

BRIEFING
FOREIGN INVESTMENT PROMOTION
IN IRAN
JANUARY 2016

- FOREIGN INVESTMENT IS PROTECTED UNDER IRANIAN LAW (FIPPA).
- 100% FOREIGN SHAREHOLDINGS IN IRANIAN COMPANIES ARE PERMISSIBLE.
- INTERNATIONAL ARBITRATION AWARDS ARE ENFORCEABLE IN IRAN.



The Joint Comprehensive Plan of Action entered into by the E3/EU+3 (Germany, France, the United Kingdom, the European Union, China, Russia and the United States) with Iran on July 14, 2015 has paved the way for the prospect of an increase in long term investments by Western companies in Iran after many years of restrictions. It provides for an ease of sanctions in exchange for limitations on Iran's nuclear programme. On the so-called "Implementation Day", which is expected to occur in the first quarter of 2016 (if not in the early weeks of 2016), the first phase of relaxation of EU and US sanctions will come into force (see our [Briefing of July 2015](#)), allowing business to be entered into in certain sectors and with a number of Iranian persons, companies and banks which were previously subject to sanctions.

Iran has taken various steps to attract foreign investors. This briefing gives a short overview of some legal measures Iran has taken for the promotion and protection of foreign investment.

Iran's Macroeconomics

With a well-educated population of about 78 million, about 50% of whom are below the age of 30, a GDP of approximately USD 415 billion (March 2014) and a land area of 1,648,195 square kilometres, Iran is the second largest economy and has the second largest population in the Middle East region. Bordering Iraq, Turkey, Armenia, Azerbaijan, Turkmenistan, Kazakhstan and Russia (across the Caspian Sea), Afghanistan and Pakistan it has an excellent geostrategic location within reach of about 400 million people. Iran is considered to be the world's second largest

"IRAN IS THE SECOND
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THE REGION."

“THE FIPPA GRANTS PROTECTION AGAINST EXPROPRIATION AND GUARANTEES REPATRIATION OF CAPITAL.”

reserve holder of natural gas and the fourth largest of crude oil. Moreover, it has large deposits of minerals, such as zinc, copper and iron. Iran enjoys an average DNI (direct normal irradiation) of 2100 kWh/m², an average of 300 sunny days per year, and high-wind locations in the mountainous regions (Alborz) north-west of Teheran, by the Caspian Sea and the Gulf of Oman. The relaxation of sanctions is expected to result in large investments in various industries, including in the infrastructure, transport, oil & gas, renewable energy, mining and maritime sectors.

Foreign Investment Promotion and Protection Act (FIPPA)

The main Iranian foreign investment law is the Foreign Investment Promotion and Protection Act (FIPPA). The FIPPA grants foreign investors the same rights, protections and facilities available to domestic investors. This includes permission for investment in all fields where private sector activity is allowed and permission to hold up to 100% of shares in Iranian legal entities. Protection against expropriation and nationalisation is guaranteed except where public interest reasons apply, in which case the expropriation should follow a non-discriminatory procedure and the investor should obtain compensation based on the real value of the investment. Moreover, the FIPPA includes provisions to ensure free transfer of foreign capital and profits of foreign investment abroad. Foreign investors may claim through the Act to convert Iranian Rial and to acquire necessary foreign currency for such transfer. Furthermore, residence and work permits for foreign personnel are facilitated under the FIPPA.

The FIPPA defines a foreign investor as any non-Iranian or Iranian individual or legal entity utilising capital of foreign origin, provided it has obtained the relevant investment licence. Foreign capital is defined as being all types of capital, including cash or in kind that has been imported into Iran. To obtain an investment licence, an application has to be made to the Organization for Investment, Economic and Technical Assistance of Iran (OIETAI) and such licence will be granted upon meeting certain criteria, including the requirement that the foreign investment should lead to economic growth, promotion of technology and quality of production, and an increase in employment, opportunities and exports.

Any disputes between the Iranian government and foreign investors related to investments subject of the FIPPA are subject to the jurisdiction of the Iranian courts, unless another dispute resolution mechanism has been agreed upon by a bilateral investment agreement with the relevant government of the jurisdiction of the foreign investor.

Bilateral Treaties

Iran has entered into more than 50 bilateral investment treaties with other countries, such as Germany, France, Italy and Spain, providing for the promotion, admission and protection of investments by investors of such contracting parties. This includes assurances that the foreign investments will be treated no less favourably than its own investors (or investors of any third country) are treated in such contracting party's country. Some bilateral treaties provide for the resolution of disputes by arbitration, such as the treaty between Germany and Iran, which provides that in the event of disputes between the Iranian government and a German investor, an ad hoc international arbitration tribunal will be established to resolve such dispute. An international dispute resolution by way of application of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) is not possible as Iran is not a signatory to the Convention.

“AGREEMENTS PROVIDING FOR NON-IRANIAN LAW AS GOVERNING LAW SHALL BE CONCLUDED OUTSIDE OF IRAN.”

Additionally, Iran has concluded a number of double tax treaties, such as with Germany and France, to avoid double payments on income and other taxes.

Choice of Law & Dispute Resolution

Choice of law is a recognised principle under Iranian law. However, the Iranian Civil Code provides that contracts concluded in Iran are subject to Iranian laws. It is unclear in Iranian law if the relevant provision of the Code is mandatory or if the parties to a contract can voluntarily agree to choose the governing law of another country. Therefore, foreign nationals who wish and agree with their Iranian partners to select the laws of a country other than Iran, should sign the relevant contracts outside Iran and, for verification purposes, have the contracts certified by a notary public.

Although it is possible under Iranian law to provide for jurisdiction of foreign, non-Iranian courts, enforcement of judgments of foreign courts would mostly fail due to a lack of reciprocal recognition and enforcement of judgments between Iran and the respective country where the judgment was obtained. However, Iran has been a member of the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards requiring contracting states to recognize and enforce arbitral awards issued in other member states. Therefore, foreign investors frequently agree with their Iranian counterparty on international arbitration. The Iranian law on international commercial arbitration has been based on the UNCITRAL Model Law and allows the parties to choose the rules governing the arbitration and the number of arbitrators. It is common to agree on arbitration at the International Chamber of Commerce. In view of the local proximity, the Dubai International Arbitration Centre (DIAC) or the Dubai International Financial Centre (DIFC)-London Court of International Arbitration (LCIA) Arbitration Centre can be also options. The main arbitration centres in Iran are the Arbitration Center of Iran Chamber (ACIC) and the Teheran Regional Arbitration Centre (TRAC).

However, claims relating to public and state property and contracts with Iranian authorities must be considered in accordance with the Iranian constitution and the Iranian Civil Procedure Code requires the approval of the Parliament in order to be able to refer such claims to arbitration. This makes it virtually impossible to agree on arbitration in such matters.

“FOREIGN INVESTORS MAY HOLD 100% OF SHARES IN IRANIAN COMPANIES.”

Company Establishment/Foreign Participation

The company structures most frequently used by foreign investors in Iran are the private joint stock company (*sherkate sahamie khas*) and the limited liability company (*sherkat ba masouliate mahdoud*). They require a minimum of three and two shareholders respectively. The shareholders can be affiliated companies. A fairly low (IRR 1,000,000.00 (equivalent to about USD 27.00 (open market rate)) in case of the private joint stock company) or even no minimum statutory capital (in case of the limited liability company) is necessary. The directors and managers can be foreign nationals. The setup and registration process has become, thanks to the introduction of an electronic registration procedure (amongst other reforms), swift and straightforward.

It is permissible for foreign investors to hold 100% of shares in an Iranian company, irrespective of the applicability of the FIPPA and obtaining an investment licence.

However, public tenders may provide for a (majority) participation of an Iranian partner.

Free Trade Zones

In order to attract and promote foreign investments, a number of free trade zones have been established. Economic activities in such free trade zones are exempted from payment of income tax for a duration of up to 20 years from the date of commencement of operation. Moreover, imported goods in the zones are exempted from customs and import duties. The same applies to the import of goods from free trade zones to the mainland, if the raw materials have been supplied domestically. The regulations of the free trade zones provide, similar to the FIPPA, for repatriation of the foreign capital and net profits, and for protection against expropriation and nationalization.

Intellectual Property

Iran is a member of the World Intellectual Property Organization (WIPO) and has joined a number of international intellectual property treaties, such as the Convention for the Protection of Industrial Property (Paris Convention), the Patent Cooperation Treaty, the Madrid Agreement and the Madrid Protocol for the International Registration of Marks (Madrid Convention), and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. The international trademarks registered under the Madrid Convention are, therefore, protected by the national Iranian intellectual property law which is the Patents, Industrial Designs and Trademarks Registration Act together with its executing regulations.

Renewable Energy Laws

Given Iran's huge energy consumption, the government subsidies to keep power costs low and the very high levels of CO₂ emissions, Iran envisages constructing wind farms and photovoltaic plants with a capacity of at least 5 GW by 2018. It has, therefore, recently amended its laws and prolonged the guaranteed term for power purchase agreements from five years to 20 years. Moreover, the feed-in tariff has been increased, e.g. photovoltaic plants with a capacity of more than 10 MW are eligible for a feed-in tariff of IRR 5,600.00 (about USD 0.15 (open market rate)) per kWh.

In addition, an adjustment mechanism exists to reflect inflation and change of the currency exchange rate. The relevant competent authority is the Renewable Energy Organization in Iran (SUNA).

New Iran Petroleum Contract (IPC)

Iran has recently implemented a new model for oil and gas contracts. The new Iran Petroleum Contract (IPC) replaces the buyback agreements which prevented foreign investors from holding shares and from booking reserves in Iranian companies.

The IPC is, in general, more attractive to international oil companies as it offers more flexible terms with respect to price fluctuations and investment risks, and allows foreign investors to take equity stakes in joint venture companies, though the Iranian partner must hold the majority of the shares. The old buyback agreements covered only the exploration and development phases of a project and the fields were taken over by the National Iranian Oil Company (NIOC) once those phases were completed. In contrast, the IPC allows contracts terms of up to 25 years.

“THE GUARANTEED TERM FOR POWER PURCHASE AGREEMENTS HAS BEEN PROLONGED TO 20 YEARS.”

Conclusion

Iran's foreign investment laws are relatively favourable for foreign investors. Both the FIPPA and many bilateral treaties grant protection against expropriation and discrimination, and guarantee repatriation of capital and profits. Furthermore, by being a member of the WIPO and joining various international intellectual property treaties, Iran has laid the legal ground for the protection of foreign investors' intellectual property. Agreeing to a governing law other than Iranian law and allowing for international arbitration is also a big step forward in giving comfort to investors. The possibility for foreigners to hold 100% of shares in Iranian companies will also be attractive to potential investors. Regarding energy projects, by increasing the feed-in-tariff and implementing an adjustment mechanism to reflect inflation and change of the currency exchange rate, the Iranian renewable energy sector may become a lucrative market. Similarly, the IPC allows for more flexible terms on price fluctuations and investment risks, for taking equity stakes in a joint venture company and provides an opportunity for investors to benefit from the production phase.

Despite all of the positive steps that have been taken to attract foreign investment, there remain many peculiarities in the Iranian legal system which require thorough examination when considering an investment in Iran. Also each investment will have its own specific issues which will need to be resolved.

Whilst the above is designed to provide an overview, legal advice should always be sought as part of the evaluation process for any investment and members of the Iran-team at Watson Farley & Williams would be pleased to assist in this regard.

FOR MORE INFORMATION

Should you like to discuss any of the matters raised in this Briefing, please speak with a member of our Iran-team below or your regular contact at Watson Farley & Williams.



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