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MINI-ROUNDTABLE

# IRAN SANCTIONS: OPPORTUNITIES AND CHALLENGES



**PANEL EXPERTS****Erik de Bie**

Co-Administrative Shareholder  
Greenberg Traurig LLP  
T: +31 (0)20 301 7300  
E: debiee@eu.gtlaw.com

**Erik de Bie** counsels clients in European trade, customs, VAT and excise duty related matters, including litigation. He focuses his practice on advising clients on EU sanctions and export control compliance, setting up and restructuring the trade, customs and VAT aspects in European supply chains, and advising on and implementing saving programmes. He represented clients in litigation before Dutch courts and the European Court of Justice.

**Kara M. Bombach**

Shareholder  
Greenberg Traurig, LLP  
T: +1 (202) 533 2334  
E: bombachk@gtlaw.com

**Kara M. Bombach** assists companies in lawfully exporting goods, technology and services around the globe. Her practice focuses on anti-corruption and anti-bribery compliance (US Foreign Corrupt Practices Act (FCPA) and OECD Convention), export control laws (EAR and ITAR), foreign investment (CFIUS), anti-boycott laws, and special sanctions (embargoes) maintained by the US government (OFAC and other agencies) against various entities, individuals and countries.

**Renee A. Latour**

Shareholder  
Greenberg Traurig LLP  
T: +1 (202) 331 3100  
E: latourr@gtlaw.com

**Renee A. Latour** focuses her practice on international trade regulation with an emphasis on compliance with US export controls and economic sanctions. Ms Latour assists clients on matters related to international trade that arise under the jurisdiction of various US governmental agencies, including the Departments of Commerce, State, Treasury, and Defense. She advises on US export control laws, anti-boycott laws and special sanctions maintained by the US government against various countries including Iran, Cuba and Sudan. Additionally, she assists clients in designing and implementing internal compliance policies and procedures and conducting cross-border export and sanctions regulatory due diligence.

**RC: Could you provide an overview of the potential investment opportunities in Iran since the country reached an agreement over a nuclear framework deal with the P5+1 group?**

**de Bie:** With regard to trade from the EU, there are various trade sectors in Iran which were not accessible under the EU measures but will become accessible once the Joint Comprehensive Plan of Action (JCPOA) is fully implemented. Most essential is probably the possibility to transfer funds between EU persons, entities or bodies, and Iranian persons, entities or bodies, without the requirement of authorisation or notification. Various potential investment industries were subject to EU restricted measures but will be open to trade once the measures are withdrawn. These industries are, for example, the oil, gas and petrochemical sector, the shipping, shipbuilding and transport sector, as well as the metals and software sector.

**Bombach:** In contrast to the EU sanctions relief that is expected upon implementation of the JCPOA, the US will maintain comprehensive sanctions prohibiting US entities and persons from dealings with Iran, with only certain limited exceptions. Currently permissible categories include exports of food and medicine, and there will be licences available for exports of commercial aircraft and

parts and services related to commercial aircraft and safety of flight. Another area we are watching with interest is the expected US sanctions relief that will likely come in the form of general licences permitting certain activities by foreign subsidiaries of US companies to engage in activities 'consistent with the JCPOA'. It remains to be seen exactly how this will be implemented and scope of permissible activities.

**RC: In your opinion, what impact will the suspension of US economic and financial sanctions and the EU lifting of its oil embargo and banking sanctions have on trade relationships investment opportunities in Iran?**

**de Bie:** We see in the market that there is a lot of interest in investments in, and trade with, Iranian entities. Transactions with Iranian parties have, however, always been limited due to the sanctions and the EU banks, which were reserved to cooperate on any transactions with Iranian persons or entities. Once the sanctions are lifted, investment possibilities will likely rise and it will be possible to open up branches, subsidiaries or representative offices of Iranian banks in the territory of the EU, which likely results in a substantial grow in trade between Iran and the EU.

**Latour:** From a US perspective, the potential investment opportunities are expected to be minimal. Given that the primary US sanctions will essentially remain wholly in place, US businesses should not expect a lot of new opportunities. Financial institutions can expect some relief, but this likely won't be realised in the near future, as it typically takes significant time for the US government to formally amend sanctions regulations.

**Bombach:** We have to wait to see exactly how the anticipated US general licences for non-US entities, which are owned or controlled by US entities or person, will be framed. It is conceivable that foreign subsidiaries of US companies in the JCPOA-related sectors – such as oil, automotive and financial services – may be permitted to start or resume business in Iran. The exact contours and scope of the general licences remain to be seen, however.

**RC: Should the Iranian government not abide by the terms and conditions set out in the nuclear framework deal, what contract precautions do companies need to include in any deals they negotiate?**

**de Bie:** In order to prevent a violation of export control laws, companies should include conditional

clauses in their contracts to address the situation where the specific EU sanctions are not lifted; then the contract immediately falls due. In addition to

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Greenberg Traurig LLP*

that, companies will want to include the possibility of terminating the contract if the EU sanctions are not lifted, or are not lifted in the timeline as agreed upon in the JCPOA. Moreover, companies can always require the contract party to warrant that it is not in violation of any EU restricted measures, in the broadest sense.

**Latour:** Companies should always take precautions when engaging in permissible business with countries subject to sanctions, particularly in situations where new business opportunities are created by the lifting of existing sanctions. The Iranian situation is unique in that it provides for a mechanism in which the sanctions can

automatically revert into place in the event that the Iranian government does not abide by the conditions set forth in the nuclear deal. In light of this, companies should exercise heightened caution when entering into business engagements. At a minimum, written contracts should include a clause allowing for automatic termination in the event that sanctions changes render contractual performance prohibited. Internal compliance programmes should also be closely monitoring sanctions developments, so that companies can be poised to take protectionist measures in the event that the sanctions are reinstated.

**RC: What advice can you offer to companies on maintaining a sound sanctions compliance framework? What adjustments might they need to make following developments with Iran?**

**de Bie:** It is important that companies create a culture of compliance awareness, in which all people of the company are involved and cooperate to create full trade compliance. As from an EU standpoint, companies must recognise that the legal requirements differ around the world and not all requirements mirror the US. And even within the EU, the implementation and possible violation

of restricted measures might be treated differently in various EU member states. If a specific trade related part of the company mostly takes place in the EU, or even one specific member state, it is advisable to identify local experts. With regard to the developments in Iran, as with any other legal

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developments in export compliance laws, companies should rely on up-to-date information. EU restricted measures may change on a weekly, or in some cases daily, basis. It is important remain informed on legal requirements in order to avoid possible violations.

**Latour:** For companies with a sound sanctions compliance framework already in place, the key to preventing violations is to stay current and abreast of sanctions developments. Tracking sanctions developments – which are often effective immediately upon announcement – allows

companies to react promptly and modify not only their compliance programmes, but also to alter existing business practices, to remain compliant with the law.

**Bombach:** Companies engaged in international business transactions should conduct periodic risk assessments to analyse changes not only in the company's business operations that might change the sanctions risk profile – such as recent acquisitions, where doing business, business partners – but external risks such as local law, business, economic and security challenges, that may impact a company's risk profile, and the adequacy of its existing sanctions compliance programme.

**RC: To what extent is the risk of fraud and corruption an issue**

**for companies dealing with Iran? What strategies are available to mitigate such risks?**

**Latour:** Fraud and corruption are risks for any company engaged in international business. Accordingly, companies should maintain strong internal compliance programmes, with specific resources dedicated to identifying and addressing fraud and corruption-related issues. When entering into a new market, it is important for companies to review and assess potential risks specific to that country or region, for example: Who are the potential government actors? Where do our greatest risks lie prior to engaging in business?

**Bombach:** We have already witnessed some interesting examples relative to Iran in particular, where enterprising local businesses and even possibly criminals are seeking to take advantage of and prepare for relaxation of sanctions. For example, we are aware of fraudulent applications for import registrations submitted by local businesses – in schemes analogous to cyber squatting or trolling. A local business in Iran seeks to become the sole



registered importer of certain brands of foreign-made goods through local Iranian authorities, in some instances without the knowledge or awareness of the foreign goods manufacturer. These predictably could lead to quasi-extortion cases when the foreign goods manufacturer decides to export goods to Iran. We anticipate these locally 'registered' importing agents may then attempt to strong-arm the foreign manufacturers to hire them as local importing agent, because if the registrations are issued by Iranian authorities, the fraudulently registered importer may be the only authorised importer of a particular brand under Iranian law.

**RC: Which sectors or activities are permissible for US and EU companies to invest or otherwise deal in?**

**de Bie:** After the EU sanctions are lifted and no specific limitations remain or come in place, the following sectors and activities, in short, are permissible: financial, banking and insurance, for example transfer of funds, provisions of insurance or reinsurance; oil, gas and petrochemical, for example the import purchase, swap or transport of Iranian crude oil and petroleum products, natural gas or petrochemical products as well as related financing;

shipping, shipbuilding and transport, for example sale, supply, transfer or export of naval equipment and technology for shipbuilding, maintenance or refit; gold, other precious metals, banknotes and coinage, for example sale, supply, purchase, export or transport of gold and previous metals; metals,

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for example sale, supply, transfer or export of graphite and raw or semi-finished metals, such as aluminium and steel; and software, for example sale, supply, transfer or export of software for integrating industrial processes, including updates, in connection with activities consistent with this JCPOA.

**Bombach:** From the US side the sectors are fairly limited and we do not expect much change after JCPOA implementation. The key allowable sectors,



some remain subject to licensing requirements, are exports of informational materials – food, medicines, and medical devices, humanitarian donations, exports of parts and components for safety of flight for commercial aircraft, as well as certain telecommunications services and exports of services and software related to internet-based communications, such as email, social networking, sharing of photos and videos. Any US companies or persons interested in exploring opportunities in Iran must do a careful and thorough review of US sanctions regulations to determine whether the proposed activities are permissible and what types of authorisations might be required. In general ‘new investment’ in Iran is not permitted by US companies or persons.

**RC: For companies legally permitted from a US or EU perspective to engage in certain business in Iran, what considerations do they need to make about Iranian laws, regulations, political risk and uncertainty? What are some of the potential difficulties they might encounter upon market entry?**

**Bombach:** Companies engaged in lawful business with or in Iran should be aware that numerous restrictions remain under the sanctions that impact how they may be able to operate relative to business there. So while a company may be permitted to export product to Iran, it does not mean that it is authorised to do everything it would normally do in other foreign markets where it sells its products, such as hire marketing representatives, advertising agencies, local consultants and opening branch offices there to support its business. All support activities have to be reviewed separately to determine whether they are permissible under US law. From the Iranian side a great amount of political, security and economic risk exists. As a country that has been a relatively closed market for decades, corruption risks are high. Given the existing regional security issues, companies should also be prepared to mitigate potential disruption to business, such as theft or tampering of shipments. It is a large market with significant population, and companies wishing to make the investment of time and resources to do business in or with Iran should be sure to implement an effective compliance programme to mitigate the risks of doing so. **RC**