, the European Union and the United States to lift nuclear-related sanctions, a milestone referred to as 'Implementation Day'. Implementation Day marks the most significant reduction in sanctions under the JCPOA, and further easing is not expected until October 2023 (see the **timetable** below). This sanctions relief is likely to have profound implications for the global economy, potentially releasing billions of dollars of assets and permitting Iranian oil to be sold on the international market.

In this client alert, we consider in more detail:

- EU sanctions relief (see **section 1A** below)
- US sanctions relief (see **section 1B** below)
- EU sanctions remaining in effect (see **section 2A** below);
- US sanctions remaining in effect (see **section 2B** below); and
- New opportunities and compliance challenges (see **section 3** below).

What does sanctions relief mean for business?

The changes in UN, EU and US sanctions against Iran are significant, particularly to the extent they previously related to non-US individuals and entities, including non-US entities owned or controlled by US persons. As discussed further below, for non-US persons these changes now:

- open up the financial services sector in Iran;
- permit the transfer of funds to and from Iranian individuals and entities;
- permit the sale of Iranian oil, gas and petrochemicals;
- allow for investment in and technical support for the oil, gas and petrochemicals sector;
- release restrictions in other sectors such as automotive, shipping and air cargo; and
- provide for the export of software and certain metals, subject to authorisations.

However, certain important restrictions remain, notably:

- the continued prohibition on US individuals and entities doing business in Iran, absent a licence to do so;

- the use of US dollars in the context of Iranian business, given the continuing restrictions on the transfer of funds through US correspondent banks; and
- the export or reexport of controlled US-origin goods, technology and software, which restrictions apply to both US and non-US individuals and entities.

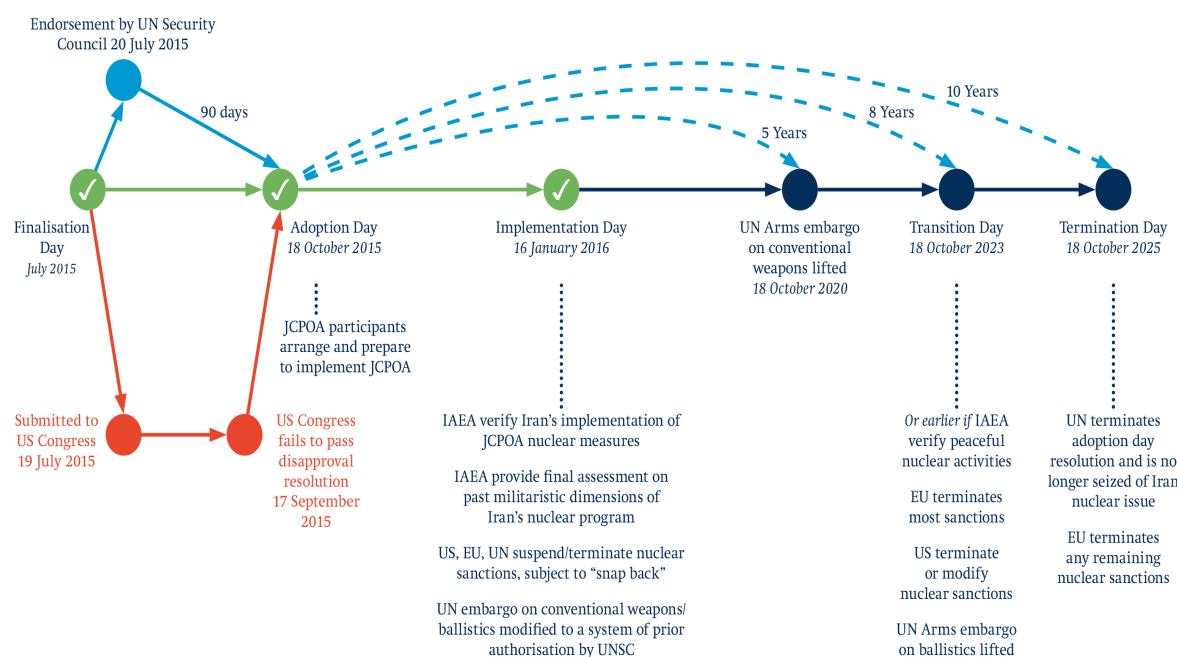
Further, although both the EU and US delisted a substantial number of Iranian persons, many Iranian individuals, entities and organisations remain on the relevant lists and compliance checks will continue to be necessary in this regard. In particular, there remains a risk of US penalties for any non-US persons doing business with certain Iranian persons that remain designated as subject to US secondary sanctions.

Consequently, while the new sanctions landscape is now clear, challenges will remain for companies looking to do business in Iran, including ensuring that transactions are compliant with the continuing sanctions and export controls. Further, the fact that sanctions can ‘snap back’ into place if Iran fails to meet its commitments will also need to be factored into the consideration and structuring of any investment.

In addition, the commercial environment in Iran is yet to settle. Iran remains an uncertain environment for foreign investors. Legal, political and commercial risks, including uncertainties regarding Iran’s legal system (which has been largely untested by foreign investors), mean that careful thought will need to be given to the mitigations of such risks (an issue that we have considered in a separate **client briefing**).

JCPOA Countdown

Timeline for Iran Sanctions Suspension



1. Overview of sanctions relief

A. EU sanctions relief

On Implementation Day the EU lifted the economic and financial sanctions related to Iran’s nuclear program. The changes to the EU sanctions regime that have come into effect on Implementation Day include the following:

- **Financial, banking and insurance:**
 - *Transfer of funds:* All general restrictions on transfers of funds between EU individuals or entities and Iranian individuals or entities – including the transfer of funds between EU financial institutions and Iranian financial institutions – have been terminated. EU asset-freeze measures will continue to restrict transfers to designated persons.

- *Banking activities*: Non-designated Iranian banks are permitted to establish new correspondent banking relationships, open new branches, subsidiaries or representative offices in the EU and acquire or increase their ownership interest in EU banks. EU banks are permitted to open representative offices or establish branches or subsidiaries in Iran, to establish joint ventures and open bank accounts with (non-designated) Iranian banks.
 - *Financial messaging services*: Non-designated Iranian banks, including the Central Bank of Iran, can once again access financial messaging services including SWIFT (but note that US dollar payments remain restricted, as discussed further below).
 - *Financial support services*: Restrictions have been removed on providing export credits, guarantees and insurance (including reinsurance) for trade activities with Iran. This includes commitments for grants, financial assistance and concessional loans to the Government of Iran as well as public and public-guaranteed bonds.
- **Energy sector – oil, gas, and petrochemical:**
 - EU persons can import, purchase, swap and transport Iranian crude oil and petroleum products, natural gas or petrochemical products. They may also export equipment and technology and provide technical assistance (including training) to the Iranian oil, gas and petrochemical industries covering exploration, production and refining of oil and natural gas (including liquefaction of natural gas).
 - Further, restrictions no longer apply to investments in the Iranian oil, gas and petrochemical sectors, including granting financial loans or credits to, acquiring or extending participation in, or setting up joint ventures with, non-designated Iranian persons.
- **Shipping, shipbuilding and transport sectors:**
 - Restrictions have been lifted that limited the ability of businesses to:
 - sell, supply, transfer and export naval equipment and technology for ship building, maintenance or refit to Iran or Iranian persons;
 - engage in the design or construction of cargo vessels and oil tankers for Iran or for Iranian persons;
 - provide vessels for the transport or storage of oil and petrochemical products to Iranian persons; and
 - provide flagging and classification services to Iranian oil tankers and cargo vessels, including those related to technical specification, registration and identification numbers of any kind.
 - EU persons may now provide bunkering or ship supply services, or any other servicing of vessels, to Iranian-owned or Iranian-contracted vessels not carrying prohibited items. Similarly, restrictions have been lifted regarding the provision of fuel, engineering and maintenance services to Iranian cargo aircraft not carrying prohibited items.
 - All cargo flights operated by Iranian carriers or originating from Iran are being granted access to EU airports, and EU member states will cease inspecting, seizing and disposing of non-prohibited cargo transported to and from Iran.
- **Software**: While EU persons may again sell, supply, transfer or export Enterprise Resource Planning software (including updates) to Iranian individuals or entities or for use in Iran for JCPOA-consistent activities, EU persons must obtain an authorisation if the software is directly associated with nuclear goods and technology (see **section 2A** below).
- **Metals**: The sale, supply, transfer or export of certain graphite and raw or semi-finished metals to Iranian individuals or entities or for use in Iran is no longer prohibited, although there is now an authorisation requirement (see **section 2A** below).
- **Gold, other precious metals, banknotes and coinage**: Sanctions restrictions no longer apply on the sale, supply, purchase, transfer or export or transport of gold, other precious metals, or diamonds. Sanctions on related brokering, financing and security services to, from or for the Iranian government or the Central Bank of Iran have also been lifted. The Central Bank of Iran may again receive newly printed and minted banknotes and coinage.

- De-listing of individuals and entities: A significant number of individuals, entities and bodies were delisted on Implementation Day; these persons are no longer subject to asset freezes, prohibitions on making funds available to such persons, or travel bans. A detailed list of all delisted persons can be found in Council Implementing Regulation (EU) 2015/1862.

B. US sanctions relief

The US sanctions relief is more limited than the EU relief described above. The most significant change to the US sanctions is the lifting of so-called 'secondary sanctions' that apply to the activities of non-US persons. Changes to the US sanctions applicable to US persons (defined as entities organised in the United States, US citizens and permanent residents, and persons located or operating in the United States) are limited. As we discuss in the next section, many US sanctions remain in place, and additional sanctions were implemented on 17 January 2016 in response to Iranian missile tests.

US secondary sanctions have been lifted in the following sectors:

- **Financial and banking:**
 - *Banking activities:* Perhaps the most consequential US secondary sanctions were those that targeted financial and banking transactions, which have now largely been lifted for non-US persons. Non-US banks may now undertake transactions (including, for example, opening accounts and providing loans) with entities and individuals listed in the JCPOA, including the Central Bank of Iran and certain other Iranian banks (e.g. Bank Mellat), the National Iranian Oil Company (NIOC) and certain other government-related entities previously designated by the Office of Foreign Assets Control of the US Department of the Treasury (OFAC), as well as individuals and entities who were removed from the US list of Specially Designated Nationals (SDN list), so long as the activity does not otherwise violate sanctions (e.g., if the transaction involves a US nexus).
 - *Currency restrictions:* Non-US financial institutions may now engage in transactions involving the Iranian rial and maintain rial accounts. Further, non-US persons are now permitted to provide US bank notes to the Government of Iran.
 - *Other banking restrictions:* Various other restrictions for non-US persons have also been removed, including participating in Iranian government bond offerings, providing certain financial messaging services to Iranian financial institutions, restrictions on bilateral trade, and the provision of services related to any of the above.
- **Insurance:**
 - US secondary sanctions no longer target insurance for transactions by non-US persons that are now permissible under the sanctions. This includes underwriting, insurance or reinsurance services.
 - Non-US persons may offer such services in the energy, shipping and shipbuilding sectors of Iran, for NIOC or the National Iranian Tanker Company (NITC), or for vessels that transport crude oil, natural gas, liquefied natural gas, petroleum and petrochemical products. Existing exemptions allowing insurance remain in place, such as the longstanding exclusion for travel insurance for travellers to Iran.
- **Energy sector – oil, gas, and petrochemical:**
 - Non-US persons may also now participate in activities related to the Iranian energy sector, including:
 - general investment in Iran's oil, gas and petrochemical sectors, including joint ventures, goods, services, information, technology and technical expertise services; and
 - the purchase, acquisition, sale, transport or marketing of petroleum, petrochemical products and natural gas and export, sale or provision of refined petroleum and petrochemical products to Iran.
 - Transactions with NIOC, Naftiran Intertrade Company (NICO) and NITC, energy sector entities that had previously been specifically targeted under the secondary sanctions are no longer targeted.
 - OFAC has stated that it will no longer pressure other countries to reduce crude

oil purchases from Iran. This effort by OFAC has in the past produced commitments from countries across the world to find alternate sources of crude oil, cutting deeply into Iran's export revenues.

- **Shipping, shipbuilding, and ports:**
 - Non-US persons may now transact with Iran's shipping and shipbuilding sectors, as well as port operators. These include major players formerly on the SDN list prior to Implementation Day: Islamic Republic of Iran Shipping Lines (*IRISL*), South Shipping Line, NITC and the port operators of Bandar Abbas.
- **Precious metals, metals, software and automotive:**
 - Several of the US secondary sanctions targeted specific types of goods and services. Most of these sanctions have been lifted, permitting non-US persons to transact in gold and other precious metals; graphite, raw or semi-finished metals such as aluminium and steel; coal; software for integrating industrial processes; and goods or services used in connection with Iran's automotive sector.

In addition to secondary sanctions relief related to the above sectors, the US has taken a number of other steps to relieve sanctions:

- **De-listing of individuals and entities:** The US has removed more than 400 names from the SDN list. Individuals and entities removed from the SDN list that meet the US definition of Government of Iran or Iranian financial institutions have been added to a newly created list, called the 'E.O. 13599 List'. US persons continue to be prohibited from engaging in transactions with, and are required to block the property and interests in property of, E.O. 13599 List entities, any other entities owned or controlled by the Government of Iran and Iranian financial institutions. The individuals and entities that are no longer on the SDN list, regardless of whether they are on the E.O. 13599 List, are no longer subject to secondary sanctions.
- **Non-US entities owned or controlled by a US person:** OFAC has issued General License H authorising non-US entities owned or controlled by a US person to engage in most business with Iran. However, US persons are not permitted to be involved in the day-to-day operations of any Iran business conducted by non-US entities, including by approving, financing, guaranteeing, or otherwise facilitating such business.
 - Specific exceptions to General License H include:
 - The export of US-origin goods, services, or technology from the United States or by a US person without specific OFAC authorisation;
 - Transfers of funds to, from or through a US bank (including US dollars cleared through US correspondent banks);
 - Transactions involving any individual or entity on the SDN list or OFAC's 'Foreign Sanctions Evaders' list – note that while many Iranian individuals and entities have been removed from the list, many others remain on the list;
 - Transactions involving any military, paramilitary, intelligence, or law enforcement entity of the Government of Iran, or any official, agent, or affiliate of such entity; any activity that is sanctionable under Executive Orders relating to Iran's proliferation of weapons of mass destruction, including ballistic missiles; international terrorism; Syria; Yemen; human rights abuses; or nuclear activity subject to a JCPOA procurement channel that is not approved through the procurement channel process; and
 - The prohibited export of US-origin goods, technology or software controlled under US export controls to Iran or to a person on the 'Entity List' or 'Denied Persons List' administered by the Bureau of Industry and Security of the US Department of Commerce (*BIS*), without an export licence from the *BIS*.
 - US persons are permitted to establish or change compliance policies to enable non-US entities they own or control to engage in business with Iran that is permitted under the general licence.
 - US persons can also make available to non-US entities they own or control any automated and globally integrated computer, accounting, email, telecommunications, or other business support system, platform, database, application or server necessary to store, collect, transmit, generate or otherwise process documents or information related to transactions permitted under the general licence.

- **Favourable licensing policy for commercial passenger aircraft:** US and non-US persons may request a specific licence from OFAC for the export, reexport, sale, lease or transfer to Iran of commercial passenger aircraft for civilian use, along with spare parts, components and associated services used exclusively for commercial passenger aviation.
 - Specific licences are available for US-origin commercial passenger aircraft, or commercial passenger aircraft that contains 10 percent or more US-controlled content.
- **Imports:** A general licence permits the importation into the US of Iranian-origin carpets and certain foodstuffs, including pistachios and caviar, with certain conditions.

2. Sanctions remaining in place

A. EU sanctions

Certain restrictions will remain in place after Implementation Day. These include:

- **The EU arms embargo:** Until ‘Transition Day’ (which, if the JCPOA remains in effect, is expected to occur in 2023), the arms embargo will continue to prohibit the sale, supply, transfer or procurement of arms and related materiel of all types to Iran, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for such arms and related material - essentially, all goods included in the EU common military list.
- **Sanctions related to missile technology:** The prohibition on the sale, supply, transfer, export or procurement of the goods and technology listed in the Missile Technology Control Regime list (Annex III to Council Regulation (EU) No 267/2012 as amended), and any other item that an EU member state determines could contribute to the development of nuclear weapon delivery systems, will continue until Transition Day. The prohibition includes associated services such as providing technical assistance, brokering, financing or financial assistance.
- **Restrictions on certain nuclear-related transfers and activities:** Prior authorisation requirements are in place for proliferation-sensitive transfers and activities concerning certain goods and technology and associated services, such as technical and financial assistance and related investments. Requests for authorisation will be assessed on a case-by-case basis by the competent authorities of the relevant EU member states. The activities, goods and technology which are subject to these prior authorisation requirements are listed in Annexes I and II to Council Regulation 267/2012 (as amended) – these lists refer, respectively, to nuclear (fuel) procurement related activities, and to dual-use goods/technology that could contribute to reprocessing, enrichment-related, heavy water-related or other activities inconsistent with the JCPOA.
- **Restrictions concerning certain metals and software:** Prior authorisation requirements are also in place for the sale, supply, transfer or export of certain graphite and raw or semi-finished metals (listed in Annex VIIB to Regulation 267/2012) and the provision of associated services, as well as the sale, supply transfer or export of Enterprise Resource Planning software designed specifically for use in nuclear and military industries (described in Annex VIIA to Council Regulation 267/2012 (as amended)) and the provision of associated services. Again, each authorisation request will be assessed on a case-by-case basis by the relevant EU member state competent authorities.
- **Human rights and support for terrorism:** EU sanctions that relate to the human rights situation in Iran and support for terrorism remain in place. Certain individuals and entities designated under UN and EU sanctions will continue to remain subject to an asset freeze, visa ban and prohibition on the provision of specialised financial messaging services (SWIFT). There will also continue to be a ban on the export to Iran of equipment which could be used for internal repression and/or for monitoring telecommunications.

B. US sanctions

Many US sanctions on Iran remain in place. These include:

- **Primary US sanctions:** The ‘primary’ US sanctions prohibiting US entities and individuals from doing business with Iran or its government remain in place, apart from the exceptions and licensing opportunities described above.
- **US dollar clearing:** The clearing of transactions involving Iran through US correspondent banks is not permitted, which means that US dollar payments cannot be made through international payment systems like SWIFT in connection with Iran-related business.
- **Export controls:** Restrictions on the export or reexport of controlled US-origin goods, technology and software, or such items produced outside the United States that contain 10 percent or more controlled US-origin content (by value), remain in place for US and non-US persons.
- **Entities and individuals on the SDN list:** Many entities and individuals remain on the SDN list and subject to secondary sanctions for reasons related to terrorism, human rights abuses, affiliation with the Islamic Revolutionary Guard Corps and proliferation of weapons of mass destruction, among other reasons.
 - Entities and individuals on the SDN list, and entities owned 50% or more by SDNs, continue to be blocked under US sanctions.
 - Non-US persons and financial institutions can be penalised under US secondary sanctions for providing material support to, or engaging in a significant transaction with, an Iranian person remaining on the SDN list.
- **New sanctions in connection with Iran’s missile program:** On 17 January 2016, OFAC added to the SDN list eleven entities and individuals allegedly involved in procuring goods for Iran’s ballistic missile program. These sanctions are in response to Iran’s test launching of ballistic missiles in October and November 2015 in violation of a UN Security Council resolution.
- **Snap-back:** Finally, the US-suspended sanctions against Iran will remain on the books until Transition Day and may be re-imposed quickly. Should such a ‘snap-back’ take place, companies doing business in Iran or with Iranian persons will be required to cease such business. US sanctions can be re-imposed very quickly, and with respect to US sanctions there will likely be no grandfathering of pre-existing contracts.

3. New opportunities and compliance challenges

Implementation Day brings about significant sanctions relief and opens new business opportunities for and in Iran. The EU now permits most business with Iran, and there is no longer a general obligation to notify the EU authorities about payments to and from Iran or Iranian persons. However, as discussed above, such relief is partial (due to remaining sanctions) and provisional (due to the possibility of a snap-back). These limitations will lead to a number of challenges for sanctions compliance going forward.

The success of the JCPOA is dependent on whether the easing of the sanctions genuinely facilitates trade with Iran, and the message, particularly from EU member states, is that trade within the rules is encouraged. Nevertheless, complex restrictions will remain in place under both EU and US sanctions for trade involving Iran and the remaining restrictive measures will continue to be enforced. Key compliance points to keep in mind when considering business involving Iran include:

- **Ring-fence all US persons:** Remaining primary sanctions will require non-US companies to ring-fence all US persons from any involvement in Iran business. This includes US subsidiaries and offices as well as US citizens and permanent residents or ‘green card’ holders (even located outside the US), including dual-nationals. US persons may not approve, assist with, or otherwise facilitate transactions involving Iran, and should not delegate authority for these Iran-related tasks to non-US persons.
- **Avoid US dollar payments:** Even if no US persons are involved, business in Iran

cannot involve US dollar payments. Any such payments are likely to be rejected or even blocked as they pass through US correspondent banks. There may be challenges in persuading even non-US banks – particularly those which have business in the United States – to process payments, as those banks may adopt broader US-compliant internal policies.

- **Consider the remaining sanctions and conduct thorough due diligence:** It will be important to conduct due diligence on Iranian counterparties to ensure that none of them remains targeted by continuing sanctions. Non-US companies in all industries should ensure they do not engage in significant transactions with, or provide material support to, persons that remain subject to US secondary sanctions. EU companies should be mindful that a significant number of persons will remain designated under EU sanctions and should continue to ensure that they do not make any funds or economic resources available to such persons (whether by making payments, providing goods or services, or otherwise). Of particular note is the continued EU and US listing of Ansar Bank, Bank Saderat Iran and Bank Saderat plc, and Mehr Bank, and the EU listing of Bank Sepah and Bank Sepah International.
- **Look out for export controls:** Goods, software, technology and technical data to be exported to Iran should be checked for the possibility of US-origin content or components that are controlled under US export controls. Potentially sensitive or dual-use goods should be reviewed for any EU export control issues.
- **Implement compliance policies:** Companies should ensure their compliance programmes are strong and should remain committed to staying within the boundaries set out by the new regime.
- **Review finance agreements, insurance contracts and other contracts:** Contractual commitments could go beyond post-Implementation Day legal requirements of the sanctions, and as a result it may be necessary to obtain waivers or enter into discussions with the relevant parties prior to doing business in Iran.
- **Include snap-back safeguards:** Including specific sanctions-related force majeure provisions and sanctions termination and wind-down provisions can provide contractual protection in the event sanctions are re-imposed.

There are, of course, other sanctions compliance considerations that will arise after Implementation Day. For businesses affected by the sanctions that remain in place, sanctions compliance with respect to potential Iran-related business may become even more challenging as compared to the prior regime when practically any dealing with Iran was sanctioned or otherwise restricted. Alongside these compliance considerations is potential opportunity in a market that has been all but closed to foreign investors.

4. Our Iran sanctions response group

Our Iran sanctions response group is available to help you evaluate business opportunities in light of these recent Iran-related developments. We have people in every region of the world with deep knowledge of the sanctions and of other issues associated with doing business with and in Iran. We would be happy to discuss with you the practical impact on your business of the changes in the law or provide a more detailed summary of the sanctions that are suspended and the remaining EU and US sanctions on Iran. We can also advise on how to navigate potential business opportunities in compliance with sanctions and assist in dealing with the uncertain legal and business environment in Iran.

Please feel free to reach out to your primary Freshfields contact, or any member of our Iran sanctions response group:

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