Shifting Sands in the Arabian Gulf?

The Abraham Accords, the Biden administration's strategy toward utilising sanctions as a tool of statecraft, and hints of US willingness to re-engage with the Joint Comprehensive Plan of Action, all have potential to profoundly affect trading relations with and between states in the Middle East region. Mahmoud (Mac) Fadlallah and Lauren Talerman address some of the big questions.

1. At the end of the Trump administration there were a series of developments which, it claimed, represented a sea-change in relations with the Middle East. One part of that was the 'normalisation' of relations between Israel, and the UAE and Bahrain – with the prospect of Saudi Arabia joining the fold. Has that shift lead to the promised opening up of investment and commercial opportunities? How is that manifest?

Following the signing of the Abraham Accords in September 2020, we have seen a flurry of activity between Israel and UAE. We expect that trend to continue and to grow as activities expand between these countries and other countries in the region. Some of these activities may occur under the umbrella of formal agreements, and some could take place more informally, as countries like Saudi Arabia and Oman may hold off on signing an official deal but still engage in a more open relationship with Israel.

In terms of Israel-UAE relations, the two countries have moved quickly to deepen diplomatic ties and to capitalise commercially on their new relationship.

Political

The UAE and Israel have established a diplomatic presence in each country. In late January 2021, Israeli Ambassador Eitan Na'eh took up his new post in Abu Dhabi, opening Israel's embassy in the UAE. Israel is also expected to open a consulate in Dubai. Around the same time, the UAE Cabinet approved the opening of the UAE's embassy in Tel Aviv, and in mid-February 2021, Mohamed Mahmoud Al Khaja was sworn in as the first UAE ambassador to Israel.

Economic

The UAE and Israel have reported robust bilateral activity since signing the Abraham Accords, including:

- The Dubai customs authority reported that between September 2020 and January 2021, trade between Dubai and Israel reached AED 1 billion (~$272 million).
- Israeli media has reported that over 130,000 Israelis have visited the UAE since the initiation of direct flights between the UAE and Israel in November 2020.
- In October 2020, the UAE, United States, and Israel established a $3 billion fund, the Abraham Fund, to support private sector investments in infrastructure, regional trade, and energy security.
- Also in October 2020, Israel's state-owned Europe-Asia Pipeline Company ('EAPC') signed a Memorandum of Understanding with a new entity called MED-RED Land Bridge Ltd. ('MED-RED'). MED-RED is a joint venture owned by Petromal, a unit of Abu Dhabi-based National Holding, Israeli firm AF Entrepreneurship, and Lubber Line, an international group that focuses on infrastructure and energy. EAPC plans to transport crude oil from the UAE to the Red Sea port of Eilat and then transport it by pipeline to the Israeli city of Ashkelon, on the Mediterranean coast, for onward export to Europe.
- In December 2020, Abu Dhabi's Investment Office ('ADIO') announced that it would open an office in Tel Aviv, its first international branch. In February 2021, ADIO reported that it had signed cooperation agreements with two entities, Invest in Israel and the Israel Innovation Authority, to facilitate collaboration on investment and innovation.
- In February 2021, Israeli companies and their affiliates, although limited by Covid-related travel restrictions imposed by the Israeli government, also participated in the International Defence Exhibition & Conference in Abu Dhabi and in Gulfood 2021, a food and beverage exhibition in Dubai.

Given the degree of activity we have seen to date despite Covid's effect on the regional economy, we expect the level of economic cooperation between Israel and the UAE to increase, particularly in light of both countries' world-leading aggressive vaccination efforts, which may allow the two countries to move toward economic recovery at a faster rate than their neighbours. Although there may be bumps in the road as the governments of both countries navigate this new relationship, the potential economic opportunities are likely to outweigh political issues that may arise as the UAE and Israel adjust to normalisation.

2. The UAE and Bahrain said that they would no longer maintain the Arab League boycott on Israel – which US companies had to be so mindful of when trading in the region. Does that mean that an area of compliance risk is immediately lifted, or is the boycott still written into legacy contract terms?

In August 2020, the UAE formally issued Federal Decree Law No. 4 of 2020 (the 'UAE Israeli Boycott Repeal Law'), abolishing Federal Decree Law No. 15 of 1972 Concerning the Arab League Boycott of Israel as part of its efforts to normalise relations with Israel. Bahrain signed a 'Joint Communique on the Establishment of Diplomatic, Peaceful and Friendly Relations' establishing full diplomatic relations with Israel in October 2020. Bahrain had previously withdrawn its boycott of Israel in 2005 in connection with

This article is reprinted from the April 2021 issue of WorldECR, the journal of export controls and sanctions.

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signing a free trade agreement with the United States under the administration of President George W. Bush. However, the 2005 agreement did not lead to diplomatic ties or economic cooperation with Israel; now, Bahrain and Israel have entered into Memoranda of Understanding focused on cooperation in a variety of sectors, from telecommunications to aviation.

It tends to take more time for significant changes like the normalisation of ties with Israel to translate into the regulatory/legal space. While the signing of the Abraham Accords has had a near-immediate ripple effect with regard to the social and economic atmosphere in the region, there will be a lag with regard to the events' impact on compliance. For example, we continue to hear from clients that have identified boycott language in their contracts and other agreements, which is generally boilerplate language included in standard templates that some companies will continue to use until those templates are updated. There are also contracts that pre-date the lifting of the UAE boycott, and the boycott language in those contracts remains reportable because the boycott was in force at the time the language was included. Because US boycott laws remain in effect and, as of today, unchanged, boycott requests must be evaluated on a case-by-case basis, and legal departments should continue to encourage employees to report all boycott language to their legal team for review.

3. In January, the UAE Central Bank announced that it had imposed financial sanctions on 11 banks operating in the country for their failure to reach appropriate levels of compliance on anti-money laundering and sanctions. What precipitated such a move? Does it signal a new, more robust approach to enforcement of sanctions?

The sanctions that the UAE Central Bank imposed on these 11 institutions, which amounted to AED 45.76 million (approximately $12.5 million), were imposed pursuant to Article 14 of the Federal Decree Law No. (20) of 2018 on Anti-Money Laundering and Combating the Financing of Terrorism and Financing of Illegal Organisations. The announcement of these penalties followed the December 2020 UAE Cabinet decision to form an Executive Office of Anti-Money Laundering ('AML') and Countering Financing of Terrorism ('CFT'), formally established in late February 2021. This Executive Office is charged with overseeing the implementation of the UAE's National AML/CFT Strategy and National Action Plan, which consists of reforms to bolster UAE financial controls.

It is possible that the recent sanctions are, at least in part, a response to a report issued in April 2020 by the Financial Action Task Force ('FATF'). The Gulf Cooperation Council ('GCC'), of which the UAE is a member, is a member of the FATF. The FATF report assessed the UAE's performance against the FATF's 40 recommendations, a global framework of measures to combat ML/CFT and sanctions evasion activities, and stated that the UAE is 'exposed to significant ML [money laundering] and TF [terrorist financing] risks and to proliferation financing.'

The UAE government's focus on combatting AML/CFT and sanctions issues will continue, which could lead to additional sanctions and/or enforcement actions. The recent sanctioning of the 11 banks came on the heels of the UAE Ministry of Justice's October 2020 suspension of the law licenses of 200 law firms in the UAE for one month for their alleged failure to follow AML procedures.

4. What is the mood in the Gulf vis-à-vis Iran, and what does it hope from the Biden administration in terms of its negotiations with Tehran?

The Gulf is anticipating that President Biden's administration will continue to take a firm stance toward Iran, but one that is different than the prior administration's 'maximum pressure' campaign. Even before the inauguration, the Biden team signaled its willingness to engage with Iran and to revisit the 2015 Joint Comprehensive Plan of Action ('JCPOA'), the nuclear deal that the United States withdrew from in May 2018, and demonstrated its strategic focus on Iran by appointing Mr Robert Malley as the US special envoy for Iran, a move which generated some debate with US foreign policy circles. However, Mr Malley is well known in the region for his work under the Clinton administration on Israeli-Palestinian negotiations and as the lead US negotiator on the JCPOA under the Obama administration. Bringing Mr Malley back indicates – to a certain degree – that the Biden administration may be seeking, to the extent possible, given all that has transpired, to pick up where the United States left off in 2018.

US sanctions against Iran have substantially affected the Gulf, given its proximity and business ties with Iran. However, the Gulf is largely in alignment with the United States with respect to Iran and shares many of the United States's concerns regarding Iran's development of its nuclear programme. Gulf countries have even joined the United States in sanctioning certain corporations, banks, and individuals linked to Iran's support for militant networks. Although many businesses in the region would welcome an easing of trade restrictions for economic reasons, there is an understanding that even if the United States considers lifting certain sanctions as a sign of good faith to bring Iran back to the table, the United States is not likely to make significant moves with regard to sanctions in advance of reengaging in negotiations with Iran.

Further, in light of the break in diplomatic relations with Iran since 2018, the region recognises that it will take time to fully reopen the channels of communication with Iran, particularly as the United States seeks to garner multilateral support from previous JCPOA players (the P5 +1, which, in addition to the United States, includes China, France, Russia, the United Kingdom, and Germany) to resume negotiations. It is also unclear whether the United States will seek to reenter into the JCPOA, or to negotiate a new agreement.

5. Looking forward over the next two or three years, what would you say are the sanctions/security related risks that companies ought to be factoring into their horizon scanning for the Gulf region?

Although we are still early in the Biden administration, its actions to date have brought a focus on Iran, Saudi Arabia, Yemen, and China.

Iran

We reiterate that companies ought to plan for the continuation of US sanctions against Iran. Although the contours of the sanctions imposed by the United States may change over the course of the next year or two, even if the Biden administration eases sanctions, we may not see the type of sanctions relief that the JCPOA offered (e.g., the relief directed at foreign subsidiaries of US companies) for some time, if at all. And even if we do, there are sure to be sanctions that remain – Iran sanctions are a highly intricate web of statutes, regulations, executive orders, and guidance, dating back over four decades, and cannot be entirely undone in four years.

Saudi Arabia

During his campaign, President Biden indicated that his administration would recalibrate US-Saudi relations, which were particularly warm under the Trump administration. Already, the Biden administration has ended arms sales and other support for Saudi offensive operations in connection with ongoing conflict in Yemen.

Following the issuance of a US intelligence report concerning the 2018 killing of journalist Jamal Khashoggi in late February 2021, the Biden administration stopped short of imposing sanctions against Saudi Crown Prince Mohammed Bin Salman, which would have significantly affected US-Saudi relations as well as the various commercial ventures in which the crown prince is involved. However, the administration has sanctioned the former Saudi intelligence chief, and the Saudi royal guard's rapid intervention force, and has announced visa restrictions on 76 Saudi citizens, referred to as the 'Khashoggi Ban', which the US government has stated could be expanded to apply to families of the blacklisted individuals. The Khashoggi Ban, a policy created pursuant to the US Immigration and Nationality Act, allows the US State Department to sanction individuals who, acting on behalf of a foreign government, are believed to have been directly engaged in serious, extraterritorial counter-dissident activities.

Yemen

Although not a member of the GCC, because of its geographic location, we include Yemen when assessing risk in the region. In the final days of the Trump administration, the State Department designated Ansarallah (also referred to as the Houthi movement) as a foreign terrorist organisation and imposed sanctions against it. In mid-February 2021, the State Department, possibly in relation to the Biden administration's strategy for brokering negotiations between the warring factions in Yemen, revoked the Ansarallah designation, allowing US persons to engage in transactions so long as no blocked persons are involved.

If the Biden administration's objective is to bring Ansarallah to the negotiating table, we would not expect to see the group re-designated. However, depending on how the conflict evolves in Yemen, we could see additional sanctions imposed against individual Ansarallah members. For example, in early March 2021, the State Department sanctioned Mansur Al-Sa'adi, the Houthi Naval Forces Chief of Staff, and Ahmad 'Ali Ahsan al-Hamzi, the commander of Yemen's Houthi-aligned Yemeni Air Force and Air Defence Forces.

China

China is one of the Gulf region's leading trade partners. In 2019, the United Nations estimated that trade between China and Saudi Arabia reached over $36 billion, while trade with the UAE exceeded $50 billion. In particular, Saudi Arabia and the UAE have partnered with Huawei in connection with adopting 5G broadband cellular technology in their respective countries, efforts that are part of China's Belt and Road Initiative, a global infrastructure development strategy.

Given that the US government has identified Huawei as a threat to national security and subjected it to US export control restrictions – an assessment that the Biden administration has indicated will not change – going forward, companies engaging in the Gulf, especially in the telecommunications sector, should be sensitive to these export restrictions. In addition, US concerns regarding Chinese surveillance and espionage could potentially lead the US government to impose restrictions in connection with the sale of defence-related items to the Gulf.

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