

# Doing Business in iRAN

2<sup>nd.</sup>  
Edition

Legal & Financial  
Aspects

For Post-Sanctions Era

written by:

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# Doing Business In Iran

## Legal & Financial Aspects For Post-Sanctions Era

*Second Edition*

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# Preface

## About This Book

This guidebook has been prepared by Partners of ESK Law Firm. It is written to give the busy executive a quick overview of the legal and professional regulation, investment climate, taxation, forms of business organization and business practices in Iran. Making decisions about foreign operations is complex and requires an intimate knowledge of a country's commercial climate, with a realization that the climate can change overnight. Companies doing business in Iran – or planning to do so – are advised to get current and detailed information from experienced professionals. This book reflects information current as of April 2016.

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and American countries. We serve our clients not only over the whole territory of Iran, but also in all over the world through our partners and associates.

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## List of Abbreviations

ADR	Alternative Dispute Resolution
GDP	Gross Domestic Product
BOT/BOOT	Build-Operate-Transfer / Build-Own-Operate-Transfer
CIS	Commonwealth of Independent States
DTA	Double Taxation Agreement
EPC	Engineering, Procurement and Construction
ESCWA	Economic and Social Commission for Western Asia
FEAS	Federation of Euro-Asian Stock Exchanges
FIPPA	Foreign Investment Promotion and Protection Act
GMT	Greenwich Mean Time (time zone)
ICGN	International Corporate Governance Network
INTA	Iranian National Tax Administration
IOR/EOR	Improved Oil Recovery / Enhanced Oil Recovery
IPC	Iran Petroleum Contract
IRR	Iranian Rial (currency of Iran)
JVC	Joint Venture Company
LAPFI	Law on the Attraction and Protection of Foreign Investment
MENA	Middle East and North Africa region
OIC	Organisation of Islamic Cooperation
OIETAI	Organisation for Investment, Economic and Technical Assistance of Iran
OTC	Over-the-counter
PPP	Purchasing Power Parity
SAARC	South Asian Association for Regional Cooperation
SSF	Single Stock Features
TSE	Tehran Stock Exchange
UNECE	United Nations Economic Commission for Europe
VAT	Value Added Tax
VATA	Value Added Tax Act of Iran
WFE	World Federation of Exchanges
WIPO	World Intellectual Property Organization



# Chapter 1

## Introduction

### 1.1 Geographical Location and Population

The Islamic Republic of Iran with an area of 164,819.6 sq.km and nearly 81 million populations is located in South West Asia. The country neighbors with Turkey and Iraq in the West, Afghanistan and Pakistan in the East, Armenia, Azerbaijan, Russia, Kazakhstan and Turkmenistan in the North and Kuwait, Saudi Arabia, Qatar, Bahrain, the United Arab Emirates and Oman in the South through the Persian Gulf and the Oman Sea.

Therefore, Iran is a strategic country with common borders with states of ESCWA in the South and West, SAARC in the East and CIS as well as UNECE in the North. Iran has long been of geostrategic importance because of its central location in Eurasia and Western Asia, and its proximity to the Strait of Hormuz.

The country is regarded as one of the richest countries in hydrocarbon reserves, so that it ranks second for gas reserve and its export as well as the second for exporting crude oil in the world. According to the reports of international institutions like the World Bank, the Islamic Republic of Iran has a GDP of approx. US\$ 425 billion and scores eighteenth with regards to purchasing power parity (PPP). The domestic market of more than 80 million inhabitants and planned large-scale government spending will further increase this share.

## 1.2 Economic Environment

Based on a World Bank Survey, Iran is the second largest economy in the Middle East and North Africa (MENA) region after Saudi Arabia, with an estimated GDP of US\$ 425 billion in 2014. Iran's economy is characterized by a large hydrocarbon sector, small scale agriculture and services sectors, and a noticeable state presence in manufacturing and financial services. Iran ranks second in the world in natural gas reserves and fourth in proven crude oil reserves. Aggregate GDP and government revenues still depend to a large extent on oil revenues and are therefore intrinsically volatile.

Petroleum and natural gas are two of the predominant natural resources in Iran which encourage investment and trade. Iran has continued to grow to become one of the largest economies in Asia and specifically in the Middle East. The country offers endless investment opportunities to local and international investors and attracts trade due to a number of free zones located throughout the country which offer lucrative incentives. Currently there are over 20 free zones and special economic zones in Iran which offer differing benefits throughout the region allowing investors to choose the favorable option for their needs.

## 1.3 Investment and Business Opportunities

### At a Glance:

- The diversified economy and broad industrial base with over 40 industries directly involved in the Tehran Stock Exchange is the core market in the MENA region.
- Resource-rich economy
- Young and educated population
- Large domestic market

- The Middle East market is a prime market opportunity for Iran's non-oil exports.
- An increasingly sophisticated infrastructure and human capital base provides the foundation for an emerging knowledge-based economy.

Since 2006 the U.S. government has imposed sanctions against Iran and doing business with Iran. This has led foreign companies to withdraw from major projects (e.g. the South Pars / North Dome Gas Condensate field development) or to delay further investment, and foreign finance has mostly become unavailable. Iran has turned more to its own resources preferring Iranian investors and engineering companies and to moot the establishment of a Pars Investment Fund for the sale of US\$ 3.5 billion of participation bonds to fund the South Pars / North Dome developments.

As you may know, international sanctions against Iran are being gradually revoked which provides a good opportunity for many business entities to start or resume their activities in Iran. Considering that, it is highly recommended that international companies shall take into account these changes and use this susceptible to profit-taking circumstance.

The law on foreign investment in Iran under the name of "Foreign Investment Promotion and Protection Act" (FIPPA) was ratified by the parliament in 2002. Some specific enhancements introduced by the FIPPA for foreign investment in Iran can be outlined as follows:

1. Broader fields for involvement by foreign investors including in major infrastructure;
2. Broader definition given to foreign investment, covering all types of investments from FDI to different types of project financing methods including: Joint Venture, buy-back arrangements, counter trade and various BOT schemes;
3. Streamlined and fast track investment licensing application and approval process;



4. Creation of a one stop shop called the “Center for Foreign Investment Services” at the organization for investment for focused and efficient support for foreign investment undertakings in Iran;
5. More flexibility and facilitated regulatory practices for the access of foreign investors to foreign exchange for capital transfer purposes;
6. Any foreign investor who registers his investment in Iran through the FIPPA has the right to export the capital and dividends according to the articles 12, 13, 14 and 15 of the FIPPA:

*Article 12: “The rate of conversion of foreign exchange applicable at the time of importation or repatriation of Foreign Capital as well as the exchange rate for all foreign exchange transfers, in case of applicability of a unified exchange rate, shall be the same rate prevailing in the country's official network; otherwise, the applicable exchange rate shall be the free market rate as acknowledged by the Central Bank of the Islamic Republic of Iran.”*

There are many options open to international companies seeking to establish a business in Iran. Apart from forming a trading relationship through commercial agencies, for many companies there are distinct advantages in having an on-the-spot presence. This makes it easier to research market prospects, make contacts, liaise with customers and see through the details of any transactions.

Having a presence is also important in the context of the commercial culture of the Middle East. Business owners and people in the region prefer to deal with someone they know and trust by building a personal relationship. Another regional factor that adds to the importance of having a physical presence is that the buying patterns of some countries served by Iran are unpredictable, creating a need for first-hand market intelligence and information.

## 1.4 Political System

Iran is a constitutional Islamic Republic, whose political system is laid out in the 1979 constitution called Qanun-e Asasi, Basic Law. Iran's makeup has several governing bodies, some of which are democratically elected and some of which operate by co-opting people based on their religious inclinations.

Its unique political system combines elements of a parliamentary democracy with a religious theocracy governed by the country's clergy, wherein the Supreme Leader wields significant influence.

The Iranian Constitution affirms the division of power into three branches, namely the Executive, the Legislative and the Judicial branches. These powers are structured within the same framework like in other countries.

Iran is a multicultural nation comprising numerous ethnic and linguistic groups, whereas most inhabitants are Shia'ites. The native language of Iran is Persian which is widely spoken by the local community. English is the second language of Iran.

## 1.5 Currency

The Iranian Rial is the currency of Iran (IRR, ریال). The most common currency exchange is IRR to US\$ and vice versa.

## 1.6 Business Hours / Time Zone

The working week in Iran is Saturday to Thursday with Friday being the national weekend. Ministries are closed on Thursday. Normal working hours for government offices are 8am to 2pm. Banking hours are generally, Saturday to Wednesday, 7.30am to 1.30pm. Thursday working hours are 7.30am to 12.30pm. Generally shops and bazaars are open 8.30am to 8.30pm, except on Friday.

The time zone is +3.5 hours GMT which allows Iran to continue to respond to international business needs throughout the world.

## 1.7 Iranian Public Holidays 2016

Date	Occasion
20 -23 March	Nowruz (New Year)
31 March-1 April	Iran National Day-End of Nowruz
21 April	Birthday of Imam Ali
5 May	Eid-e-Mab'ath
22 May	Birthday of Imam Mahdi
4 June	Khordad Uprising
27 June	Martyrdom of Imam Ali
6 July	Eid-e-Fitr
7 July	Eid-e-Fitr
30 July	Martyrdom of Imam Sadeq
12 September	Eid-e-Qorban
20 September	Eid-e-Ghadir
11 October	Tasua
12 October	Ashura
20 November	Arbaeen
28 November	Martyrdom of Imam Hasan and Muhammad (pbuh)
30 November	Martyrdom of Imam Reza
17 December	Birthday of Muhammad and Imam Sadegh (pbuh)

## 1.8 Country Background at a Glance:

Capital	Tehran
Main language	Persian
Main religion	Shia Islam
Currency	Rial (ریال) (IRR)
Area	1,648,195 sq.km / 636,372 sq.mi
Population	2014 estimate 80.8 million
International dialing code	+98



## Chapter 2

# Foreign Investment in Iran

After nearly 48 years, the new law on foreign investment in Iran under the name of “**Foreign Investment Promotion and Protection Act**” (FIPPA) was ratified by the Parliament in 2002. FIPPA replaced the “Law for the Attraction and Protection of Foreign Investment” (LAPFI) which was in effect since 1955. FIPPA’s replacement of LAPFI has further enhanced the legal framework and operational environment for foreign investors in Iran.

### 2.1 Methods of Foreign Investment

According to article 3 of the FIPPA, methods of investment are:

1. Foreign Direct Investment (FDI) – only permitted in the private sector;
2. foreign investment within the framework of "Joint-venture", "buy-back" or "build-operate-transfer (BOT)" schemes where the return of capital and profits accrued is solely emanated from the economic performance of the project in which the investment is made, and such return of capital and profit shall not be dependent upon a guarantee by the government, state-owned companies or banks - permitted in all sectors.

### 2.1.1 Foreign Direct Investment (FDI)

Foreign direct investment is a kind of cross-border investment in a business enterprise by a natural person or a legal entity based in another country with the aim of achieving long-term profit. In this type of investment, control and management of the enterprise as a whole or in part will often be in the hands of the foreign investor. Based on the FIPPA, foreign direct investment can be attained in the following ways:

1. Through the use of foreign investment in a new Iranian company or by the purchase of an already-established company's shares by the foreign investor.
2. Through contractual arrangements between the parties with or without formation of company.

Needless to say, foreign direct investment in the private sector will only be allowed in accordance with the procedures prescribed by the FIPPA. Furthermore, it can be construed from article 3 of the FIPPA and related regulations that foreign investment in economic sectors that are monopolized by the government will only be permitted where the return of capital and its profits is solely through the economic activity of the same investment project and does not rely on any guarantee by the government or government companies or banks. In fact, this article states the criteria for foreign investment in the public and private sectors of Iran's economic system. Under article 44 of the Constitution of the Islamic Republic of Iran,

*"The economy of the Islamic Republic of Iran is to consist of three sectors: state, cooperative, and private, and is to be based on systematic and sound planning.*

- a) *The state sector is to include all large-scale and mother industries, foreign trade, major minerals, banking, insurance, power generation, dams, and large-scale irrigation networks, radio and television, post, telegraph and telephone services, aviation, shipping, roads, railroads*

*and the like; all these will be publicly owned and administered by the State.*

- b) The cooperative sector is to include cooperative companies and enterprises concerned with production and distribution, in urban and rural areas, in accordance with Islamic criteria.*
- c) The private sector consists of those activities concerned with agriculture, animal husbandry, industry, trade, and services that supplement the economic activities of the state and cooperative sectors.*

*Ownership in each of these three sectors is protected by the laws of the Islamic Republic, in so far as this ownership is in conformity with the other articles of this chapter, does not go beyond the bounds of Islamic law, contributes to the economic growth and progress of the country and does not harm society. The scope of each of these sectors as well as the regulations and conditions governing their operation, will be specified by law."*

Based on section "A" of the general policies of Article 44 of the Constitution of the Islamic Republic of Iran,

*Investment in and management and ownership of those sectors that fall under Article 44 are permissible by non-state enterprises and public institutions, and the cooperative and private sectors as described below:*

- a) Large-scale industries, mother industries (including large downstream oil and gas industries) and large mines (except oil and gas)*
- b) Foreign trade activities in the framework of trade and foreign currency policies of the country*



- c) *Banking operations by non-state enterprises and public institutions, publicly-held cooperatives and joint stock companies, provided maximum shareholding of each shareholder is as determined by law*
- d) *Insurance*
- e) *Power supply, generation and importation of electricity for domestic consumption and export*
- f) *All postal and telecommunication activities, except the main telecommunication grid, assigning of frequencies and main networks of postal exchanges, routing and management of distribution of mails and basic postal services*
- g) *Roads and railways*
- h) *Aviation (air transport) and shipping (marine transport)*

*The optimal share of the State and non-State sectors in the economic activities covered under the preamble of Article 44 will be determined by law by taking into view the sovereignty and independence of the country, social justice and economic development and growth."*

Considering the above-mentioned general policies of Article 44 which has been instructed by the Supreme Leader of Iran, the private sector can invest, manage and own economic activities specified in this instruction. As a result, foreign direct investment is allowed in these eight sectors by foreign investors.

### **2.1.2 Contractual Schemes**

Regarding paragraph (b) of article 3 of FIPPA, foreign investment is possible in all sectors within the framework of "Joint venture", "buy-back" and "build-operate-transfer (BOT)" schemes. These three schemes are briefly discussed below.

### 2.1.2.1 Joint Ventures

The term "Joint Venture" is frequently used in the field of foreign investment, as this contractual framework is employed by investors in many legal systems for investment. The joint venture model, as a favorable contract which decreased risks and costs of investing, has always been of interest to investors. However, the joint venture is usually subject to the laws and regulations governing the joint venture's place of operation.

Considering the laws and regulations of a host country, the subject matter of the project and its performance requirements, sometimes it is advisable to build a joint venture in the form of a company which has a separate legal personality from its members which is often called a "corporate joint venture". Some other times, partnering without establishing a company and through concluding a contract is a safer choice for investment, which is known as "contractual joint venture". Partnership as a kind of contract form is not the purpose of investment, but it is a method by which foreign investors achieve their investment objectives as specified in their business plan.

In various legal systems, this form of investment has different names such as "joint venture", "partnership", "consortium" and sometimes "shareholders agreement". In some legal systems, these titles differ in some aspects, why analyzing them is beyond our brief discussion. In Iran's legal literature, the legal form of partnership is mentioned in the Civil Law (article 501-606), the Commercial Code (companies' section) and also implied in the Interest-Free Banking regulation (article 18). Article 3 of the FIPPA also states the civil partnership as a method of investing, which can be established in the form of a joint venture.

In the corporate joint venture, partners establish a separate legal entity known as the joint venture company (JVC). Each of the partners possesses a specific percentage of the JVC's shares. In this case, partners are known as shareholders and it is the company which is responsible for the implementation of the project which is the subject of the joint venture. On the other hand, in the contractual joint venture, partners who decided not to establish a company directly implement the investment scheme based on their contract.

## **2.1.2.2 Iran's Petroleum Contracts**

### **2.1.2.2.1 Buy-back Agreements**

The second method of investment which is expressed in article 3 of FIPPA is "buy-back". In recent years, buy-back contracts, as a contractual investment technique, have had a prominent role in Iran's economy. This type of contract is mainly known for its use in the development of discovered oil and gas fields. In addition, buy-back contract are also usable in other industries.

A buy-back contract is a kind of counter-trade arrangement which is also classified as a hybrid contract. It is often defined as a contract between a purchaser and a vendor in which the vendor agrees to repurchase the property from the purchaser if a certain event occurs within a specified period of time. The buy-back price is usually set out in the agreement. However, the buy-back transaction has acquired a broader meaning under Iranian law. As defined by Article 2 of the Executive Rules approved by the Council of Ministers, a buy-back transaction refers to a deal in which the supplier, wholly or partially, puts the goods and services required for the establishment, expansion, reconstruction, improvement or continued production of manufacturing enterprises of the country at the disposal of the producer.

The price of the said goods and services, after deducting the amount of down payments plus the related costs dispersed on the basis of the concluded contract, is paid to the supplier through the delivery of goods or services of the producer and/or through delivery of other industrial and mineral goods and services produced in Iran. Due to some requirements in Iran's Constitution and Petroleum Act, buy-back contracts are usually employed in the development of oil and gas fields in Iran.

Oil and gas buy-back contracts where the exploration is also under the offered scope of services will be categorized as "Risk Service Contract" with a special payment procedure. According to this type of contract, the contractor concludes a contract with the host government and utilizes cash and non-cash items of the provided capital in order to develop oil and gas fields. Further, various costs such as contractors' remuneration are de-

financed in such contract and secured by selling the produced oil and gas and through a "Long Term Crude Oil Sales Agreement" which is an annex to the buy-back contract.

#### 2.1.2.2.2 Iran Petroleum Contract (IPC)

These days, one of the most important debates in scientific and technical circles is optimizing contractual mechanisms for upstream oil and gas projects in Iran. In February 2014, a seminar was held in Tehran and some provisions of the new oil contracts which have been prepared by the "Oil Contracts Revision Committee" were unveiled under the title of "**Iran Petroleum Contract (IPC)**". This type of contract has been prepared to rectify failures and gaps in different generations of buy-back contracts and is a beginning of an evolution in Iran's petroleum contracts. In addition, Iran's Parliament has played a significant role in this evolution by passing a few important laws, especially the "Act on the Duties and Powers of the Ministry of Petroleum" in 2012.

The IPC is not a new kind of petroleum contract alongside concession contracts, production sharing contracts, risk service contracts or joint venture. Instead, it is a hybrid contract which contains some features of joint venture contracts (regarding the procedure of implementing petroleum projects) and some traits of production sharing contracts (regarding the cost recovery mechanism).

Based on the IPC, in the exploration stage, contractor and the National Iranian Oil Company establish an "Oil Exploration Operations Company" in which the contractor leads the operation and performs exploration by using his own budget and by taking its own risks. The National Iranian Oil Company is a technical partner who accompanies the contractor without sharing the costs and risks of exploration. If exploration does not lead to the discovery of a commercial field, the contractor's costs incurred in the operation will not be refunded. But if a commercial field is discovered, the contractor's costs will be transferred from the exploration stage to the development stage and will be recovered during the amortization period.

Following the discovery of a commercial field and assessment opera-

tion, the project will step into a new stage. In this phase, in order to implement a development project, another company is established which is usually known as "development operation company".

Like the previous stage, the contractor incurs all costs and risks of development operation while he has the power to lead the operation. Once again, the National Iranian Oil Company is a technical partner who accompanies the contractor without sharing the costs and risks of the development operation. All direct and indirect costs of such operation incurred by the contractor or the National Iranian Oil Company, will be amortized by allocation of a specific percentage of products to the company.

The next phase is the production operation which is more varied than the exploration and development stages. Therefore, either (i) the production operation may be implemented by the National Iranian Oil Company or its affiliated companies along with financial and technical support of the contractor; or (ii) the development company also takes part in the production operation; or (iii) in order to implement and manage the field production operation, a production operations company is established while the development company which was set up in the previous stage, will provide financial and technical support to the production company.

It should be noted that, based on the above-mentioned seminar's panels, the IOR/EOR <sup>1</sup> are further responsibilities of the production operations company which should be implemented and reported to the development company.

Finally, at the end of a payment period, which according to the conditions of each field is ranging from 15 to 20 years, the petroleum contract is terminated.

The seminar's panels did not determine any specific forms of company for exploration and development operations, however, the production operation company will be formed as a "non-profit Joint Operating Company".

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<sup>1</sup>IOR (Improved Oil Recovery) and EOR (Enhanced Oil Recovery) means the implementation of various techniques for increasing the amount of crude oil that can be extracted from an oil field.

### **2.1.2.3 Build, Operate, Transfer Contract (BOT)**

According to the FIPPA, another contractual framework for investment is the "Build, Operate, Transfer (BOT) Contract". This method of investment is often used for building infrastructures such as power plants, telecommunications, airports and highways. Nevertheless, it can also be used in recreational projects such as building cable cars. In BOT contracts, a government organization confers the concession of building and operation of a specific project to a private sector contractor, and in return, the private sector contractor is responsible for financing, designing, supplying materials, building, testing and managing the project. During the operation period, the private sector contractor recovers its costs and interest of its investment by selling the project's output. At the end of the operation period, ownership of the facility is transferred to the government organization free of charge.

The BOT contract is a kind of public-private partnership in which the government or a public sector organization decides to build an infrastructure project by partnering with the private sector. Experience has proven that it is much faster and more cost-effective when governments build necessary facilities and infrastructures by partnering with the private sector. Choosing an appropriate company from the private sector (which usually is a consortium) is through a tendering process, after which the state or public sector organization signs a BOT contract with the selected company.

### **2.1.2.4 Investment in Iran's Construction Projects**

With property values exceeding those of similar-sized countries, Iran has seen a recent boom in the real estate market. Encouraged by the country's youthful demographic trends, investors are increasingly putting their faith in real estate, which has stood the test of time as a safe, fixed asset. At the same time, contractors and consultants have spotted opportunities throughout the country in terms of catering to both tourists and local residents seeking modern and convenient new homes. Investors are also eager to invest in these projects, which will satisfy growing demand and

guarantee returns for years to come.

Growth is also occurring in the country's infrastructures. Iran's government and public sectors try to build or renovate infrastructures all over the country which provides great opportunities for investors to invest in these projects by setting up public-private partnerships (BOT, BOOT, Joint Venture, etc.). Such projects offer a favorable interest rate for investors' capital. In recent years, the construction industry has been thriving due to an increase in national and international investment to the extent that it is now the largest in the Middle East region.

#### **2.1.2.4.1 Construction Contracts**

What forms of contract are used in Iran's construction industry depends on the position of employers (owners). If an employer is a private individual or a legal entity from the private sector, any sorts of contract can be applied between the employer and a contractor. Contracting parties can negotiate almost any type of project delivery mechanism such as Design-Bid-Build, Design and Build, EPC, turnkey etc. On the other hand, if the employer is a government or public organization, there is limited space for negotiations upon choosing a contract form. Government and public sector organizations in Iran are required to utilize per-designed forms of contract which have been issued by the government.

#### **2.1.2.4.2 Selection of a Contractor**

In the private sector of Iran, employers are able to negotiate with contractors directly so that they can find an appropriate contractor who has technical knowledge and adequate resources to implement the project. However, government institutes are required to use a tendering process in order to choose a contractor for implementing public projects. The Tender's Law of Iran which was passed in 2005 provides in its first article that:

*"All three powers of the Islamic Republic of Iran shall follow the stipulations of this Law in organizing a bidding; this includes:*

*ministries, public organizations, institutions, and companies, profitable institutes affiliated to the Government, public financial establishments and banks, public insurance companies ...*

The tendering process in the state and public organizations of Iran is not an open one, but it is subject to a per-qualification procedure after which bidders are short listed and invited to bid for the project. Based on article 12 of the Tender's Law:

*"In per-qualification of bidders, the following shall be taken into account: (i) Guarantee on quality of services and goods; (ii) Experience and knowledge in the relevant field; (iii) Reputable record; (iv) Work permit or qualification certificates, if necessary; (v) Financial capacity of the bidder for implementation, if necessary."*

#### **2.1.2.4.3 Pricing Methods**

Contracting parties in the private sector are free to take any kinds of pricing method that they wish. Depending on the conditions of a project's site and other factors, parties can choose one of the pricing methods such as lump sum, cost plus, re-measurement, time charge, estimation etc. However, in the state and the public sector, the employer determines the pricing method which is often known as "unit price" contract. This kind of contract is based on estimated quantities of items included in the project and their unit prices. The final price of the project is dependent on the quantities needed to carry out the work.

#### **2.1.2.4.4 Dispute Resolution**

Similar to the construction industry of many other countries, most of construction contracts in Iran refer to "Alternative Dispute Resolution" (ADR) techniques to solve related disputes. Negotiation and mediation are usually applied to resolve such disputes, even so, contracting parties can agree



to resort to arbitration or litigation if their dispute remains unresolved. On the other hand, where the employer is a representative of the state or public sector, a dispute resolution mechanism has already been embedded in the construction contract and it is not open to free negotiation. Although such construction contracts stipulate ADR methods in their per-designed terms, there are notable differences between practicing ADR methods according to these contracts, and well-known procedures of performing them in other disputes. As a result, it is advisable to seek legal advice before signing construction contracts.

### **2.1.2.5 Foreign Portfolio Investment (FPI)**

#### **2.1.2.5.1 Iran's Stock Exchange**

The Tehran Stock Exchange (TSE) was established in 1968, and is the primary equities market in Iran. In 2005, the new Capital Market Law of Iran was approved by parliament and in 2006, according to this Law, the TSE was demutualized and established as a joint stock company with over 6,000 shareholders. The TSE enjoys a reputation for having maintained an orderly market and a cost-effective trading capability since its inception. The fully computerized trading system which was launched in 1994 has helped boost the trading capacity and efficiency of the stock market. In 2007, the TSE moved to a more powerful trading system (powered by Atos Euronext) for meeting the high trading volume. TSE has been awarded the quality system certificate of ISO9001 in 2009 and it is also planned to obtain the ISO27001 certification for its IT Security Management System.

The TSE has implemented many reform measures in the past few years in order to bring it in line with international practice, and to better reflect investors' diversified needs. The TSE is set to continue making progress towards liberalization and internationalization. The TSE, with its fully automated trading systems and book entry mechanisms, is known as one of the most active exchanges in the Middle East region. At the end of March 2015, the total market capitalization of the 314 companies listed on the TSE surpassed USD 172 billion,. The ratio of total market capitalization to GDP was about 60

In order to enhance the core competitiveness of the TSE and to make faster progress towards liberalization and internationalization, the authorities have also promoted the introduction of new financial products, new financial institutions and implemented many reform measures, such as the listing of Single Stock Futures (SSF), relaxing limitations on foreign investment, streamlining foreign registration procedures, and adjusting various trading systems and mechanisms so that they are more in line with international standards.

#### **2.1.2.5.2 Foreign Investments in the Tehran Stock Exchange**

As with several emerging stock markets, the TSE historically set several limitations on foreign investment. With the growth of Iran's stock market and development of the economy, the stock market authorities have gradually relaxed these limitations on foreign investors. Since April 2010, the process for investment by foreign investors in the stock market has been changed from the 'permit' system to the 'repatriation' system. On 18th April 2010, upon the recommendation of the Ministry of Economic Affairs and Finance, and by virtue of paragraph 3 of article 4 of the Securities Market Law ratified in 2005, the Council of Ministers approved "The Regulations Governing the Foreign Investment in the Exchanges and OTC Markets". This has consequently simplified the application procedures for foreign investment in the TSE.

According to Article 7 of these "Regulations", the restrictions imposed on the possession of shares by non-strategic foreign investors on every exchange or over-the-counter (OTC) market are set forth as follows: The number of shares owned by the total foreign investors shall not exceed 20

Based on Article 4, foreigners/foreign entities shall have to submit the required information and documents to the Securities Exchange Organization along with an application based on the forms prescribed by the Organization so as to obtain a license for trading in securities on every exchange or OTC market.

### 2.1.2.5.3 Buying and Selling Stocks

The following steps should be taken when trading stocks on the TSE:

1. **Choose a stockbroker.** In choosing a broker, you should check if that broker (person or corporation) is a member in good standing at the TSE. A complete listing of the TSE member-brokers can be found in various publications or from the TSE Membership Department. It is important that you trust your broker and that you are satisfied with the services it provides for you. Brokerage services include market reports, advice regarding the stock selection and timing of purchases and sales, trade executions, on time delivery of important documents – such as confirmation receipts – and other trading-related activities that their clients may require.
2. **Open a brokerage account.** Once the investor has chosen his brokerage firm, a brokerage account has to be opened. This account allows the client to perform stock transactions (buy and sell shares) any time – similar to a bank account which enables you to deposit, transfer and withdraw money. Opening a brokerage account is relatively easy to accomplish and takes no longer than opening a bank account. A specimen signature card needs to be filled out, containing the: name, address (professional and private), telephone number(s), and most importantly, the client's signature. Frequently, bank and professional references have to be submitted. Once an account has been opened, the client may buy or sell immediately according to the trading instructions between the investor and broker. Trading instructions can vary depending on the investor's objective – whether it is short-term or long-term, minimum or maximum value of trades (trading limit), etc. All transactions are handled confidentially and the broker will not reveal to any person the details of any purchases or sales done for his client.
3. **Place your order with your broker.** After opening the account, a trader will be assigned to the investor. A trader is a licensed salesman who is authorized to buy and sell securities at the TSE. The as-

signed trader will be your contact person for all transactions. He/she will receive your order, most likely by telephone (unless arrangements are made), and will execute the order through the trading terminal connected to the main system of the Exchange. Thus, when placing an order to buy or sell, you have to call your trader and give the details of your order. The trader needs to know the following specifications: buy or sell order, which stock to buy or sell, the number of shares to buy or sell, and preferably also the bid price (when buying) or asked price (when selling).

4. **Settle your transaction.** Buying and selling transactions are settled by book-entry. This means the ownership of shares and cash is transferred electronically to the brokerage account, without the stock certificates and cash being handed over physically. (Instead, stock certificates are simply immobilized and kept in a safe place – Central Securities Depository of Iran, Inc.) The account is credited when buying shares, and debited in the case of selling shares. The book-entry system clearly advantages over the paper-based system. It has dramatically reduced paper work, facilitated the trading and eliminated the loss or forgery of shares.

Currently the TSE settles trades on T+3, i.e., four days after the transaction date. Therefore, payments and/or securities must be delivered to your broker on trading day. Be sure to always verify the settlement deadline with your broker for future transactions.

#### **2.1.2.5.4 Global Relationship**

TSE had been a full member of WFE (between 1992 to 2010) and also is a member and one of the founders of the Federation of Euro-Asian Stock Exchanges (FEAS) (since 1995) and also a subscriber of the International Corporate Governance Network (ICGN). The TSE also is an active participant of OIC Members' Stock Exchange Forum.

### **2.1.3 Required Documents for the issuance of Foreign Investment License**

The following documents are required to apply for a Foreign Investment License:

1. Application Form
2. Establishment License / Primary Agreement / Preliminary agreement of the pertinent Iranian organization
3. Official letter of the foreign investor to submit to the Organization for Investment, Economic and Technical Assistance of Iran (OIETAI)
4. The foreign investors background including a brief history of the company, the year of establishment, area of activities, or (in case the foreign investor is a natural person) a photocopy of passport and resume
5. A list of machinery, equipment and parts which may be imported into the country as a part of the foreign investors capital (if available)
6. In case that a part of the foreign investor's share is in the form of technical know-how, a draft of the contract outlining the conditions of the transfer of technology
7. Any further useful information

The primary objective in this process is to find a suitable and "acceptable" local partner. If the contemplated foreign investment project complies with the plan already sanctioned, the Ministry of Economic Affairs and Finance may introduce to the potentially interested foreign investor, the local partners already holding an "agreement in principle" for taking part in such a project.

A ministerial "agreement in principle" must be applied for again jointly by both the foreign and the local potential investors. Details of the project are to be submitted to the Ministry of Economic Affairs and Finance as per a standard questionnaire, together with a feasibility study. Once the

agreement in principle is issued, the parties should take the preliminary steps along with implementation of the project, such as importation of the machinery, equipment and setting up the required infrastructure.

An “application for participation” is required to be filed by the foreign investor with the OIETAI to the effect of participation in implementation of the sanctioned project.

Then, the process is followed by a review of the application by the Supervisory Board for Attraction and Protection of Foreign Investment. The Foreign Department of the Ministry of Economic Affairs and Finance, upon preliminary coordination with the Ministries concerned, shall prepare a comprehensive report for submission to the Supervisory Board to adopt the decision. If the project is deemed to be in the country’s overall interest, the Supervisory Board conveys its favored decision through the Ministry of Economic Affairs and Finance for approval and issues an Investment Decree. The Decree, once issued, is the formal permission for the investor to begin operation and to import the necessary capital which will be protected under the law.



## **Chapter 3**

# **Iran's Special Economic & Free Trade Zones**

The philosophy of establishment of Free Zones and Special Economic Zones is, as it has been mentioned in respective laws, to provide prosperity, economic development and growth, promotion of investment, active presence in local and international markets, production of industrial goods and services, increase in national income and increase in employment. Such zones have facilitated the trade and industrial activities and they have promoted investment benefiting from great reduction in formalities like customs, banking and financial systems, insurance and labor laws, foreigner entrance etc.

Especially Free Zones, in comparison to Special Economic Zones, have significant advantages, the most important of which is having an independent organization, the High Council of Free Trade Industrial Zones, who administers of the zones.

Since the investment promotion has been the main target of the zones, consequently all the existing systems, formal and informal, have the intention to serve and promote industrial activities.

The Islamic Republic of Iran began to implement the first five year economic plan aimed at the reconstruction and economic recovery in 1989, after the end of the eight year Iraqi imposed war. The main objective of this



plan was to transform the managed economy of the war to an open economy based on market forces and establish and maintain relations with the world economy.

Due to the existing limitation for the application of the market economy and concern for the side effects of such a sharp transformation on the social wellbeing of the society, it was decided to assign some locations and establish free or special economic zones in order to completely apply the principle of a free market economy. This way, enough incentives could be introduced for attracting foreign investment.

According to the legally accepted definition, the free trade zones and special economic zones are those parts of the Iranian territory that are managed according to the special laws and bylaws and are excluded from the laws of the governing motherland. These zones are excluded from the domain of the customs authorities and enjoy the full freedom for the in- and outflow of goods and commodities. Unique geographical locations, sufficiently developed infrastructure and the foreign investment incentives have provided ample opportunity for internal as well as foreign investment in the zones.

The Iranian Parliament approved the Free Zones Act in September 1993. According to this act, Kish Island, Qeshm Island and the Port of Chabahar were declared as the Free Zones of Iran. The council of ministers later adapted the bylaws of the free zones. These bylaws have defined and set out all regulations pertaining to import, export, investment, insurance, banking, labor and employment in these zones.

### **3.1 Free Trade Industrial Zones**

#### **3.1.1 Incentives and advantages for investment in Free Trade Industrial Zones**

The following incentives and advantages are granted to investments in the Free Trade Industrial Zones:

1. Tax exemption for 20 years from the date of operation for all economic activities

2. Foreign investment in any amount
3. Freedom of entry and exit of capital and profits
4. Protection and guarantees for foreign investments
5. Abolition of entry visas and easier issue of residence permits for foreigners
6. Facilitated regulation on labor relations, employment and social security
7. Transfer of partly manufactured goods to the mainland without paying customs duties
8. Elimination of customs duties on imports from outside to the region
9. Employing trained and skilled manpower in all different skill levels and professions
10. Utilization of raw materials, oil and gas as feedstock and fuel for all industrial activities

### **3.1.2 List of Free Trade Industrial Zones of Iran**

1. Qeshm Free Trade Industrial Zone
2. Chabahar Free Trade Industrial Zone
3. Aras Free Trade Industrial Zone
4. Anzali Free Trade Industrial Zone
5. Arvand Free Trade Industrial Zone
6. Kish Free Trade Industrial Zone
7. Maku Free Trade Industrial Zone

### **3.1.3 Regulations on Investment in Free Trade Industrial Zones**

1. Law on the Administration of Free Trade Industrial Zones
2. Law on the Establishment of Free Trade Industrial Zones in Abadan-Khorramshahr, Jolfa and Bandar Anzali
3. Executive Bylaw on Issuance of Visa to Foreign Nationals in the Free Trade Industrial Zones
4. Regulations on Entry and Residence of Foreign Nationals
5. Bylaw on Monetary and Banking Operation in the Free Trade Industrial Zones
6. Executive Guideline for the Monetary and Banking Operations in the Free Trade Industrial Zones
7. Regulations on the Establishment and Operation of Insurance Institutes in the Free Trade Industrial Zones
8. Criteria on Registration of Companies and Property Rights
9. Regulations on Exports, Imports and Customs in the Free Trade Industrial Zones
10. Regulations on the Use of Land and other National Resources in the Free Trade Industrial Zones
11. Permanent Permissibility of Import of Goods Produced in the Free Zones in to the Mainland (added to Article 8 of the Bylaw to the Export-Import General Regulations)
12. Bylaw on Special Facilities for Import of Goods, Produced in Free Trade Industrial Zones into the Mainland
13. Bylaw on The Manner of Ingress of Raw Materials and Parts from the Free Zones (into the Mainland)

14. Bylaw on the Peculiarly Manufactured or Rebuilt Goods, Permissible into the Mainland
15. Regulations on Employment of Work Force, Insurance and Social Security
16. Comparison Table indicating Legal Status on Economic Activities in Iran's Free Trade Industrial Zones and Special Economic Zones
17. Regularities of Automobile Imports into Free Zones

## **3.2 Special Economic Zones**

### **3.2.1 Incentives and advantages for investment in Special Economic Zones**

The following incentives and advantages are granted to investments in the Free Trade Industrial Zones:

1. Import of goods from the above mentioned zones into the mainland for domestic consumption would be subordinate to export and import regulations, and export of goods from these areas into other countries will be carried out without any formalities
2. Import of goods from abroad or other free trade zones or industrial area would be carried out with minimal customs formalities and internal transit of imported goods would be performed in accordance with the relevant regulations
3. Log entry of merchandise subject to the laws and regulations of special zones will be done without any customs formalities
4. Goods imported from outside or industrial areas or other commercial zones can be exported without any formalities of the country
5. Management of the region is allowed to assign parts of the region to qualified natural or legal persons after classification and valuation

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6. Owners of goods imported to the region can send all or part of their goods for temporary entry into the country after doing customs clearance regulations
7. If the processing of imported goods is to some extent that changes the tariff of goods, the rate of commercial benefit of the goods would be calculated equal to the commercial benefit of raw materials and spare parts of the country
8. Importers of goods are allowed to hand over to others part or all of their products against warehouse receipt to be issued by the district administration. In this case the breakdown warehouse receipt holder would be the owner of the goods
9. The management of each district is authorized to issue certificates of origin for goods per applicant out of the area with the approval of the customs authorities
10. All the goods imported to the region for the required production or services are exempted from the general import-export laws. Exports of goods to other parts of the country will be subordinated to export and import regulations
11. Based on paragraph (d) of clause (25) of the Law of the Second Economic, Social and Cultural Development Plan of the Islamic Republic of Iran, the ratio of goods produced in the zone and imported to the country, the proportion of total value added and domestic parts and materials used in the total price of the commodity production is allowed without any limitation and in addition to not having to order and open letter of credit
12. Goods manufactured in special economic zones, as well as raw materials and CKD parts imported into the country are not subject to price regulation due to un-utilized resources and allocated currency

### **3.2.2 List of Special Economic Zones of Iran**

1. Salafchegan Special Economic Zone
2. Shiraz Special Economic Zone
3. Assaluye Special Economic Zone
4. Arge Jadid Special Economic Zone
5. Payam Airport Special Economic Zone
6. Persian Gulf Special Economic Zone
7. Lorestan Special Economic Zone
8. Amirabad Port Special Economic Zone
9. Bushehr Port Special Economic Zone
10. Shahid Rajaei Port Special Economic Zone
11. Sarakhs Special Economic Zone
12. Sirjan Special Economic Zone
13. Yazd Special Economic Zone
14. Bushehr Special Economic Zone

### **3.2.3 Regulations on Investment in Special Economic Zones**

1. The Law on the Establishment and Management of Special Economic Zones Islamic Republic of Iran



## **Chapter 4**

# **Establishing a Legal Presence in Iran**

### **4.1 Incorporating a Local Entity**

#### **4.1.1 Joint Stock Company**

##### **4.1.1.1 General**

The Joint Stock Company is defined by law as a company whose capital is divided into shares and the liability of whose shareholders is limited to the par value of their shares. The Joint Stock Company may be either a public company (Sherkat Sahami Am) or a private company (Sherkat Sahami Khass). The main difference between the two is that the public company may offer its shares and debt securities to the public while the private company may not.

The shareholders of a joint stock company participate in the ownership, profit and losses, and distribution of assets in liquidation in proportion to the shares held. As indicated above, the liability of each shareholder is limited to the par value of his shares and in the absence of fraud or other deceptive practices, there should be no recourse to shareholders for the liabilities of the company. The company has a separate juridical personality by the



law and can sue or be sued in its own name. The shareholders possess the usual shareholder rights including, in general, the right to attend shareholders meetings, receive financial reports, elect and replace the board of directors, and vote on major decisions of the company.

#### **4.1.1.2 Number of Shareholders**

The law specifies that a joint stock company must have a minimum of three shareholders.

#### **4.1.1.3 Nationality of Shareholders**

There are no legal restrictions with respect to the nationality of persons who may form joint stock companies. As a matter of policy, however, the Iranian Government generally requires Iranian shareholder participation in fields of activity deemed important to the nation's development programs.

#### **4.1.1.4 Shares**

A joint stock company may issue both ordinary and preferred shares in either bearer or registered form. While the law does not specifically state what privileges may be accorded to preferred shares, it is understood that priorities as to dividends and distribution of assets in liquidation, and multiple voting powers will be honored under the law. The principal differences between registered and bearer shares relate to the manner of transfer and tax implications.

#### **4.1.1.5 Management**

Management of a joint stock company is the responsibility of the board of directors which must be elected by cumulative voting of the shareholders at least once every two years.

#### **4.1.1.6 Dissolution and Liquidation**

General provisions governing the dissolution and liquidation of a joint stock company are provided in the law and companies are authorized to specify in their Articles of Association any particular provisions they may desire so long as they are not inconsistent with the law. Since the provisions of the law on this subject are general in nature, it is advisable, when drafting Articles of Association, to include procedures for dissolution and liquidation.

#### **4.1.1.7 Other Forms of Business Association in Iran**

In addition to the Joint Stock Company, the Iranian Commercial Code provides for the following types of business association:

1. Limited liability company (Sherkat ba Masouliyat Mahdoud)
2. General partnership (Sherkat Tazamoni)
3. Limited partnership (Sherkat Mokhtalet Gheyr Sahami)
4. Mixed joint stock partnership (Sherkat Mokhtalet Sahami)
5. Proportional liability partnership (Sherkat Nesbi)
6. Production and consumption cooperative (Sherkat Ta'avoni Towlid va Masraf)

Of these entities, the limited liability company and the joint stock company provide for a limitation of shareholders' liability to the value of their shares. The principal difference between the two is that with the limited liability company, the capital may not be divided into shares and the participants may not transfer their interests therein without the approval of a majority of the participants representing three-fourth (3/4) of the company capital. In the case of the mixed joint stock partnership, the law provides for both shareholders and unlimited liability partners.

## **4.1.2 Capital**

### **4.1.2.1 Share Capital**

A minimum capital, at time of formation, of IRR 1,000,000 is required for the private Joint Stock Company, and of IRR 5,000,000 for the public Joint Stock Company. Payment for shares may be either in cash or in kind. If payment is made in kind, the value of the property involved must be appraised by an official appraiser of the Ministry of Justice. In the case of payments in cash, only 35% need to be paid in at the time of formation and the remainder within five years upon the call of the board of directors or shareholders. In the case of payments in kind, the full amount of the property must be transferred to the company at the time of formation. The share capital may be increased at any time by a two-thirds (2/3) vote taken at an extraordinary general meeting of the shareholders. Decrease in the capital may also be effected at any time by a two-thirds (2/3) vote taken at an extraordinary general meeting and there is a legal requirement for the reduction of registered capital whenever half of the company's capital is lost.

### **4.1.2.2 Subscriptions**

Although only 35% of the company's capital need to be paid in at the time of formation, 100% of the capital must be subscribed. Notwithstanding the 100% subscription requirement, a procedure has been developed in practice for "authorized but un-issued stock", enabling the use of such desirable arrangements as employee stock purchase plans. In general, the procedure involves the holding of an extraordinary general meeting at which the shareholders approve to implement the increase in such amounts and at such times as the board may determine.

### **4.1.2.3 Par Value**

A par value, or nominal value, is required to be assigned to the shares of a joint stock company. For the public Joint Stock Company, the law prescribes a maximum par value of IRR 10,000 per share. There is no

minimum or maximum par value fixed for the shares of a private Joint Stock Company. There is a requirement applicable to both the public and private Joint Stock Company that all shares must be of equal par value. Where both ordinary and preferred shares are issued, all apparently must have the same par value. There is also a related requirement that all calls of the unpaid portion of shares must be made without any discrimination. If provision for the issue of fractional shares is made, the par value of each fraction must also be equal.

#### **4.1.2.4 Share Certificates**

Specific requirements as to the form and content of share certificates are provided in the law. They must be uniform, printed, and bear a serial number, and be signed by at least two authorized persons. Each certificate must contain the following information:

1. Name and style of the company and number under which it is registered at the Companies Registration Office
2. Registered share capital and paid-up portion
3. Type of shares
4. Par value of the shares and paid-up portion both in words and figures
5. Number of shares represented by the certificate

#### **4.1.2.5 Provisional Share Certificates**

The law provides that when share certificates have not been issued, the company must issue provisional certificates to the shareholders indicating the number of shares and the amount paid up. The law also provides that until the full par value is paid on bearer shares, the issuance of bearer certificates is prohibited; however, registered certificates may be issued to the subscribers of such shares before the full par value has been paid and in this case the provisions of law regarding the transfer of registered shares will be applicable to such shares.

#### **4.1.2.6 Transfer of Shares**

Bearer shares may be transferred by physical delivery while the transfer of registered shares is not complete until the transfer is recorded in the share register of the company. In the case of registered shares, restrictions on transfer may be written into the Articles of Association.

#### **4.1.2.7 Reserves**

A legal reserve to be funded by transfer of 5% of the net profit of a joint stock company each year until the fund reaches 10% of the registered capital is required. Net profit is defined as income derived during the year less the expenses, depreciation and any transfers to other reserves.

#### **4.1.2.8 Dividends**

Dividends must be authorized by the shareholders at a general meeting and may be made only out of "distributed profit" which is defined as the net profit earned during the year (i) less losses incurred during preceding years, (ii) less other optional reserves, (iii) plus distributed profit of the preceding years not previously distributed.

#### **4.1.2.9 Preemptive Rights**

Shareholders have the preemptive right to subscribe to new shares. This right may be rescinded, however, by a two third (2/3) vote taken at an extraordinary general meeting.

### **4.1.3 Formation**

#### **4.1.3.1 Articles of Association**

The constitutional document of a joint stock company is called the Articles of Association which is roughly equivalent to a combination of the charter and by-laws of a corporation formed in other countries. The subscribing shareholders or founders must approve the Articles of Association and affix their signatures thereto before the company formation may be registered.

### **4.1.3.2 Payment of Subscriptions**

Subscriptions in the required amount must be paid in to a bank account opened in the name of the company before the company may be formed.<sup>1</sup>

A receipt of the bank is required as one of the documents to be filed with the Companies Registration Office when the company is registered.

### **4.1.3.3 Founders Meeting**

A meeting of the subscribing shareholders or founders is required by law for the public company but not for the private company. Even with the private company, however, it is advisable to hold such a meeting as the simplest means for accomplishing all of the actions required in connection with the company formation. All of the founding shareholders must:

1. Approve and sign the Articles of Association
2. Confirm the required subscriptions and payments thereon have been made
3. Elect directors and inspectors
4. Receive acceptances of directors and inspectors
5. Designate a general circulation newspaper for publication of the company's legal notices

### **4.1.3.4 First Meeting of the Board of Directors**

Before a joint stock company may begin doing business, the Board of Directors must hold a meeting to:

1. Elect a Chairman and a Vice Chairman
2. Appoint the Managing Director and specify his duties

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<sup>1</sup>After the company's name has been confirmed, the Companies Registration Office issues a letter to open a bank account under the company's name.

3. Approve the form of share certificates and designate the company officers to sign them
4. Designate the officers authorized to sign on behalf of the company
5. In addition, it is advisable in the first meeting of the Board of Directors to designate the bank or banks to serve as depository of the company funds

#### **4.1.3.5 Registration**

##### **4.1.3.5.1 Private Joint Stock Company**

In forming a private company, the following documents are required to be filed with the Companies Registration Office:

1. Draft Articles of Association signed by all shareholders
2. Statement that the shares have been subscribed together with a bank certification that the required amounts have been paid in
3. A document signed by all shareholders evidencing the election of directors and inspectors
4. Signed acceptances of the directors and inspectors
5. Statement designating the general circulation newspaper in which the legal notices of the company will be published
6. A declaration (on a form furnished by the Companies Registration Office)

##### **4.1.3.5.2 Public Joint Stock Company**

A public company is formed when its Articles of Association have been approved by the shareholders at the founders (or statutory) meeting and filed with the Companies Registration Office together with a minute showing the election of directors and inspectors and their signed acceptances of

their positions. The public company's promoters, who must subscribe to at least 20% of the company's capital, begin the process of formation by submitting to the Companies Registration Office in Tehran draft Articles, a draft prospectus and a declaration which must state:

1. Name of the company
2. Identity and domicile of promoters
3. Objectives of the company
4. Capitalization, including separate identification of stock paid in kind and in cash
5. Number of registered and bearer shares together with their par value and the number of preferred shares together with a description of the rights of preferred shareholders
6. Contributions, cash and kind, of the promoters
7. Principal office, and
8. Duration

When the Companies Registration Office is satisfied with the information furnished by the promoters, it will permit publication of the prospectus which must include information and instructions regarding how and where interested investors may subscribe for shares of the company's stock. When the total capital of the company has been subscribed and at least 35% has been paid in, the promoters are required to allot the shares to the subscribing shareholders and then call the founders (or statutory) meeting. At this meeting, the subscribing shareholders are to review the Articles of Association, elect the first directors and inspectors and designate a newspaper for publication of the company's legal notices. Upon approval of the Articles by the subscribing shareholders, they must be submitted to the Companies Registration Office together with the minute of the meeting.



**4.1.3.6 Publication**

A notice of the company formation is required to be published both in the Official Gazette and the general circulation newspaper designated by the founding shareholders. Publication of this notice is paid for by the company and usually contains the following information:

1. Name and style
2. Objects
3. Location of the head office
4. Duration and date of formation
5. Nationality
6. Share capital, par value of shares and type of shares
7. Paid-up portion of the share capital and number of bank receipt or receipts evidencing the payments
8. Identity of founders and number of shares held by them
9. Names of first board members and managing director
10. Managing director's authorities
11. Persons authorized to sign on behalf of the company
12. General circulation newspaper in which legal notices will be published
13. Names of the first statutory inspector and alternate inspector
14. Manner of liquidation

**4.1.3.7 Commencement of Legal Existence**

Although the registration and publication requirements must be met to complete the formation process, the legal existence of the company commences on the date the directors and inspectors accept their positions in writing.

### **4.1.3.8 Costs**

The following charges and fees will be incurred in connection with the formation of the Company:

1. Registration fee based on the capitalization of the company payable to the Companies Registration Office
2. Charges for publication in the Official Gazette of the notice of registration payable to the Official Gazette at current rates
3. Charges for publication in a general circulation newspaper at current rates
4. Stamp taxes on share certificates

### **4.1.3.9 Liability of Promoters**

The law provides that the promoters of the company are jointly liable for all acts and functions which they perform in connection with formation of the company.

## **4.1.4 Board of Directors**

### **4.1.4.1 Number**

Although the law prescribes that a public joint stock company must have a minimum of five directors, there is no minimum prescribed for private joint stock companies. However, since the board of a private company, as well as of a public company, is required to elect a Chairman and a Vice Chairman, and a board is required by law, the board of a private company must consist of at least two directors.

### **4.1.4.2 Election and Removal**

Directors must be elected from among<sup>2</sup> the shareholders at least once every two years. It is mandatory that the election be by cumulative voting and

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<sup>2</sup>All directors (except the CEO) must also be shareholders of the company.

that it takes place at an ordinary general meeting. Any one or more of the directors are subject to removal by the shareholders. Directors are also eligible for re-election. Legal entities may be elected as directors.

#### **4.1.4.3 Duration of Office**

The term of office for directors must be fixed in the Articles of Association but may not be for more than two years. However, if the term expires before successor directors are elected, the existing directors continue to be responsible for the affairs and management of the company until the new directors are elected.

#### **4.1.4.4 Security Shares**

Directors are required to possess the number of shares specified by the Articles of Association and this may not be less than the number required for voting at general meetings. Each director must place the required number of shares in the custody of the company for the duration of his term of office to serve as security against losses which may result to the company through violations by the directors of their duties. These shares must be registered shares. The law provides that failure to comply with the requirements will result in the offending director being considered to have resigned from his office.

#### **4.1.4.5 Authority**

The law specifically provides the board with all necessary authorities for the management of the company within the limits of the company's objectives as stated in the Articles of Association. However, the board may not exercise any power which has been expressly reserved to the shareholders acting in general meetings. Limitations on the board's authority which will be valid as between the directors and shareholders, but not in respect of third parties, may be written into the Articles of Association.

#### **4.1.4.6 Liability**

Directors are not only subject to the ordinary rules of fair play in respect of the company, its shareholders, and third parties dealing with the company, and thus liable for any violations of these rules, but they are also, individually and jointly, subject to criminal prosecution for specified acts and omissions.

#### **4.1.4.7 Meetings**

The board is expected to act in meetings at which a quorum of a majority of the directors is present. The manner of calling board meetings including any notice requirement should be specified in the Articles of Association. In any event, the law provides the board chairman and any group of directors constituting one-third of the board with authority to call meetings. Resolutions will be adopted when passed by the favorable votes of a majority of the directors present at the meeting, unless a higher vote requirement is specified in the Articles of Association.

Minutes for each meeting must be kept and signed by a majority of the directors who attended the meeting. The minutes must show the names of the directors who attended and who were absent, a summary of the deliberations and actions taken, and the date of the meeting.

#### **4.1.4.8 Actions without Meeting**

Actions of the board are valid without a meeting if approved in writing by all of the directors.

#### **4.1.4.9 Proxies**

Although there is no specific authority in the 1969 amendments to the Commercial Code for directors' proxies, such have been recognized in practice. The Code, prior to the amendments, provided for proxies with the caveat that the director remained responsible for his proxy's acts.

#### **4.1.4.10 Alternate Directors**

Alternate directors are authorized but are not mandatory.

#### **4.1.4.11 Managing Director**

The law requires that at least one person be appointed by the board as the managing director to manage the daily operations of the company. This person may or may not be a member of the board but he may not also hold the position of chairman of the board unless the shareholders meet and approve the arrangement by a three-fourth vote. The scope of the managing director's authority should be specified by the board at the time of his appointment and he is then considered to be the company's legal representative with authority to sign on behalf of the company.

#### **4.1.4.12 Compensation**

Directors as such may not be paid by the company except reasonable fees for attending meetings, and a "bonus" voted by the shareholders out of company profits. For the private company this bonus is limited to 10% of dividends and for the public company, to 5% of dividends. Directors may serve as officers or employees of the company, however, and be compensated in such capacities.

#### **4.1.4.13 Doing Business with the Company**

A director (and the managing director) may not enter into an enforceable business transaction with the company unless the transaction is approved by the board without the interested director participating in the vote, and the matter is reported both to the company inspectors and the shareholders. Even where this is done, if losses result to the company from the transaction, the directors who approved may be held liable. The law specifically provides that loans and guarantees by the company to directors are void except where the director is a legal entity.

#### **4.1.4.14 Competing with the Company**

If any director (or the managing director) concludes transactions in competition with the company, and the company suffers a loss of profits as a result, the director will be liable to indemnify the company for the loss.

### **4.1.5 Shareholders Meetings**

#### **4.1.5.1 Types**

Shareholders meetings are called general meetings and the law provides for three types. The first is the statutory or founders meeting which is mandatory only for the public company. The second is the ordinary (annual) meeting which must be held once a year, and the third is the extraordinary meeting which is held on call. In addition, there are two other species of meetings involving the shareholders. One is a "special meeting" which must be called whenever the rights of holders of preferred shares are to be altered, to enable these shareholders to vote on the intended alteration. The other is called an "extraordinary session of the ordinary general meeting" and may be called by the board of directors, inspectors, or holders of 20 percent of the company's shares whenever action is required on a matter within the competence of the ordinary meeting at times other than when the ordinary meeting is scheduled to be held.

#### **4.1.5.2 Competence of Ordinary Meeting**

The ordinary meeting is competent to deal with all of the affairs of the company except those which are expressly within the competence of the statutory and extraordinary meetings. It is expressly required to take action on the following matters:

1. Review and approval of the balance sheet and profit and loss account and other financial reports
2. Review and approval of the directors annual report
3. Review and approval of the inspectors annual report

4. Election of directors (if their term has expired)
5. Election of inspector(s) and alternate inspector(s)
6. Designation of general circulation newspaper in which the company's legal notices will appear

#### **4.1.5.3 Competence of Extraordinary Meeting**

The extraordinary meeting is competent to deal with any changes in the Articles of Association or the share capital and dissolution of the company.

#### **4.1.5.4 Directorate**

The law provides for management of general meetings by a directorate composed of a chairman, a secretary, and two observers. Unless the Articles of Association provide otherwise, the chairman will be the chairman of the board of directors. The secretary need not be a shareholder but the observers must be.

#### **4.1.5.5 Notice**

Written notice for general meetings must be given to the shareholders not less than 10 days and not more than forty days before the date of the meeting and such notice must be published in the general circulation newspaper designated for the company's legal notices. The notice must state the agenda and the date, hour, and place of the meeting. Waiver of these requirements is authorized whenever all of the shareholders attend the meeting.

#### **4.1.5.6 Quorum**

The quorum requirement for both the ordinary and extraordinary meetings is more than 50 percent of the shares entitled to vote.

**4.1.5.7 Minutes**

Written minutes of all general meetings are required to be made by the secretary of the meeting providing a record of the deliberations and actions taken. The minutes must be signed by the directorate and a copy thereof must be kept at the principal office of the company.

**4.1.5.8 Filing and Registration of Minutes**

Whenever a general meeting takes action on any of the following matters, a copy of the relevant resolution must be filed with the Companies Registration Office for registration in a register (book) maintained by that office:

1. Election of directors or inspectors
2. Approval of the balance sheet
3. Decrease or increase in the capital and any change in the Articles of Association
4. Winding up of the company and the manner of liquidation

**4.1.5.9 Publication of Minutes**

In addition to the filing and registration requirements mentioned above, notice of action taken by a general meeting (or by the board) on the following matters is required to be published in the general circulation newspaper designated by the shareholders and in the Official Gazette:

1. Election of directors or inspectors
2. Decrease or increase in the capital and any change in the Articles of Association.
3. Winding up of the company and name and particulars of the liquidators.
4. Name and power of the Managing Director



5. Designation of the newspaper in which all the legal notices of the company will be published.

#### **4.1.5.10 Adjournment**

A general meeting may be adjourned for a period of up to two weeks by the directorate with the approval of the meeting. In such a case, no new notice is required and the quorum requirement for the adjourned session will be the same as for the original session.

#### **4.1.5.11 Minority Shareholders Calls**

Minority shareholders owning in the aggregate one-fifth of the company's shares are entitled to request the board and the inspectors to call a general meeting at any time. If the board and the inspectors fail to call the requested meeting, then the shareholders, themselves, are entitled to call the meeting.

### **4.1.6 Miscellaneous**

#### **4.1.6.1 Statutory Inspectors (Auditors)**

The law requires the election, by the shareholders, of a statutory inspector and alternate inspector once a year at the ordinary general meeting. The election of more than one inspector and alternate inspector is optional. In general, the function of the inspector is to serve as a watchdog over shareholders' and third parties' interests and he may be prosecuted criminally for violation of his duties. Certain categories of persons such as criminals, the directors and their relatives, and persons doing business with the company are disqualified from serving in this post. Among other things, the inspector is required to submit a report to the ordinary general meeting each year.

#### **4.1.6.2 Books of Account**

Both the public and private joint stock companies are required to maintain in the Persian language the journal, ledger, inventory and copy book

of merchants. These books serve as the basis for determining the company's tax liability and failure to keep them strictly in accordance with the legal requirements may result in the tax authorities making their own determination of what the company's tax liability should be.

#### **4.1.6.3 Company Name**

The law requires that the words, "Private joint stock company (Sherkat Sahami Khass)" appear with the name of a private company and that these words be displayed in a conspicuous way on all letterheads, publications and notices of the company. As a matter of practice, the Companies Registration Office requires the use of Iranian names and will refuse to register a new company name that is too similar to the name of a company already registered.

### 4.1.7 Some of the Differences between Public and Private Joint Stock Companies

Table 4.1: Income Taxes

	Private Joint Stock Company	Public Joint Stock Company
Minimum Capital	IRR 1,000,000	IRR 5,000,000
Maximum nominal share value	-	IRR 10,000
Minimum Share Subscription	20%	100%
Minimum Paid-up Capital	35%	35% of cash capital 100% of non-cash capital
Requirements for Capital Increase	shareholders resolution	prospectus
Minimum Number of Directors	2	5
Maximum Bonus for Directors	10% of dividends	5% of dividends
Statutory Meeting required by law	No	Yes
Annual financial reports must be certified by officially recognized accountants	No	Yes

### 4.1.8 Checklist for Articles of Association

Generally, the Articles of Association should include the following information:

1. Name of the company
2. Style of the company
3. Duration of the company
4. Objectives of the company expressed and defined
5. Location of the head office and branch offices, if any
6. Details of the share capital of the company specifying the amount paid in cash and the amount paid in kind, separately
7. Number of bearer shares and of registered shares and the par value thereof as well as the number of preferred shares, if any, particulars and the privileges attached thereto
8. Details of the amount of the shares which is paid up
9. Name(s) of authorized officer(s) who will sign the share certificates
10. Manner of call of the par value of shares and the period over which the balance should be paid
11. Manner of transfer of registered shares
12. Manner of conversion of registered shares into bearer shares and vice versa
13. Manner and conditions of increasing or decreasing the capital of the company
14. Period and manner of calling general meetings
15. Regulations governing the quorum for general meetings and the manner of running such meetings

16. Manner of transacting business and the number of votes required to give validity to the actions taken by general meetings
17. Number of directors, the manner of their election, their term of office, the manner of election of the successors of such directors who die or resign or become incapacitated or have been removed from their office or otherwise deprived of their office by any legal impediment
18. Details of the scope of the functions and authorities of the board of directors
19. Time for and the manner of calling the meetings of the board of directors
20. Regulations governing the quorum for the meetings of board of directors
21. The manner of election of chairman and vice chairman of the board and their term of office
22. Manner of transacting business and the number of votes required to give validity to the actions taken by the board of directors
23. Number of directors' security shares to be deposited with the company
24. Whether the company shall have one or several legal inspectors and the manner of their election and their terms of office
25. Whether the company shall have one or several managing directors and their terms of office
26. Date of commencement and end of the fiscal year of the company, the time limit for preparing the balance sheet and profit and loss account and the submission thereof to the legal inspectors and to the annual general meeting
27. Manner of voluntary winding up of the company and the proceedings for liquidating its affairs

28. Manner of making alterations to the Articles of Association.

## **4.2 Branches and Representative Offices of Foreign Companies**

A foreign company may establish a branch or representative offices in Iran. The Law Permitting Registration of Branches and Representative Offices of Foreign Companies in Iran was approved on November 11, 1997:

### **Sole Article:**

*"The foreign companies considered as being legal in their own countries of origin may, on provision of reciprocal treatment by their governments in respect of Iranian companies, set up branches and representative offices in Iran to carry out the businesses authorized by the government of the Islamic Republic of Iran in due compliance with the Laws of Iran."*

### **4.2.1 Authorized Companies**

The Council of Ministers approved the Executive By-Laws of the Law Permitting Registration of Branches and Representative Offices of Foreign Companies under No.019776T/M/78-930 on May 2, 1999. According to Article 1 of these By-Laws, the companies that are considered as legal companies in their countries of origin, i.e. have been formed on the basis of the laws and regulations of those countries and are legal entities, may set up their branches or representative offices in Iran, on the basis of the applicable laws and regulations, in order to carry out the businesses mentioned hereafter.

### **4.2.2 Differences between a Representative Office, Liaison Office and Branch of a Foreign Company in Iran**

In case the office of the foreign company shall become engaged in carrying out the works undertaken by the head office of the company, such as

executing the works under a contract concluded by and between the head office of the company outside Iran and a client in Iran, the registered office shall be known as a Branch Office.

In cases where the office shall represent its head office before its clients and sells the products of its head office in Iran or carries out after-sales services and negotiation of the terms of agreements to be concluded by and between the company and its clients in Iran, concludes agreements with those clients, etc., the office shall be known as a Representative Office.

In cases where the office of a company shall be solely engaged in conducting market research activity on behalf of its head office and shall report the business opportunities available to the company to its head office in order that the relevant proposals (Performa Invoices) shall be made directly by the head office to the clients in Iran and therefore the office shall not be in a position to generate any income of its own in Iran and its expenses shall be covered by transfer of funds by its head office from outside Iran, the office shall be called a Liaison Office.

### **4.2.3 Permitted Activities**

#### **4.2.3.1 Supply of After-sales Services**

In cases where foreign companies supply goods or services to Iranian subjects, the said companies may apply for registration of their branches or representative offices in Iran for supply of after-sales (guarantee and warranty) services in Iran.

#### **4.2.3.2 Carrying out Executive Works**

Foreign companies being parties to contracts concluded with Iranian subjects (Iranian natural persons and legal entities of private and public sectors) may require that their branches or representative offices shall be registered in Iran.

#### **4.2.3.3 Investigating investments in Iran**

It must be first noted that those foreign companies wishing to make investment in Iran may take any one of the following two actions:

1. Investing within the framework of the FIPPA through authorization to be given by the Organization for Investment and Economic and Technical Assistance and by submitting the required documents after obtaining an approval to be made on a case by case basis by the Council of Ministers.
2. Entering into joint ventures directly with Iranian natural persons and legal entities through creating a joint venture company or by making investment in already existing joint venture companies.

Foreign companies may set up branches or representative offices in order to conduct due diligences and preparing grounds for investment by using anyone of the above two methods.

#### **4.2.3.4 Cooperation for Projects in a Third Country**

In cases where Iranian technical and engineering companies have been designated to carry out industrial, technical, development, and other activities in a third country and for such purpose, agreements shall be concluded by and between the Iranian company and companies from other countries, the foreign company being party to such agreements may set up a branch or representative office of its company in Iran by submitting the required documents. Also, in case a foreign company designated to carry out a technical or engineering work in a third country wishes to carry out such work through a joint venture with an Iranian technical and engineering company, it may set up its branch or representative office in Iran.

#### **4.2.3.5 Export and Technology Transfer**

The following foreign companies contributing to export increases and technology transfer may register a branch or representative office of their company in Iran:



1. Foreign companies operating in the field of and contributing to development and increase of exports of Iranian non-oil products, including industrial and agricultural products and handicrafts
2. Foreign companies transferring know-how on production of various products to Iranian nationals
3. Foreign companies possessing the technology in respect of industrial products that intend to transfer the technology in respect of production of the said products to Iranian nationals through setting up factories and plants

#### **4.2.3.6 Activities that require a Permission**

Foreign companies that have entered into a contract with a government body to supply services in various fields that require a permission to be issued by a government organization may register a branch or representative office of their companies in Iran.

Foreign companies operating in many other fields shall require permission from the pertinent organizations to carry out business in Iran. E.g. offering services in the fields of transportation at sea, on land (road and rail) and by air shall require permission from the Organization for Transportation and Terminals. Also, operation in the field of banking shall require permission from the Central Bank of the Islamic Republic of Iran.

#### **4.2.4 Branch Office of a Foreign Company**

According to Article 2 of the Executive By-Laws of the Law Permitting Registration of Branches and Representative Offices of Foreign Companies in Iran, a branch of a foreign company is a local (Iranian) wing of the original company that carries out the business and functions of the head office of the company in Iran directly through one or more principal representative(s).

#### **4.2.5 Required Documents for the Registration of Branch Offices of Foreign Companies**

Foreign companies intending to set up a branch office of their companies in Iran must submit the following documents to the Companies Registration Office in Tehran:

1. Request in writing to be submitted by the company
2. Certified photocopies of the articles of association, notice of incorporation, and the last changes in the company registered with the authorities concerned
3. The last confirmed financial report of the company
4. A feasibility study containing the following information:
  - Information concerning activities of the company
  - A description of the reasons and the needs for registration of the company in Iran
  - A description of the type and scope of authorities and the place of operation and business of the branch office of the company in Iran
  - An estimate of the required local and expatriate work force
  - The manner of procurement of the funds in Rials and in foreign currencies required for running the affairs of the branch office
5. A letter of introduction from a government entity in case the branch has been set up for implementation of an agreement between the foreign company and that government entity
6. Statement of Registration (a form to be filled in and signed by the foreign company)
7. Certificate of Registration (a form to be filled in and signed by the foreign company)

8. Letter of Authorization given by the foreign company to its principal representative(s) in Iran
9. A Letter of Undertaking whereby the foreign company undertakes to wind up and close down its branch office in Iran in case the activity permit given to the branch office by Iranian authorities shall be revoked and canceled. The branch office in such case must be closed down by designating a liquidator who shall wind up and liquidate the branch office within a period to be specified by the Companies Registration Office.

All documents prepared by the foreign company for the above purpose must be certified by the authorities concerned (such as local registries), followed by confirmation by the Foreign Ministry of that country and then confirmed by the Iranian embassy of such country. The above said documents must thereafter be translated into Persian by official translators and certified by the Judiciary and the translations and original documents must then be submitted to the Companies Registration Office for registration of the branch office of the company.

#### **4.2.6 Responsibilities of a Foreign Company in respect of its Branch Office**

A branch office is deemed to be carrying out business in Iran on behalf of the head office of the company. Therefore, the head office of the company shall be responsible for all activities performed by the branch office.

#### **4.2.7 Agents (local)**

“Agent” of a foreign company means a natural person or a legal entity that, on the basis of an agency agreement, carries out some of the activities and functions of the principal company in Iran.

#### **4.2.8 Required Documents for the Registration of Representative Offices of Foreign Companies**

A. In cases where a natural person shall act as the representative of a foreign company, the Persian translation of the following documents and evidences must be submitted to Companies Registration Office:

1. Certified photocopy of the Agency Agreement concluded with the foreign company
2. Photocopy of the Identification Booklet (shenas'نامه), or of the passport if the agent is not an Iranian national
3. The address of the place of residence of the agent and the address of the office of the agent
4. Presentation of the past record of activities of the agent in respect of the works to be carried out under the agency agreement
5. A certified photocopy of the articles of association of the principal foreign company, together with the notice of registration and the last changes of the company registered with the competent authorities.
6. A report on the activities of the principal foreign company and a description of the reasons on the necessity of obtaining agency
7. The last audited fiscal report of the principal foreign company
8. A letter of introduction by the ministry concerned (in case the contract has been concluded with a government entity)
9. Statement of Registration of foreign company
10. Certificate of Registration of foreign company
11. A letter of authorization of the principal representative(s) of the foreign company

All documents of the principal company that will be drawn up in foreign countries must be certified by the authorities concerned (such as the companies registries), confirmed by the foreign ministries of

those countries and confirmed by the Iranian embassy there. The above said documents must be translated into Persian by official translators and certified by the Judiciary. The translations and original documents must then be submitted to the Companies Registration Office for registration of the representative office

- B. In cases where a legal entity acts as the representative of a foreign company, it must submit the Persian translation and the original copies of the following documents to the Companies Registration Office:
1. A certified photocopy of the agency agreement concluded with the foreign company
  2. A certified photocopy of the articles of association of the principal foreign company, together with the notice of registration and the last changes of the representative company registered with the competent authorities.
  3. The records and history of activities of the legal entity applying for registration as representative in respect of the works undertaken under the agency agreement
  4. The articles of association of the foreign principal company, its notice of incorporation and its last changes registered with the authorities concerned
  5. A report on the activities of the principal foreign company and a description of the reasons on the necessity to obtain the agency of that company
  6. The last audited financial report of the foreign principal company
  7. Submitting a letter of introduction of the ministry concerned (in case the contract has been concluded with a government entity)
  8. Statement of Registration of the foreign company
  9. Certificate of Registration of the foreign company

## **4.2. BRANCHES AND REPRESENTATIVE OFFICES OF FOREIGN COMPANIES**<sup>65</sup>

All documents of the principal company that will be drawn up in foreign countries must be certified by the authorities concerned (such as the Companies Registry), confirmed by the Foreign Ministry in those countries and certified by Iranian embassy there. The above said documents shall be translated in to Persian by official translators and certified by judicial authorities. The translations and the original documents shall then be submitted to the Companies Registration Office for registration of the representative office

### **4.2.9 Responsibilities of Branch Office and Agent(s) of Foreign Companies**

The Agent(s) of a foreign company shall be responsible for the activities in Iran carried out in the name of the principal company.

- Winding up and liquidation of the branch office in case of revocation of the permission granted to the foreign company to operate in Iran.
- Submission of the annual report on the activities of the head office comprising fiscal statements audited by independent auditors in the country of origin of the company, to the authority concerned in Iran.
- Submission of the activity report of the branch or representative office in Iran together with the audited fiscal statements within four (4) months after expiry of the fiscal year, to the authority concerned in Iran.
- Management and running the affairs of the branch or representative office by one or more natural person(s) domiciled in Iran.

### **4.2.10 Tax applicable to the Agencies & Branches of Foreign Companies in Iran**

Representatives and branches of foreign companies in Iran that are working for the parent company to gather economical information and data as well as marketing, without the right to carry out transactions, and receive

money from the parent company to compensate for their expenses shall not be subject to income tax. Note 3 of the Article 107 of the Direct Taxation Law illustrate this more clearly:

Note 3: The branches and representative offices of foreign companies and banks in Iran which shall proceed to render activities for marketing and gathering of economic data and information in Iran for the holding company, without having the right to enter into a transaction in Iran, and which shall collect amounts from the holding company in order to meet the expenses and its financial requirements, shall not be liable to income tax.

## Chapter 5

# Taxation: A Review of the Iranian Tax System

### 5.1 Tax Bases and Rates

The Iranian tax system is divided into two general categories of direct and indirect taxes. Based on a survey of the **Organization for Investment, Economic and Technical Assistance of Iran “OIETAI”**, the share of direct taxes from the total tax revenues is almost 68% currently. There are two major types of direct taxes including income taxes and property taxes. Each category of direct taxes, in turn, is divided into sub-parts. Indirect taxes include taxes on imports and Value Added Tax (VAT). Taxes on imports are currently collected by the Iranian Customs Organization and are not within the jurisdiction of the Iranian National Tax Administration (INTA). Tables 1 to 4 briefly show various types of taxes in the Iranian taxation system:



Table 5.1: Income Taxes

Tax Base	Taxable Income	Taxable Persons	Tax Rates
Real Estate Income Tax	Income of persons derived from transfer of rights in immovable properties situated in Iran, less the exemptions: total rent, less a deduction of 25% for expenses, depreciations, and commitments of the owner in regard to the property.	Owners who have rented their immovable properties to others	15%-35%
Employment Income Tax	Salaries, wages or any other remuneration received by individuals in respect of their employment services. Payments for works conducted out of Iran, shall be subject to the tax, provided that the payer is an Iranian resident.	Individuals	10% for public sector employees and the others 10-35%
Individual Business Income Tax	Unincorporated business activities (aggregate sale of goods and services) less the exemptions provided in the DTA	Individuals	15-35%
Corporate Income Tax	Aggregate profits of companies, and the profits from the profit-making activities of other legal persons, derived from sources in Iran or abroad, less the losses from nonexempt sources and minus the provisioned exemptions	Legal Persons	25%
Tax on Incidental Income	Income earned ex gratia or through favoritism or as an award.	Real or legal person	15-35%

Table 5.2: Property Taxes

Tax Base	Taxable Income	Taxable Persons	Tax Rates
Tax on Transfer of Real Properties	Final transfer of real estates & goodwill shall be subject to taxation at the date of transfer.	Real or legal person	5% & 2%
Tax on Transfer of Shares	Tax on Transfer of Shares Nominal value of transfer of shares	Joint Stock Companies and other Companies	0.5% & 4%
Inheritance Tax	Any estate left from the deceased individual.	Real person	5% - 65%
Stamp Duties	Each sheet of check printed by banks (Rls. 200), bill of exchange, promissory notes (0.3%), and other documents and negotiable papers with specified amounts.		As provisioned in Articles 44-51

Table 5.3: Import Tax

Tax Base	Taxable Income	Taxable Persons	Tax Rates
Taxes on Imports : Currently collectible by the Iranian Customs Organization.			

Table 5.4: VAT

Tax Base	Taxable Income	Taxable Persons	Tax Rates
Value Added	Value added resulting from the sale of all goods and services and their imports, except 17 items listed in Article 12 of the VAT Act (VATA) as the exempted ones	Real and Legal Persons	6% currently, to be annually increased for 1% up to 8% by the end of the 5th Development Plan

## 5.2 Taxation from Foreign Investors in Iran

All foreign investors doing business in Iran or deriving income from sources in Iran are subject to taxation in Iran. Depending on the type of activity the foreign investor is engaged in, different taxes and exemptions are applica-

ble, including profit tax, income tax, property tax, etc.

### **5.2.1 Direct Taxes**

All non-Iranian individuals or legal entities for the income earned in Iran and also for the income gained through granting of license or other rights, technical and educational assistance or movie contracts in the territory of Iran are subject to taxation. Foreign investors in Iran enjoy the same supports and privileges that are offered to Iranian investors. This means both Iranian and foreign investors pay the same amount of taxes. Tax exemptions and discounts are also equally granted to domestic and foreign investors. Since foreign investments are usually active as legal entities, we will hereunder focus on rules and regulations for Corporate Income Tax.

### **5.2.2 Corporate Income Tax**

#### **5.2.2.1 General Issues**

Foreign legal entities residing abroad shall be taxed at the flat rate of 25% in respect of the aggregate taxable income derived from the operation of their investment in Iran or from the activities performed by them, directly or through the agencies in Iran. The legal entities shall not be subject to any other taxes on the dividends or partnership profits they may receive from the capital recipient companies. Legal entities are obligated to, even within the exemption period, submit declaration and profit and loss balance sheets, provided from their official statutory books, maximum four months after the tax year (March 21 each year until March 20 next year) along with the list of partners and shareholders, their shares and addresses to the tax department within the area of the activity of the legal entity. If these legal entities do not submit the documents within the stipulated time span, the tax exemption will be null and void.

#### **5.2.2.2 Exemptions**

The Direct Taxation Law and other pertinent legislations have considered certain exemptions for the legal entities as shown in table 5:

Table 5.5: Highlights of Tax Exemptions

Activity	Level of Tax Exemption	Duration of Exemption	Incentive Type
Agriculture	100%	Perpetual	Permanent Exemption
Industry and Mining	80%	4 Years	Tax Holiday
Industry and Mining in Less-Developed Areas	100%	20 Years	Tax Holiday
Tourism	50%	Perpetual	Tax Credit
Export of Services & Non-oil Goods	100%	During 5th Development Plan	Tax Holiday
Handicrafts	100%	Perpetual	Permanent Exemption
Educational & Sport Services	100%	Perpetual	Permanent Exemption
Cultural Activities	100%	Perpetual	Permanent Exemption
Salary in Less-Developed Areas	50%	Perpetual	Tax Credit
All Economic Activities in Free Zones	100%	20 Years	Tax Holiday
Profits of Private and Cooperative Companies used for development, reconstruction and renovation of existing industrial and mining units	50%	Perpetual	Tax Credit

### 5.2.2.3 Deductions

Expenses which are deductible in the assessment of taxable income are listed in the Direct Taxation Law. These expenditures must be supported to a reasonable degree by documentary evidence and must be exclusively connected with the earning of income during the year in question. The categories of deductible expenditure are as follows:

1. The cost of goods and raw materials
2. Personnel costs
3. Rental of enterprise's premises in case of being rented
4. Rent of machinery and equipment
5. Costs of fuel, electricity, lighting, water and communication
6. Business insurance
7. Royalties, duties, rights and taxes paid
8. Research, development and training expenditure
9. Compensation paid for damages resulted from the business operations
10. Cultural, sports and welfare expenditures paid to the Ministry of Labour and Social Affairs in respect of workers
11. Reserves against doubtful claims
12. Losses of legal persons
13. Minor expenses incurred in connection with the rented premises of the enterprise
14. Expenses incurred in the maintenance and upkeep of the premises owned by the enterprise

15. Transportation expenses
16. Expenses related to transportation and entertainment for employees
17. Warehousing costs
18. Fees paid in proportion to the services rendered
19. Interest and fees paid for the carrying out of the enterprise operation
20. Cost of repair and maintenance of machineries and business equipments
21. Abortive exploration expenditures for deemed mines
22. Membership and subscription fees connected with the business operations
23. Bad debts, if proved
24. Currency exchange losses computed in accordance with accepted accountancy practice
25. Normal wastage of production
26. The reserve related to acceptable expenses of the assessment period
27. Expenses for purchasing of books and other cultural and art goods for employees and their dependents

Other expenses that are not referred to above, but are related to the earning of the enterprise's income, shall be accepted as deductible expenses if proposed by the INTA and approval of the Ministry of Economic Affairs and Finance.

#### **5.2.2.4 Losses**

Losses sustained by all taxpayers engaged in trading and other activities are accepted by the tax authorities and can be carried forward and written off against future profits for a period of three years.

### **5.2.2.5 Withholding Taxes**

Five percent of every contract payment had to be withheld by the payer and accounted for to tax authorities. Such a withheld tax constituted an advance payment of the final tax due. However, this kind of withholding tax has been abolished in the recent revision of Direct Taxation Law.

On the other hand, the payers of salaries are obliged, when paying or allocating the same, to compute and withhold therefrom the applicable taxes and to remit, within thirty days, the deducted amounts together with a list containing the names and addresses of recipients and the amount of the payments, to the local tax assessment office.

### **5.2.2.6 Depreciation**

Depreciation of assets is deductible in the assessment of taxable income. Depreciation rates range from 5% to 100% and the period over which assets may be depreciated ranges from 2 to 15 years.

## **5.2.3 Value Added Tax (VAT)**

The VAT in Iran is levied on the sale of all goods and services and their imports, except 17 items listed in Article 12 of the VAT Act (VATA) as the exempted ones. The VATA, however, does not include the export of goods and services through official Customs gates. Therefore, the taxes paid for the export of goods and services will be refundable by submitting the Customs clearance sheets and valid documents.

Currently, the VAT rate stands at 9% (VAT rate for two special goods of cigarettes and jet fuel is relatively higher). To reduce the country's dependency on oil revenue, the Law on the Fifth Five-Year Development Plan provisioned an annual one-percent increase in the VAT rate to put it at 9% at the end of the Plan, i.e. 2016.

Economic activities in Free Trade Industrial Zones are exempted from the VAT.



### 5.2.4 Agreements for the Avoidance of Double Taxation

To facilitate cooperation between Iranian and foreign residents and to promote trade and economic exchanges with foreign countries, the Government of the Islamic Republic of Iran has concluded mutual Agreements for the Avoidance of Double Taxation with the following countries:

Table 5.6: List of Iran's Applicable Agreements for the Avoidance of Double Taxation

Algeria	Georgia	Pakistan	Sudan
Armenia	Germany	Poland	Switzerland
Austria	Indonesia	Qatar	Syria
Azerbaijan	Jordan	Romania	Tajikistan
Bahrain	Kazakhstan	Russia	Tunisia
Belarus	Kuwait	Serbia	Turkey
Bulgaria	Kyrgyzstan	South Africa	Turkmenistan
China	Lebanon	South Korea	Ukraine
Croatia	Malaysia	Spain	Uzbekistan
France	Oman	Sri Lanka	Venezuela

### 5.2.5 Standard Audit Systems

The actual audit system of companies in Iran meets all international standard audit criteria. Moreover systems like GAAP are accepted and recognized by tax authorities and there is no restriction for foreign companies to use their own systems. After registering a company in Iran, one inspector from the local tax department will be introduced to the company as a liaison

officer and it is recommended to send a report on the audit system of the company to him for further references.

### **5.2.6 Audit of Financial Statements by Independent Auditors**

Accountants of a company can make arrangements to prepare financial statements and to prepare and submit tax declarations. Article 272 of Direct Taxation Law states:

“In case of tax auditing by certified accountants, their view and opinion shall be considered and accepted by the Tax Department. The income subject to tax declared by them shall be basis for computing tax prior to tax auditing.”

Therefore,, the financial statements shall be considered by either the Tax Department or certified accountants subject to Article 272 of the Direct Taxation Law, and necessary steps shall be taken to determine income subject to tax and issuance of slip for tax determination.



## Chapter 6

# Labour Law: Employment of Foreign Nationals in Iran

Foreign nationals are prohibited from working in Iran unless they receive work and employment permits (even if they are supposed to receive wage and salary outside the Iranian territory).

The work permit for the employment of foreign nationals in Iran is issued by the “Department General for Employment of Foreign Nationals” (also called Department for Employment of Expatriates) of the Ministry of Cooperatives, Labor and Social Welfare upon a request by Iranian employers. In provincial capitals it is issued by the Foreign Citizens Divisions of the Department General of Cooperatives, Labor and Social Welfare. (The general procedure for admission of employees of foreign investors has been brought separately in the following part.)

The Iranian employers are obligated to seek the permission of the Department General for Employment of Foreign Nationals before concluding any contract that may lead to the employment of foreign citizens in Iran. The rules and regulations for acquiring work permits for the foreign nationals are available in the Labor Law of the Islamic Republic of Iran, ratified in 1990 (articles 120 through 129 and executive bylaw of Article 129).

Due to abundance of educated and skilled job-seekers in the country and the purpose of reducing their unemployment rate, the Technical Board

for Employment of Foreign Nationals has strict rules and regulations (stipulated in Article 121 of the Labor Law) for the issuance of work permits. However, the Foreign Investment Promotion and Protection Act (FIPPA), passed in 2002, has considered promising provisions for issuance of work permits for foreign investors, managers and experts in relation with the investments under FIPPA.

## **6.1 Admission of Employees of Foreign Investors According to FIPPA Rules and Regulations**

By virtue of Article 35 of the Executive Bylaw of FIPPA:

“The relevant executive agencies, including but not limited to, the Ministry of Foreign Affairs, the Ministry of Interior, the Ministry of Labor and Social Affairs [since 2011 and after merging of ministries, the Ministry of Cooperatives, Labor and Social Welfare] and the Disciplinary Forces of the Islamic Republic of Iran (the Police), are required to proceed with the issuance of visas, residence permits and work permits for foreign investors, directors, experts and their immediate family members in relation to the investments covered by FIPPA, at the request of the OIETAI confirming their status as investors, in the following manner: The Ministry of Foreign Affairs is required, upon receipt of the request of the OIETAI, to communicate to the Missions of the Islamic Republic of Iran abroad, the authorization for the issuance of single entry visa, or multi-entry visa (for three years) with a three-month residence permit on each entry for the relevant individuals, depending on the type of visa requested. The above mentioned persons who have obtained entry visas for investment may, after entry into the Country, refer to the Disciplinary Forces of the Islamic Republic of Iran (the Police) and obtain a three-year residence permit, upon submission of the OIETAI's formal note confirming the coverage of such investments under the FIPPA. The Ministry of

Labor and Social Affairs is obliged to issue work permits for such individuals consequent to the issuance of the residence permit.”

Obtaining such three-year residence permits by foreign investors, as stipulated above, shall exempt them from entry and exit visas required for traveling to or from the Country.

## **6.2 Issuing Work Permit outside FIPPA Framework**

In cases when Iranian employers need technical specialty of foreign experts, the issuance of a visa with a work permit privilege as well as the work permit for the foreign nationals will be carried out upon request by the Iranian employer. According to pertinent rules and regulations, no foreign citizen can personally apply for employment and work permit in Iran, unless he/she registers an enterprise legally.

Upon inquiry from the Department General for Employment of Foreign Nationals, before concluding any contract with foreign experts, the Iranian employers should deliver the request and required documents to the department general for verification. The documents are sent for further investigation to the Technical Board for Employment of Foreign Nationals. The approval or disapproval of the Board is thereby announced to the employer through the related experts. In the past, the responsibility of issuance, extension and renewal of the work permits of foreign nationals used to be carried out only in Tehran (at the Department General for Employment of Foreign Nationals).

For the welfare of the applicants, the authority of these affairs to certain degree has been delegated to the Departments General of Cooperatives, Labor and Social Welfare in the provinces. Therefore, employers and foreign nationals can refer to the provincial departments general for issuance, extension or renewal of their work permit.

### **6.3 Validity Period of Work Permits**

The work permits of foreign nationals are issued, extended or renewed for a period of one year.

### **6.4 Extension of Work Permits**

Upon expiry of the work permit, if the Iranian employer still needs the specialty of the expatriate, he can apply for the extension of the work permit of such foreign laborer or expert. The application is sent to the Technical Board for Employment and upon approval the permit is extended for a period of one year.

### **6.5 Renewal of Work Permits**

Foreign nationals with valid work permits whose contracts with their employer become null and void for any reason will be subject to renewal of the work permit after changing the employer. The renewal of the work permit – upon the change of the employer or the type of work – will be carried out by the responsible divisions of the Ministry of Cooperatives, Labor and Social Welfare after the approval of the Technical Board for Employment of Foreign Nationals.

### **6.6 Legal Punishments for Employment of Foreign Nationals without Work Permit**

Employers who hire foreign nationals whose work permits have been expired or have no work permit, or employ them in jobs other than those stipulated in their work permits, or do not notify the Ministry of Cooperatives, Labor and Social Welfare about cases where the employment agreement between them and foreign nationals is terminated, shall be sentenced to prison terms or cash fines.

## **6.7 Fees**

At present, the issuance and renewal of work permits for foreign nationals costs IRR 1,400,000 and the extension of permits costs IRR 1,000,000. Expatriates of some countries will be exempted from such charges upon mutual agreement with their respective countries on receiving similar privileges.

## **6.8 Unique Advantage for Foreign Investors Employing Labor Force in Iran**

Foreign investors employing those introduced by the affiliated units of the Ministry of Cooperatives, Labor and Social Welfare will enjoy growing discounts or exemption from paying part of the insurance duties in case their units are newly established, or there would be no reduction in their employment rate the year before (part of Article 80 of the Law on Fifth Five-Year Development Plan).





## **Chapter 7**

# **Iranian Intellectual Property Law**

### **7.1 Trade Mark**

In accordance with Article 30 of the Iran Patents, Industrial Designs and Trademarks Registration Act (2008):

- A. Mark means any visible sign capable of distinguishing the goods or services of legal entities or of natural persons.
- B. Collective Mark means any visible sign designated as such in the application for registration and capable of distinguishing the origin or any other characteristics, including the quality, of goods or services of natural persons or of legal entities which use the sign under the control of the registered owner of the Collective Mark;
- C. Trade Name means the name or designation identifying and distinguishing a natural person or a legal entity.

The exclusive right to use a Mark shall belong to the person who registers his Mark in accordance with the provisions of this Act.

### **7.1.1 Not Registrable Mark under the Law of Iran**

A Mark is not registrable in the following cases:

1. If it is not capable of distinguishing the goods or service of one enterprise from those belonging to another enterprise.
2. If it is contrary to Rules of Sharia, public order or morality.
3. If it is likely to mislead the public or trade centers, in particular as regards the geographical origin of the goods or services concerned or their nature or characteristics.
4. If it is identical with, or is an imitation of or contains as an element, an armorial bearing, flag or other emblem, a name or abbreviation or initials of the name of, or official sign or hallmark adopted by, any State, intergovernmental organization created under an international convention, unless authorized by the competent authority of that State or organization.
5. If it is identical with, or confusingly similar to, or constitutes a translation of, a mark or trade name which is well known in Iran for identical or similar goods or services of another enterprise.
6. If an identical or similar mark has been registered or become well-known for services that are not similar provided that customarily there is a connection between the use of the mark and the owner of the well-known mark and that its registration is likely to damage interests of the owner of the well-known mark.
7. If it is identical with a mark registered in the name of a different proprietor with an earlier filing date or a priority right in respect of the same goods or services or for goods and services that, due to connection or resemblance, is likely to deceive or cause confusion.

### **7.1.2 Documents Required for the Registration of a Trade Mark in Iran**

Required documents to register a trade mark in Iran are the same for an entity and an individual. The only difference is in the registration fee. Trade Mark registration requires submission of a declaration to the Registration Authority as follows:

1. Mark registration declaration shall be drawn up in two copies and in special form (E-1) and in Persian language and signed by the applicant or his/her legal representative after mentioning date.
2. In case that deeds attached to the declaration and other related documents are drawn up in another language but Persian language, it is obligatory to submit the original documents with their unofficial translation. If necessary, the registration authority can request for official translation of the said documents while studying the declaration.
3. Mark registration declaration shall contain the following points:
  - a) Name, national code number, address, postal code and nationality of the applicant. In case that the applicant is a legal entity, it is necessary to mention name, type of activity, domicile, registration place and number, nationality, principal office and if necessary, any other identification number.
  - b) Name, national number, address and postal code of legal representative of the applicant, if available.
  - c) Name, domicile and postal code of the person or persons who are qualified for receiving notices in Iran in case that the applicant is not resident of Iran.
  - d) Affixing a sample of that mark in the related cadre
  - e) Describing and determining components of the mark and determining mark and specified letters in case that the requested mark includes special letters.

- f) Mentioning the goods and services for which the mark is used by determining class or classes requested in accordance with the international classification
- g) Mentioning right of priority in case of request
- h) Field of activity of the mark owner
- i) Mentioning collective mark in case that its registration is requested
- j) In case that the mark includes word or words other than Persian language, inserting transcription and its translation
- k) Mentioning color in case that color is regarded as specification of the mark
- l) Mentioning that the mark is three-dimensional in case of request for its registration
- m) Determination of appendices

Note 1. In case of submission of the declaration and other related documents by the legal entities, they shall be signed by the authorized signatories.

Note 2. In case of numerous applicants for registration, the person who has right to refer to and correspond with the registration authority and performs other necessary administrative formalities as representative of others except for receipt of mark certificate shall be appointed by mentioning domicile.

Note 3. Name and address of the applicant abroad shall be in Latin in addition to Persian script and shall be registered and published with the same letters.

Note 4. In all affairs relating to registration and publication of the marks, the registration authority investigates classification of the goods and services on the basis of international classification. In case of pictures in the mark, it is compulsory for the registration authority to observe its classification.

4. A separate declaration shall be used for registration of each mark. Use of a declaration for registration of one mark for goods and services included in one or more classes is permissible.
5. A person who requests for registration of some marks simultaneously shall submit a separate declaration for each of them in accordance with this regulation. In this case, if the requests are done by the legal representative, original representation documents shall be attached to one of the declarations and its true certified copy shall be attached to each one of the other declarations.
6. The following documents shall be attached to the declaration:
  - a) Original representation copy, in case that request has been submitted by the legal representative
  - b) Presentation of 10 samples of the mark in graphical form which is equal to the mark affixed on the declaration and of which dimensions are at most 10 x 10 cm. If presentation of the mark is not graphical, 10 samples of the copy of the mark will be presented in the same dimensions and at discretion of the Registration Authority.
  - c) In case that the mark is three dimensional, it is necessary to present the mark as graphical samples or two-dimensional picture on the paper in such a manner that it can be prepared from six different angles and a unit sample which forms the same three-dimensional mark.
  - d) Documents relating to right of priority which shall be submitted simultaneously with submission of the declaration or within 15 days of that date (if priority right is requested)
  - e) Presentation of documents including activity in the related field at discretion of the Registration Authority
  - f) Documents proving identity of the applicant
  - g) Receipt relating to payment of the legal expenses

7. Trade Mark registration phases are as follows:

- a) Collecting necessary information
- b) Filling up the application form (declaration)
- c) Checking the application and its related appendices: in this stage, staff of the registration office will review the declaration and its appendices and take one of the three kinds of decisions:
  - (i) If they find a defect in the submitted documents, a rectification notice will be issued and the applicant has to rectify the defect in the specified period.
  - (ii) If the application is rejected, a rejection notice will be issued.
  - (iii) admission of application
- d) Publication of application: When the application is accepted, the registration office will ask the applicant to publish the application in the Official Gazette.
- e) Requesting registration number: One month after the application has been published, the applicant can ask for the registration number by providing the office with the picture of the published application in the Official Gazette and paying the registration fee. Official registration of the Trade Mark also needs to be published.
- f) Requesting registration certificate: One month after the publication of the official registration of the Trade Mark, the applicant can ask for registration certificate.

### **7.1.3 Iran's Membership in International Trade Mark Conventions**

#### **7.1.3.1 Paris Convention for the Protection of Industrial Property (1883)**

Iran has been a member of the Paris Convention for the Protection of Industrial Property since 1998.

### **7.1.3.2 Madrid Agreement (1891) and Protocol Relating to the Madrid Agreement (1989) Concerning the International Registration of Marks**

On 25 September 2003 Iran acceded to both the Madrid Agreement and the Madrid Protocol on the International Registration of Marks with the World Intellectual Property Organization (WIPO). The Madrid Agreement and the Madrid Protocol came into force in Iran on 25 December 2003.

## **7.2 Patent**

In accordance with Article 1 of the Patents, Industrial Designs and Trade-marks Registration Act (2008):

“An invention is the outcome of an individual(s) mind that produces a certain product or a process for the first time and provides for a solution to a specific problem in a certain line of specialty, technique, technology, industry and the like.”

A patent is essentially a government grant to a person for the exclusive right to make, use, and sell his new and useful discovery, design, process, machine, manufacture, or other composition, or, any new and useful improvement on it.

Applying for a patent is not obligatory. But, obtaining of a patent gives the owner (patentee) the right and assurance to take legal action for preventing others from exploiting the patented invention or discovery without his consent.

### **7.2.1 Types of Patentable Discoveries and Inventions**

According Article 2 of the Patents, Industrial Designs and Trademarks Registration Act (2008),

“An invention shall be patentable if it includes a new innovation, and is industrially applicable. An innovation includes anything that has not been anticipated by prior art and would not



be obvious to a person having ordinary skills in the art. An invention shall be considered industrially applicable if it may be made or used in a given line of industry. "Industry" may be construed in the broadest meaning of the word and shall include handicrafts, agriculture, fishery and services as well."

### **7.2.2 Un-patentable Discoveries and Inventions**

Based on Article 4 of the Patents, Industrial Designs and Trademarks Registration Act (2008):

"The following shall be excluded from the scope of the protection of a patent:

1. Discoveries, scientific theories, mathematical methods and works of art
2. Schemes, rules or methods for doing business, performing mental or social acts
3. Methods for treatment or diagnosis of human or animal diseases: This subsection shall not include products falling within the scope of definition of the patent and those used in the said methods.
4. Genetic resources and genetic components comprising the same, as well as biological processes for the production of the same
5. Anything that has been already anticipated in industries and techniques."

### **7.2.3 Documents Required for the Registration of an Invention or Discovery in Iran**

The inventor or discoverer is required to make a written application to the Tehran Office for Industrial Property (patent office) and, together with the necessary fees, file what is known as a "declaration" with the following contents:

1. Patent declaration shall be drawn up in three copies and in special form (A-1) and in Persian language and signed by the applicant or his/her legal representative after mentioning date.
2. In case that deeds attached to the declaration and other related documents are drawn up in another language but Persian language, it is obligatory to submit the original documents with their unofficial translation. However, if perfect translation of these documents is not possible, one can attach their summary in Persian language. If necessary, the registration authority can request for official translation of the said documents while studying the declaration. In case that technical and scientific terms applied in the documents don't have Persian equivalent, it is sufficient to mention the same terms.
3. The applicant shall submit, personally or by registered mail or on the basis of Article 167 of this regulation, patent declaration to the registration authority. Date of collection of the declaration or date of giving message is regarded as date of declaration.
4. Patent declaration shall contain the following points:
  - a) Name, national code number, address, postal code, nationality, position of the applicant and in case that the applicant is legal entity, it is necessary to mention name, type of activity, domicile, registration place and number, nationality, principal office and if necessary, any other identification number.
  - b) Name, national number, address and postal code of legal representative of the applicant, if available
  - c) Name, domicile and postal code of the person or persons who are qualified for receiving notices in Iran in case that the applicant is not resident of Iran
  - d) Name, address, and position of the inventor, in case that the applicant is not inventor
  - e) Title of invention in such a manner that the invention specifies a claim and does not include any words such as "better" and

so on. The title should preferably consist of between three and ten words.

- f) Date, place and number of declaration or invention certificate abroad at request of the right of priority
- g) Information relating to original declaration in case that the invention is complementary
- h) Number of pages for description, claims, brief description of invention and plans
- i) Determination of invention class on the basis of international classification of inventions
- j) Determination of appendices
- k) In case of submission of the appendices and other related documents by the legal entities, they shall be signed by the authorized signatories.
- l) Name and address of the applicant abroad shall be in Latin in addition to Persian script and shall be registered and published with the same letters.

5. The following documents shall be attached to the declaration:

- a) description of invention
- b) claim or claims of invention
- c) brief description of invention
- d) design or designs , if necessary
- e) evidences affirming identity of the applicant and inventor
- f) Written request for not mentioning the name of the inventor, in case the inventor does not want to mention his/her name
- g) Documents relating to right of priority which shall be submitted simultaneously with submission of declaration or within 15 days of that date
- h) Receipt relating to payment of legal expenses.

- i) Representation documents, in case that the legal representative applies.

Note 1. In case that the declaration is not qualified for conditions stipulated in Article 11 at the time of request, the registration authority will invite the applicant to perform the necessary corrections till date of notification within 30 days and date of application will be the same as date of receiving the necessary corrections. If no correction is done at due date, the declaration will be null and void. This grace period is 60 days for persons residing abroad.

Note 2. If some designs are referred to this declaration which have not been included or attached, the registration authority will invite the applicant to present the designs within 30 days. In case of submission, date of receiving the designs will be regarded as date of request. Otherwise, the registration authority will mention date of request as date of receiving the declaration and will regard reference to designs as null and void. This grace period is 60 days for those persons residing abroad.

- j) Any page of description, claim, brief description and invention design shall be signed by the applicant or his/her legal representative.
- k) The declaration shall only relate to an invention or a group of the related inventions which comprises a general invention. Otherwise, the applicant can divide his/her invention declaration into two or more separate and independent declarations.

6. The registration authority having received the declaration and the related appendices investigates them within 6 months in terms of conformity with procedural and substantial conditions inserted in the law and this regulation.

Note 1. The registration authority enquires the concerned authority whether private or governmental or the specialists and experts for ful-

filling substantial conditions of invention and asks them about their views. Grace period for answering the enquiry will be not later than 3 months.

Note 2. The declaration of authorities and mentioned persons is advisory and failure to answer the enquiry and receive the opinion will not prevent from investigation and decision making by the registration authority.

Note 3. Enquiring and asking the said authorities and persons about their opinions can be based on contracts concluded with them.

7. In case that it is necessary to correct or complete the declaration and its appendices after investigation of the declaration and its appendices, the registration authority asks the applicant in writing to take action regarding correction or completion of the document within 30 days of date of notification. Otherwise, the declaration will be null and void. The grace period determined in this article for the persons residing abroad is 60 days. The applicant will be notified of the decision of the registration authority regarding grant of patent certificate within 30 days of notification and the applicant shall take action regarding registration of invention and publication of notice included in Article 32 of this regulation for payment of the related expenses. In case of failure to pay the expenses at due date, the declaration will be regarded null and void. This grace period for the applicants residing abroad will be 60 days.
8. Invention is registered by mentioning the following information on the basis of form (A-2) in patent register:
  - a) Number and date of declaration by mentioning hour, day, month and year
  - b) Number and date of patent
  - c) Name and address and nationality of inventor
  - d) Name and address and nationality of the applicant in case that the applicant is not the inventor unless the inventor requests in writing not to mention his/her name in patent certificate.

- e) Name and address of the legal representative of the inventor, if patent is requested by him/her
- f) Title of invention
- g) International classification of invention by mentioning scientific field in which the invention is included
- h) In case of claim for right of priority and accepting it, date, number and place of submission of the prior declaration
- i) Term of support

Note 1. Two pages are allocated to each invention in patent register and any change and correction as well as transfers which are done partially or wholly regarding subject of the invention are mentioned in the said pages.

Note 2. Insertion of the said information shall be signed by the inventor or his/her legal representative as well as the head of the Patent Office after completion.

9. After registration, the notice of registration is published in the official gazette within 30 days by mentioning the information mentioned in Article 31 of this regulation. The said notice is signed by the head of the Patent Office and is submitted to the official gazette for publication.
10. After publication of patent notice and delivery of three copies published and reflected in site of the official gazette to the registration authority, the patent certificate will be issued and submitted to the applicant or his/her representative. The patent certificate shall be prepared with use of updated technology and include a copy of description, claim, brief description and design and shall be punched and sealed and signed by the head of the Patent Office. The patent certificate shall contain the following points on the basis of form (A-3):
  - a) Number and date of declaration

- b) Number and date of patent
  - c) Name and address and nationality of inventor
  - d) Name and address and nationality of the inventor unless the inventor requests in writing not to mention his/her name in patent certificate
  - e) Title of invention
  - f) International classification of invention
  - g) In case of claim for right of priority and accepting it, date, number and place of submission of the prior declaration
  - h) Term of support
11. With regard to Article 16 of the Patents, Industrial Designs and Trademarks Registration Act (2008): "Validity of patent certificate is 20 years from the date of submission of the declaration. For keeping validity of the certificate, annual cost shall be paid within 2 months before expiry of a year from the date of submission of the declaration and every year afterwards until validity of the certificate in accordance with the table of costs; otherwise, the invention patent will be null and void."

## **7.2.4 Iran's Membership in International Patent Convention**

### **7.2.4.1 Paris Convention for the Protection of Industrial Property (1883)**

Iran has been a member of the Paris Convention for the Protection of Industrial Property since 1998. Parties to this agreement undertake to grant each other's nationals patent and trademark rights identical to those of their own nationals. The right of priority is one of the major benefits of the Paris Convention. It allows for a person who has applied for a patent in one of the Convention countries to have the right to apply, within one year, for protection in any of the other Convention countries.

These later applications shall be regarded as if they had been filed on the same day as the first application. This provision is a major advantage

for foreigners who wish to register and safeguard their patents in any number of countries, Iran included.

#### **7.2.4.2 Patent Cooperation Treaty 1970 (PCT)**

On 4 July 2013, the Islamic Republic of Iran deposited its instrument of ratification to the PCT, thus becoming the 148th Contracting State of the PCT, which came into force in Iran 4 October 2013. Consequently, any international application filed after that date automatically includes the designation of the Islamic Republic of Iran.

Also, because the Islamic Republic of Iran is bound by Chapter II of the PCT, it is automatically elected in any demand for international preliminary examination filed in respect of an international application. Furthermore, nationals and residents of the Islamic Republic of Iran are entitled to file international applications under the PCT.



## **Chapter 8**

# **Appendix**

Table 8.1: Important Iranian Websites

Ministry of Finance & Economy	<a href="http://www.mefa.gov.ir">www.mefa.gov.ir</a>
Ministry of Industry & Mines	<a href="http://www.min.gov.ir">www.min.gov.ir</a>
Ministry of Commerce	<a href="http://www.iranministryofcommerce.com">www.iranministryofcommerce.com</a>
Iran Chamber of Commerce & Mines	<a href="http://www.iccim.org">www.iccim.org</a>
Duties Islamic Republic	<a href="http://www.irica.gov.ir">www.irica.gov.ir</a>
Ministry of Foreign Affairs	<a href="http://www.mfa.gov.ir">www.mfa.gov.ir</a>
Ministry of Oil	<a href="http://www.nioc.com">www.nioc.com</a>
Ministry of Labour	<a href="http://www.irimlsa.ir">www.irimlsa.ir</a>
Organization of Managing & Planning	<a href="http://www.mpzog.ir">www.mpzog.ir</a>
Value Added Tax Organization	<a href="http://www.vat.it">www.vat.it</a>
Iranian Association of Certified Accountants	<a href="http://www.iacpa.ir">www.iacpa.ir</a>
Tehran Stock Exchange Organization	<a href="http://www.tse.or.ir">www.tse.or.ir</a>
Central Bank of Iran	<a href="http://www.cbi.ir">www.cbi.ir</a>
State Tax Organization	<a href="http://www.intamedia.ir">www.intamedia.ir</a>
Iranian Privatization Organization	<a href="http://www.ipo.ir">www.ipo.ir</a>
Organization for Investment Economic & Technical Assistance of Iran (OIETAI)	<a href="http://www.investiniran.ir">www.investiniran.ir</a>
Iran Foreign Investment Co.(IFIC)	<a href="http://www.ific.org.ir">www.ific.org.ir</a>
Audit Organization	<a href="http://www.audit.org.ir">www.audit.org.ir</a>
Electronic Visa for Iran	<a href="http://wvisa.mfa.gov.ir">wvisa.mfa.gov.ir</a>

# References

- [1] Ali Hatami LLD. & Esmaeil Karimiyan, *Foreign Investment Law In Light of Investment Act and Contracts* Tessa, 2014.
- [2] [http://www.kishtpc.com/Free-En/free\\_Iran.htm](http://www.kishtpc.com/Free-En/free_Iran.htm)
- [3] <http://www.investiniran.ir/en/home>
- [4] <http://www.ibchamber.org>
- [5] <http://www.irxp.com>

# Disclaimer

*In the formulation of this guidebook, every effort has been made to offer current, correct and clearly stated information. Nevertheless, the information in the text is intended to provide general and legal guidelines only. This publication is circulated with the understanding that the authors are not responsible for the result of any actions taken on the groundwork of information in this publication, nor for any errors or omissions contained herein. The authors are not attempting through this study to render legal or financial advice. Readers are encouraged to consult with professional advisors for advice concerning specific matters before making any decision.*

“**IRAN** is the origin of one of the first human civilizations which has a very remarkable cultural and historical background. Locating in a unique geographical region, this country has always played a decisive role in international relations.

Regarding the recent Iranian nuclear deal which results in lifting international sanctions, and by considering unlimited investment and business opportunities in Iran, this country has acquired the title of “Investors’ Paradise” which heralds the emergence of one of the most powerful economies in the world.”

[www.ESKLawFirm.com](http://www.ESKLawFirm.com)  
[info@ESKLawFirm.com](mailto:info@ESKLawFirm.com)