

## Summary of Iran Sanctions Relief 18<sup>th</sup> January 2016

On January 16<sup>th</sup> 2016, Implementation Day was announced. This marks the day on which the International Atomic Energy Agency (“IAEA”) verified that Iran implemented its agreed nuclear-related commitments contained in the JCPOA. Simultaneous with the IAEA verification, the European Union (“EU”) and United States (“US”) took the actions necessary to lift sanctions.

Unequivocal guidance published over the weekend by the US will certainly encourage non-US banks to re-enter the Iranian market. Countless EU exporters have already visited Iran and are now able to progress contractual discussions.

### What EU sanctions are lifted?

Almost all the EU related sanctions concerning nuclear issues (which applied to EU nationals and EU entities) are now lifted, including the primary sectoral sanctions and the obligation to notify and/or seek authorisation from HM Treasury prior to making or receiving payments involving Iran or an Iranian bank.

A vastly reduced asset freeze remains which will continue to prohibit dealings with certain listed entities. Sanctions relating to human rights also continue although these are unlikely to prohibit mainstream commercial activities.

### Due Diligence

Moving forward you must check that your business dealings do not involve any person or entity subject to the continuing EU asset freeze, in particular the Iranian Revolution Guards (“IRGC”). Further, you must check that your business dealings do not involve any person or entity remaining on OFAC’s SDN List. Remember that if you deal with an entity which is owned or controlled by a person or entity which continues to be listed on the EU asset freeze then such dealings will probably be prohibited. We are able to assist you with your due diligence.

You must also check whether you are transferring goods or technology with US origin content to Iran since this may be prohibited.

### Tidewater

Concerns were raised prior to Implementation Day because Tidewater Middle East Co. (“Tidewater”) remains subject to the EU asset freeze. Historically, the US alleged that Tidewater owns/controls Bandar Abbas port. This would have presented difficulties with the discharging of vessels and payments to Bandar Abbas port. However, the US has announced:

*“Based on publicly available information, as of Implementation Day (January 16, 2016), it appears Tidewater Middle East Co. (Tidewater) is not the port operator of Bandar Abbas.”*

Such announcement helps clear the way for dealings with Bandar Abbas port. However, you should ensure that you do not make payments to Tidewater and that Tidewater do not own or control other Iranian ports with whom you may have dealings directly or indirectly.

### How will non-US banks react?

The big question is whether (and if so, how quickly) the non-US banking sector will embrace Iranian trade? Some banks (in particular, in Germany) have already started processing payments to and from Iran, albeit indirectly. Slowly but surely, we anticipate the number of EU banks who do so will grow in number. However, one large UK clearing bank has intimated it will be some 6 months before they likely begin to process Iranian related payments.

- It is expected that SWIFT will resume the provision of the services it provides to Iranian banks, although a small number of Iranian banks remain subject to the EU

asset freeze and may not be able to resume services with SWIFT.

- Some non-US banks (including certain clearing banks) will be unable to recommence Iranian related trade at this time. This is because they have entered into historical settlement agreements with various US enforcement agencies pursuant to which they have agreed not to do so. The Implementation Day sanctions-easing measures do not supersede the terms of these settlement agreements and such banks currently have their “hands tied behind their backs”. Smaller banks who clear through these clearing banks may be required to clear through a different clearing bank if they wish to conduct Iranian related business. They may decide it is too much trouble to do so.
- Many non-US banks continue to have concerns about money laundering issues. The JCPOA does not impact the November 2011 finding by the Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”) that Iran is a Jurisdiction of Primary Money Laundering Concern. Banks may take time to create and implement the required due diligence before recommencing Iranian related business.
- Many non-US banks have concerns about recommencing Iranian related business because they continue to be subject to exposures under US primary sanctions which remain in place and for this reason may decide not to do so. For example, if they become involved in a payment which includes an entity which remains on the SDN List then this could create exposure under the US primary sanctions.

### **US Export Controls**

Non-US persons continue to be prohibited from re-exporting from a third country, directly or indirectly, any goods, technology, or services that have been exported from the United States if they know or have reason to know that the re-exportation is intended specifically for Iran or the Government of Iran and the items are controlled for export from the United States to Iran. Non-US

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persons also continue to be prohibited from re-exporting from a third country, items containing 10 percent or more US-controlled content, if undertaken with knowledge or reason to know that the re-exportation is intended specifically for Iran or the Government of Iran. However, the exportation or re-exportation of US-origin goods that are designated as EAR99 under the Export Administration Regulations from a third country to Iran without knowledge or reason to know at the time of export from the United States that the goods are intended specifically for Iran would not be prohibited. Additional export controls administered by the Department of Commerce may also apply.

### **What US sanctions are lifted?**

The US nuclear-related “secondary sanctions” have been lifted. Secondary sanctions generally are directed toward non-US persons for specified conduct involving Iran that occurs entirely outside of US jurisdiction. These include:

- Financial and banking-related sanctions;
- Sanctions on the provision of underwriting services, insurance, or re-insurance in connection with activities that are consistent with the JCPOA;
- Sanctions on Iran’s energy and petrochemical sectors;
- Sanctions on transactions with Iran’s shipping and shipbuilding sectors and port operators;
- Sanctions on Iran’s trade in gold and other precious metals;
- Sanctions on trade with Iran in graphite, raw or semi-finished metals such as aluminium and steel, coal, and software for integrating industrial processes;
- Sanctions on the sale, supply, or transfer of goods and services used in connection with Iran’s automotive sector; and
- Sanctions on associated services for each of the categories above.

The above mentioned sanctions are similar to the EU sanctions which were simultaneously removed. In addition to the lifting of the nuclear-related secondary sanctions set out above, the US removed over 400 individuals and entities from its various sanctions lists, primarily, the SDN List. Non-US persons will no longer be subject to sanctions for conducting transactions with these persons and

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entities, including the Central Bank of Iran (CBI) and the specified Iranian financial institutions, provided these transactions do not:

- involve the more than 200 persons remaining on the SDN List after Implementation Day; or
- violate remaining US sanctions legislation concerning Iran (including specific legislation related to human rights, terrorism and the situation in Yemen and Syria).

Secondary sanctions continue to apply to non-US persons who knowingly facilitate significant financial transactions with or provide material or certain other support to those Iranian or Iran-related persons that remain or are placed on the SDN List, including the IRGC and its designated agents or affiliates and remaining Iranian banks: Ansar Bank, Bank Saderat, Bank Saderat PLC, and Mehr Bank.

#### **US: Oil, gas and Petrochemicals**

Subject to not dealing with persons or entities remaining on the SDN List (including the IRGC) and not violating remaining US sanctions legislation, non-US persons may:

- purchase Iranian oil;
- provide goods and services in connection with Iran's energy requirements;
- purchase, acquire, sell, transport, or market petroleum, petrochemical products, and natural gas from Iran;
- export, sell, or provide refined petroleum products and petrochemical products to Iran;
- export, sell, or provide goods, services, or technology to Iran's energy sector; and
- engage in transactions with Iran's energy sector, including the National Iranian Oil Company, (NIOC), the Naftiran Intertrade Company (NICO), and the National Iranian Tanker Company (NITC)

Please note it is not permissible to make payments for Iranian oil through the US financial system.

#### **US: Financial and Banking Measures**

#### **Which financial and banking sanctions are relieved under the JCPOA?**

Secondary sanctions do not apply to non-US persons who engage in:

- Financial and banking transactions with individuals and entities removed from the SDN List, FSE List, and/or NS-ISA List, as appropriate, on Implementation Day;
- Transactions and other activity related to the Iranian rial;
- Provision of US bank notes to the Government of Iran, including the provision of material support for such transactions;
- The purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt, including governmental bonds; and
- The provision of financial messaging services to the Central Bank of Iran ("CBI") and other Iranian financial institutions removed from the SDN List on Implementation Day.

US persons continue to be generally prohibited from involvement in the activities described above. In addition, transactions related to the above-mentioned activity are prohibited from transiting the US financial system.

Subject to not dealing with persons or entities remaining on the SDN List (including the IRGC) and not violating remaining US sanctions legislation, non-US persons may:

- conduct or facilitate transactions with persons removed from the SDN List. This would include transactions by foreign financial institutions that have branches in the US, provided that the branches in the US are not directly or indirectly involved in the transactions. In addition, such transactions may not transit the US financial system;
- open or maintain correspondent accounts for Iranian financial institutions removed from the SDN List although any transactions processed to or through the United States or that involve a US person, directly or indirectly, continue to be

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prohibited unless they are exempt from regulation or authorized by OFAC; and

- Provide Iranian banks specialized financial messaging services.

### **U-Turn Transactions**

Please note that U-turn transactions involving the United States are not permitted.

US persons continue to be prohibited from exporting goods, services (including financial services), or technology directly or indirectly to Iran. The so-called “U-turn general license,” which allowed US dollar clearing activities involving Iran prior to its revocation in November 2008, was not reinstated on Implementation Day and US financial institutions continue to be prohibited from clearing transactions involving Iran, with the exception of transactions that are exempt or authorized by a general or specific license issued pursuant to the ITSR.

### **US Dollar Clearing**

After Implementation Day, foreign financial institutions need to continue to ensure they do not clear US dollar-denominated transactions involving Iran through US financial institutions, given that US persons continue to be prohibited from exporting goods, services, or technology directly or indirectly to Iran, including financial services, with the exception of transactions that are exempt or authorized by a general or specific license issued pursuant to the ITSR. It is the breach of this particular rule which resulted in non-US banks being fined large amounts over the past decade.

Non-US, non-Iranian financial institutions engaging in transactions with Iranian financial institutions (including the CBI) not appearing on the SDN List will not be exposed to sanctions as a result of those Iranian financial institutions engaging in transactions or banking relationships involving Iranian individuals or entities, including financial institutions, on the SDN List, provided that the non-US, non-Iranian financial institution does not conduct or facilitate, and is not otherwise involved in, those specific transactions or banking relationships with the individuals and entities on the SDN List.

### **Dealing in Rials**

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It is no longer sanctionable for foreign financial institutions to conduct or facilitate any significant transaction related to the purchase or sale of Iranian rials (or a derivative, swap, future, forward, or other similar contract whose value is based on the exchange rate of the Iranian rial) or maintain funds or accounts outside of the territory of Iran denominated in the Iranian rial.

### **Beware**

After Implementation Day, the United States retains the authority to impose correspondent or payable-through account sanctions on foreign financial institutions that knowingly facilitate significant financial transactions on behalf of any Iranian person included on the SDN List.

### **Conclusion**

The US guidance is unequivocal in nature and makes clear that non-US banks may proceed to have dealings with Iran subject to a set of clear rules. Exposures and risks remain but it is submitted that non-US banks are able to comply with these rules in a workable manner. The approach of the banking sector is the key to trade with Iran taking off.

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