Please note that US jurisdiction-based or "primary" US Sanctions, administered by Office of Foreign Assets Control ("OFAC") require compliance by "US Persons", namely:

- *any person inside or outside the US who is a US citizen or green card holder;*
- *any person within the US (even non-US citizen or green card holder); and*
- *any entity organised under the laws of the US, as well as their foreign branches.*
- *in the case of US sanctions relating to Cuba and Iran, the definition of "US Persons" also includes entities organised outside the laws of the US but that are US-owned or controlled (e.g. non-US subsidiaries of US entities).*

Furthermore, US jurisdiction-based or "primary" US Sanctions, administered by OFAC may apply if the transaction involves the US financial system (e.g. processing USD payments or checks) and/or US-origin Goods (collectively "US Elements"). Against this background, the measures described in this Client Briefing require, in particular, specific legal advice if you are a "US Person" or if any intended transaction would contain any other "US Element".

The Iranian Hospitality Market after the Relief of International Sanctions: Dawn of a New Era

Six months after the landmark nuclear deal with Iran, international sanctions against Iran have partially been lifted. Iranian and international businesses are keen to establish or expand trade and business relationships. Business travel and tourism have begun to increase considerably, providing an ideal basis for the resurgence of the Iranian hospitality market.

Introduction

The Joint Comprehensive Plan of Action ("JCPOA") provides for a gradual relief of EU and US sanctions against Iran in exchange for Iran's cut down on its nuclear activities. The first stage of the EU and US sanctions relief took place on 16 January 2016 ("Implementation Day"). Lifting the sanctions includes the removal of trade and financial restrictions covering fund transfers, banking activities, insurance and reinsurance services, and trading with Iranian oil, gas and petrochemical products. As a consequence, non-US companies and persons are now able to invest in Iran and enter into a wide range of business activities in Iran and with Iranian partners, including in the hospitality sector.

As the number of people travelling to Iran has increased in the last years and is expected to increase significantly in the near future, international hoteliers and hotel groups are interested to enter or have already started business in the Iranian hospitality market. In 2015, Accor Hotels opened two hotels, the Novotel IKIA and the ibis IKIA, at Imam Khomeini International Airport in Tehran. UAE based Rotana is currently developing four hotel projects, two in Tehran and two in the pilgrimage city of Mashhad. Meliá hotels announced the opening of a new five-star hotel on the shores of the Caspian Sea.

This newsletter provides an overview of the legal framework for foreign investment in the Iranian hospitality market. It highlights the impact of sanctions relief on business with Iran and outlines mechanisms for a secure and protected investment in the Iranian hotel industry.

How to Make a Protected Investment

The first step for investors is to obtain a licence under Iran's Foreign Investment Promotion and Protection Act 2002 ("FIPPA"). A foreign investor's investment in Iran will only be protected if made under such FIPPA licence. For example, the FIPPA licence guarantees the export of capital and goods produced in Iran. Should the export of goods be prohibited, such goods can be sold in the Iranian market and profits be transferred abroad, also in foreign currency. In addition, a FIPPA licence holder enjoys the government guarantee of fair compensation for losses or damages should investments be expropriated in Iran.

In order to obtain a FIPPA license, an investor has to apply to the Organisation for Investment, Economic and Technical Assistance of Iran ("OIETAI"). A fast and facilitated mechanism is available to foreign investors, so that a FIPPA licence can be obtained within two months from application. A FIPPA license will be granted if, inter alia, the intended investment is expected to lead to economic growth, upgraded technology, better quality products, more employment opportunities or increased export and provided that the respective investment does not threaten national security, public interests, damage the environment, or jeopardize local investments.

Once a FIPPA licence has been obtained, the investor can start bringing capital into Iran. Such capital ("capital of foreign source") under the FIPPA includes all types of assets, cash and non-cash, such as machinery and equipment, but also patent rights, know-how, trademarks, and trade names. Capital further includes transferrable dividends or the proceeds of any business activities such as fees to be paid to an operator or investor under a management or franchise agreement or otherwise to be paid out of the proceeds of the hotel operation, once registered under the FIPPA license.

As the JCPOA contains a snap-back mechanism which means that EU and US sanctions against Iran can be re-implemented should Iran violate its nuclear commitments, investors should take further measures, mostly contractual ones to safeguard their investment in such event. For instance, an appropriate force majeure clause considering various possibilities, such as temporary or permanent suspension of performance of the contract as a result of re-imposition of sanctions would be helpful.

Where to start

Investment in the Iranian hospitality sector may take different forms. The main options seem to be

- investing in an Iranian company
- entering into contractual agreements, such as leases, joint venture agreements, franchise or management agreements, or
- investing in Iranian real estate, via the Iranian company.

While shareholdings can be acquired and held and agreements can be entered into by Iranian and foreign investors alike, investments in Iranian real estate require the investor to be of Iranian nationality.

Contractual investments

International hotel operators may prefer to enter into franchise or management agreements with Iranian counterparts or to establish an Iranian subsidiary which in turn would enter into such agreements.

Another route for foreign investors wishing to operate hotels in Iran is to lease the hotel property from an Iranian national or company or to enter into a contractual or corporate joint venture with such Iranian national or company. A joint venture can also be structured in a way that the Iranian counterpart supplies property and holds a stake in the business with certain executive power.

Which option and which refinement in contractual terms will be pursued, depends on the goal of the investor and the result of the negotiation with the Iranian counterpart.

Irrespective of the specific structure, all of the above options will allow for an investor to exercise executive power on management and operation of the hotel and to take control over the hotel's day to day business.

Real Estate Investments

Under Iranian law, foreign nationals are in principle prohibited from owning real estate in Iran. It is permitted, however, for a foreign investor to own up to 100% of the shares in a company registered in Iran which holds Iranian real estate.

Key facts

- Iran is the second largest economy in the MENA region with a GDP of USD 406.3 billion in 2014
- First stage of lifting of the sanctions against Iran in January 2016 has opened the door for business and investment opportunities
- Number of visitors to Iran has grown 12% in each of the past two years; in 2014 alone more than five million people visited Iran
- The Iranian Government aims to quadruple the number of foreign visitors to 20 million by 2025 with an expected annual revenue of up to USD 30 billion
- Iran's hotel market still lacks the required capacity to host the envisaged number of future visitors and the Iranian Government has announced the need and its support for building 250-300 new hotels in Iran within the next 10 years
- A foreign investor may either acquire land or enter into contractual arrangements, either with another foreign investor or with an Iranian counterparty; other approaches include franchise system and management agreements
- A FIPPA licence guarantees that investors can retrieve their capital and profits generated

Private joint stock companies or limited liability companies are usually the preferred investment vehicles as they provide the protection of limited liability and can be established quickly.

Where an investor not only chooses to (indirectly) acquire Iranian real estate, but to also construct the hotel himself, a construction license will be required. Such license will be granted by the Cultural Heritage, Handicrafts and Tourism Organisation ("Tourism Organisation") upon review of the documents showing the lawful possession over land appropriate for the project and the relevant construction plans which the investor has to file with the authorities. Lawful possession over the land can be demonstrated by either an acquisition agreement or a long-term lease.

Like for the FIPPA licence, there is also a facilitated and fast track procedure for obtaining the construction license. If the Tourism Organisation considers the relevant real estate sufficiently suitable for the project, and other relevant authorities grant their approval, the investor will have to submit architectural plans and feasibility studies. Upon approval of such plans and studies, the Tourism Organisation instructs the relevant municipality to issue a construction license for the project. The investor will then be required to accomplish the construction within two to five years from issuance of the construction license.

Operational Aspects

In order to commence hotel operations, the investor/operator will need an operation license, which is issued by the Tourism Organisation.

An operation license will be granted on the basis of a franchise or management agreement, a lease or joint venture agreement or an approved completion of hotel construction. Before the operation license is issued, the applicant needs to obtain the standard certificate for tourism services.

In all cases, the operation license will be issued for an initial period of three years, only. The operation license may be renewed upon the re-evaluation of the hotel's facilities and services under the standard certificate for tourism services. The Tourism Organisation is further in charge of the classification of hotels and specific measures in case of violation of regulations.

To date, there are no exceptions for international hotel operations from local Iranian laws and regulations, e.g. alcoholic drinks remain forbidden and cannot be offered or served in hotels or to foreign visitors.

Choice of Law, Jurisdiction

Iranian law generally allows for the free choice of law. In practice, such choice of law only applies to a very limited number of cases.

The Iranian Civil Code further states that agreements concluded in Iran have to be subjected to Iranian law. Hence investors wishing to have a non-Iranian legal system apply to their agreements need to ensure that agreements under foreign law are signed outside Iran. However, even where foreign law validly applies to an agreement in general, Iranian courts will apply mandatory provisions of Iranian law which will then supersede any foreign law provisions. Such mandatory provisions exist as well in public business law as well as for contractual provisions. For instance, interest is not permitted, but late payment damage claims are. Additionally, if the agreement is illegal under Iranian law (e.g. gambling), the transaction would be null and void.

Iranian law allows the choice of jurisdiction of foreign, non-Iranian courts. Iran is a member of the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, recognising and enforcing arbitral awards of other member states. Consequently, international investors often agree on international arbitration with their counterparts. A choice of jurisdiction is, however, not possible with regard to claims relating to public and state property and agreements entered into with Iranian authorities. Those can only be submitted to international arbitration with special approval of the Parliament.

Free Trade Zones

Iran has established several free trade industrial zones to accelerate development and economic growth in areas considered to have high potential for business. These include Kish, Qeshm, Chabahar, Anzali, Aras, Arvand, and Maku. It is still to be seen how much impact those free trade zones will have on the hospitality market. In free trade zones, foreign investments are granted further incentives and privileges, such as tax, customs and trade duties exemptions.

Next Steps

The right moment has come now for hotel operators to invest in the growing Iranian hospitality market. Please contact us if you have any queries.

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