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FIPPA

Introduction

The legal corpus governing foreign investment in the Islamic Republic of Iran constitutes the Foreign Investment Promotion and Protection Act (FIPPA) and the FIPPA's Implementing Regulations as well as legislation applicable for the establishment and conduct of economic activities in the country. While the prospective investors are recommended to get full knowledge about the legislation directly related to their interest, they are also advised to get familiar with certain legislation which is fundamental in their daily affairs such as laws pertaining to companies formation and administration (Commercial Code- Company Law), registration of companies, branches and representative offices, import/export regulations, taxation, industrial and intellectual property protection, status of foreign nationals (entry, resident and work permits), banking and insurance, free and special economic zones regulations, etc. Since 1955, the legal framework of Iran's foreign investment regime was defined under the Law for the Attraction and Protection of Foreign Investments (LAPFI). Moreover, in line with reforms in the overall economic framework, Iran's parliament undertook to propose and approve a plan concerning a new foreign investment law entitled: The Foreign Investment Promotion and Protection Act (FIPPA) which was ratified in May 2002. FIPPA replaced the 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. Some specific enhancements introduced by FIPPA for foreign investments in Iran can be outlined as follows:
Broader fields for involvement by foreign investors including major infrastructure Recognition of new models of foreign capital exposure in addition to Foreign Direct Investment, e.g. project financing, Buy-Back arrangements and BOT schemes

- Streamlined and fast-track investment licensing and approval process
- Creation of a one-stop institution called the "Center for Foreign Investment Services" at the Organization for Investment, Economic and Technical Assistance of Iran (OIETAI) for focused and efficient support of foreign investment undertakings in Iran
- Further liberalization of foreign exchange mechanisms as enjoyed by foreign investors
- Introduction of new legal options governing the Government- Investor(s) relations

Clearly, the ratification of the FIPPA and the approval of its implementing regulations by the Council of Ministers represented a significant complement to a whole host of reforms taking place in Iran's general macroeconomic framework and structural mechanisms. The trend in foreign investment applications in Iran since the ratification of the FIPPA demonstrates that the new economic environment and the enhanced foreign investment legal and regulatory regime have tapped a great foreign investment potential for Iran that can be realized at a more accelerated pace through a concerted effort aimed at transparent communication of the latest status of Iran's dynamic economic and foreign investment framework.

Highlights of FIPPA

1. General Features

The Government of the Islamic Republic of Iran welcomes foreign investment in all areas of economic activities by foreign persons including real persons as well as juridical entities.
In accordance with Article (1) of the FIPPA, the term Foreign Investor is defined to be natural persons and legal entities as well.

•The foreign investors, as Iranian nationals and companies either residing in Iran or abroad, by importing capital as defined in a very broad and diversified form being in cash or in kind or being machinery and equipment, raw materials, parts, specialized services as well as intellectual property for the purpose of investment in industry, mining, agriculture and services shall be eligible to enjoy the privileges and facilities provided under the FIPPA.
The advantages and facilities shall be granted to the foreign investors who obtain the Investment License. In general, foreign investment in Iran is free for all investors but such facilities and privileges are only granted to those investors who seek the FIPPA's coverage through submission of an application to the OIETAI which is the central government agency to receive license and protect the interests of the foreign investors throughout the lifetime of their operation in Iran, notwithstanding the type and the manner of investment.
In fact, the interests and rights of foreign investors under the FIPPA are fully recognized and secured against noncommercial risks which would simply commit the Iranian Government not only to facilitate the free flow of capital repatriation but also the full and fair compensation against acts of Government towards expropriation as well as interruption of activities of the foreign investors. It should be noted that under the FIPPA there is no restriction of whatever nature is legally permissible to be imposed on the manner of investment, type of investment, volume of investment, percentage of shareholding, profit and capital repatriation as well as internal

2. Risks Covered

Generally speaking, the FIPPA provides full security against the risks which are generally referred to as "noncommercial risks". These risks are usually insured by the export credit and the investment insurance agencies. The risks related to transfer issues and expropriation remains as the core stone of the risks attributed to an investment in a recipient country. FIPPA honors all the rights and entitlements of investors through facilitating and making available the necessary foreign exchange for transfer purposes and issues related to transfer of profit as well as issues related to capital repatriation. In fact, the FIPPA recognizes the transfer right as the most fundamental right of the foreign investors. There is no limitation to the amount of the profit to be transferred as well as to the capital and gains on capital to be repatriated. In the area of expropriation and nationalization of foreign assets, the FIPPA recognizes the rights of the investors to receive compensation based on the fair market value of the expropriated assets immediately on the day before expropriation takes place. In addition to the foregoing, the FIPPA also recognizes the rights of foreign investors in cases whereby the implementation of a project is seized or interrupted as a result of enactment of a law and/or a decision by the government. In such cases, the Government is under obligation to guarantee all the payments which should have been paid on maturity.

3. Facilities Provided

FIPPA produces and provides a bulk of new facilities all aimed at meeting the interests of the foreign investors. One other important facility is establishment of the Center for Foreign Investment Services (CFIS) at the premises of the OIETAI which makes it possible for the new-comers, whether Iranian or foreigners, to have a direct access to the relevant organizations and government agencies through the resident representatives of those organizations. Moreover, they are able to collect first-hand and updated information simultaneously from the most relevant agencies without any need to resort to those agencies.
In fact, CFIS is designed as a one-stop-shop to serve the investors' needs and save their time and energy throughout the investment decision–making and implementation stage starting from preliminary studies on project feasibility, collection of information on regulatory framework and preparatory work for the investment licensing,

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right to the operational stage which may require certain co-ordination and follow-up activities toward proper materialization of the investment project. From the standpoint of the FIPPA, foreign investors will enjoy the same and equal treatment as accorded to the local investors.
There should be no discrimination vis-à-vis foreign investors and all facilities, privileges and exemptions will be equally extended to the foreign investors. Anyhow, a most favored nations treatment may also be applicable to the investors of countries with which the Iranian government has entered into a Bilateral Investment Treaty (BIT) which provides for more favorable treatment over national treatment.
In addition to the foregoing, the FIPPA introduces new legal options in respect to the government-investors relations which symbolizes the receptive and constructive approach of the Iranian government toward safeguarding the interests of foreign investors. There are various instances in the FIPPA as well as in the Implementing Regulations which focuses on the liberty of the foreign investor to choose the best choice compatible to his expectations from a variety of alternatives which may extend to a choice on the percentage of inter alia shareholding, the management, claims for compensation resulting from expropriation, complementary security umbrella term for receiving compensation resulting from government intervention to a wide spectrum of transfer options ranging from access to the banking system as well as free access to export and other foreign currency revenues and the like.
Last but not least, are a series of facilities in the areas of entry and exit visas, residence and work permits for the investors, managers, directors and experts as well as their close relatives. These facilities are provided on a long term basis which creates comfort and confidence to those related to the investment projects for constant presence over the asset in which they have invested.

4. Broad Outlook

FIPPA provides for investment in all areas of economic activity in Iran. In fact, there is no area other than areas related to arms, ammunition and security which are closed to foreign investment. According to Article (3) of the FIPPA, foreign investment is divided into two broad categories:

a. Foreign Direct Investment (Equity Investment) which is opened to Iranian private sector in all areas through direct equity participation in the share capital of Iranian companies whether in greenfield projects or in existing firms or companies. As was explained elsewhere, foreign shareholding in Iranian entities is not limited in terms of percentage as opposed to what was formerly publicized that a foreign investor cannot hold more than %49 shares in Iran. Such restriction is totally irrelevant and even contradicts the current general policy and legislation.

b. Foreign "Indirect" Investment (Non-equity Forms) which provides for any type of investment under contractual arrangements defined under the FIPPA other than direct investments. Although the arrangements recognized under the FIPPA are limited to Civil Participation*, Buy- Back and BOT arrangements, each of them may be subdivided by different types under the same title. it should be noted that we may mention different types of BOOT, BOO, BLT, ROT, etc. schemes as well as Project Financing and Profit Sharing arrangements. In other words, any types of investment in which the investor does not have an equity stake and/or is not qualified for the ownership standpoint will fall under this broad category known as "Indirect" investment. This category provides for the foreign investors to enter into areas which are even closed to the private sector or areas in the upstream fields or national projects in which a direct participation in not permissible by the law.
Irrespective of the type of the investment, the Foreign Capital as defined under the FIPPA is not only defined to be the funds disbursed to cover the investors' share in the equity capital but also it refers to the funds which may be provided to an Iranian recipient entity in the form of credits and financial facilities (shareholders' loans and third party financing).

The term Foreign Capital under the FIPPA may cover both. It depends on the investor's wish and consent on how the loan to be treated in the context of the FIPPA. Such investors/financiers may be given two options. One option is to treat the loan as part of the investment of the foreign investor in the project. In this case, the repayment of the loan is dependent upon the economic performance of the project without being supported through a repayment guarantee by the government or banking system and/or state-owned companies. The other option is to treat the loan as separate financing alternative outside the FIPPA coverage. In this case, the repayment may be supported by a guarantee obtained from any of the authorities. In short, the FIPPA's coverage is only available for the funds brought into the country in the form of investment rather than the funds or the repayment of which is secured under banking instruments.