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Client Alert: Iran's Sovereign Guarantee Decree and the New Framework for International Financing

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Introduction

On 2 February 2017, the Iranian Council of Ministers approved decree number H53528T/142064 (the "Decree") laying the ground for the issuance of sovereign guarantees to support projects that are funded by foreign bank loans. Previously, there was considerable uncertainty as to whether such guarantees could be issued. A sovereign guarantee is distinct from the current "payment guarantee" which guarantees the payment obligations of a government agency that is an exclusive purchaser of the products of a particular project.

Sovereign Guarantee Conditions

Pursuant to the Decree, the Ministry of Economic Affairs and Finance (MEAF) can issue a sovereign guarantee on behalf of the Government of Iran in certain defined circumstances. These are:

1. The foreign bank loans must have a "legal permit" and be conditional on the guarantee of the Government of Iran.
2. The lenders must be one or more of the following:
   a) a foreign agent bank or a mandated lead arranger;
   b) an export credit agency;
   c) an overseas aid agency; or
   d) an international development bank or institution.
3. In order for a bank loan to be eligible for a sovereign guarantee, the relevant project must have already been approved by the Economic Council and sufficient collateral must have been put in place. Such collateral is said to be the guarantee of the Plan and Budget Organization and the agreement referred to in Article 62 of the Public Accounts Act 1986 (requiring the Plan and Budget Organization to forecast the repayments in future budgets) with respect to government projects and appropriate security as confirmed by the agent bank with respect to non-governmental projects.

Outstanding Issues

The Decree provides a framework for the issuance of sovereign guarantees but there are two grey areas.

Firstly, it is unclear what is meant by the "legal permit." It would seem more than likely than not that this refers to the specific authorizations granted to the government to enter into facility agreements with foreign lenders contained in the development plan laws and the annual budget laws.

Secondly, it is not clear which "non-governmental projects" would be eligible. It may be that this covers large projects (such as infrastructure and power projects) previously within the realm of government but which in recent years have been privatized and are now undertaken by the private sector.

Notwithstanding these uncertainties, for the first time in recent years the Decree provides a clear legal basis for the government to issue sovereign guarantees. The inability of the government to issue sovereign guarantees has in the past halted a number of high profile projects and this new development will no doubt be welcomed by foreign financiers and export credit agencies that wish to work with Iran.

If you would like more information about this topic then please contact us.

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