Iran – New Opportunities and Continuing Risks

The suspension of UN and EU nuclear related sanctions against Iran on January 16, 2016, referred to as ‘Implementation Day’, has generated significant media coverage highlighting potential commercial opportunities for UK firms in the Iranian market as the country is re-integrated into the international financial and trade system following a decade of economic isolation since these sanctions were first imposed in 2006-7.

In spite of the debilitating impact of economic sanctions, Iran’s $400bn economy remains the second largest in the Middle East after Saudi Arabia and is significantly more diversified than the petro-economies of the Gulf States. However, severe restrictions on imports of western machinery, high-tech products and spare parts have resulted in a degradation of Iran's infrastructure and industrial base and, in particular, of its oil sector – all of which require substantial investment.

Whilst the re-opening of the Iranian market presents significant opportunities for UK firms, doing business in Iran and with Iranian entities is likely to remain high risk – from both the commercial and legal perspective - for the foreseeable future.

Optimistic projections of increased oil revenue for Iran following the lifting of the UN / EU sanctions have been undermined by the recent collapse in the oil price limiting the funds available to Iranian state and private entities for investment and financing of imports.

On the legal side, whilst UN / EU nuclear related sanctions have been suspended, these may potentially be re-imposed under ‘snap-back’ provisions in the event of a violation by Iran of its nuclear undertakings. In addition, US sanctions unrelated to the nuclear issue remain in place under which substantial penalties may be imposed on US entities or individuals involved in Iran related transactions. These are likely to apply to US subsidiaries of UK companies and to US citizens working for UK entities. Also, US banks continue to be prohibited from involvement in US dollar transactions relating to Iran. In practice, given the presence of most non-US financial institutions in the US market, the reach of US regulatory authorities and previous heavy fines imposed on European banks by the US for violation of Iran related
sanctions, many non-US banks are also likely to be reluctant to engage in Iran related transactions in the near term.

Particular care should be taken when dealing with Iranian state entities or with private sector companies wholly or partly owned by state bodies – particularly the Iranian military authorities, which have substantial involvement in Iran’s private commercial sector, and may be subject to specific US and also EU sanctions.

Whilst most EU sanctions on Iran related activity have been lifted, restrictions on the export of certain items and on dealings with specific persons and entities remain in place. It should also be noted that, aside from the remaining US and EU sanctions, other countries may continue to impose their own restrictions on trade with Iran.

As well as compliance with the remaining EU, US and other international restrictions on trade with Iran, UK firms intending to trade with or invest in Iran should ensure that their insurance policies and finance agreements do not prohibit Iran related transactions and that any agreements entered into address the requirements of both current restrictions on trade with Iran and the possibility of a ‘snap-back’ of the suspended nuclear related sanctions. It is also important to bear in mind commercial, legal and political risk issues in Iran itself. In particular, UK companies are likely to face significant difficulty in recovering unpaid fees and other sums due from Iranian entities. In most cases it will be advisable for contracts with Iranian parties to provide for disputes to be resolved by arbitration in a venue outside Iran. However, whilst enforcement of international arbitration awards in Iran is theoretically possible, in practice this is unlikely to be straightforward. Accordingly, it is preferable for contracts to provide for advance payment of sums due and / or to require an Iranian counter-party to provide a bank guarantee or similar form of security from an institution located outside Iran.

So far as investment in Iran is concerned, UK companies should consider acting through a corporate entity domiciled in a jurisdiction which benefits from the protection afforded by a Bilateral Investment Treaty (BIT) with Iran. Whilst there is currently no BIT between Iran and the UK, Iran has concluded BITs with a number of other European countries including France, Germany and Switzerland.
In sum, whilst the commercial opportunities may appear enticing, due diligence and compliance should be at the forefront of the decision-making process for any UK firm considering entry into the Iranian market.

* UK government guidance on trade with Iran can be found at https://www.gov.uk/government/publications/doing-business-with-iran/frequently-asked-questions-on-doing-business-with-iran

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