



Eyes on the prize

The opening up of Iran is being presented in some quarters as a once-in-a-lifetime business opportunity. But if that is truly the case, what are the risks that go with it? WorldECR reports.

Implementation Day, 16 January 2016, was the day that under the Joint Comprehensive Plan of Action, signed between Iran and the P5+1, the United States and the EU relaxed nuclear-related sanctions against the Islamic Republic in exchange for Iran ramping down its nuclear programme and agreeing to regular monitoring by the International Atomic Energy Agency. On the same day, the United Nations ended its resolutions relating to Iranian nuclear proliferation, precipitating other countries, such as Canada and Australia, to reassess their own sanctions regimes.

Implementation Day signalled a realignment in relations between the

Islamic Republic of Iran and the rest of the world, and though suspicions on both sides linger, it was soon clear that a country that had been a pariah for decades was being brought into the fold. Iran's President Rouhani has now shaken hands with a coterie of leaders and their own representatives, either on their own turf or his, while major corporations such as Siemens, Peugeot, Airbus and Mitsui have signalled their willingness to explore new opportunities. China has reportedly agreed an investment 'roadmap' with Iran worth a staggering \$500 billion over 25 years, and in Italy some euro 18bn worth of deals were announced by the close of President Rouhani's visit.

'This isn't like lifting the lid on Cuba

or Zimbabwe,' Brussels-based Grayston & Company's John Grayston told *WorldECR*, 'Iran is an industrialised country with an appetite for everything that the rest of the world is able to provide. There are going to be some big opportunities, and they're not just going to be in the oil sector... notwithstanding the myriad risks.'

In sales meetings around the world, the talk is of an opportunity not to be missed. But, as every export control and sanctions professional is undoubtedly being asked, is now the right time to get into Iran? And if it is, what are the challenges?

Deals in the pipeline?

So far as John Grayston can tell,

'People are indeed in Iran, negotiating deals, changing their compliance policies and looking for new sales in a growth market. Anecdotally, people are managing to do deals, some more short-term and speculative, but others, particularly the larger multinationals,

and the West, to rein in its operations?' These, says Jasper Helder of law firm Baker & McKenzie, are amongst the critical factors that will determine the kind of advice that a company is likely to receive from its legal advisers, and which will impact on its own

Helder. 'Consumer electronics companies, offshore oil and gas, aviation, financial services, manufacturing. There's a lot of gauging of the market. Some people are rekindling relations with [pre-sanctions era] business contacts; others haven't had experience of doing business in Iran but are interested – though so far we haven't come across many clients actually signing significant new contracts.'

Helder's colleague, Chiara Klaui elaborates further on the tapestry of queries they've received: 'We're getting questions like: "What kinds of risks still exist under U.S. sanctions? How do I verify whether I'm too close to entities or individuals that remain on the U.S. or EU lists?" Many businesses in the European Union have some degree of U.S. involvement, whether through their financial arrangements, investors, shareholders, or because they have U.S.-origin products or operations. All of those have a bearing on what they're going to feel comfortable doing in Iran.'

At Baker Botts, a firm with a worldwide reputation in the energy sector, lawyers say they're also handling a slew of questions along similar lines: 'We have, for example, oil field service companies exploring potential opportunities and wanting, for example, to export ancillary parts such as drilling equipment,' says partner Ama Adams. 'But many



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John Grayston, Grayston & Company

are looking to develop longer-term distribution structures in the country.'

Notable absences from the declared first entrants into Iran are U.S. companies. Yet this valuable market, rich in resources raw, human and technological still opens up to them to, if only a peep.

Of course, prior to Implementation Day a great deal was already known about what would or wouldn't be permitted and for and by whom. But the devil was in the detail. 'The questions we received simultaneous and immediate with Implementation Day were in effect multiples of those that we'd had since the signing of the JCPOA,' says Paulette Vander Schueren of the Brussels office of international law firm, Mayer Brown. 'Without guidelines from OFAC and other agencies, many businesses didn't even feel comfortable drafting agency and distributorship agreements.' Vander Schueren adds that many other businesses are almost certainly awaiting more comprehensive guidelines than have been issued to date.

There's no doubt that Iran needs the investment, and investors, deprived of exciting new markets by a malaise that has spread to the corners of the world, are eyeing the Islamic Republic hungrily, albeit warily. Indeed, the cocktail of risk and reward is a heady one, though the exact blend depends very much on a company's own corporate make-up and ambitions.

'Is it looking to make long- or short-term investments? How is it exposed to the United States? In what sector is it operating? What is its corporate structure, and who does it employ? How easy would it be, in the event of deteriorating relations between Iran

commercial decision making.

Arguably, this ever so slightly paradoxical state of affairs places the law firms with strong sanctions practices in an ambiguous position: keen as they are to market their services, they're anxious not to overplay the opportunities, and for the moment lawyers suggest that what they're offering is often a *tour de horizon*, setting out the lay of a new land. Still, there's no doubt that there's a strong appetite for information about the Islamic Republic and its challenges. Baker & McKenzie has been very actively engaging with potential investors in Iran with a series of roadshow events across Europe, the United States and beyond. 'The interest comes from all across the board,' says



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components are of U.S. origin, and U.S. export control regulations may prohibit their export. There are still a lot of U.S. export restrictions in place! Generally, some companies are eager and active, but others are taking a wait-and-see

– and exporting commercial passenger aircraft and aircraft parts – and of course the longstanding exceptions for agricultural goods and medical items, not a lot has moved for U.S. companies,’ points out Simeon

controlled United States person ‘established or maintained outside the United States’ is authorised to engage in transactions with the Iranian government or persons under its jurisdiction. This, in effect, puts the clock back to 2012, when the Iran Threat Reduction and Syria Human Rights Act made provision to impose civil penalties on a U.S. parent company if its foreign subsidiary knowingly engaged ‘in any transaction with the GOI [government of Iran] or any person subject to its jurisdiction that would be prohibited if engaged in by the U.S. person or in the United States’ – regardless of whether the parent knew about those activities.



‘U.S. companies can be informed of what foreign subsidiaries can do, but can’t be seen to be enabling those activities.’

Simeon Kriesberg, Mayer Brown

approach – and low oil prices are of course affecting strategic decision making.’

U.S/EU split?

One of the many ironies of the Joint Comprehensive Plan of Action is that while the negotiations were driven by the United States, the agreement effectively precludes U.S. businesses from trading with Iran, with some caveats: ‘Outside of importing pistachios, other foodstuffs and carpets

Kriesberg of the DC office of Mayer Brown.

For EU companies, the main U.S. changes are the removal of secondary sanctions that scared them from business with Iran in sectors such as finance, energy, shipping, gold, raw materials and automotive.

For U.S. companies, at least those with non-U.S. subsidiaries, the most significant change in the new landscape is the issuance of General License H, which holds that a U.S.-owned or

On paper at least, this relaxation is a significant one. As Simeon Kriesberg notes: ‘U.S. companies can be *informed* of what foreign subsidiaries can do, but can’t be seen to be enabling those activities. General Licence H permits U.S. parents and executives to alter policies and procedures that would have otherwise prevented foreign subs from doing business – which ordinarily would have been seen as a form of facilitation.’



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There is, he points out, a further concession in so far as General License H ‘permits the foreign sub to use the parent’s automated and globally integrated IT system for email accounts, data retrieval and things like that – provided that a U.S. person doesn’t intervene.’

But so much depends on the architecture of parent-sub relations, says Matthew Getz, a lawyer in the London office of Debevoise & Plimpton: ‘We’ve seen subsidiaries explaining to their U.S. parents – even lobbying – that they should be entering or re-entering the Iranian market.’

Getz’s New York-based colleague, Carl Micarelli says he’s seen the conundrum from the other side – where U.S. parents are looking at how desirable or practical it may or not be to permit their subs to go full steam ahead into Iran: ‘Sometimes the parent is just going to be too involved with the subsidiary and it’ll be difficult to police; for example, whether there’s a U.S. person involved. Other subsidiaries have been traditionally more independent. But there’s always the

fear of loss of control of the subsidiary’s actions if the parent takes a hands-off approach,’ he says: ‘Some are going to

services that can’t be exported or provided without an authorisation.’

The European Commission, adds



“We’ve seen [European] subsidiaries explaining to their U.S. parents – even lobbying – that they should be entering or re-entering the Iranian market.”

Matthew Getz, Debevoise & Plimpton

say, “Yes, we can do this.” Others are sticking to a blanket ban – at least for now.’

In the majority of cases, says Mayer Brown’s Vander Schueren, clients are looking for advice on both U.S. and EU law: ‘U.S. sanctions remain largely intact, and the EU sanctions are essentially suspended – so this is a very significant divergence. But it’s not the case that business only needs to know the U.S. position: there are still many entities and individuals that are under an asset freeze in the European Union, and of course there are goods and

Vander Schueren, had promised ‘clear-cut’ guidance as to whether services constitute economic resources: ‘We’re supposed to have had clarification but actually what there has been a) doesn’t officially exist – or b) doesn’t address services!’

On the flip side of a conundrum confronted by U.S. parents, is that facing their EU counterparts, says Ama Adams of the Washington DC office of Baker Botts: ‘From the EU side, the question is often: “We do X amount of trade with the United States and have a representative office there. Would

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our involvement trigger U.S. sanctions? Facilitation is such a difficult area for all companies, one that requires a great deal of context and subjective analysis. There are some bright lines but it's still a pretty grey area of the law!

No wonder then, that Adams's London-based colleague, Chris Caulfield, has seen an uptick in enthusiasm from 'companies that have no U.S. links at all, for example from the EU, the Middle East and Russia. Many of those that were doing business before are looking to return, although of course they still have concerns about cutting across U.S. sanctions, and wondering whether they're going to be able to get finance and insurance from institutions with U.S. links.'

New contours

It's inevitable that EU Member States will in effect interpret the relaxation of EU sanctions in accordance with their own foreign policy and trade agendas.

'The EU institutions have said what they're doing, but of course we're going to see different national flavours across the European Union – that goes with

as well as earmarking sanctions violations as an area for deferred prosecution agreements.'

Bureaucratic hurdles also are likely



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Ama Adams, Baker Botts

to possess their own characteristics. Prior to the EU sanctions regime, Germany was Iran's largest trading partner – a position that the industrial community is keen to restore (the head of Germany's chambers of commerce reportedly anticipating German exports to Iran to reach Euro 10 billion per annum in the long term.) In January, the country's minister for the economy, Sigmar Gabriel, appeared to give that ambition his blessing when he led a trade delegation to Tehran – the move coinciding with Siemens signing significant contracts to modernise

But in terms of actually going so far as to sign a contract, and ship things off, that's still frightening for a lot of companies.'

Müller says that the demand for German goods and machinery is very evident, with Iranian companies showing a preference for European products over the Chinese and other Asian equivalents that the sanctions regime had effectively imposed upon them. But, he says, bureaucratic hurdles remain despite the change in the EU regulations: 'We have clients who undertook entirely legitimate transactions with Iran throughout the sanctions period, and they can't see any difference in the practical handling of their goods by German Customs. For instance, they're now being asked to provide a certificate from BAFA that proves that an export doesn't require a licence. That's got nothing to do with the legal framework – but just shows that not everyone has caught up with the new regime.'



'We're seeing people taking a lot of preliminary steps. But in terms of actually going so far as to sign a contract, and ship things off, that's still frightening for a lot of companies.'

Stephan Müller, Oppenhoff & Partner

the territory,' says John Grayston. 'There are going to be issues arising at customs, and that'll cause problems. And yes, we're moving from a system of prohibitions to a more open playing field, but in the cases where national authorities need to issue licences for export, we may still see differences in approach.'

Daniel Martin of the London office of law firm Holman Fenwick Willan points out that in the United Kingdom at least, there is, running against the grain of détente, '...a counter-current. There are, in fact, indications that we're going to see greater enforcement. HM Treasury is to create a sort of "mini-OFAC" (to be known as the Office for Financial Sanctions Implementation), and new legislation, the Policing and Crime bill, proposes heightened criminal penalties for sanctions breaches and new monetary penalties,

Iran's railway infrastructure and gas-production facilities.

But, says Cologne-based Stephan Müller, of the law firm Oppenhoff & Partner, there's an irony in that while it was '...traditionally the Mittelstand companies that did the business with Iran; the very big corporations were cautious because of the reputational issues. But now we see those bigger companies in the advance guard,' adding that those larger companies are of course better resourced to navigate

Fretting on financing

Without doubt, the greatest hurdle





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remains the difficulty in financing deals with Iran, with western banks still mindful of the big-ticket pay-outs by Standard Chartered, BNP Paribas and others to the U.S. regulators.

‘It seems that these banks will take a long time to adapt their policies and covenants in lending agreements. Right now, most do not want to take the risk of doing Iran business,’ says John Grayston. ‘On the other hand, this still leaves the non-European non-U.S. banks that are not part of global networks with a real opportunity to develop their business.’

But not all companies are going to be comfortable changing from their regular bankers to use unknown financial institutions. Matthew Getz notes: ‘Some smaller banks, Nordic banks involved in trade finance, for example, are getting involved in deals, but there are a lot of different opinions within financial institutions as to how far it’s safe to go. Before the relaxation of sanctions, quite a few EU banks had a blanket ban on business with Iran even when they didn’t have to. They’re considering ways in which they could go back – very much a risk question

asked at a senior level. None wants to be first to go public – there’s always the chance that you’d be the first to be shot down’.

The risk, of course, is that while the United States has relaxed secondary sanctions – and thus much of its extra-territorial reach – the primary sanctions remain. As a spokesman for

simultaneously supporting the political rapprochement with Iran.’

Swift but not sure?

Significant obstacles lie less in the law than in overcoming some of the process-related issues that have grown up around sanctions. On 17 January, the electronic financial messaging



‘The risk for businesses is that if banks do not adjust their filters, payment comes in and hits a hard spot because automated screening blocks funds.’

Chiara Klau, Baker & McKenzie

the British Bankers Association remarked on Implementation Day: ‘International banks need much more clarity from U.S. authorities about the regulatory hurdles they need to meet before engaging in dealings with Iran. At the moment there is too much ambiguity, which leaves banks in a difficult position of trying to fulfil their financial crime obligations while

service SWIFT announced that it would henceforth be possible for banks delisted by the Implementing Regulation to ‘now automatically be able to reconnect [to it], following the completion of our normal connection process (i.e. administrative and systems checks, connectivity and technical arrangements).’

‘[Since then] we’ve had to learn

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more than we thought was humanly possible about SWIFT messaging!’ says Jasper Helder, adding that the reconnection does not resolve all issues around the sending and receiving of funds.



‘They [Iranian oil and gas companies] had been sourcing spare parts mostly from China, which aren’t bad – but what they really wanted was European equipment.’

Yvo Amar, B&A Law

Klaui adds: ‘The risk for businesses is that if banks do not adjust their filters, payment comes in and hits a hard spot because automated screening blocks funds. Banks are going to be struggling with a lot of operational issues. But eventually, there’s going to be sufficient pressure from the business community for banks to support trade with Iran, so they’ll have to support it.’

Yvo Amar, partner at Amsterdam-based law firm B&A Law, recently

accompanied a trade delegation of Dutch businesses and consultants to Iran – amongst them, representatives of a number of major financial institutions. He says: ‘I learnt that these banks held discussions with the Iranian

central bank [the listing of which by the European Commission in 2012 was subsequently ruled unlawful in 2014]. Among the issues that emerged were the fact that Iranian banks are undercapitalised – and so don’t meet Basel criteria. Also, their “know your customer” (‘KYC’) procedures are not up to speed. In fact, they asked for help both with KYC and their need for capital. But these are things that need to be addressed before European banks can actually work with them.’

Positive energy

It’s no little surprise that Iran – which boasts the fifth-largest oil reserves in the world and the second-largest gas reserves, and is anxious to boost its sanctions-addled economy by the export not only of crude and gas but refined products also – is hungry for Western oil and gas field, equipment, components and related services.

U.S. and European energy interests have historically played a significant, often ignominious role in Iran’s emergence as a state: it was the nationalisation of the Anglo Iranian Oil Company that triggered the United States and United Kingdom’s joint orchestration of a coup that ousted the democratically-elected president Mohammed Mossadegh in 1953, and placed the ill-fated Shah on the throne from which he would be forced out in 1979.

Up until the ratcheting-up of sanctions, oil company executives developed strong business relationships with contacts within the National Iranian Oil Company (‘NIOC’) – many of which are now being rekindled: ‘For those that have stayed in touch with

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counterparts in NIOC for example, it'll be relatively easy to restart commercial discussions,' says Helder.

Newcomers are more wary, as Yvo Amar found on his visit to Iran: 'With other members of the delegation, I visited a number of oil and gas companies, most of which were state-owned though some were private. It was really clear that they wanted to continue to exploit their resources but that they weren't up to date [with the latest exploration and production techniques] and that they lacked the spare parts and components. All their units and equipment needed updating, restoration and refurbishment. They had been sourcing spare parts mostly from China, which aren't bad – but what they really wanted was European equipment.'

On the face of it what Amar describes is an open opportunity for businesses to market their wares. But there are strings attached: 'What these companies really want is long-term engagement from EU companies: investment, financing and funds – because they don't have the money themselves.'

Despite these less than ideal constraints, Amar says that enthusiasm clearly hasn't been entirely dampened, given that several Dutch companies have subsequently entered into sales agreements – some of which may have been in negotiation prior to and during the delegation's trip to Iran.

The underlying message is that long-term engagement of the kind that Iran is looking for carries with it a host of risks for western companies – as Debevoise's Matthew Getz observes: 'Compliance people sometimes perceive some of their marketing colleagues to be a little too enthusiastic about Iran. There's the risk of "snapback" – a



Presidents Rouhani and Hollande are looking to a bright future of economic cooperation.

November. And Iran hasn't been part of the global business scene for a while, which means that you're dealing with a less modernised environment. There are also potential corruption concerns, similar to China when it opened up to the world after a long period of isolation.'

In some ways, he suggests, 'Iran now is going to be like China was some time ago. Companies will find it difficult to not do business in ways that they don't actually want to.'

Jasper Helder reinforces that observation: 'Overall, there remain a large number of listed Iranian entities. The Iranian Revolutionary Guard represents a big risk to investors because it is involved in so many different businesses. Ascertaining ownership and control issues around IRG officials is a very substantial due diligence challenge.'

A further possible headache is the presence of contractual limitations, for

say, "Thou shalt not do business with Iran" – which is very strict!

Re: insurance...

The surge of interest in Iran (despite the finance log jam) also demands other services to be available – and related complications – like insurance. Anthony Woolich of Holman Fenwick Willan outlines some of the questions that he and his colleagues are fielding: 'A typical query might come from a Lloyds managing agent. For example, they might want to provide cover for Iranian business but be coming up against General License H: "Can you make a transfer of funds to or through the U.S. financial system – e.g. accept a premium or pay claims in U.S. dollars? What about entities on the SDN list? Can you insure a party that is listed in the United States but not on the EU list? And what about goods manufactured in the United States – can they be insured for export to Iran? Are there parts of the Iranian government that we're safe to insure?"

And there are a host of further complexities relating to reinsurance: 'Non-U.S. insurers are reliant on U.S. reinsurance and this is particularly a problem for P&I clubs. It isn't clear how, for example, they should deal with pooling, or with U.S. reinsurance on excess cover. What we're seeing is that the P&I Clubs are saying, "Yes, we can insure you. But if our ability to recover from reinsurers is prejudiced by sanctions, we may not be able to pay you."

Woolich's colleague, Daniel Martin



'What we're seeing is that the P&I Clubs are saying, "Yes, we can insure you. But if our ability to recover from reinsurers is prejudiced by sanctions, we may not be able to pay you."

Anthony Woolich, Holman Fenwick Willan

violation of the JCPOA that triggers the reinstatement of U.S. secondary sanctions and EU sanctions. There are questions around U.S. foreign policy following the presidential election in

example in procurement or financing arrangements: 'A clause that says, "You shall comply with all applicable sanctions" is surmountable,' says Jasper Helder. 'But we've also seen clauses that

adds: ‘There are also issues with historic claims because of the status of beneficiaries, with different U.S.-backed insurers taking different lines in terms of their own position.’

All roads, he says, ultimately lead back to Washington, DC: ‘If U.S. insurers balk at some of this business through fear of triggering a breach, is there capacity in the market to replace US cover for global risk?’

A long road behind – and ahead

There’s no doubt that the machinery of sanctions, suspended, relaxed or maintained, on both sides of the Atlantic – and beyond – will continue to generate questions (only partly answerable) for business and their advisers for a long time to come. The timeline for the relaxation of sanctions against Iran began with secret and back-channel negotiations long before the signing of the Joint Plan of Action in November 2013.

Reaching Implementation Day (at least for those who support the plan) is a significant triumph, but there’s further to go. The next major milestone is Transition Day, which, if everything



goes to schedule, will see all provisionally-lifted nuclear-related sanctions removed on 20 October 2023. Watch this space!

Given the seismic shifts seen in global affairs over the past eight years, it’s difficult to imagine what the world will look like by then – it’s already bracing itself for some big tremors. As one lawyer put it: ‘A Planet Earth which sees Donald Trump as President of the United States of America and the United Kingdom floating in splendid

isolation in the Atlantic is a very different one from the one that we inhabit now. Either part of that scenario could impact on the advice we give even more significantly than developments within Iran.’

As at time of writing, President Rouhani looks to being reaping his nuclear dividend in the Iranian elections that will at least partly determine the outlook for his country. When and whether the outside world reaps its reward, time will tell.

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