PROJECT IRAN 2017

International Law Office
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Legal Aspects of

Foreign Investment in Iran

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Legal Aspects of Foreign Investment in Iran

Investment in Iran:

Foreign Investment Promotion and Protection Act ("FIPPA") was passed on 2002

Methods of foreign investment, features and facilities under FIPPA:

- Foreign Direct Investment (FDI): all areas are open to private sector.

- Contractual Arrangements → Build, Operate and Transfer (BOT) Schemes: all areas are open to private and governmental sector. Contractual Arrangements → Buy-Back / Civil Partnership: all areas are open to private and governmental sector.

Legal Aspects of Foreign Investment in Iran

→ The application process: Organization for Investment and Economic & Technical Assistance of Iran (OIETAI)

Article 13 of FIPPA also provides that:

“The principal of the Foreign Capital and profits therefrom, or the balance of capital remaining in the country, after fulfillment of all obligations and payment of legal dues and upon the approval of the Board and the Minister of Economic Affairs and Finance, shall be transferrable abroad subject to a three-month prior notice submitted to the Board.”

Legal Aspects of Foreign Investment in Iran

Local Content:

The Act on "Maximum Use of Technical Power …" (ratified on 02 March 1997) had provided that all the relevant works and services shall only be assigned to the local companies and where, for acceptable reasons, such an assignment is not possible, it is permissible to deliver the projects (e.g. concerning up-stream development of the Iranian oil and gas resources) to a partnership with an Iranian company having 51% of the shares. In either way, 51% of the project costs (at least) shall be in form of inland work. [Article 3]

Legal Aspects of Foreign Investment in Iran

Pursuant to ratification of the Act on "Maximum Use of Production Power …" (22 July 2012), in case of the Iranian companies not being competent to do so, the projects may be consecutively assigned to a domestic-foreign partnership and a full foreign venture (still 51% of the project costs shall be in form of inland work). [Articles 5 & 6]

Legal Aspects of Foreign Investment in Iran

Foreign Investment Promotion and Protection Act "FIPPA" (ratified on March 04, 2002):

- Methods of foreign investment under FIPPA as previously cited.
- Foreign investors enjoy all of the facilities and exemptions as same as the national investors. [Article 8]
- Foreign investor shall not be deprived of its ownership unless in case of Public benefits based on a lawful procedure. According to FIPPA the application for indemnification of damage incurred must be submitted to the Board after the act of deprivation of ownership or nationalization. Any disputes in this regard should be settled according to the clause of settlement of disputes. Moreover, the facility of transfer of capital is prepared. [Articles 9 & 10]

Legal Aspects of Foreign Investment in Iran

<u>Act on Management of State Services</u> (ratified on October 10, 2007):

In order to promote the privatization, the Act on Management of State Services as well as the Act of Execution of the General Policies re Principle 44 of Iranian Constitution allowed the private companies to take part and invest in many economic sections as mentioned in Principle 44 of Constitution.

Legal Aspects of Foreign Investment in Iran

Act of Execution of General Policies re Principle 44 of Iranian Constitution (ratified on June 14, 2008 at the Expediency Discernment Council, and further amended on June 22, 2014 by Parliament):

Competition rules under Iranian laws and regulations are so poor. However, the lately ratified "Act of Execution of General Policies re Principle 44 of Iranian Constitution" provide for regulations as to competition, inter alia, as follows:

- Public non-governmental entities/institutions and their affiliates/subsidiaries are authorized for taking over, whether directly or indirectly, of up to 40% of the market share of any goods or services. [Article 6, para 2]

Legal Aspects of Foreign Investment in Iran

Act on Constant Improvement of Trade Ambiance (ratified on April 05, 2011):

- The national indicators of trade ambiance in Iran shall be prepared and declared through the Chambers (i.e. Chambers of Commerce and the Chambers of Cooperatives), annually or for each season, depending to any province, any section and/or any economic activity. [Article 4]
- The national economic establishments shall be listed through the Chambers (i.e. Chambers of Commerce and the Chambers of Cooperatives). [Article 5]

Legal Aspects of Foreign Investment in Iran

Act on Maximum Use of Production and Services Content for Supply of the Country's Necessities and Enhancing them for the Matter of Exportation (ratified on July 22, 2012) as previously was cited.

Anti-Corruption Legislation in Iran

Iran has ratified the United Nations Convention against Corruption on October 11, 2008 with the exception of Clause 2 of Article 66.

Apart from the foregoing, a number of general laws and regulations have been enacted as to prevention of corruption in connection with the administrative and governmental bodies.

Legal Aspects of Foreign Investment in Iran

Additional Information

Joint Venture Companies:

JVC is a registered Company in Iran, which is formed, based on the investment and cooperation of a foreign and an Iranian Company. Based on a general practice, the amount of participation by a foreign company can range from %10 to %90 for the foreign company.

Legal Aspects of Foreign Investment in Iran

Branch or representative office of foreign companies in Iran:

One of the simplest and most common means for commercial and investment transactions in Iran is the establishment of branch or representative offices of foreign companies in Iran.

The law permitting the registration of branch or representative offices of foreign companies was ratified on November 12th, 1997 so as to accelerate this new process.

Legal Aspects of Foreign Investment in Iran

Dispute Resolution:

FIPPA (Article 19) provides that “Any disputes between the government and foreign investors related to the investments subject of this Act which can not be settled through negotiations, shall be examined by domestic courts of law, unless another mode of settlement of disputes has been agreed upon within a law on bilateral investment agreement with the government of the Foreign Investor.”

→ 66 BITs (whether in force or signed)

Legal Aspects of Foreign Investment in Iran

Article 139 of Iranian Constitution provides that:

“The settlement of claims relating to public and state properties or the referral thereof to arbitration is in every case dependent on the approval of the Council of Ministers, and the Assembly [i.e. Iranian Parliament] must be informed of these matters. In cases where one party to the dispute is a foreigner, as well as in important cases that are purely domestic, the approval of the Assembly must also be obtained. Law will specify the important cases intended here.”

Legal Aspects of Foreign Investment in Iran

Article 968 of the Iranian Civil Code:

“Liabilities arising out of transactions are subject to the laws of the place of the conclusion of the transaction except in cases where the parties to the transaction are both foreign nationals to have explicitly or impliedly declared the transaction to be subject to the laws of another country”.

Iran has adopted an act on international arbitration entitled “Law on International Commercial Arbitration“ (LICA). The LICA was approved by the Islamic Consultative Assembly on September 17th, 1997, and ratified by the Guardian Council on October 1st 1997.

Legal Aspects of Foreign Investment in Iran

Respectfully Submitted by:

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<u>THANK YOU ALL</u>