



IRAN SANCTIONS: One year Later

What's changed over the past year, and the impact of the U.S. election results on the path forward.

the Oath in association with Akin Gump Strauss Hauer & Feld LLP organised the third session of the GC Talk Series on 'Iran Sanctions: One Year Later' on November 9, 2016 at The Ritz-Carlton in DIFC. The session took place just as the votes were being counted to reveal the next president of the United States of America. Mahmoud (Mac) Fadlallah, a sanctions lawyer in Akin Gump's Dubai Office, led the discussion sharing his expertise on what has changed in the Iran sanctions landscape over the past year and how the result of the U.S. presidential election would impact the way forward for the U.S. Iran sanctions program.

Below, we have set out a summary of the discussion points by Fadlallah. The talk was divided into law and politics – the first part of the seminar focused on the Iran sanctions, how they apply to non-U.S. entities, while the second part of the

seminar discussed the impact that a Trump or Clinton presidency would have on the future viability of the Iran nuclear deal.

THE LAW

Fadlallah shared the common misconception companies often harbour is that sanctions only prohibit dealing with certain countries or governments, when in fact sanctions often extend to dealings with specific individuals or entities. The UAE, for example, is not a sanctioned country, yet there are hundreds of sanctioned parties within the country. He stressed on the need for companies to conduct proper screening on transactions to avoid exposing themselves to the risk of dealing with the wrong parties. He talked about how banks in particular conduct detailed screening of transactions, often declining to do business even at a hint of suspicion.



Fadlallah also detailed ways that U.S. primary sanctions programs – those traditionally understood to apply only to U.S. companies – can capture activities of non-U.S. entities. He provided the most common examples of UAE companies that employ U.S. citizens or permanent residents as employees, or that deal in U.S. dollar denominated transactions, or in U.S. controlled commodities, software, or technologies.

Finally, Fadlallah detailed the consequences of running afoul of U.S. sanctions laws, which range from monetary penalties (over USD250K per violation) to designation on restricted party lists resulting in the freezing of property interests in the United States and a prohibition on U.S. and many non-U.S. companies from dealing with you.

THE IRAN DEAL – WHAT CHANGED?

The Iran deal was the single, largest easing of a U.S. sanctions program in history. It created a plausible path for non-U.S. entities to do business in Iran.

Prior to the lifting of sanctions, there was a broad prohibition of doing business in Iran except for a few exceptions of food, medicine and personal communications for both U.S. companies and non-U.S. subsidiaries of U.S. entities/persons.

Today, for U.S. companies and branches abroad, the licensing has been extended to carpets, foodstuffs and civil aviation. For non-U.S. subsidiaries of U.S. entities/persons, General License H authorises activities in which non-U.S. persons may engage in, however they are subject to

certain important limitations.

Prior to the deal, non-U.S. companies were sanctioned (secondary sanctions) for dealings involving several Iranian industries or parties. Now, they are authorised to deal with several additional Iranian industries and previously designated parties, but still significant limitations remain.

These important limitations on the sanctions relief can generally be categorized into two areas – no U.S. involvement, and no sanctions nexus. No U.S. involvement should be interpreted expansively, and may include dollar transactions, employees, affiliates, banks, forwarders, brokers, agents, systems and servers, procedures and approvals and flow-up of profits and funds transfers, as well as hardware, software and technology subject to U.S. export controls. A sanctions nexus is established where a sanctioned party is involved, or where the underlying transaction involves sanctionable conduct such as support for terrorism, proliferation of WMDs, human rights abuses, money laundering, etc.

The key takeaway is that companies seeking to do business in Iran should tread carefully and consult with sanctions counsel prior to engaging in any transactions.

PRACTICAL ISSUES

On that note, Fadlallah gave insight into the Iranian perspective with a quote by Iranian Foreign Minister Javad Zarif who spoke at the Council on Foreign Relations in New York on September 23, 2016, “OFAC tells international banks that it’s okay to do business with Iran but — and the but’s and if’s are so long — I mean there is one



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sentence that it is okay to do business with Iran and five pages of if's and but's. So at the end of the day, these banks say we will take the safe road. We will forget about Iran. And that has been the outcome. No major European bank has started doing business with Iran now, eight months after the deal. And we believe that's a shortcoming."

Fadlallah said, "This accurately summarises the biggest issue related to the Iran deal today. It is not a legal restriction but a practical issue. Banks choose not to accept the risk of doing Iran-related business, or doing any business involving parties listed on any restricted party list. Being added on these lists can significantly impact your banking relationships globally. There are restrictions that may come from state or local governments, if you end up doing business in Iran. Again, these are not legal restrictions, these are risks that businesses can choose to accept or reject."

Banks in general have been reluctant to do business in Iran, in spite of high-level interference from the U.S. State Department. The expectation is that European Banks will take the lead, however there is hesitation on that side too. Fadlallah said that banks have not entered Iran yet as they are hoping for authorisation on the U-turn transactions. U-turn transactions were prohibited in 2008 as a result of the sanctions. A U-Turn transaction allows a non-U.S. Iranian Bank to transfer funds through a U.S. Bank to another non-U.S., non-Iranian bank even if the underlying transaction related to Iran. However, this hasn't been lifted and poses the biggest hurdle for banks to do business in Iran.

THE IMPLICATIONS OF THE TRUMP ADMINISTRATION

President Donald Trump had promised

during his campaign to 'dismantle' the nuclear pact with Iran, calling it a 'disaster' and 'the worst deal ever negotiated'. His election as president can result in the U.S. pulling out of the Iran deal, potentially inviting Iran to restart its nuclear programme.

Fadlallah thinks it is highly unlikely that Trump will 'tear up' the agreement, however he declined to make predictions as Trump has revealed a low-level of information through his campaign on his policy positions on important issues. Fadlallah believes that there will be no additional concessions to Iran as current president Barack Obama may lack the political capital during the lame-duck session, but one thing remains clear, "Iran policy will be one of the front and centre issues of the new administration's transition work."

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