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**Analysis of the trading relations between Iran and the UK, US and EU in light of
the 2016 international sanctions' partial lifting**

Abbreviations

BAA: British Banking Association

BISN: Bureau of International Security and Non-proliferation

CISADA: Comprehensive Iran Sanctions, Accountability and Divestment Act

ECO: Export Control Organization

EC: European Council

GOI: Government of Iran

IFCA: Iran Freedom and Counter-Proliferation Act

ILSA: Iran and Libya Sanctions Act

IRGC: Iranian Revolutionary Guards Corps

ITRA: Iran Threat Reduction and Syria Human Rights Act

JCPOA: Joint Comprehensive Plan of Action

OFAC: Office of Foreign Assets Control

NDAA: National Defense Authorization Act of

UKEF: UK Export Finance

USG: US government

WMD: Weapons of Mass Destruction

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1. Introduction

International trade involves many factors to ensure its growth and sustainability. Liberalization, globalization and technological advancements are key for the success of international commerce; however, trading across borders requires the consideration of all legal frameworks regulating the international business environment. Enterprises that are willing to operate internationally by way of expansion adopt specific strategies to achieve such goal. Nevertheless, attaining such a goal does not rely solely on implementing the economic strategies but rather it is the political situation that determines the extent to which international trade can develop at a given country. Many countries seek to create new markets internationally and the UK government sets an example. The UK took considerable steps in expanding its trade relationships on the international level and particularly with the Islamic Republic of Iran, (“Iran”) as a new commercial opportunity arising after partially lifting the sanctions.

Iran has found itself in a situation where it had to deal with unfavorable complex relationships that involve major economic powers from the Western part of the world including the United States of America, (the “U.S.”) and the United Kingdom, (the “UK”). Considering the amount of power and influence these Western governments wield, Iran and all its affiliations have suffered major blows in their economy witnessed in the devaluation of the national currency, the Iranian Rial, (the “Rial”). The UK, the European Union, (“EU”), and the U.S. have partially lifted the most recent sanctions that saw the Rial lose more than a hundred percent of its value, a move which opens up a window of opportunities for UK businesses and those from other countries which play on the international markets. However, striking the right balance between conducting international business in a sanctioned country while avoiding penalties of violating international sanctions, is the hurdle which creates the highest level of risks for UK businesses wishing to do business with Iran. Accordingly, careful interpretation of the relevant laws and business practices is of paramount importance.

Following the implementation of the Joint Comprehensive Plan of Action¹ (“JCPOA”) by the P5+1 on January 16, 2016 (“Implementation Day”), the U.S. and the EU have now lifted their nuclear-related sanctions on Iran (Morello & DeYoung, 2016). Many UK-based companies are keen to take advantage of the economic opportunities now available and wish to engage in business with Iranian companies and individuals, across a variety of business sectors (Critchlow, 2014). The relationship that has existed between the two nations underwent many transitions, from sanction to another, since 1951 when the Iranian parliament voted to nationalize the oil industry. This situation prohibited any business contact between the UK and Iran, which spread to the U.S., and the rest of the European Union. However, with the partial lifting of the sanctions, the business terrain is much more complicated than has ever been before.

The UK government’s acceptance of bilateral trade between UK companies and Iran following the E3+3², on 14th July 2015, is an indication of the positive relations towards business between the two countries. Therefore, companies from either countries can strike a deal that is legally acceptable at the international level, thus non-attractive of fines resulting from sanctions’ violations. However, there are certain restrictions that remain as to what kind of business is permissible. Sanctions remain in trade involving military equipment and finance (UK Government, 2016). Any business that is involved in such dealings is liable for a fine and other consequences stipulated under the sanction conditions.

Given the fact that not all sanctions have been lifted, Iran is still sanctioned or a partially sanctioned jurisdiction. Furthermore, Iran is a politically volatile country with an outdated regulatory landscape and the continued operation of the JCPOA is not guaranteed (Katten Law, 2016). Before starting business in Tehran, companies are encouraged to tread carefully amidst high legal and compliance risks. This kind of

¹ A Joint Comprehensive Plan of Action (JCPOA) was agreed on July 14, 2015 between the P5+1 being: (China, France, Germany, Russia, the United Kingdom, and the United States), the European Union (EU), and Iran. The purpose was to ensure that Iran’s use of nuclear power is strictly safe and peaceful.

² E3 refers to: UK, France, and Germany from the EU and +3 refers to China, Russia, and the United States.

environment is highly dangerous for businesses operating in the UK because the future trends are hardly predictable, meaning that one can hardly foresee whether to expect profits or losses resulting from fines and sanctions within a certain period. The UK government's encouragement of UK companies, pursuant of the five UN resolutions for Article 40 Chapter VII, to take advantage of Iran's reentry into the global markets has enormous economic opportunities that far outweigh the risks of business interaction. However, caution is imperative; prior to engaging in business with Iran, UK companies must implement thorough and robust legal, risk, and compliance monitoring and enforcement programs.

This paper will look at the history and parallel operation of EU and U.S. sanctions regimes against Iran, their application within the UK legislative framework and the consequences of the implementation of the JCPOA. It will discuss opposing academic views regarding the implementation of the JCPOA by the U.S. Government and consider the implications and possible outcomes for Iran and those wishing to engage in business with Iranian entities (US Department of the Treasury, 2015 c).

2. UK parliamentary sovereignty, European sovereignty and U.S. legislation

Parliamentary sovereignty, also referred to as legislative supremacy, is a principle of English constitutional law whereby Parliament is held supreme over the executive and judicial bodies, as well as over other governmental institutions. Indeed, in the 2005 case of *R (Jackson) v Attorney General*, Lord Bingham stated that "*the bedrock of the British Constitution is ... the Supremacy of the Crown in Parliament*" (UK Parliament, 2010) (Forsyth, 2011).

European law does not recognize the principle of parliamentary sovereignty (Alder, 2009, page 173). UK courts grant supremacy to European law in areas where the EU has power to legislate and "*the national courts are therefore obliged to give effect to those Treaty obligations, even if this means disapplying national law*" (Berry and Hargreaves, 2007, page 39). It is noteworthy that EU supremacy is derived from the European

Communities Act 1972 and theoretically, a future Parliament could repeal its successors; thus, adhering to the English constitutional law principle that no Parliament can bind a future Parliament (UK parliament, 2016).

Due to the supremacy of European law in the field of international sanctions, the Her Majesty's Government ("HMG") does not legislate sanctions unilaterally. Although in principle British Parliament is supreme, it does not legislate directly in relation to sanctions but merely legislate to implement EU sanctions law, which is directly applicable (European Union, 2012g). The UK businesses are therefore liable to the control structures stipulated by the European Union, which are subject to change and collide with UK laws and interests of UK businesses. This terrain increases further the unpredictability of the businesses in the UK, particularly after the Brexit³ vote which took place in June 2016.

Furthermore, certain U.S. sanctions legislation authorizes the U.S. Government to impose sanctions against private entities, foreign individuals, and governments engaging in restricted activities and as such UK companies and individuals may also find themselves impacted by the extraterritorial reach of the long arm of the U.S. laws. In such regards, the Companies in the UK are placed at crossroads between the EU and U.S. sanction policies and laws, in addition to the UK's. This situation has led the UK companies to perform through a thin line of operation in order to avoid breaching certain laws that may lead to excessive penalties and brings along unwelcomed reputational risks.

Ultimately, the relationship between a country and other nations is determined by the foreign policy that the nation has towards the country in question. For instance, the Western countries have, traditionally, and continue to have mutually beneficial relationships of goodwill. These nations include the U.S., UK, Germany, and France. Their foreign policy is shared, especially regarding the nations from the Middle East. For example, the history of sanctions against Iran is marked by heavy influence from these powers; specifically, the UK and the U.S. have placed the highest number of sanctions,

³ Brexit is where the British public voted on the relationship between the UK and the EU in June 2016.

with the former having placed its first in the 1950s⁴. The trade embargos are enacted as laws by parliament (European Union, 1958c), and their breach attracts legal action and possible fines or other consequences.

The biggest challenge for the UK companies is that trade embargos usually involve asset freezing and restricted financial engagements with regards to the policies that have been put in place. The sanctions placed against Iran involve the prohibition of trade engagements on certain platforms, which may be deemed against the interest of the UK or the U.S. (Clawson, 2015). One of the things that led to the collapse of the financial markets in Iran is due to the instability caused as a result of the ban on transactions using the U.S. dollar. The U.S. dollar is the standard international medium of transactions for trade. Along with the Sterling pound, being the most valuable currencies, business was complicated. These same restrictions pose a huge risk to the uncharted waters of partially permissible international trade; the markets have no ease of predictability.

3. Sanctions on Iran – a historical outline

3.1 U.S. Sanctions regime

Sanctions have featured strongly in the U.S. Government's foreign policy, particularly in relation to Cuba and Iran (Arnett, 2015). In the case of Iran, sanctions were first imposed during the Carter administration, right after the takeover of the U.S. Embassy in Tehran and the crisis of the hostages that subsequently ensued, which took place nine months after the Islamic revolution in 1979 (Dehghan & Butt, 201). Escalating sanctions were imposed with a ban on imports of Iranian oil, followed by the blocking of circa \$12 billion of Iranian government assets under the reach and control of the U.S. Further escalation by the U.S. Government took place in 1980 after it imposed embargos on all its trade and travel involving Iran (Fayazmanesh, 2002).

⁴ UK's first trade embargo on Iran goes back to April 1951 when the Iranian Parliament voted for nationalizing the oil industry which was mostly managed and controlled by the British Anglo-Iranian Oil company.

There was a brief period of respite when, under the 20 January 1981 Algiers Declaration, Iran freed the U.S. hostages and all trade sanctions against Iran were revoked (New York Times, 1981). International business with Iran could not be restored because under the Reagan administration, the U.S. imposed sanctions against Iran again following the 1983 bombing of U.S. marine peacekeepers in Lebanon and accordingly the U.S. imposed new restrictions on World Bank loans to Iran. Then, during the Iran-Iraq war further restrictions were imposed on 'dual-use' items (Phillips, 2009). In 1987 all Iranian imports were banned, following criticism by the Congress of the United States of the purchase of Iranian oil for the U.S. Strategic Petroleum Reserve (European Community, 1996).

The historical analysis of the sanctions placed by the U.S. alone on Iran and its businesses indicates that it followed a highly irregular pattern and the reasons are varied, with the bottom line of protecting its interests in the Middle East. Considering the fact that international trade is transacted using the dollar as its medium, and the foreign relations between the UK and the U.S., any embargos issued impromptu by either parties is likely to hurt all businesses working with Iranian counterparts. For instance, during the Clinton administration, all participation by the U.S. in the development of Iranian petroleum was banned, following an announcement by Conoco in March 1995 of a \$1 billion contract to develop oil and gas fields in Iran and two months later the U.S. imposed a total embargo on all trade and investment with Iran. In 1995, the U.S. also banned the export to Iran of most U.S. goods, unless under a Treasury Department license (Salpukas, 1995). In 1996 Iran and Libya's Sanctions Act ("ILSA") was enacted, barring all foreign entities from investing in the sector of oil and gas industry of Iran.

In 2005, under the Bush administration, the U.S. revised its policies, which led to freezing the assets of individuals and firms involved in Iranian related terrorist activities such as the support of terrorism and Iran's nuclear and missile programs, in addition to any Iranian involvement in threatening stability in Iraq. The result was the U.S. enactment of the Iran, North Korea, and Syria Nonproliferation Act 2006 ("INKSNA") which authorized the U.S. to impose sanctions against private entities, foreign individuals, and

governments engaging in proliferation activities (Haas, 2013). Pursuant to this act, the Bureau of International Security and Nonproliferation (“BISN”) applied penalties on entities or individuals involved in the transfer to or acquisition of restricted equipment and technology, as set out in several multilateral control lists (U.S. Department of the Treasury, n.d a). The BISN has so far also imposed sanctions on Russian and Chinese companies involved with Iran’s nuclear and missile programs (Chau & Kane, 2014, page 292). In parallel to this complexity, the Office of Foreign Assets Control (“OFAC”) was also set up in the U.S. to administer and enforce economic trade sanctions and to impose transaction controls and asset freezing under U.S. jurisdiction.

Most recently, under the Obama administration, the Comprehensive Iran Sanctions, Accountability and Divestment Act (“CISADA”) was enacted in June 2010, targeting refined petroleum products supply to Iran by non-US entities, resulting in the severance of contracts with Iran by several major international oil companies (Whitehouse, 2012) (U.S. Department of the Treasury, n.d b). In 2012, the Iranian oil, transport industries and companies as well as individuals engaging in censorship in Iran were also severely impacted after the Iran Threat Reduction and Syria Human Rights Act 2012 (“ITRA”) was imposed (www.state.gov, 2012). The Act introduced a new restrictive definition of ‘US person’, whereby non-US entities owned or controlled by a U.S. person were restricted from engaging in any business with Iran (United Nations, 2010). To tighten the chain of constraints even further, Section 1245 of the National Defense Authorization Act of 2012 (NDAA) enforced further restrictions between the U.S. and Iranian businesses by imposing sanctions on foreign banks dealing with the Iranian Central Bank (Boucher & Gerrish, 2012), allowing for the freezing of U.S. accounts of foreign entities if found to be conducting or facilitating any “significant financial transaction” with the Government of Iran or any designated entities.

This essentially forced foreign banks to choose between access to the U.S. financial system or continued business with the government of Iran or with Iranian entities. These sanctions attract major penalties in the event that they are broken or disregarded in the slightest manner. The line between what is right or wrong for the businesses and

companies is variable and may cause a lot of confusion, hence making business transactions take much longer, thus unfavorable. In addition to that, The Iran Freedom and Counter-Proliferation Act (“IFCA”), was enacted in January 2013, allowing for even further sanctioning of foreign entities, with penalties being applied for the provision of financial services to Iran (Dentons, 2013). The Act moreover, imposed additional restrictions on access to Iran’s oil, transport and precious metals industries (British Petroleum Statistical Review of World Energy, 2015).

In light of the above, and pursuant to its foreign policy, the U.S. enforced stringent restrictions on Iran at all levels, be it on the government or on the state level. The Department of Financial Services in New York has been known to impose even higher penalties than those imposed at a federal level on firms engaging in non-permitted business practices such as concealing a party to a financial transaction and has even been known to pursue banks when the U.S. Treasury chose not to (DFS, 2016). Many American states also enforce sanctions independent of the U.S. Federal Government (Reuters, 2015). Responding to the violent suppression of protests in the wake of the 2009 Iranian presidential election, several U.S. states debated whether to continue their involvement with companies providing assistance to the government of Iran in carrying out repressions, for example, in relation to internet censorship.

3.2 Enforcement action by U.S. agencies

Numerous bills, and Acts with special provisions restricting trade with Iran were legislated. For instance, the U.S. National Defense Authorization Act (NDAA) aimed for prohibiting the facilitation of financial transactions involving the Central bank of Iran altogether, (the “CBI”), the restriction also involved specific Iranian financial institutions including those based in the U.S. and the UK. To ensure consistent compliance with such laws and directives, businesses that are directly affiliated to the citizens of the US and Europe need to be transparently scrutinized in order to ensure all transactions are conducted in accordance with the law. Compliance with these types of regulations are monitored for example by the U.S. Office of Foreign Assets Control (OFAC), which monitors all payments processed through the U.S. financial systems, it operates pursuant

to a strict liability statute, where no criminal intent is required to prove the breach. It imposes sanctions pursuant to specific statute or by Presidential Executive Order under the International Emergency Economic Powers Act 1977 (“IEEPA”) (Ronzitti, 2016). OFAC calculates its fines according to its Economic Sanctions Enforcement Guidelines and those found to be in breach face unlimited fines and potential imprisonment of individuals. It further exercises its powers by levying hefty financial fines on non-U.S. firms as well.

The law enforcement officials, in different incidents, declared that a number of recognized banks committed sanctions violations and eventually they had to pay fines as a settlement over breaching U.S. Federal authorities’ regulations. Among the most significant instances are, UBS which was fined \$100 million for providing new U.S. banknotes to the Government of Iran in 2004 (Mckinnon & Walker, 2004). In August 2015, Credit Suisse was fined \$536 million for failing to disclose the identity of certain Iranian clients, namely the Atomic Energy Organization of Iran and the Aerospace Industries Organization (Barrett, 2015). BNP Paribas, France’s largest bank, was fined \$9 billion in June 2014 for assisting clients in Iran, Sudan and Cuba to evade U.S. sanctions (Kary, Wilber, & Hurtado, 2014). The rising fines represent an upward trend that poses a great risk to non-U.S. banks and consequently banks have started adopting ‘de-risking’ strategies by avoiding risky clients and transactions with sanctioned countries, including Iran.

3.3 UN security council resolutions relating to Iran

Concerns of a global interest were raised regarding the Iranian nuclear program and the International Atomic Energy Agency (“IAEA”) which was tasked with ascertaining whether Iran posed a nuclear threat. Following a considerable investigation, spanning over 2 years, the IAEA was unable to confirm that Iran was not engaging in undisclosed nuclear activity and did not hold undeclared nuclear materials. In June 2006, the 5+1 UN Security Council members made Iran an offer, based on economic incentives and the promise of transfer of technology, in exchange for assurances that Iran would permanently terminate its uranium enrichment program (NTI, 2016). Iran refused and

reinforced its right to enrich uranium for peaceful purposes.

Five Resolutions, four of which contained sanctions, were consequently adopted under Article 40 of Chapter VII of the UN Charter, with the aim of preventing Iran from developing nuclear weapons capacity:

- i. Resolution 1696 (2006), adopted on 31 July 2006, requested that Iran halt its nuclear enrichment program, however it contained no formal sanctions provisions;
- ii. Resolution 1737 (2006), adopted on 23 December 2006, was imposed after Iran failed to comply with the requirements of Resolution 1696 and imposed an embargo on the import and export of nuclear weapons and other nuclear technologies and missiles, as well as financial sanctions;
- iii. Resolution 1747 (2007), adopted on 27 March 2007, tightened the sanctions imposed by Resolution 1737 and resolved to impose a ban on the sale of arms and to increase the use of asset freezes;
- iv. Resolution 1803 (2008), adopted on 3 March 2008, introduced sanctions on the travel of Iranian individuals engaged in nuclear-related activity, further extended the freezing of financial assets of such persons or entities and imposed inspection requirements on cargo to and from Iran by air and water; and
- v. Resolution 1929 (2010), adopted on 9 June 2010, expanded the arms embargo and tightened restrictions on proliferation-related financial and shipping activities.

These types of resolutions clearly demonstrate the far reaching risks and complexities facing UK businesses. Indeed, UK businesses as well as other EU companies are at risk when conducting business with Iranian entities through their wholly or partially owned entities that are setup locally or in other countries. Hence, sanctions compliance program is always recommended for these situations to hedge for the risk of violating U.S., EU, or UK sanctions. Such compliance program should include enhanced due diligence and strict on-boarding procedure to be followed to screen cases' transactions sanctioned parties either directly or indirectly. i.e.: identifying the ultimate beneficiaries. Similarly, a robust assessment should be conducted to identify if traded goods are restricted or placed on export control lists and to verify cases where relevant licenses are obtained. UK businesses are also advised to maintain contractual controls by way of including special

warranties and exclusions that protect them against the other party's wrongful actions, and to conduct periodic awareness training for employees on the relevant policies and procedures.

3.4 EU sanctions regime

All member states of the UN are required to implement sanctions imposed by the UN Security Council. The EU implemented all UN measures under Article 60 and Article 301 of the EC Treaty, also known as the Treaty of Rome, through binding and directly applying EU Regulations, as follows:

- i. Common Position 2007/140/CFSP was adopted on 27 February 2007 to implement the UN Security Council Resolution 1737 and set out an embargo on all items with the ability to contribute to Iran's nuclear and ballistic programs as well as travel ban and asset freeze measures against a number of Iranian entities;
- ii. Common Position 2007/246/CFSP, adopted on 23 April 2007, updated the EU's sanction policy by adding the provisions of UN Security Council Resolution 1747 and expanded restrictions on export to include military items;
- iii. Common Position 2008/652/CFSP was adopted on 7 August 2008 to implement UN Security Council Resolution 1803 by widening the list of Iranian entities subject to restrictive measures and calling out on Member States to be vigilant in relation to certain types of transactions between institutions within their jurisdiction and listed Iranian entities;
- iv. Council Decision 2010/413/CFSP, adopted on 26 July 2010, implemented UN Security Council Resolution 1929, repealed Common Position 2007/140/CFSP and, at Article 4, introduced an embargo on the export of oil and gas related items (European Union, 1958a);
- v. Council Decision 2012/35/CFSP, adopted on 23 January 2012, introduced a total ban on the import of Iranian oil, also forbidding the provision of financial services to Iran's oil and gas sector, placing a big strain on Iran's oil exporting capacity by maritime routes.
- vi. Council Decision 2012/635/CFSP, adopted on 16 October 2012, extended the embargo to Iran's natural gas sector.

It is noteworthy that in its first 3 years, the EU sanctions policy essentially consisted of the implementation at EU level of UN Security Council provisions (Macaluso, 2014). The ban on items for the use of refining hydrocarbons under Council Decision 2010/413/CFSP represented a change in policy from sanctions of a preventative nature, to sanctions of a coercive nature, as the EU ramped up its efforts to influence the Iranian government's behaviour regarding its nuclear program by adopting economic measures (UKHL, 2005). Thus, the European Union began to formulate and implement its own sanction policy and not just that of the UN Security Council. With negotiations on the proliferation crisis having stagnated, the EU adopted increasingly tighter sanctions, putting pressure on Iran's economy and resources, (European Union, 2007b), and played a key role in the reinstatement of negotiations that subsequently ensued the successful JCPOA agreement.

3.5 EU blocking legislation

In the 1990's there was considerable friction between the U.S. and the EU regarding the application of the U.S. sanctions regime against Iran, with the EU objecting to the U.S. punitive approach towards European companies (Clawson, 2015). The U.S. agreed to waive ILSA restrictions in relation to European action in Iran and the EU agreed, in exchange, to severely downsize its export of 'dual-use' items. The crisis was averted but as a result, on 22 November 1996, the EU adopted two measures addressing the issue of the extra-territorial application of U.S. law (European Council, 2016).

In response, Council Regulation (EC) 2271/96, known as the "*Blocking Regulation*", requires that those affected by the U.S. extra-territorial sanctions regime should report within 30 days to the commission and bans any cooperation with the U.S. regime whether actively, through deliberate omission or via a subsidiary or intermediary (European Union, 2007c). Those affected are subsequently entitled to claim for damages from the U.S. Joint Action 96/668 CFSP, was adopted under the European Union Treaty and has become part of the Blocking Regulation ever since.

3.6 Implementation of EU sanctions regime in the UK

The Terrorist Asset-Freezing Act 2010 (“TSA 2010”) implements the UK’s obligations under UNSCR 1373. It is the responsibility of UK businesses to have adequate systems and controls in place to ensure compliance with the act (WikiLeaks, 2011). The TSA 2010 imposes requirements on all UK businesses to carry out assessments to ensure they are not in breach of anti-terrorist sanctions, to carry out screening of customers and transactions, to keep an audit trail for a period of no less than 5 years and to report any transactions involving a sanctioned party, known as “matches”, or any other breaches of the regime to Her Majesty’s Treasury’s (“HMT”) Asset-Freezing Unit (“AFU”).

The UK’s Foreign Commonwealth Office (“FCO”) leads on sanctions policy and maintains an up-to-date list of sanctions and other restrictions in place. The FCO’s provisions are implemented by various departments of Her Majesty’s Government (“HMG”), as follows:

- The AFU implements the UK’s financial sanctions system through its four branches: Counter-terrorism, International, Licensing and Compliance;
- The UK Department for Business, Innovation and Skill (“BIS”) administers the FCO’s list of countries subject to sanctions and its Export Control Organization (“ECO”) legislates and grants licenses pertaining to controlled goods;
- The Financial Conduct Authority (“FCA”) places responsibility on firms to ensure the prevention of financial crime;

On 31 March 2016, HMG’s established the Office of Financial Sanctions Investigations (“OFSI”) (O’Kane, 2016). Its role and ambit is somewhat akin to the U.S. OFAC in that it will carry out compliance by detecting breaches of the financial sanctions regime, taking enforcement action when necessary and assisting businesses and individuals by increasing awareness of the sanctions regime and providing advice to those affected by sanctions in any way (European Union, 2008d). The OFSI has published guidance on the UK’s financial sanctions system, specifically in relation to the export license process. The OFSI will also be applying and enforcing the upcoming Policing and Crime Bill, which is

currently on its third reading the UK House of Commons which commenced on 26 April 2016.

4. Impact of JCPOA

EU and U.S. sanctions, but EU sanctions in particular, have played a key role in convincing the Government of Iran to reengage in dialogue regarding its nuclear program, resulting in the signing of the JCPOA.

4.1 Sanctions lifted by the JCPOA

4.1.1 The U.S.

Under the JCPOA, the U.S. has lifted most of its nuclear-related secondary sanctions. The U.S. has also delisted Iranian entities and individuals, of which eighty-three Iranian banks, from the OFAC's Specially Designated Nationals (SNDs) and Blocked Persons, Foreign Sanctions Evaders and non-SND Sanctions Act lists. The assets of these entities will not be subject to the freezing injunctions of the U.S. The U.S. has also agreed to allow dealings in Iranian commercial aircraft and aviation.

Overseas subsidiaries of U.S. companies are no longer subject to U.S. primary sanctions and may carry out activities as non-U.S. persons. This does not apply to parent companies, i.e. branches of U.S. companies, which are considered as U.S. companies. Although the majority of secondary sanctions have been lifted, some remain. Several Iranian individuals and entities remain on the designated lists and non-US entities continue to be subject to secondary sanctions should they engage in transactions with stated individuals.

4.1.2 The EU

Under the JCPOA, all EU and UN nuclear-related financial and economic sanctions have been suspended. In addition, many UN and EU entities and individuals have been delisted.

4.2 Sanctions not lifted by JCPOA

Many sanctions on Iran remain in place; therefore, making Iran a partially sanctioned country.

4.2.1 The U.S.

Practically, all primary U.S. sanctions remain in force, most notably the U.S. trade embargo on Iran. Pursuant to Executive Order 13059 and Executive Order 12613, U.S. companies and individuals are restricted from engaging in import and export with Iran. Unless under license from the OFAC, U.S. persons and U.S. owned or controlled foreign entities are generally prohibited from transacting any business with Iran, *“including any transactions of the types permitted pursuant to the JCPOA”* (US Treasury, 2015, Question 3: Frequently Asked Questions Relating to the Continuation of Certain Temporary Sanctions Relief Pursuant to the JPOA Prior to Implementation of the JCPOA). One notable exception to the U.S. primary sanction regime is the provision of OFAC licenses to U.S. owned or controlled foreign entities; however, these are very narrow in definition and application and relate only to the export of medical supplies to Iran.

4.2.2 The EU

Some sanctions were not lifted pursuant to the JCPOA and the following activities continue to be banned:

4.2.2.1 Proliferation-related sanctions

- All technological and military goods’ supply, export, sale and transfer, as referred to in the UK Military List;
- All technological and missile-related goods’ export, supply, sale and transfer, as referred to in Annex III of Council Regulation (EU) 267/2012;
- The provision of technical, brokering or financial assistance and services regarding the aforementioned activities;
- The import of any such goods;

- The investment in any Iranian entities engaged in the manufacture of military goods; and
- The investment in any Iranian entities engaged in the manufacture of missile-related goods.

4.2.2.2 Human rights related sanctions

- The sale, supply, transfer or export of equipment which may be used for the purposes of internal repression, as set out in Annex III of Council Regulation (EU) 264/2012; and
- The provision of technical assistance, brokering services and financial assistance regarding the aforementioned.

In addition, all entities and individuals listed in Council Regulation 267/2012 and Council Regulation 264/2012, besides those listed under EU terrorism and other EU sanction regimes for terrorist-related activities or for human rights reasons, have not been delisted and therefore restrictions continue to be placed upon them (European Union, 2010e). The most notable example of such entities is the Iranian Revolutionary Guards Corps (“IRGC”). It is worth mentioning that EU Sanctions bar companies and individuals from dealing in funds or economic resources owned by such entities, from making funds or economic resources available to them, whether directly or indirectly, whether for their benefit or for the benefit of entities owned or controlled by them.

4.3 UK’s sanctions order on Iran

Pursuant to the JCPOA, the UK has passed the Export Control (Iran Sanctions) Order 2016, which came into force on 16 May 2016. The order sets out sentencing guidelines for breaches of the remaining sanctions on Iran, namely a maximum sentence of 10 years’ imprisonment and an unlimited fine.

5. Impact of JCPOA on Iran

5.1 Iran's economy: A potential pathway to UK's investment opportunities

Sanctions have had huge impact on Iran's economy. Iran's financial isolation has resulted in a huge slump in its short-term debt stock, which is mainly comprised of trade finance, with figures provided by the World Bank showing a decline from \$10.3 billion in 2011 to \$486 million in 2014 (The Economist, 2016, All that glitters: Assessing opportunities and risks in post-sanctions Iran).

Iran, however, is ready to bounce back. In June 2013, Iran elected a new, moderate president, Hassan Rouhani, whose presidential campaign was fuelled by promises to revive Iran's economy by striking a deal to lift the nuclear sanctions (European Union, 2012). The Iranian government seeks to attract foreign investment, with an estimated one trillion dollars of investment required over the next decade. Iran's main imports are iron and steel, chemicals, electrical and non-electrical machinery, transport vehicles, tools and appliances (United Nations, 2006a).

Following a European tour by Mr. Rouhani in the weeks following Implementation Day, approximately €50bn (US\$55bn) in contracts were agreed in Italy and France alone. Indeed, Iranian trade with Europe, currently at around \$8bn, is set to quadruple in the next two years. (The Economist, 2016, All that glitters: Assessing opportunities and risks in post-sanctions Iran).

5.2 Oil, gas and petrochemical sector

Iran is ranked the second largest gas reserves and the fourth largest oil reserves worldwide. Its oil reserves comprise of 158 billion barrels, which is in excess of 150 years of production at the extraction rate recorded in 2014 and it has indicated that it will increase its oil output to 1 billion barrels per day by 2016 (BP Statistical Review of World Energy, 2015). Iran's petrochemical sector is the second largest after oil and gas.

The lifting of economic sanctions pursuant to the JCPOA is expected to unlock huge investment opportunities in Iran, providing much needed financing and new technology

for enhanced oil recovery projects and the construction of facilities for exporting liquefied natural gas, with Iran sharing the largest gas asset in the world with Qatar (Foreign and Commonwealth Office, 2016, Guidance: Iran trade guide and frequently asked questions on doing business with Iran).

5.3 Infrastructure sector

The aviation and rail infrastructure sectors in Iran require significant investment. The Iranian Airports Company manages the country's 54 airports, including Tehran's Imam Khomeini International and Mehrabad International as well as 6 other international airports. International investment is much needed for their expansion and upgrade, in preparation for the expected surge in international tourism post JCPOA implementation (United Nations, 2007b).

Iran's mainline rail network is operated by the Islamic Republic of Iran Railways and comprises of 10,223km of rail tracks. It centers on Tehran and connects the country to Turkey, Azerbaijan, Turkmenistan as well as to the Caspian Sea via the port of Bandar Torkaman. There are plans to extend the rail network to 25,000km by 2050 and considerable construction work is already underway (Foreign and Commonwealth Office, 2016, Guidance: Iran trade guide and frequently asked questions on doing business with Iran). Annex II of the JCPOA also lists the Financial, Banking and Insurance, Gold and other Precious Metals and Banknotes and Coinage sectors are likely to be affected by the initial phase of sanctions relief.

6. Concerns about Lopsided Implementation of the JCPOA

A lot rests on the successful implementation of the JCPOA; however, there are concerns that political tensions within the U.S. regarding the JCPOA and its lopsided implementation by the U.S. are threatening the operation of the agreement and the political and economic stability of Iran.

6.1 ‘Snap back provisions’ and potential consequences on Iran

Article 37 of the JCPOA provides for ‘snap back’ provisions, to which all parties have agreed to, so as to incentivize Iran to abide by the agreed terms. Sanctions can be snapped back within 30 days, should Iran be charged, by any single party to the JCPOA, with significant non-performance of its commitments under the agreement.

The ‘snap back’ of sanctions would only take place as a last resort, when all the processes of the ‘Dispute Resolution Mechanism’ have been exhausted and *“it is not meant to act as a disincentive for companies looking to do business in Iran”*. The Dispute Resolution Mechanism works in two directions, both to resolve any disputes between the E3+3 and Iran and in the event of significant breach by Iran of the terms of the JCPOA, where the E3+3 will consider the option of ‘snap back’ of sanctions.

6.2 U.S. commitments under JCPOA

Therefore, the U.S. is currently experiencing considerable tension regarding the JCPOA and its application and there is a growing fear that the obstacles set up by the U.S. are preventing Iran from fulfilling its agreements under the JCPOA thereby, posing a big threat to the deal. Under Article 29 JCPOA, the U.S. has committed to ensure *“the normalization of trade and economic relations with Iran”* however there is a growing unease regarding policy decisions taken by the U.S. in this respect causing Marietje Schaake, president of the European Parliament’s Delegation for Relations with the U.S. to recently state that *“Europe is being taken hostage by American policy... We negotiated the nuclear deal together, but now the U.S. is obstructing its execution”* (Erdbrink, T., April 21, 2016, New York Times, Europe Says U.S. Regulations Keeping it From Trade with Iran).

Examples of incongruent behavior by the U.S. in terms of Section 29 of the JCPOA include the recent changes to U.S. visa requirements, which have made it much tougher for non- U.S. persons to travel to the U.S., if they have also traveled to Iran as well as for citizens with dual Iranian nationality.

The U.S. has also imposed several new non-nuclear sanctions against Iran since the signing of the JCPOA and has been considering penalties for certain Iranian individuals and entities from Iran, Hong Kong and the United Arab Emirates for supposed involvement in ballistic missile tests. Iranian assets have also been confiscated abroad. Seyed Mohammad Marandi, a professor at the University of Tehran, has stated that since the implementation of the JCPOA the U.S. has been targeting Iran through other methods including the confiscation of Iranian assets abroad, adding that the actions of the U.S. could “*severely damage the chances for the JCPOA bearing fruit*” (IRIB Word Service, January 2, 2016. ‘The only thing Washington has not blamed Iran for is global warming’).

The mixed signals sent by the U.S., the additional sanctions, and the tightening of its visa regime are also reportedly angering the Iranian leadership, which feels that it undermines Iran's ability to re-engage in the global financial market, which was a key goal of the JCPOA (Erdbrink, T., April 21, 2016, New York Times, Europe Says U.S. Regulations Keeping it From Trade with Iran).

Section 29 of the JCPOA also requires the U.S. to take appropriate steps to encourage U.S. states to change their regional sanctions law to ensure they comply with the requirements of the JCPOA. Means of implementation, however, are unclear. There are questions as to whether the influence of the U.S. Federal Government is wide-reaching enough to ensure that state and local sanctions comply. Many U.S. State laws ban pension funds from investing in foreign companies that engage in business with Iran and the disharmonious rhetoric between federal State laws and U.S. officials is causing significant unease with European banks which, so far, have shown unwillingness to transact with Iran (Brunnstrom D, Reuters, May 12, 2016, Kerry seeks to soothe European bank nerves over Iran trade).

6.3 Unwillingness of European banks to engage in financial transactions with Iran

Fears of prosecution under the U.S. primary sanction regime, a lack of clarity caused by the uneven application of the JCPOA and what George Kleinfeld, a sanctions expert at law firm Clifford Chance has called a “primal fear” of Iran due to “years of hyperactive

enforcement” of sanctions by the U.S., are preventing European banks from financing deals with Iran (Slavin, B., May 9, 2016, US officials circle globe to explain Iran policy but fail to persuade). There was a strong expectation following Implementation Day that business between Europe and Iran would flourish once again as it once had, however, this is not coming to pass and there is growing frustration and unrest in Europe over the unwillingness of banks to commit to transacting with Iran over fears of prosecution under the U.S. primary sanctions regime and the subsequent inability to complete business contracts with Iran (Erdbrink, T., April 21, 2016, New York Times, Europe Says U.S. Regulations Keeping it From Trade with Iran).

To quell concerns, the U.S. State and Treasury Departments have deployed representatives to consult with European banks and firms and to provide practical guidance on the application of the U.S. primary sanctions regime. According to Barbara Slavin, acting director of the Future of Iran Initiative and correspondent for Washington DC based Middle East media site Al-Monitor, U.S. governments and stakeholders have conducted various roundtable discussions with many nations regarding the return to Iran. However, most are not yet convinced about the safety of their transactions.

It is reported that both Credit Suisse and UBS have been approached by U.S. officials seeking to convince them to engage with Iran; however, both have refused based on previous heavy fines levied against them by the U.S. for sanctions violations and amidst fears that the regulatory environment is uncertain and may change for the worse (Slavin, B., May 9, 2016, US officials circle globe to explain Iran policy but fail to persuade). As part of the convincement attempts, John Kerry, U.S. Secretary of State, attended meetings with banking executives on 12 May 2016 in London to address concerns; nevertheless, little clarity was provided on types of trade to be engaged in. As to how that was interpreted, a Reuters source reported that Kerry’s reassurance was only vague (Brunnstrom 2016).

Whilst the apparent willingness of the U.S. to persuade European banks and firms to engage with Iran reveals a serious intention of cooperation, it is unfortunate that it is not

proving to be successful. Mostafa Beheshti Rouy, Director of International Affairs for Bank Pasargad, Iran's largest bank, has confirmed that *"only third-tier European banks have shown any willingness to re-enter the Iranian market"* (Slavin, B., May 9, 2016, US officials circle globe to explain Iran policy but fail to persuade).

Following Secretary Kerry's meeting with London banking executives, Standard Chartered confirmed that it will decline the new customers who live in Iran or business entities owned by those who are directly Iranian. French bank Societe Generale asserted that it did not plan to resume commercial ventures with Iran due to the fact that disparities between the two countries generate an enormous exploitable opportunity. (Brunnstrom D, Reuters, May 12, 2016, Kerry seeks to soothe European bank nerves over Iran trade).

The lack of engagement by European banks is concerning and, whilst it is hoped that this will remedy itself in the coming months, only time will tell. There is a risk that it may cause the breakdown of the JCPOA. George Kleinfield of Clifford Chance has explained that the decision is in the hands of European countries if they are willing to protect their economic interests and reject any future sanctions or a "snapback" of the previously imposed U.S. secondary sanctions if Iran proved to fulfill its nuclear obligations. In this respect, it would be highly beneficial that EU guidance on this specific issue is published as a matter of urgency to confirm such a stance, providing assurance and encouragement to banks and companies wishing to engage in business with Iran (Slavin, B., May 9, 2016, US officials circle globe to explain Iran policy but fail to persuade).

6.4 Iran's outdated regulatory landscape

The other crucial factor concerning the European Banks is the state of Iran's regulatory landscape. In a Public Statement dated 19 January 2016, the Financial Action Task Force ("FATF"), the global standard setting body for anti-money laundering and combating the financing of terrorism stated that it remained the primary concern of the failure to address concerns of the risks of terrorism in Iran and the impact on the international markets. Also, it reaffirmed the business relationships with the government

of Iran and its companies, regarding the financial system (Financial Action Task Force, February 19, 2016, Public Statement).

Iran has acknowledged that its financial and banking sector requires considerable attention, having been burdened with nonperforming loans and other troublesome transactions under the presidency of Mahmoud Ahmadinejad and had promised to make necessary amendments to its financial policies. Iran has held meetings with the FATF to show that it has started taking steps to counter concerns over money laundering and terrorist financing raised in its statement of February 19, 2016 (Slavin, B., May 9, 2016, US officials circle globe to explain Iran policy but fail to persuade). Time will tell whether these changes will be comprehensive and sufficiently expedient but until then, this is indeed a red flag for businesses and banks looking to conduct business with Iran.

6.5 Potential consequences for Iran

It is of paramount importance to commence smoothing out the business cycle or else huge political implications for Iran will strike and that may lead to unfavorable consequences for Iranian president Hassan Rouhani. If the JCPOA fails and Mr. Rouhani fails to deliver on his promises to bolster Iran's economy, there could be devastating political and economic ramifications ahead for Iran's already volatile political situation, particularly in light of the fact that its isolation from the global financial markets was the main impetus that led to the JCPOA.

Concerns have been voiced that the failure by the U.S. refusal to assist Iran by providing clarity to European banks will result in the strengthening of hard-line factions in Iran, with the U.S. credibility being pursuant to its commitments under the JCPOA having been brought into question. Indeed it was recently reported that Ayatollah Ali Khamenei, Iran's Supreme Leader, who granted ascent to the JCPOA, has been showing increased hostility towards the U.S., having reportedly stated that Iran had seen no *"tangible results"* under the deal and that *"the Americans are frightening other countries from cooperating with Iran"* (Erdbrink, T., April 21, 2016, New York Times, Europe Says U.S. Regulations Keeping it From Trade with Iran).

6.6 Iranian revenues 'Stalled' in overseas banks

One supposed economic benefit for Iran under the JCPOA was the access to the previously restricted revenues of its oil trade, estimated to be in the region of \$50 billion, which were trapped in non- U.S. bank accounts. Under the JCPOA, Iran was expecting to repatriate these funds; however, only \$3 billion have so far made their way back to Iran (Cullis, T., Sanctions Law, May 12, 2016, Iran Sanctions-Lifting Continues to Be Frustrated). The reason for this is fear by the banks of prosecution under the U.S. sanctions regime should they move funds that were initially deposited as US dollars and the fact that funds that were deposited in other currencies must be exchanged through the US dollar first.

Fortunately, a solution seems to have been found. The Reserve Bank of India, which is holding a considerable amount of Iran's oil revenues, has agreed to transfer the funds to the Central Bank of Italy and Germany's Europaische-Iranianische Handelsbank, releasing \$6.4 billion in stalled funds. (Verma N. and Busvine D., Reuters, May 6, 2016, India, Iran agree to clear \$6.4 billion in oil payments via European banks: Pradhan). This move is a progress and ultimately promising should other banks follow. It is hoped that other banks will follow.

7. Guidelines for UK companies intending to engage in business with Iran

The lifting of sanctions on Iran pursuant to the JCPOA offers British companies an exciting opportunity to engage with a large global economy reentering the global market; however, Iran is a complex and challenging place to do business and it will not always be straightforward to navigate its partially sanctioned landscape. UK companies wishing to engage in business with Iran must ensure that their proposed activity is compliant with the terms of the remaining sanctions on Iran. It is vitally important that companies carry out due diligence before contracting with or entering into any financial transactions with Iranian entities.

Although EU restrictions on financial and banking transactions with Iran have been lifted post JCPOA implementation, U.S. financial institutions continue to be barred from engaging in business with Iranian entities and the block on US dollar transactions remains. The incongruity between the application of the EU and U.S. sanctions regime on Iran creates additional risks that must be ascertained and mitigated. It is strongly advised that legal advice is sought in this context.

Her Majesty's Government has declared its full support for expanding trade between the UK and Iran and on 23 August 2015, the Foreign Secretary reopened the British Embassy in Tehran and set up a Trade Office to provide support for UK businesses. The UK FCO has also provided helpful guidance titled *"Iran trade guide and frequently asked questions on doing business with Iran"* for UK companies wishing to engage in business with Iran. The UK Trade and Investment ("UKTI") office has also been set up, with a presence in the UK as well as the Trade Office at the British Embassy in Tehran, to assist UK businesses by providing trade and investment support. Free consultations with UKTI export advisers are available for any UK business wishing to export to Iran. Besides, several private sector business organizations such as the British-Iranian Chamber of Commerce and the Confederation of British Industry are also available for consultation.

7.1 Key risks and challenges of doing business with partially sanctioned Iran

In fact, Iran is not a straightforward place to do business with. Iran was ranked low, 118th out of 189 countries in the World Bank Group's 'Ease of doing business' 2015-2016 ranking. It also received very low scores in terms of minority investor protection, ranking 150th, trading across borders where it ranked 167th and resolving insolvency with a 140 ranking (World Bank Group, 2015-2016, Economy Rankings Report). The risks are varied and complex. Thorough risk analysis and a comprehensive risk management program are absolutely essential for all UK businesses planning to engage in business trade and financial transactions with Iranian entities.

7.2 Legal and regulatory risks

Iran is a partially sanctioned jurisdiction and UK companies run the risk of being prosecuted by the OFSI pursuant to the EU sanctions regime and the OFAC pursuant to the U.S. sanctions regime as well as by other national bodies for breach of national legislation. UK companies with specific questions are advised to seek advice from a UKTI Iran export adviser. Under the EU regime, sanctions related to human rights, proliferation and support for terrorism are still in force. The trade of certain products, as set out in Annex III of Council Regulation (EU) 267/2012, the UK Military List and Annex III of Council Regulation (EU) 264/2012, is restricted.

Careful investigation is also required to make sure that none of the Iranian entities or individuals the company intends to trade and transact with are listed under in Council Regulation 267/2012, Council Regulation 264/2012 or any other EU sanctions regimes. Companies are advised to search HMT's 'Consolidated list of targets' for all Iranian individuals and entities subject to sanctions, such as the IRGC and to take appropriate steps to ensure that sturdy due diligence measures are in place before engaging with any Iranian entities.

Companies must also ensure that the Iranian entity is not owned or controlled by, or making funds or economic resources available to a listed entity. This can be a tricky area due to the Iranian custom of non-transparency regarding the identity of parties to a financial transaction. Companies are advised that a defense does exist under the EU Regulations if a company does not have any reasonable cause to suspect that their dealing would cause the infringement of prohibitions.

There are also additional risks of investigation by national bodies pursuant to national legislation. The AFU has powers to investigate and prosecute pursuant to the anti-terrorism sanctions imposed by the TSA 2010. In parallel, The FCA has enforcement powers under its ambit of financial crime prevention pursuant to the Financial Services and Markets Act 2000; in addition to the BIS, which has powers in relation to controlled goods. That adds to the complexity of the matter for a business deal has to undergo a

web-like tangled investigative process of different bodies with its specific requirements and restrictions.

As for UK subsidiaries of a U.S. company, they may be impacted by primary sanctions. The OFAC has provided helpful guidance on the U.S. Department of the Treasury website including 'Guidance Relating to the Lifting of Certain Sanctions Pursuant to the JCPOA on Implementation Day' and 'Frequently Asked Questions relating to the Lifting of Certain U.S. Sanctions under the JCPOA on Implementation Day' and there is also the option to sign up for free email updates in relation to Iran sanctions.

Section 219 of the ITRA requires that all companies filing quarterly or annual reports with the U.S. Securities and Exchange Commission must provide full disclosure of all financial activities involving Iran. UK subsidiaries are therefore advised to make sure that no money with an Iranian connection passes through their systems and must have tight systems in place to ensure the strict segregation of Iranian-connected money and the rest of its financial holdings. It is important for UK companies to consider that they may also be subject to the laws of other jurisdictions. Australia and Japan continue to enforce sanctions on Iran and Switzerland while Canada only recently lifted its sanctions.

7.3 The risk of bribery and corruption

UK companies must ensure that they comply with the requirements of the UK Bribery Act, particularly in light of the fact that Iran scores high on Transparency International's Corruption Perception Index, ranked 130th out of 168 countries (Transparency International, 2015, Corruption Perception Index - Iran). There are three offences under the act: that of offering or receiving bribes, bribery of foreign public officials and failure to prevent the payment of a bribe.

The offence of failing to prevent the payment of a bribe is very wide in its ambit and this creates a legal risk for companies wishing to engage in business with Iran. The Act sets out the statutory defense of having adequate procedures in place. The principle of proportionality is at the heart of the act and businesses must be assured that the level of

financial input is a subjective matter for each business to decide according to factors such as its size, the type of product it trades in and the number and size of financial transactions it engages in. A detailed section on 'Risk Management Program' is thoroughly discussed below, with a breakdown of procedures UK companies are advised to adopt.

7.4 Risk of 'snapback' provisions

This is currently a relatively low risk, as all the processes of the 'Dispute Resolution Mechanism' will be exhausted before the JCPOA snapback provisions kick in; however, there is still increased concern regarding the U.S. application of JCPOA. Contracts should be carefully drafted with this risk in mind, with the inclusion of specific clauses mitigating this, such as a force majeure clause or other termination provisions, to cover themselves in the eventuality of EU and U.S. sanctions being reinstated against Iran.

8. Risk of enforcement action pursuant to the EU blocking legislation

The EU blocking regulations pose an additional risk for UK businesses looking to comply with the U.S. sanctions regime and a decision must be reached as to whether to comply with the U.S. sanctions regime or with the EU blocking regulations, which are in conflict with each other. UK companies may find themselves in a tricky situation because complying with U.S. sanctions against Iran would, strictly speaking, be a violation of UK law.

In the UK, the risk of enforcement action by BIS or by the OFSI is low, as neither has ever taken an enforcement action pursuant to the EU blocking regulations. Nevertheless, the risk is still present, as evidenced by an enforcement action in Austria against bank BAWAG PSK, in April 2007. UK companies are advised that BIS will provide them with a written warning, should they are in breach of the EU blocking legislation, at which point it would be prudent for the company to seek legal advice.

8.1 Travel-related risk

HMG's Foreign Travel Advice office has removed its warning against all but essential travel to Iran; in spite of that, a warning against travel to certain areas of Iran remains. British citizens wishing to travel to Iran are advised to check the official website for up-to-

date reports as well as information of local Iranian laws and customs. There are also additional U.S. visa requirements to take into consideration, which will make travel to the U.S. more problematic for individuals who have travelled to Iran.

8.2 Other risks

Businesses may find themselves unable to pursue commercial objectives or comply with their contractual obligations for reasons outside their control. Such risks include the risk of bureaucratic delays, which may significantly slow down the progress of contractual negotiations and implementation, Iran's outdated infrastructure which may also result in unexpected delays, the risk of influence by third parties such as control of many Iranian companies, both direct and indirect, by the Iranian security services and risks to private sector growth such as inflation, subsidies and price control.

8.3 Export of goods requiring a license

Certain goods and business activities can only be engaged in under license from the Export Control Organisation ("ECO") in the BIS Department, due to restrictions in place under the proliferation-related sanctions under Council Regulation (EU) 267/2012 and the human rights-related sanctions under Council Regulation (EU) 264/2012.

Also, nuclear-related activities listed at Annex I of Council Regulation (EU) 267/2012 must receive prior approval from the UN Security Council through the newly established Procurement Channel and UK companies seeking to supply such goods and services to Iran or to receive investment from an Iranian entity engaging in such activities must first apply for a license from the ECO who will then seek the necessary approval from the UN, as the ECO license in relation to items listed under Annex II of Council Regulation (EU) 267/2012 requires no prior UN approval and they are therefore not subject to the Procurement Channel process.

Restricted activities pursuant to the human rights-related sanctions under Council Regulation (EU) 264/2012; in addition, require a licence, as set out in Annex IV of the Regulation. These include dealings in equipment that may be used for monitoring or

interception of internet or telephone communications as well the provision of technical, brokering, financial or other assistance relating to such items.

UK Companies are moreover advised to ensure that the products or services they provide are not caught by the 'catch-all' or 'end-use' controls also in place, for which a licence is also required. These include items that could be used as part of a Weapons of Mass Destruction ("WMD") program or other military purpose. Companies are advised to carry out due diligence to ensure that the 'end-use' is not a potential WMD concern.

8.4 Risk management program

In dealing with Iran, UK companies run the risk of criminal prosecution, whether under the EU or U.S. regime, which could result in exceptionally large fines, with the possibility of prison sentences for individuals. In light of this, as well as all the other risks highlighted above, it is mandatory for UK businesses to implement a robust risk management program. The nature and extent of the risk management program will vary according to the nature and size of the business and the degree of risk; however, a robust and effective risk management program will comprise of the following key elements: risk identification, monitoring, disseminating training, screening and maintenance. Small companies are advised to appoint a Compliance Officer to ensure that the company is fully protected. For larger companies, a compliance department comprising of multiple members of staff may be more suitable. Companies are also advised to never hesitate to seek a specialist legal and other advice, when and where appropriate.

Record keeping is an absolutely key aspect of any risk management program. Documentary evidence of all actions taken in relation to ensuring compliance, including all the steps taken as part of the risk identification process should be recorded and backed up. 'Know Your Client' processes are highly important when dealing with Iranian counterparties, especially in light of the lack of transparency regarding parties to transactions that are customary in Iranian business dealing and relevant due diligence must be carried out simultaneously. Businesses must carry out screening of all their customers, associated parties and transactions and maintain a fully updated and

comprehensive Screening Policy. They are equally advised to take extra care to ensure that all contracts are agreed on suitable terms and that financial and insurance advisers are consulted throughout the negotiation and planning processes.

In parallel, all ascertained risks must be mitigated against and processes must be put in place to ensure that all employees engage in the processes appropriately and uniformly. Disseminating training and embracing the principles of risk management across all levels of the business is key, particularly, in relation to the front-end staff who will be operating the program on an ongoing basis. Finally, the risk management policy must be maintained and updated regularly to ensure it is fit for purpose at all times.

8.5 Export finance and insurance

UK Export Finance (“UKEF”) is a useful resource for UK companies looking to engage in export trade with Iran, particularly in the early stages, with European banks demonstrating a reluctance to engage. It provides export finance for UK based companies looking for financial support to realize their ambitions for international expansion and trade with Iran, as well as short term export credit insurance to help mitigate payment risks. Companies are advised that UKEF only deals in Sterling and Euros, due to the remaining U.S. sanctions on Iran.

8.6 Additional advice for UK firms

UK companies are advised to sign up to email alerts provided by Regulatory bodies such as HMT’s Notification Service, so as to keep abreast of the latest sanctions-related developments. The British Banking Association (“BAA”) also offers an alert service for its members disseminating updates provided by HMT. In addition to that, law firms, particularly, those with an international presence offer free client alerts, briefings, trainings and seminars so companies are advised to keep abreast of these. Keeping up-to-date with financial, trade and mainstream press is also prudent.

9. Conclusion

In summary, analyzing the impact of foreign relations regulations and laws with reference to the sanctions that had earlier been imposed on Iran was the sought-after aim of this discussion. Many companies had been barred from doing business with Iran, or any significant financial contribution towards activities in the country. There have been many embargos placed on Iran, with the latest being for its involvement with nuclear arsenal development. Following the sanctions by the EU and the U.S., various bodies were placed to monitor transactions and advise on actions against breaches. Such bodies included the OFAC to implement laws such as CISADA, IFCA, NDAA and ITRA. However, after the partial lifting of the sanctions, the P5+1 set up the JCPOA in an attempt to assist companies in the respective regions and countries establish political connections with Iran thus achieving the desired economic growth. Various talks have been held between the Western governments and the Government of Iran in 2015 and 2016, regarding the various restrictions that still remain in place.

The sanctions imposed on Iran have significantly contributed to the slumping of its economy though it is a country with a vast amount of resources in terms of natural and human capital. Business on the international markets is mutually beneficial for the Government of Iran and the enterprises that are involved, provided they are able to meticulously monitor the items of trade that are still under the sanctions act. Despite the many uncertainties of the post-JCPOA global environment, UK companies are nonetheless encouraged to take advantage of Iran's reentry into the global market, with the economic opportunities available outweighing the high risk levels of engaging in business with Iran, so long as a thorough and robust legal, risk management, and compliance programs are in place.

References

1. Alder, J. (2009). *Constitutional and Administrative Law*. 7th edition, page173
2. Arnett, G. (2015, July 15). *Which countries are still affected by US sanctions?* Retrieved from <https://www.theguardian.com/us-news/datablog/2015/jul/21/which-countries-still-affected-us-sanctions>
3. Barrett, P. (2015, February 19). *The Big Bet to Hold Banks Liable for Terrorism*. Retrieved from <http://www.bloomberg.com/news/articles/2015-02-19/are-credit-suisse-rbs-standard-chartered-hsbc-and-barclays-terrorist-banks>-Berry, E and Hargreaves, S. (2007). *European Union Law*. 2nd edition, p39
4. Bell, O., & Lawrence, M. (2016, January 28). *Iran—Dispelling the Misconceptions, but Accepting the Challenges*. Retrieved from <https://www4.troweprice.com/gis/fai/us/en/insights/articles/2016/q1/iran-dispelling-the-misconceptions-but-accepting-the-challenges.html>
5. Boucher, J. L., & Gerrish, J. (2012, August 14). *"New Sanctions Against Iran: President Obama Signs the Iran Threat Reduction and Syria Human Rights Act of 2012"*. Retrieved from <https://www.skadden.com/insights/new-sanctions-against-iran-president-obama-signs-iran-threat-reduction-and-syria-human-right>
6. Bradner, E., CNN. (April 2, 2015). *What's in the Iran nuclear deal? 7 key points*. Retrieved from <http://edition.cnn.com/2015/04/02/politics/iran-nuclear-deal-main-points-of-agreement/>
7. British Petroleum Statistical Review of World Energy. (2015). *Statistical Review of World Energy*. Retrieved from <http://www.bp.com/en/global/corporate/energy-economics/statistical-review-of-world-energy.html>
8. Brunnstrom D., Reuters. (May 12, 2016). *Kerry seeks to soothe European bank nerves over Iran trade*. Retrieved from <http://www.reuters.com/article/us-iran-banks-kerry-idUSKCN0Y30OJ>
9. Chau, D. C., & Kane, T. M. (2014). *China and International Security: History, Strategy, and 21st-Century Policy [3 volumes]: History, Strategy, and 21st-Century Policy*. ABC-CLIO.

10. Cullis, T., Sanctions Law. (May 12, 2016). *Iran Sanctions-Lifting Continues to Be Frustrated*. Retrieved from <http://sanctionlaw.com/iran-sanctions-lifting-continues-to-be-frustrated/>
11. Clawson, P. (2015, August). *U.S. Sanctions*. Retrieved from <http://iranprimer.usip.org/resource/us-sanctions>
12. Critchlow, A. (2014, July 19). *British business in race to return to Iran*. Retrieved from <http://www.telegraph.co.uk/finance/newsbysector/energy/10978251/British-business-in-race-to-return-to-Iran.html>
13. Dehghan, S. K., & Butt, R. (2011, November 30). *Britain withdraws diplomats from Iran after embassy attack*. Retrieved from <https://www.theguardian.com/world/2011/nov/30/britain-withdraws-diplomats-iran>
14. Dentons. (2013, January 15). *Iran Freedom and Counter-Proliferation Act Signed Into Law*. Retrieved from <http://www.dentons.com/en/insights/alerts/2013/january/15/iran-freedom-and-counterproliferation-act-signed-into-law>
15. DFS. (2016). *New York Codes, Rules, and Regulations*. Retrieved from <http://www.dfs.ny.gov/legal/regulations/adoptions/dfsp200t.pdf>
16. Erdbrink, T., (April 21, 2016). *New York Times*. *Europe Says U.S. Regulations Keeping It From Trade With Iran*. Retrieved from http://www.nytimes.com/2016/04/22/world/middleeast/europe-says-us-regulations-keeping-it-from-trade-with-iran.html?_r=0
17. European Community. (November 22, 1996). Council Regulation (EC) 2271/96.
18. European Council. (2016, March 7). *Dual-use export controls*. Retrieved from <http://ec.europa.eu/trade/import-and-export-rules/export-from-eu/dual-use-controls/>
19. European Union. (January 1, 1958). Treaty Establishing the European Economic Community and Related Instruments.
20. European Union. (February 27, 2007). Common Position 2007/140/CFSP.
21. European Union. (April 23, 2007). Common Position 2007/246/CFSP.
22. European Union. (August 7, 2008). Common Position 2008/652/CFSP.
23. European Union. (July 26, 2010). Council Decision 2010/413/CFSP.

24. European Union. (January 23, 2012). Council Decision 2012/35/CFSP.
25. European Union. (October 16, 2012). Council Decision 2012/635/CFSP.
26. European Union. (April 2, 2015). Joint Statement. Retrieved from http://www.eeas.europa.eu/statements-eeas/2015/150402_03_en.htm
27. Fayazmanesh, S. (2002). *The Politics of the U.S. Economic Sanctions against Iran*. California State University.
28. Financial Action Task Force. (February 19, 2016). *Public Statement*. Retrieved from <http://www.fatf-gafi.org/publications/high-riskandnon-cooperativejurisdictions/documents/public-statement-february-2016.html>
29. Foreign and Commonwealth Office. (2016, April 28). *Guidance: Iran trade guide and frequently asked questions on doing business with Iran*. Retrieved from <https://www.gov.uk/government/publications/doing-business-with-iran/frequently-asked-questions-on-doing-business-with-iran>
30. Forsyth, C. (2011). The definition of Parliament after Jackson: Can the life of Parliament be extended under the Parliament Acts 1911 and 1949? *International Jnl of Constitutional Law*, 9(1), 132-143.
31. Germain, T. (undated). CESIM. *Iranian presidential election: can a discernable impact be expected?* Retrieved from <http://cesim.fr/observatoire/eng/82/article/160>
32. Haas, M. (2013). *International Human Rights: A Comprehensive Introduction*. Routledge.
33. IRIB Word Service. (January 2, 2016). *'The only thing Washington has not blamed Iran for is global warming'*. Retrieved from <http://english.irib.ir/analysis/commentaries/item/220843-%E2%80%98the-only-thing-washington-has-not-blamed-iran-for-is-global-warming%E2%80%99>
34. Kampmark, Dr. B. (April 5, 2015). *Centre for Research on Globalization. Doing the Nuclear Dance: The Iran Joint Comprehensive Plan of Action*. Retrieved from <http://www.globalresearch.ca/doing-the-nuclear-dance-the-iran-joint-comprehensive-plan-of-action/5440887>
35. Kary, T., Wilber, D. Q., & Hurtado, P. (2014, July 1). *BNP to Pay Almost \$9 Billion Over U.S. Sanctions Case*. Retrieved from

- <http://www.bloomberg.com/news/articles/2014-06-30/bnp-paribas-charged-in-sanctions-violation-probe-in-new-york>
36. Katten Law. (2016, January 22). *"Implementation Day" Brings Openings for Commercial Aircraft Sales With Iran*. Retrieved from <https://www.kattenlaw.com/Implementation-Day-Brings-Openings-for-Commercial-Aircraft-Sales-With-Iran>
 37. Lawder D., Reuters. (July 14, 2015). *U.S. House Speaker Boehner says Iran accord looks like a 'bad deal'*. Retrieved from <http://www.reuters.com/article/iran-nuclear-boehner-deal-idUSL2N0ZU13820150714>
 38. Macaluso, A. (2014). *The Apparent Success of Iran Sanctions*. The Hague Institute for Global Justice.
 39. Mckinnon, J. D., & Walker, M. (2004, May 11). *Fed Fines UBS \$100 Million For Money-Transfer Violations*. Retrieved from <http://www.wsj.com/articles/SB108419978061306718>
 40. Mimms S., The Atlantic. (July 14, 2015). *The GOP's Iran Deal Point Man Is Holding His Fire*. Retrieved from <http://www.theatlantic.com/politics/archive/2015/07/the-gops-iran-deal-point-man-is-holding-his-fire/449301/>
 41. Morello, C., & DeYoung, K. (2016, January 16). *International sanctions against Iran lifted*. Retrieved June 21, 2016, from https://www.washingtonpost.com/world/national-security/world-leaders-gathered-in-anticipation-of-iran-sanctions-being-lifted/2016/01/16/72b8295e-babf-11e5-99f3-184bc379b12d_story.html
 42. New York Times. (1981, January 20). *Text of Agreement between Iran and the U.S. to Resolve Resolve the Hostage Situation*. Retrieved from <http://www.nytimes.com/1981/01/20/world/text-of-agreement-between-iran-and-the-us-to-resolve-the-hostage-situation.html?pagewanted=all>
 43. NTI. (2016, March). *Nuclear*. Retrieved from <http://www.nti.org/learn/countries/iran/nuclear/>
 44. O'Kane, M. (2016, March 31). *HM Treasury establishes Office of Financial Sanctions Implementation*. Retrieved from

- <https://europeansanctions.com/2016/03/31/hm-treasury-establishes-office-of-financial-sanctions-implementation/>
45. Phillips, J. (2009, October 23). *The 1983 Marine Barracks Bombing: Connecting the Dots*. Retrieved from <http://dailysignal.com/2009/10/23/the-1983-marine-barracks-bombing-connecting-the-dots/>
 46. Reuters. (2015, April 15). *Deal Or Not, Many US States Will Keep Sanctions Grip On Iran*. Retrieved from <http://www.ibtimes.com/deal-or-not-many-us-states-will-keep-sanctions-grip-iran-1879031>
 47. Ronzitti, N. (2016). *Coercive Diplomacy, Sanctions and International Law*. Martinus Nijhoff Publishers.
 48. Salpukas, A. (1995, March 7). *Iran Signs Oil Deal With Conoco; First Since 1980 Break With U.S.* Retrieved from <http://www.nytimes.com/1995/03/07/world/iran-signs-oil-deal-with-conoco-first-since-1980-break-with-us.html>
 49. Slavin, B. (May 9, 2016). *Al-Monitor. US officials circle globe to explain Iran policy but fail to persuade*. Retrieved from <http://www.al-monitor.com/pulse/originals/2016/05/us-officials-iran-policy-persuade-banks.html>
 50. Shavit, A. Politico Magazine. (April 2, 2015). *Letter from Israel: Iran is America's New Iraq*. Retrieved from <http://www.politico.com/magazine/story/2015/04/iran-is-the-next-iraq-ari-shavit-116639#.VSCT1zAyZ8E>
 51. Tharoor, I., The Washington Post. (July 15, 2015). *How the nuclear deal can keep Iran from 'cheating,' according to a former U.N. inspector*. Retrieved from <https://www.washingtonpost.com/news/worldviews/wp/2015/07/15/how-the-nuclear-deal-can-keep-iran-from-cheating-according-to-a-former-u-n-inspector/>
 52. The Center for Arms Control and Non-Proliferation. (July 14, 2015). *Factsheet: Iran and the Additional Protocol*. Retrieved from <http://armscontrolcenter.org/factsheet-iran-and-the-additional-protocol/>
 53. The Economist. (2016). *All that glitters: Assessing opportunities and risks in post-sanctions Iran*. Retrieved from http://pages.eiu.com/rs/783-XMC-194/images/Iran_Whitepaper_Feb2016_FINAL.pdf?mkt_tok=3RkMMJWWfF9wsRovuarPZKXonjHpfsX56%2B4oUa60IMI%2F0ER3fOvrPUfGjI4JTcpnl%2BSLDwEYGJlv6SgFTbjGMbht2bgMUhU%3D

54. Transparency International. (2015). *Corruption Perception Index – Iran*. Retrieved from <https://www.transparency.org/country/#IRN>
55. UK Parliament. (2010, December). *3 Divergent opinion on the scope of Parliamentary sovereignty*. Retrieved from <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmeuleg/633/63305.htm>
56. UK parliament. (2016, June 16). *European Communities Act 1972*. Retrieved from <http://www.legislation.gov.uk/ukpga/1972/68/section/2>
57. United Nations. (July 31, 2006). Resolution 1696.
58. United Nations. (December 23, 2006). Resolution 1737.
59. United Nations. (March 27, 2007). Resolution 1747.
60. United Nations. (March 3, 2008). Resolution 1803.
61. United Nations. (June 9, 2010). Resolution 1929.
62. US Department of State. (Undated). *Diplomacy in Action: Iran, North Korea, and Syria Nonproliferation Act Sanctions (INKSNA)*. Retrieved from <http://www.state.gov/t/isn/inksna>
63. US Department of the Treasury. (Undated). *Office of Foreign Assets Control*. Retrieved from <https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>
64. US Department of the Treasury. (Undated). *Resource Center: Iran Sanctions*. Retrieved from <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/iran.aspx>
65. US Department of the Treasury. (August 7, 2015). *Frequently Asked Questions Relating to the Continuation of Certain Temporary Sanctions Relief Pursuant to the JPOA Prior to Implementation of the JCPOA*. Retrieved from https://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa_ext_faq_20150807.pdf

66. Verma N. and Busvine D., Reuters. (May 6, 2016). *India, Iran agree to clear \$6.4 billion in oil payments via European banks: Pradhan*. Retrieved from <http://in.reuters.com/article/india-iran-payment-idINKCN0XX0OU>
67. Whitehouse. (2012, July 31). *Fact Sheet: Sanctions Related to Iran*. Retrieved from <https://www.whitehouse.gov/the-press-office/2012/07/31/fact-sheet-sanctions-related-iran>
68. WikiLeaks. (2011, February 4). *UK Passes Temporary Terrorist Asset-Freezing Bill*. Retrieved from <http://www.telegraph.co.uk/news/wikileaks-files/london-wikileaks/8304899/UK-PASSES-TEMPORARY-TERRORIST-ASSET-FREEZING-BILL.html>
69. World Bank Group. (2015 – 2016). *Ease of Doing Business Rank*. Retrieved from <http://www.doingbusiness.org/rankings>
70. UKHL. (2005). Lord Bingham. 56 [9] www.state.gov. (2012, September 28). *Iran Sanctions Contained in the Iran Threat Reduction and Syria Human Rights Act (ITRSHRA)*. Retrieved from <http://www.state.gov/e/eb/rls/fs/2012/198393.htm>