

# inBrief



## The End of the Iran Deal?

By Shahram Safai | 10 May 2018

The French, German and British governments have been in talks with the United States with respect to the Iran nuclear deal (Joint Comprehensive Plan of Action or JCPOA) for many months. Even though the United States agreed to the deal in 2015, the new administration in Washington has expressed serious concerns about certain aspects of the deal and has decided to withdraw from the Iran nuclear deal.

### US Secondary Sanctions

The US government has stated, in light of its withdrawal, that it will reimpose certain US secondary sanctions with respect to Iran on August 6, 2018, with any remaining US secondary sanctions to be reimposed by November 4, 2018 (secondary sanctions are sanctions applicable to non-US persons).

### No United Nations Sanctions

Such withdrawal by the US is a repudiation of the JCPOA. The US could have followed another course of action that would impose United Nations sanctions under the JCPOA without repudiating it. The JCPOA contains “snap-back” provisions that would allow signatories to reimpose United Nations sanctions against Iran. However, in this regard, the JCPOA requires that the International Atomic Energy Agency (IAEA) certify that Iran is not in compliance with its obligations, but the IAEA has repeatedly confirmed that Iran is in compliance. Nevertheless, the US could have elected to continue to waive US secondary sanctions (hence continuing to comply with the US’s obligations under the JCPOA) and instead invoked the Dispute Resolution Mechanism under the JCPOA if the US believed that Iran was not meeting its commitments under the JCPOA. The Dispute Resolution Mechanism would ultimately culminate in a UN Security Council vote to continue to waive UN sanctions. If such vote is not unanimous (i.e. the US does not vote in favour), then UN sanctions would be reimposed. Unlike the unilateral US sanctions, the UN sanctions would be global in

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applicability.

However, the US chose not to follow such path. As a result, US secondary sanctions will snap back on the dates discussed above and not the United Nations sanctions.

### Consequences

The effect of such US secondary sanctions will be a further significant chilling of foreign business with and foreign direct investment in Iran. This will be in addition to the already existing reluctance/avoidance by international banks and most regional banks to facilitate Iran business. This is primarily due to US sanctions laws and the increased internal compliance scrutiny that a bank may be subject to if it facilitates Iran business.

### Path Forward?

Given all of these impediments, the path to doing business in Iran may look like a dead-end. However, when US secondary sanctions are unilaterally reimposed by the US, regional banks with no exposure to the US market might still decide to continue to offer Iran related services. Also, companies with no presence or business in the United States might continue to pursue Iran business. Nevertheless, it is still a daunting business proposition: business in Iran will result in blacklisting of companies from doing business in or with the US or its banking system.

Indeed, reports suggest that the European Union, Russian and Chinese governments have prepared contingency plans to support companies. For example, there is consideration of extending non-dollar lines of credit and credit guarantees to preserve as much of the deal as possible. Also, the European Union is being asked to pass laws to protect European firms from US secondary sanctions. However, the reality is that no country can completely shield businesses and investments in Iran given the US pullout. ■



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Shahram's practice consists of corporate law, real estate law, disputes, and advising on the legal aspects of doing business in the region. He also advises on private equity and venture capital transactions. He heads the firm's 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 practice involves advising clients with respect to investments, joint ventures, as well as introduction to sector specific private and public entities. Such advice generally involves franchise and agency matters, build-operate-transfer transactions, regulatory compliance and strategies, foreign investment protection regimes, sanctions and anti-money laundering implications. Shahram is fluent in Farsi and he is a qualified solicitor in England and Wales and a member of the California State Bar. He is also a registered professional engineer.

Shahram's specific doing business in the region related work has included advice relating to:

- Manufacturing sector joint ventures, commercial agency arrangements and local partner introduction.
- Onshore and 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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