The Iran Accord—What it Means for Our Clients

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Last week’s announcement in Lausanne of a “framework” for an agreement between Iran and the major global powers (the P5+1—the permanent members of the U.N. Security Council plus Germany) brought us back to the first major agreement by the regime that controls the Islamic Republic of Iran and the U.S.—the Algiers Accord, negotiated in 1980 by another set of energetic State Department diplomats under a Democratic president. Several of our lawyers were involved in the aftermath of that Accord, including the extensive international arbitration proceedings it launched in the Claims Tribunal in The Hague—and we think there are parallels worth noting.

But first, the basic elements of the deal:

The Lausanne Framework

The framework reflects what the lead spokesperson for the P5+1 negotiating team called “solutions on key parameters of a joint comprehensive plan of action.” These “parameters,” now referred to as the Joint Comprehensive Plan of Action (“JCPOA”)—a clunky term that we expect to be replaced when (and if) a full deal is reached in the next few months’ negotiations—are something more than an outline of terms, but something less than a detailed term sheet: lead Iranian negotiator Mohammed Zarif stressed in the announcement press conference that “[t]here is no agreement; and so no commitments” until an agreed upon document is negotiated based on the framework terms, which the two sides will attempt to generate by June 30.

The Lausanne framework’s main elements are:

- Iran’s ability to enrich uranium will be reduced and restricted, subject to international inspections. These are advertised by experts on nuclear proliferation as some of “the most robust and intrusive inspections” ever negotiated for any nuclear program, and from our (non-expert) perspective, this appears accurate. Experience with other nuclear inspection regimes teaches that implementation of what is agreed on paper is only the beginning of the story. But there is now a seasoned multilateral nuclear inspection protocol that has advanced capability for detecting evasion, and the Iran program—if we get to a final agreement—will put it to its most severe test.

- In return, Iran will receive relief from U.S. and E.U. nuclear-related sanctions, once the International Atomic Energy Agency (“IAEA”) verifies Iran’s strict compliance with the agreement’s terms.
To accomplish this, the current UN Security Council resolutions related to Iran will be recast to endorse the JCPOA, mandate its full implementation, and deal separately with transfers of sensitive technologies, conventional arms, and ballistic missiles, as well as related cargo inspections and asset freezes.

- If Iran does not perform, the array of trade and financial sanctions currently in place under UN resolutions related to Iran’s nuclear program will “snap back” into place.
- Meanwhile, the U.S. program of sanctions on Iran for non-nuclear reasons—support of terrorism, human rights abuses, and ballistic missiles—will remain in place even after a final JPCOA.

The Enrichment Constraints
The central enrichment-related features of the Lausanne deal are notable:

- **Enrichment restricted to Natanz.** The terms would limit the operation of uranium-enrichment centrifuges to one site in Iran—Natanz. Iran will convert the heavily-secured underground facility at Fordow from an enrichment site into a center for nuclear physics and technology research. Foreign scientists (and presumably IAEA inspectors) will be present at Fordow, and no fissile material will remain there. This strikes our (again, non-expert) eyes as a significant diplomatic achievement, given the centrality of the Fordow facility for the scenarios at the heart of global worry about Iran’s nuclear program—a rapid and unstoppable Iranian break-out and use of nuclear devices to threaten neighbors in the Arabian Gulf or Israel.

- **Centrifuges restricted in number and scope.** Iran has agreed to reduce its installed centrifuges by approximately two-thirds—from the current number of 19,000 to 6,104. Of the approximately 6,000 centrifuges, only 5,060 will continue uranium enriching activities for a period of 10 years. Most notably, the 6,104 centrifuges will be first-generation machines, rather than the more advanced model that Iran has acquired—equipment that is more plausibly useable for a peaceful civilian nuclear program than for generation of weapons-capable source material.

- **Arak rebuilt.** The heavy-water nuclear reactor at Arak—the second leg in the program at the core of Western concern about Iran’s program—will be rebuilt and no longer used to produce weapons-grade plutonium.

- **Low enrichment ceilings.** Iran will not enrich uranium above the level of 3.67% for at least 15 years—again, a provision consistent with generating fuel for nuclear power plants but not for weaponizing warheads.

- **Stockpile reduction.** Iran will reduce its current nuclear stockpile of about 10,000 kilograms of low-enriched uranium to 300 kilograms for 15 years.
The language used by Foreign Minister Zarif to describe these terms in the Lausanne announcement press conference is telling:

None of those measures include closing any of our facilities. The proud people of Iran will never accept that. Our facilities will continue. We will continue enriching. We will continue research and development. Our heavy water reactor will be modernized.

These carefully-chosen words reveal a great deal about the politics in Iran that may determine how difficult the next round of negotiations will prove. So too do the crowds that greeted Zarif on his return to Tehran. It appears that the clerical power centers in Iran have determined that an agreement that preserves the cosmetic outline of the current Iranian program, while mothballing or dismantling a large part of its leading edge, is worth the benefits of removing the trade and financial sanctions on Iran. That choice cannot have been an easy one to make inside the power corridors of Tehran, any more than the agreement to lift sanctions was within the West Wing, the State Department, and the offices of the leadership in Congress.

Verification Terms

Of course, the alternative view—that Iran does not intend to deliver on the reductions promised in the framework, and will instead continue a concealed nuclear military plan—cannot be overlooked. (Israeli Prime Minister Netanyahu’s intensified warnings of a “bad agreement” with an apocalyptic outcome assure that this view will not be overlooked.) Advocates and critics of the Lausanne agreement share one key point: the effectiveness of the verification regime put in place inside Iran will determine whether the agreement, if one is completed in the upcoming negotiations, proves historic or deceptive.

So what verification mechanism does the Lausanne framework provide? The guidance on this question comes from the State Department’s description of the “Inspections and Transparency” provisions. Taken at face value—that is, assuming that the Iranian negotiators have agreed to the inspection terms described, even if they are not publicly confirming it—the verification measures are impressive. They include:

- “Regular access” for the IAEA to “all of Iran’s nuclear facilities,” including Natanz and Fordow, with “use of the most up-to-date, modern monitoring technologies;”
- IAEA “access” to “the supply chain that supports Iran’s nuclear program”—a provision that will raise interesting issues concerning support Iran has received from Pakistani or North Korean sources;
- IAEA “continuous surveillance” at uranium mills (“where Iran produces yellowcake”) for 25 years and at centrifuge rotor/bellows production and storage facilities for 20 years, resulting in the “freezing” of Iran’s centrifuge manufacturing base;
- Placement of “all centrifuges and enrichment infrastructure removed from Fordow and Natanz” under “continuous monitoring” by IAEA;
- Creation of a “dedicated procurement channel for Iran’s nuclear program” to “monitor and approve, on a case by case basis, the supply, sale, or transfer” of “certain nuclear-related and dual use materials and technology” to Iran; and
IAEA access to “investigate suspicious sites or allegations of a covert enrichment facility, conversion facility, centrifuge production facility, or yellowcake production facility anywhere in the country.”

If Iran has agreed to allow IAEA inspectors into Fordow—deep underground in an Iranian Revolutionary Guard base just 20 miles from Qom— it will be an intriguing day when those inspections start. The IAEA team will be aware that Iran managed to build Fordow in secret before the U.S., the U.K., and France blew the whistle by publishing intelligence information showing the facility in September 2009, in what former Prime Minister Gordon Brown called a “serial deception of many years.”

Has the Iranian regime concluded that it can fool the West again? Or has it concluded (based on the Fordow episode) that Western intelligence capabilities will uncover any secret nuclear development program before they can get it to the finish line? If the negotiators can get to a complete agreement in the June 30 cycle of talks, it is difficult to imagine that the Iranian ruling circle thinks it can pull off a repeat of Fordow under the spotlights that will accompany any final agreement.

**Removal of Nuclear-Related Sanctions (and Non-Removal of Others)**

The payoff for Iran in any deal is the removal of the trade and financial sanctions that have strangled its economy since the Fordow revelations of 2009. For many of the clients who engage us to help on compliance with Iran sanctions, the critical questions are whether, when, and how the current sanctions regime will change.

The initial guidance from the U.S. sanctions enforcers has been, unsurprisingly, of little value. The Office of Foreign Assets Control (“OFAC”) released a [terse notice](#) that is best translated as “sit tight and expect little.” That is appropriate advice at this point, since nothing will change unless and until the June 30 deadline results in a comprehensive agreement based on the “parameters” of the JCPOA.

What does the JCPOA provide? In something of a contrast to the specified changes that Iran will make to its nuclear program, the [State Department’s description](#) of the lifting of sanctions is imprecise: “Iran will receive sanctions relief, if it verifiably abides by its commitments.” What relief, on what timetable, in what manner? “U.S. and E.U. nuclear-related sanctions will be suspended after the IAEA has verified that Iran has taken all of its key nuclear-related steps. If at any time Iran fails to fulfill its commitments, these sanctions will snap back into place,” because “[t]he architecture of U.S. nuclear-related sanctions on Iran will be retained for much of the duration of the deal and allow for snap-back of sanctions in the event of significant non-performance.”

The State Department is more specific on the fate of the current UN resolutions:

All past UN Security Council resolutions on the Iran nuclear issue will be lifted simultaneous with the completion, by Iran, of nuclear-related actions addressing all key concerns (enrichment, Fordow, Arak, PMD, and transparency). However, core provisions in the UN Security Council resolutions—those that deal with transfers of sensitive technologies and activities—will be re-established by a new UN Security Council resolution that will endorse the JCPOA and urge its full implementation... Important restrictions on conventional arms and ballistic missiles, as well as provisions that allow for related cargo inspections and asset freezes, will also be incorporated by this new resolution.
The State Department’s summary carefully concludes with this note: “U.S. sanctions on Iran for terrorism, human rights abuses, and ballistic missiles will remain in place under the deal.” President Obama’s Rose Garden statement announcing the Lausanne framework underscored the same point.

What, then, will change in the U.S. regime of Iran sanctions?

**Not much at first.** It is worth emphasizing up front that little, if anything, will change in the short term—because the State Department says the U.S. has promised only to lift “nuclear-related sanctions” “simultaneous with the completion, by Iran, of nuclear-related actions addressing all key concerns (enrichment, Fordow, Arak, PMD, and transparency).” “Completion” may not require, for example, the full accomplishment of the conversion of Fordow to pure civilian research—“all key concerns” might be “address[ed]” by interim steps that demonstrate the objective will be achieved in due course—but with a hostile Congress peering over the Obama Administration’s shoulder, we expect American sanctions on Iran to remain largely in place for the balance of President Obama’s term in office.

**Which sanctions are “nuclear-related”?** And it is no simple matter to determine which current U.S. sanctions are “nuclear-related” and therefore will be suspended when the time comes. U.S. sanctions on Iran derive from a welter of Executive Orders, OFAC regulations, statutes that authorize (but do not require) bans on Iran-related transactions, and Congressional mandates that purport to leave the Administration no discretion on imposing sanctions.

- For example, under the “state sponsor of terrorism” designation that has applied to Iran since 1984 (after the bombing of the U.S. Marine barracks in Lebanon), sales of items with both military and commercial (“dual use”) uses of U.S. origin are banned. That will not change even if Iran fully complies with the Lausanne conditions. Clients who produce technology items or software that might have a sizeable civilian market in Iran, but that incorporate U.S.-origin technology with dual-use implications, should not expect to find the door open to Iranian customers.

- The ban on imports from Iran—even of pistachios, pomegranates, caviar, and carpets—will not change. The import ban was codified by Congress in the major 2010 Iran sanctions legislation (known as “CISADA”). Though the 2010 legislation was largely an outgrowth of the revelations about the Iranian nuclear program, we do not expect Congress to take affirmative steps to relax the import ban in the foreseeable future.

- Several bans that pre-date the concerns with the nuclear program—such as the ban on Iranian oil imported into the U.S., imposed in 1995—will continue.

- The much-controverted application of the Iran proscriptions to foreign subsidiaries of the U.S. companies—codified by statute in 2012—will not change. Although this extension of the U.S. prohibitions to overseas subsidiaries was plainly driven in major part by Congress’ desire to up the pressure on the Iranian nuclear program, the White House will not be able to suspend it in light of the statutory mandate.

- Similarly, the prohibition on U.S. investment in Iran’s petroleum sector, which date to 1996, may not be regarded as “nuclear-related” and could well remain in place. This is likely to be a point of contention in the ongoing negotiations for the June 30 agreement, but the Administration will find it difficult to classify these proscriptions as related to the nuclear
program. Their primary function has been to deter Iranian modernization of its oil production and refining capabilities and to keep Iran’s large natural gas reserves in their present undeveloped state.

- A harder set of questions will be presented by the third-country companies that were subjected to U.S. sanctions because of their dealings with the Iran oil and gas sector. European oil services firms, for example, may be authorized by removal of E.U. sanctions to provide rigs or drilling equipment to Iran, but the U.S. sanctions imposed by President Obama in 2011 and codified by Congress in 2012 would continue U.S. sanctions on those companies. Pressure on the White House to waive sanctions on third-country companies will be intense.

- Another set of 2012 proscriptions calls for imposition of third-country insurance companies that provide insurance or reinsurance to Iran’s national oil company (NIOC) or its shipping firm (NITC). Carriers in Japan and Europe can be expected to push hard for removing the threat of U.S. sanctions when and if their home countries open the way for commercial insurance coverage of Iranian entities. As with other provisions that were included in the 2012 Iran Threat Reduction law, a battle can be expected over whether the White House has (or should have) the ability to waive such sanctions in the interests of avoiding friction within the coalition of Western nations backing the P5+1 process.

- One of the most peculiar elements in the U.S. sanctions quiver—the White House’s imposition of sanctions on firms that supply the auto sector in Iran (for which there was no explicit statutory mandate)—was suspended when the initial agreement to negotiate over the nuclear program was announced in late 2013. That provision will not be reinstated.

**The financial sector sanctions.** Perhaps the most sweeping component of the recent U.S. escalation of sanctions—and the provisions Iran is most eager to remove through the Lausanne arrangement—deal with measures to close off the global banking system to Iranian banks (including its Central Bank). Much of the pressure to lift “nuclear-related sanctions” will focus on these financial measures, many of which were imposed by the U.S. (and adopted by the E.U. and others in the P5+1 coalition) since 2010 for the express purpose of forcing Iran to the table on its nuclear program.

- One such provision involves closing off the U.S. banking system to processing payments connected with Iran’s Central Bank. This provision—adopted, importantly, as part of annual defense authorization bills in 2011, rather than as part of permanent statutes—allowed the President to exempt foreign banks that finance purchases of crude oil in countries that have reduced the volume of oil purchases from Iran. Decoded, this provision was designed to permit Japan, China, Italy, and Spain to continue to acquire Iranian oil (and to use their banks to finance those purchases) so long as they moved more of their oil purchases to other sources. (This leverage worked: Iranian oil sales exports declined from 2.5 million barrels per day to 1.1 million barrels per day.) President Obama has exempted a number of countries under this provision, and it appears likely that this banking sanction will be one of the “nuclear-related” sanctions that will be removed as part of a final Lausanne deal.

**Off-limits.** We know, also, that certain sectors will remain off-limits to Iranian transactions. Those are areas in which clients rarely have express interest in any event, but which can prove devilishly difficult in implementation—dealings with the Revolutionary Guard or other SDNs (Specially Designated Nationals) under the OFAC Iran regulations and development of missile delivery systems.
**State procurement laws.** The recently-proliferated state laws banning, for example, procurement contracts with companies that have been accused of continuing to deal with Iran will continue in force, unless Congress develops a new Iran-related statute to replace the mishmash of laws that have been adopted over the past 20 years in an effort to up economic pressure on the Iranian regime. A number of our clients have found themselves on hastily-compiled lists of companies targeted for procurement blacklisting, often on the basis of misinformed culling of news reports about dealings—such as the purchase of Iranian crude oil by Japanese buyers, a practice explicitly authorized under the present sanctions regime. Clients who find themselves in this position will continue to have to work with state procurement offices to avoid being caught in the downdraft as state legislators have sought to fill the narrow space allowed by the federal Iran sanctions laws for complementary state proscriptions.¹

**The Algiers Accord Precedent**

The Lausanne framework aims not only to address the Iranian nuclear program, but to provide a foundation for turning the page on the hostility that has governed the U.S.-Iran relationship since the fall of the Shah and the occupation of the U.S. embassy in Tehran in 1979. The embassy hostage trauma continued for 14 months, to the last hours of the Carter Administration in 1981, and it was ended only when the U.S. and Iran—working through the Algerian government—fashioned an agreement that included an extensive system for resolving American business claims of expropriation and business losses caused by the Iranian revolution in 1979.

The circumstances surrounding the Algiers Accord and the Lausanne framework are dramatically different, of course. Yet it is noteworthy that the resolution of the 1980-81 hostage crisis took the form of Iran’s acceptance of a comprehensive legal framework, including the creation of a new international tribunal, to conduct an orderly process for disposing of economic claims that threatened to produce a Cuba-like perpetual embargo on dealings with the U.S. Our lawyers handled a number of claims in that Tribunal, and—though it functioned far less perfectly than even the most mediocre court system—ultimately it did work. And in that instance, the structure functioned despite the fact that there was minimal direct interaction between the Iranians and the Americans: the Accords were negotiated by then Deputy Secretary of State Warren Christopher via Algerian proxies, and the Claims Tribunal operated through written submissions in which there was often no meaningful direct communication between the American and Iranian parties (and indeed, between the Iranian arbitrators and their U.S. counterparts).

The analogy is by no means exact, and the dynamics in the 2015 nuclear issues are considerably more complex than those of the economic claims that arose from the Iranian revolution. But there is a common core, in the form of the imposition of a detailed, process-oriented, multi-step legal framework on a large zone of contentious claims in which neither side can permit the status quo to be sustained.

For questions and assistance on compliance with economic sanctions and other trade laws, contact a member of our Global Trade Controls practice.

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If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings Washington D.C. lawyers:

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1 These state law measures are authorized by Section 202 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Public Law 111-195) (“CISADA”), which State and local governments the authority to “adopt and enforce measures … to divest the assets of the State or local government from, or prohibit investment of the assets of the State or local government in, any person that the State or local government determines, using credible information available to the public, engages in investment activities in Iran….” For a recent example of such a measure, see Mississippi’s Iran Divestment Act of 2015, found here: http://billstatus.ls.state.ms.us/documents/2015/html/SB/2800-2899/SB2807IN.htm