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Arbitration in post-sanctions Iran

by Dr Ardeshir Atai, Arbitrator at Alternative Dispute Resolution Centre of American Chamber of Commerce and partner at Atai & Associates.

As the negotiations between Iran and Western powers in Vienna are moving closer to a final nuclear deal, business communities are preparing for new opportunities in the Iranian market following the lifting of sanctions on banking, insurance, petroleum and shipping sectors. Multinational companies interested in developing business in Iran should consider options for resolving disputes with local partners. The number of arbitration cases has risen recently mainly due to application of sanctions regulation on national and international level with adverse impact on business relations involving foreign and Iranian corporations. Iran has adopted the UNCITRAL Model Law on International Commercial Arbitration. The Law of International Commercial Arbitration recognises party autonomy including selection of foreign choice of law, appointment of arbitrator(s), language and location of arbitration, appointment of experts. Other benefits include non-intervention of state courts in arbitration proceedings, recognition and enforcement of arbitral awards, competence of arbitral tribunal to determine its own jurisdiction, power of the arbitral tribunal to issue provisional measures, and the requirement for equal treatment of parties that is fundamental for due process of law. Therefore, arbitral awards issued by foreign arbitral tribunals are recognizable and enforceable in Iran subject to the rules and procedures. Iran has signed more than 50 Agreements for Promotion and Reciprocal Protection of Investments (BITs) with capital exporting countries (EU states) and neighboring countries. Under the BITs foreign investors can institute arbitration proceedings under international law against Iran for encroachment of their investment and claim compensation. Iran has is not member of the ICSID Convention, therefore, the arbitration proceedings will be in accordance with dispute resolution provision in applicable BIT. The Iranian Foreign Investment Promotion and Protection Act accords foreign investors and their investments national treatment standard, compensation in case of expropriation and nationalization of their investment, transfer of funds and dispute settlement procedures pursuant to BIT terms. Therefore, foreign investors may structure their investment to benefit from network of BITs for protection of their investments including international arbitration proceedings. The commercial contracts between foreign investors and Iranian counterparts

may stipulate arbitration as a forum for resolution of contractual disputes. The parties may choose the seats of arbitration such as London, Paris or Geneva and select foreign law as choice of law governing the dispute. Under the Constitution Law, in case the dispute relates to public and state assets or one party to the dispute is a foreign national, the approval of the parliament is required for submission of disputes to arbitration. The investor-state dispute settlement provision in BITs contains express consent of the Iranian government to refer investment disputes with foreign investors to arbitration. Therefore, there is no need for separate approval since ratification of investment treaty by parliament has full force of law. There are three main arbitration institutions in Iran, Arbitration Centre of Iran Bar, Arbitration Center of Iran Chamber of Commerce (ACICC) and Tehran Regional Arbitration center (TRAC) that was set up under the Asian-African Legal Consultative Organisation in 1997 to promote international commercial arbitration in the region. The TRAC has adopted and modified the UNCITRA Arbitration Rules as rules of procedures. At the post-sanctions phase, the TRAC will have an important role in facilitating and supervising arbitration proceedings involving multinational companies and Iranian parties. In conclusion, arbitration has gained recognition by Iranian legal and business community as an efficient mechanism for resolving disputes and the government recommends state entities to refer their contractual disputes to arbitration administered by the ACICC which is important step in strengthening arbitration as alternative dispute resolution mechanism.

