

# Iran-Post Sanctions: Legal challenges and business opportunities

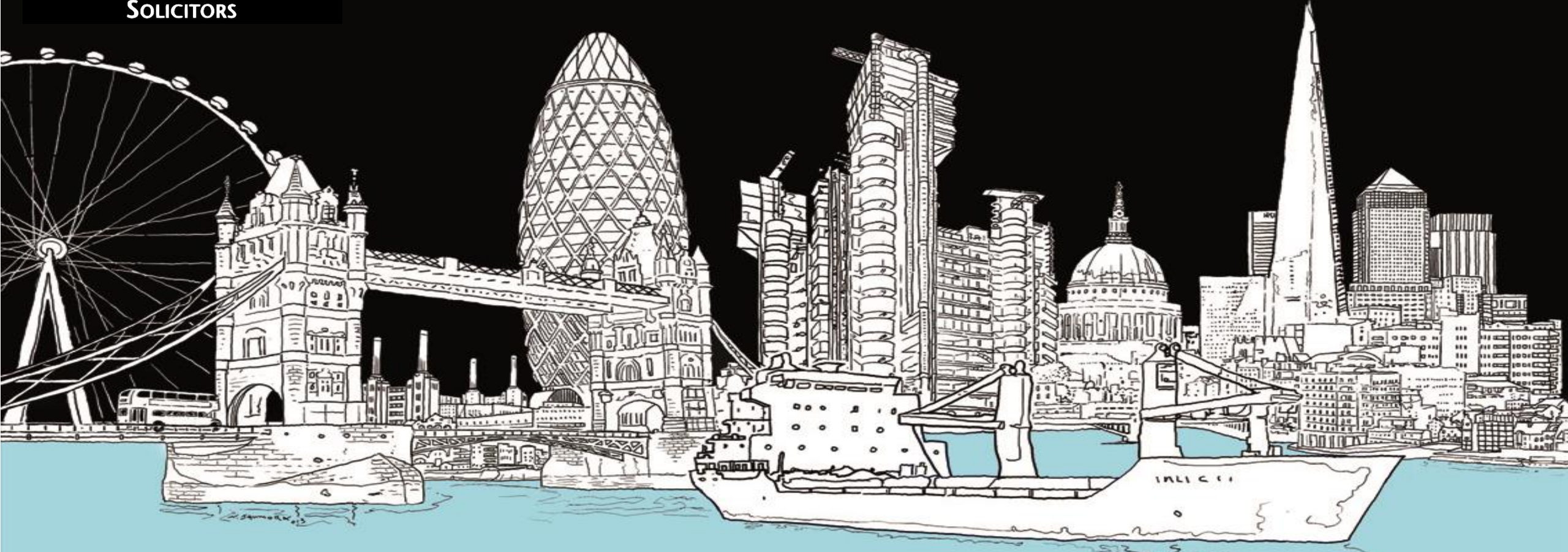
An event organised by:

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 **NAYTIKA XPONIKA**

With the support of:

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# Agenda

1. About Iran

2. Implementation Day

3. EU Position

4. US Position

5. Financial & Banking services

6. The Energy Sector

7. Shipping, Shipbuilding and Transport

8. Insurance and Reinsurance

9. EU & US Sanctions still in place

10. Snap back provisions

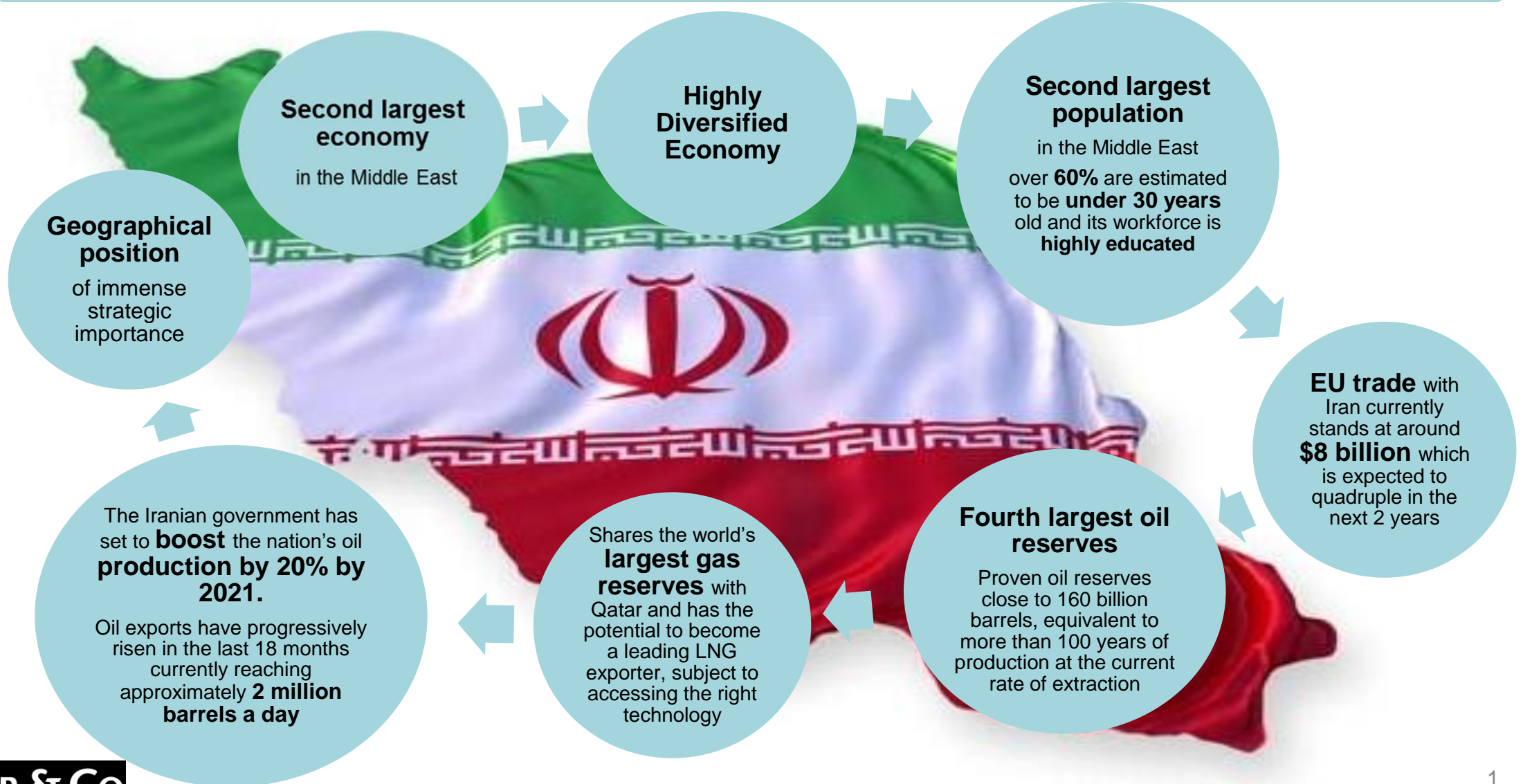
11. Opportunities for foreign investment in the Travel/Hospitality sector

12. Key insights: How to avoid pitfalls when dealing with Iran

13. Future of the nuclear deal in view of recent geopolitical and economic developments

14. Conclusion

# A few interesting facts about Iran...





# JCPOA - Implementation Day

## 16<sup>th</sup> January 2016



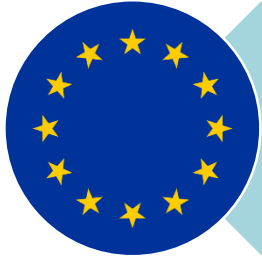
Yukiya Amano, the General Director of The International Atomic Energy Agency (IAEA), confirmed that Iran implemented its nuclear-related commitments, as described in sections 15.1-15.11 of Annex V of the JCPOA.



The European Union and the US took all necessary actions to lift sanctions as set out in sections 16 and 17 of Annex V of the JCPOA.



# EU position



EU restrictions on **Financial and Banking** activities, **Insurance and Reinsurance** services, **Petroleum and Shipping** activities to and from Iran, have now been removed as part of the sanctions relief triggered on Implementation Day.

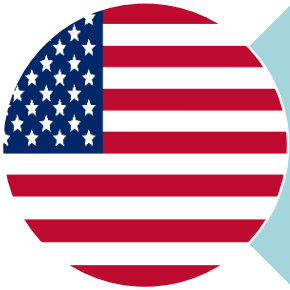


A number of **Iranian** individuals and entities, including many Iranian banks, have been **delisted**.



This now **allows financial transactions** to go ahead with Iran, provided that no listed entities or individuals are involved.

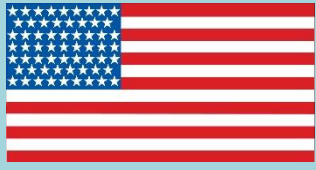
# US position



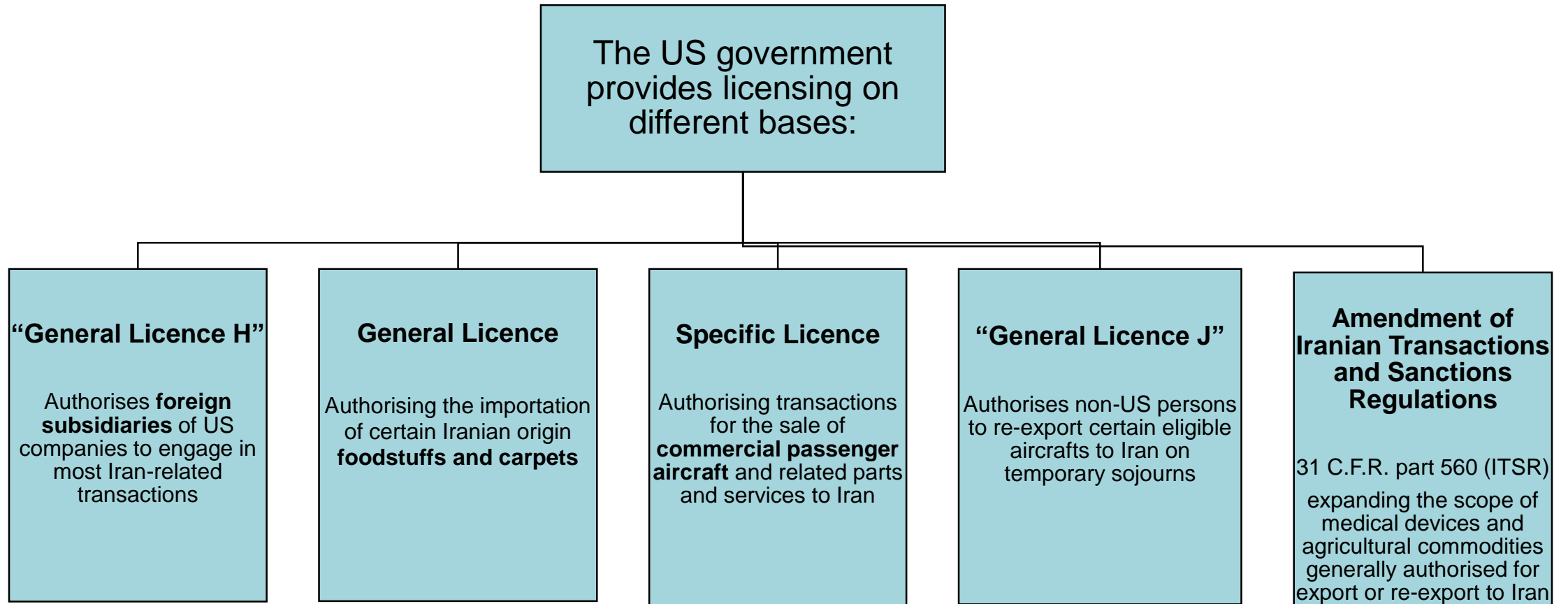
**US primary sanctions remain in place**



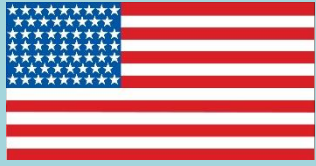
**US persons**, companies, citizens, permanent resident aliens, wherever located, continue to be **prohibited** from engaging in transactions or dealings with Iran, the Iranian government and Iranian financial institutions with the **limited exception** of transactions that are exempt or authorised by US Treasury's Office of Foreign Assets Control (OFAC).



# US Primary Sanctions - Licensing







# Secondary US Sanctions

The US has lifted the nuclear-related “**secondary sanctions**” (i.e. sanctions with extraterritorial reach, directed toward non-US persons) described in sections 4.1- 4.7 of Annex II and 17.1-17.2 of Annex V of the JCPOA by:

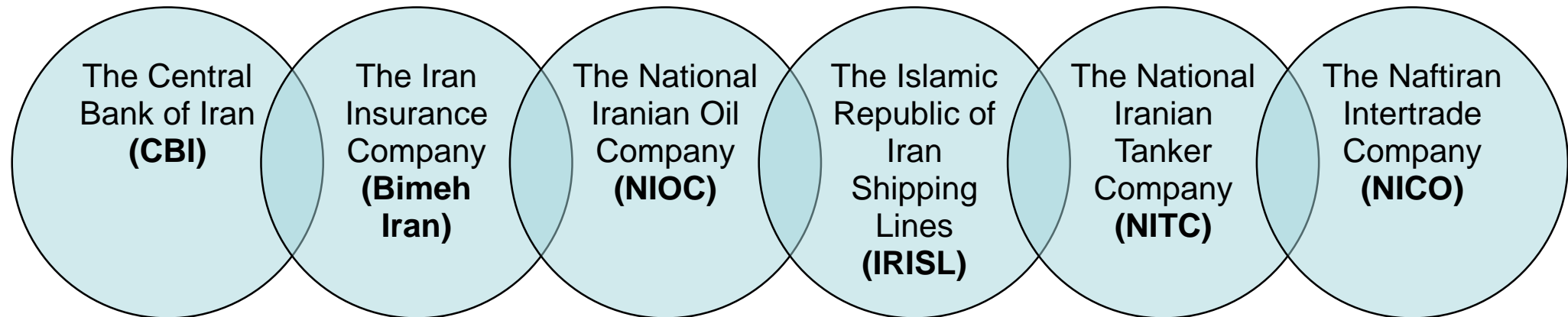
- Issuing waivers of certain statutory sanctions provisions
- Committing to refrain from exercising certain discretionary sanctions
- Removing certain individuals and entities from OFAC’s sanctions list
- Revoking certain Executive orders and specified sections of an Executive order

# US delisted over 400 individuals and entities from:

OFAC's List of Specially Designated Nationals and Blocked Persons  
**(SDN List)**

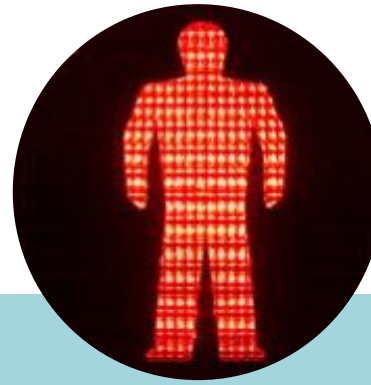
The Foreign Sanctions Evaders List  
**(FSE List)**

The Non-SDN Iran Sanctions Act List  
**(NS-ISA List)**





**Non-US persons will no longer be subject to sanctions** for conducting transactions with any one of the more than 400 individuals and entities, including CBI and other specified Iranian financial institutions.



**Secondary sanctions continue to apply** to non-US persons for conducting transactions with any one of the more than 200 Iranian or Iran-related individuals and entities who remain on the **SDN List**, notwithstanding the lifting of secondary sanctions.



# Recent Developments

## ISA reauthorisation & new sanctions against Iran



- The reauthorisation of the 1996 Iran Sanctions Act became law on 15 December 2016.
- It allows the US government to impose sanctions from 31 December 2016 until 31 December 2026.
- The extension does **not impose new sanctions** and does not affect other US sanctions measures.
- The United States federal law confers full discretionary power to the US President in imposing sanctions and restrictions, in any event.
- On 3 February 2017, **OFAC sanctioned 25 individuals** and entities either involved in Iran's missile programme or in a network supporting military activities in Lebanon.
- They target specific individuals and entities, and not products or sectors of the Iranian economy.
- **None of the secondary sanctions lifted on 16 January 2016 under the JCPOA have been re-imposed.**



# Financial and Banking services (EU Position)

The following are now permissible:



**Transfers of funds**  
between non-sanctioned Iranian and EU persons, entities and bodies, including financial and credit institutions.



**The opening (or re-opening) of subsidiaries,**  
branches or representative offices of non-listed Iranian banks in EU Member States.



The supply of specialised financial messaging services, including **SWIFT**, for Iranian persons, entities or bodies, that are no longer the subject of restrictive measures.



**Joint ventures and opening of bank accounts** with Iranian financial or credit institutions.

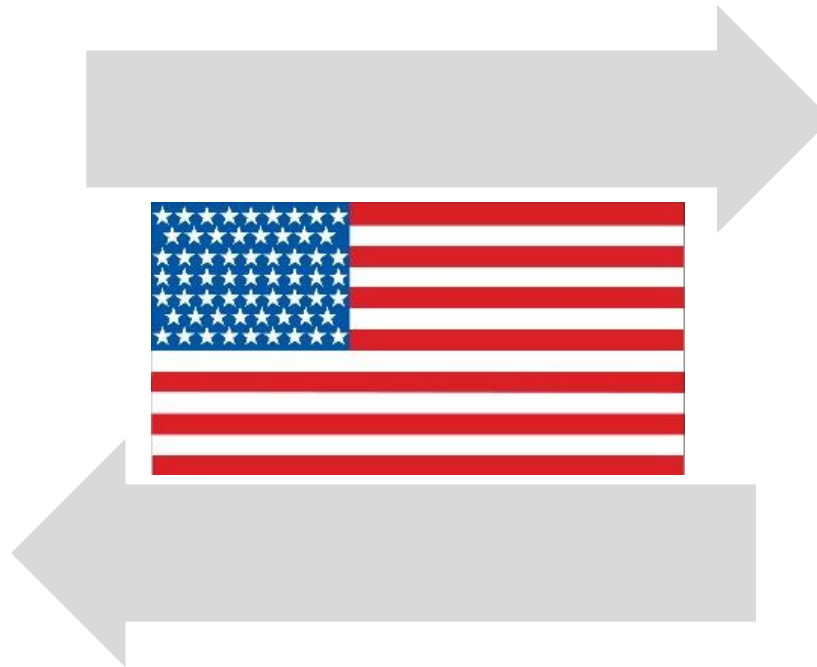


Provision of **export credit and guarantees, insurance** and other financial assistance.

# Financial and Banking services (US Position)

## Non-US persons

including foreign financial institutions (FFIs), **can engage** in financial and banking transactions with the CBI or other financial institutions without risk of exposure to sanctions.



## US persons

**continue to be prohibited** from engaging in transactions with the Iranian government and financial institutions, with the exception of transactions that are exempt from regulation or authorised by OFAC.

**!US dollar-denominated transactions are broadly prohibited.** Foreign and US financial institutions cannot use USD for any transaction in relation to Iran.

# Important OFAC Iran FAQ Update on US dollar processing

On 7 October 2016, **OFAC** further updated its Frequently Asked Questions (**FAQs**) relating to **Financial and Banking Measures** and, more specifically, to **offshore dollar processing** (C.7 and C.15):

- The clarification gives FFIs the go ahead to **open dollar denominated vostro/nostro accounts** on behalf of Iranian banks to effectively process dollar payments but without the involvement of the US financial system in “clearing” them (emphasis).
- The **offshore processing** of US dollars can be carried **under General Licence H**, which means that FFIs subsidiaries of US financial institutions are allowed to participate subject to obtaining the licence.



# The Energy Sector (EU Position)



The following are now permissible:



The **import, purchase, transportation and swap** of Iranian **crude oil**, petroleum products, natural gas and petrochemicals.



The supply and export of **equipment or technology** as well as the provision of **technical support**.



The **investment** in the Iranian oil, gas and petrochemical sectors.



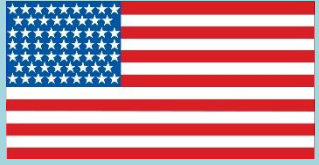


# The Energy Sector (US Position)



The US is **no** longer pursuing **efforts to reduce** Iran's **sales of crude** oil under the National Defense Authorization Act for Fiscal Year 2012 (NDAA).

The **restriction on the use of the proceeds** of sales of Iranian petroleum and petroleum products for bilateral trade with Iran, which previously applied to the 20 jurisdictions with a so-called "significant reduction exception" under the NDAA, **no longer applies** (sections 4.3 of Annex II and 17.1 of Annex V of the JCPOA).



# The Energy Sector (US Position)

The following activities by **non-US persons** are no longer the subject of sanctions:

- ✓ Investment, including participation in joint ventures, supply of goods, services, information, technology and technical expertise and support for Iran's oil, gas and petrochemical sectors.
- ✓ The purchase, acquisition, sale, transportation or marketing of petroleum, petrochemical products and natural gas from Iran, provided the transactions do not involve persons on the SDN List.
- ✓ The export, sale or provision of refined petroleum products and petrochemical products to Iran.
- ✓ Transactions with Iran's energy sector including with NIOC, NICO and NITC.
- ✓ The provision of associated services for each of the categories above.

**!Transactions related to the above-mentioned activities are prohibited from transiting the US financial system.**

# The Energy Sector: The new Iranian Petroleum Contracts

## Iran Petroleum Contracts (IPC)

Service contracts with production sharing element and duration of 20 years, concerning the integrated exploration of oil fields, development and production of oil, to replace the existing buy-back contracts.

They allow joint-venture partnerships between global oil companies and their Iranian counterparts.

Oil companies benefit from full cost recovery on their investments in the exploration, discovery and development of a given field.

Profit will be paid to the foreign investor on a fee per barrel basis and further incentives will be offered for delivering the project below budget.

# Shipping, shipbuilding and transport (EU position)

The following  
are now  
permitted:



- **Sale, supply, transfer and export** of naval equipment and technology **for shipbuilding and maintenance** to Iran or Iranian persons.
- **Construction**, design or participation in the construction and design of Iranian cargo vessels and oil tankers.
- **Supply** of oil and petrochemicals transport and storage **vessels** to Iranian persons.
- Provision of **flagging and classification** services to Iranian-controlled tonnage.
- **Access to EU airports** by passenger and cargo flights operated by Iranian carriers or originating from Iran.
- Provision of **fuel, engineering and maintenance** services to Iranian cargo aircrafts.
- **Cargos** to and from Iran of previously prohibited items will no longer be subject to inspection, seizure and disposal by EU Member States.



# Shipping, shipbuilding and transport (US position)

The US have lifted the **secondary sanctions** on Iran's shipping and shipbuilding sectors and port operators in Iran, including sanctions related to:



- The **sale, supply or transfer** to, or from, Iran of goods and services used in connection with Iran's shipping and shipbuilding sectors, including **port services** such as **bunkering, inspection, classification and financing**.
- **Transactions with** entities that are part of the shipping or shipbuilding sectors of Iran (including **IRISL, South Shipping Line, NITC** and **port operators of Bandar Abbas**, provided that such persons are no longer controlled by a person on the SDN List).
- The provision of associated services for the foregoing.


# Insurance & Reinsurance (EU position)

The provision of insurance and reinsurance to Iran and any non-listed Iranian person, entity or body is now **permitted**.

The majority of the insurance and reinsurance providers and brokers, who have **no US connection**, can provide their services with regard to activities consistent with the JCPOA (sections 4.2 of Annex II and 17.1 of Annex V).



# Insurance & Reinsurance (US Position)



The provision of underwriting services, insurance or reinsurance **by non-US persons** is **no longer subject to secondary sanctions**.

OFAC will not impose penalties on a non-US person for **payment of insurance or reinsurance claims**, arising from an incident that occurred **prior** to Implementation Day.

To the extent that a claim payment involves a **US person**, the payment remains **prohibited** and requires authorisation from OFAC prior to payment.

**!Note:** US persons continue to be barred from providing insurance services to Iran. Similarly, **non-US insurers who employ US nationals** still **risk exposing those individuals** if they write unlicensed Iranian business.

## Insurance and Reinsurance services to NITC or IRISL vessels

- Non-US persons are now permitted to provide underwriting services, insurance or reinsurance to **NITC** and **IRISL** vessels or vessels owned by non-US persons when chartered by NITC or IRISL, provided that the transactions do not involve persons on the SDN List.
- US persons continue to be prohibited from providing underwriting services, insurance or reinsurance to **NITC** or **IRISL**, including extending insurance coverage to, or paying claims involving, NITC or IRISL.





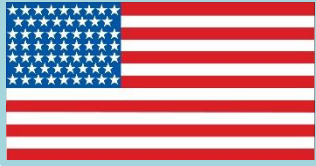


# EU & US Sanctions still in place



The EU and US have retained the sanctions in connection with activities outside the scope of the JCPOA including:





# The “Snapback” Provisions



Ensure that Iran continues to abide by the terms of the agreement in the longer term.

**Not a disincentive** for companies looking to do business in Iran.

**Last resort:** The snapback of sanctions will be considered only when the Dispute Resolution Mechanism set up under the terms of the JCPOA has been exhausted.

In the event of **significant non-performance** by Iran of its JCPOA commitments such that cannot be resolved through the Dispute Resolution Mechanism, the **snapback of sanctions will be considered** by the other JCPOA participants.

In the event of a snapback, these provisions would **not apply with retroactive effect** to contracts signed between any party and Iran or Iranian individuals and entities prior to the date of application.

# The “Snapback” Provisions – Important OFAC update

On 15 December 2016 OFAC issued an update to its “Frequently Asked Questions relating to the Lifting of Certain US Sanctions Under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day” (the FAQs). Questions M.4 and M.5 now provide additional clarity for Non-US and Non-Iranian persons in the event that sanctions are put back into place.



## **Sanctions will not apply retrospectively**

to legitimate business concluded after Implementation Day but before a snapback occurs



# OFAC



**180-days** period for non-US, non-Iranian persons and entities **to wind down operations** involving Iran

**Payments** under contracts entered into prior to a snapback owed to non-US, non-Iranian persons would be **allowed**



# Opportunities for foreign investment in the Travel/Hospitality sector



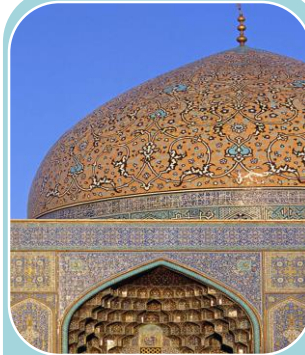
With a nascent hospitality sector, Iran has **huge potential for growth** both in the domestic and international **travel** sectors.



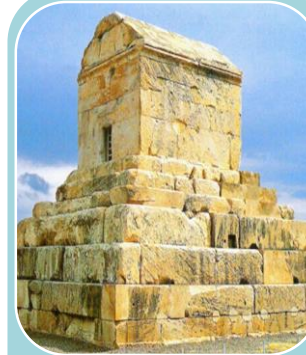
The direct share of tourism in Iran's gross domestic product equalled **7.6% in 2015** and according to official predictions the same figure will exceed **9%** within 2017.



The only remaining **major under-developed hotels market**, completely untouched by international brands and big hotel operators, presenting **opportunities in all hotel classes**.



**High-end hotels** under 700 hotels throughout the country with only 96 in the capital, Tehran, roughly 13 of which are 4 and 5\* with a handful actually meeting the international standards.



Significant opportunity in the **mid-range sector**, with a particular focus on modern, trendy hotels to cater for the **young population** of Iran.



Growing demand for **budget hotels**, particularly those maintaining internationally recognised standards.



Government plans to **expand the country's 60 airports** will trigger a further rise in travel spreading demand throughout the country and calling for **tailored hotels**.

# Government incentives



Three-year extendable **residence permits** for foreign nationals involved in investment projects.



**100% income tax exemption** for periods between 3 to 13 years for new tourist infrastructures in less developed areas.



**50% income tax exemption** under the same newly introduced, “100 Hotels, 100 Businesses” scheme, while the National Development Fund of Iran offers **limited loans**.



**Visas** for nationals of nearly 65 countries upon their arrival at Iranian airports.



New **Foreign Investment laws** providing full security and legal protection to foreign investments, simplified licencing procedures, based on transparency and international standards and guaranteeing repatriation of investments.



**Banking law** reform is expected to pass shortly addressing sustainability issues.



Ratification of **Anti-Money Laundering Act** in 2007, approved by the parliament in 2008.



## Key insights: How to avoid pitfalls when dealing with Iran

- ✓ Conduct stringent and efficient assessment on a case-by-case basis and robust **due diligence** vis-à-vis counterparts, adhering to the parameters within **OFAC's guidance**.
- ✓ **Consider amendments in contracts and internal policies**, such as the use of exclusion and termination clauses in contracts (taking into consideration the snap back provisions) and policies to wall off US directors, senior managers, and other employees from Iran-related business.
- ✓ Consideration of **money laundering** and **bribery** risk.

## Key insights: How to avoid pitfalls when dealing with Iran (cont'ed)

✓ **Payments** to Iran-related entities concerning claims under contracts legally concluded before or after Implementation Day are **no longer subject to sanctions** and may be honoured, even if the payment is to an entity previously subject to sanctions. However, the sanctions relief triggered on Implementation Day does not have retroactive effect, and the payment of claims in connection with contracts which were bound prior to Implementation Day in breach of the sanctions at the relevant time may still be illegal and **legal advice** should be sought **as to whether such payment is permitted**.

✓ **Payments** for Iran-related business **should not be made/denominated in USD** where they relate to activities which would be prohibited under US primary sanctions against Iran. Regardless of whether or not the bank is US domiciled, owned or controlled, companies intending to engage in transactions involving Iran should liaise with their banks to determine whether they are willing to process the relevant transactions. The underwriting of Iran-related risks is impossible if banks keep refusing to process financial transactions, either due to legal constraints or internal compliance policies.

# Can The Iranian Nuclear Deal Survive The Trump Presidency?

## **Uncertainty**

around whether a Trump administration will fulfil a campaign promise to **renegotiate the JCPOA**.

If the new US president tries to resile from the agreement while Iran remains committed to the continued implementation of the deal, **the EU** will most likely not follow and **continue its commitment**.

Uncertainty may stoke further tensions over the JCPOA relief and limit the positive elements from Iran's perspective, **undermining Iranian confidence** in its intended effects. That might compel Iranian hardliners to push for a discontinuation of the deal.

**Sustainability of the JCPOA:** a UN Security Council–approved multilateral deal, cemented into an international framework, that the UN establishment considers an important non-proliferation agreement. The US administration is **not**, strictly speaking, in **a legal or operational position to reverse or annul the deal in its entirety**.

Whilst stepping up the rhetoric with threats of retaliation, **Tehran will** hopefully **act with prudence** in the context of the JCPOA.

# Conclusion

Iran holds much potential to be excited about with **strong long term business prospects**.

- Iran remains a complex operational environment, therefore, companies need to prepare a **robust market entry strategy**, which will instil confidence to both their Iranian counterparts and their internal and external stakeholders that the company has taken an informed, independent and risk based approach when entering the Iranian market.
- Whilst there is a number of practical difficulties to overcome, such as the current complications in international payments involving Iran, the recent and significant increase in the involvement of western business interests in Iran calls for companies who are able to infiltrate the market quickly. It is therefore **important that those with potential interests in the region maximise their opportunities as soon as possible**, as to delay may very well lead to significant disadvantage at a later stage.



# Useful links

- **Europa:** [http://europa.eu/index\\_en.htm](http://europa.eu/index_en.htm);  
[http://eeas.europa.eu/archives/docs/top\\_stories/pdf/iran\\_implementation/information\\_note\\_eu\\_sanctions\\_jcpoa\\_en.pdf](http://eeas.europa.eu/archives/docs/top_stories/pdf/iran_implementation/information_note_eu_sanctions_jcpoa_en.pdf)
- **US Department of the Treasury:** <https://www.treasury.gov/Pages/default.aspx>;  
[https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa\\_faqs.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jcpoa_faqs.pdf)
- **HM Treasury guidelines:** <https://www.gov.uk/guidance/sanctions-on-iran>
- **Council of the European Union:**  
<http://www.consilium.europa.eu/en/policies/sanctions/iran/jcpoa-restrictive-measures/>;  
<http://www.consilium.europa.eu/en/policies/sanctions/iran/>
- **U.S. Department of State:** <https://www.state.gov/e/eb/tfs/spi/iran/jcpoa/>
- **Office of Financial Sanctions Implementation:**  
<https://www.gov.uk/government/organisations/office-of-financial-sanctions-implementation>



# MTAHER & Co

SOLICITORS

Suite 811

**Lloyd's Building**

One Lime Street

London, EC3M 7DQ

Tel: +44 (0) 20 7929 7600

Fax: +44 (0) 20 7691 7141

Email: [m.taher@mtaher.com](mailto:m.taher@mtaher.com)

Web: [www.mtaher.com](http://www.mtaher.com)



## Maryam Taher



Maryam is the senior partner of M Taher & Co Solicitors, a well-established international law firm, recognised as a leading boutique practice in its areas of speciality.

Maryam has over twenty years' experience in the shipping industry having previously worked at Clyde & Co, Hill Dickinson, W K Webster as in-house legal counsel, and at a P&I Club before setting up her own practice in 2004. She has handled a variety of work, ranging from non-contentious advice, to the sole conduct of arbitrations relating to demurrage and detention, large scale multi-jurisdictional disputes and other high profile cases such as the US\$800m "Kuwaiti Airways" case following the invasion of Kuwait by the Iraqi Government.

More recently, Maryam has successfully brought actions in the European General Court to annul the applicability of European sanctions against Iranian nuclear proliferation insofar as they applied to her clients. Her cases and clients represented in the European Courts are in record numbers and none of the successful judgments have been appealed.

Maryam is a regular speaker at conferences practice also encompasses sanctions-related work.

## Paris Pantelis



Paris is a shipping litigation specialist dealing with a wide range of maritime matters in English High Court proceedings and London arbitrations, especially those under LMAA terms. He has particular experience in complex charterparty, bill of lading, MOA, cargo and large scale shipbuilding disputes, and has acted on numerous enforcement (ship arrest) actions in a variety of jurisdictions.

A dual qualified lawyer, admitted as a solicitor of the Senior Courts of England and Wales and an advocate in Greece, Paris has working knowledge of both the English and Greek legal systems and a variety of experience having worked in private practice and in-house.

Paris' practice also encompasses sanctions-related work. He has been heavily involved in actions challenging the applicability of sanctions in the EU and UK Courts and regularly advises on international sanctions interpretation and compliance.