The Foreign Investment Regulation Review

Fourth Edition

Editor
Brian A Facey

Law Business Research

The Foreign Investment Regulation Review

Fourth Edition

Editor
Brian A Facey

Law Business Research Ltd

PUBLISHER
Gideon Roberton

SENIOR BUSINESS DEVELOPMENT MANAGER
Nick Barette

BUSINESS DEVELOPMENT MANAGER
Thomas Lee

SENIOR ACCOUNT MANAGERS
Felicity Bown, Joel Woods

ACCOUNT MANAGERS
Jessica Parsons, Adam Bara-Laskowski, Jesse Rae Farragher

MARKETING COORDINATOR
Rebecca Mogridge

EDITORIAL ASSISTANT
Gavin Jordan

HEAD OF PRODUCTION
Adam Myers

PRODUCTION EDITOR
Robbie Kelly

SUBEDITOR
Janina Godowska

CHIEF EXECUTIVE OFFICER
Paul Howarth

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK

www.TheLawReviews.co.uk

ISBN 978-1-910813-24-9

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW

THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

THE DISPUTE RESOLUTION REVIEW

THE EMPLOYMENT LAW REVIEW

THE PUBLIC COMPETITION ENFORCEMENT REVIEW

THE BANKING REGULATION REVIEW

THE INTERNATIONAL ARBITRATION REVIEW

THE MERGER CONTROL REVIEW

THE TECHNOLOGY, MEDIA AND
TELECOMMUNICATIONS REVIEW

THE INWARD INVESTMENT AND
INTERNATIONAL TAXATION REVIEW

THE CORPORATE GOVERNANCE REVIEW

THE CORPORATE IMMIGRATION REVIEW

THE INTERNATIONAL INVESTIGATIONS REVIEW

THE PROJECTS AND CONSTRUCTION REVIEW

THE INTERNATIONAL CAPITAL MARKETS REVIEW

THE REAL ESTATE LAW REVIEW

THE PRIVATE EQUITY REVIEW

THE ENERGY REGULATION AND MARKETS REVIEW

THE INTELLECTUAL PROPERTY REVIEW

THE ASSET MANAGEMENT REVIEW

THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

THE MINING LAW REVIEW

THE EXECUTIVE REMUNERATION REVIEW

THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW

THE CARTELS AND LENIENCY REVIEW

THE TAX DISPUTES AND LITIGATION REVIEW

THE LIFE SCIENCES LAW REVIEW

THE INSURANCE AND REINSURANCE LAW REVIEW

THE GOVERNMENT PROCUREMENT REVIEW

THE DOMINANCE AND MONOPOLIES REVIEW

THE AVIATION LAW REVIEW

THE FOREIGN INVESTMENT REGULATION REVIEW

THE ASSET TRACING AND RECOVERY REVIEW

THE INSOLVENCY REVIEW

THE OIL AND GAS LAW REVIEW

THE FRANCHISE LAW REVIEW

THE PRODUCT REGULATION AND LIABILITY REVIEW

THE SHIPPING LAW REVIEW

THE ACQUISITION AND LEVERAGED FINANCE REVIEW

THE PRIVACY, DATA PROTECTION AND CYBERSECURITY LAW REVIEW

THE PUBLIC-PRIVATE PARTNERSHIP LAW REVIEW

THE TRANSPORT FINANCE LAW REVIEW

THE SECURITIES LITIGATION REVIEW

THE LENDING AND SECURED FINANCE REVIEW

THE INTERNATIONAL TRADE LAW REVIEW

THE SPORTS LAW REVIEW

THE INVESTMENT TREATY ARBITRATION REVIEW

THE GAMBLING LAW REVIEW

THE INTELLECTUAL PROPERTY AND ANTITRUST REVIEW

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ALRUD

ATAI & ASSOCIATES

ATSUMI & SAKAI

BLAKE, CASSELS & GRAYDON LLP

CLEARY GOTTLIEB STEEN & HAMILTON LLP

DARROIS VILLEY MAILLOT BROCHIER

ESTUDIO BECCAR VARELA

FRESHFIELDS BRUCKHAUS DERINGER LLP

HENGELER MUELLER PARTNERSCHAFT VON RECHTSANWÄLTEN MBB

HOGAN LOVELLS BSTL, SC

JUNHE LLP

LETT LAW FIRM P/S

MATHESON

PINHEIRO NETO ADVOGADOS

RAJAH & TANN SINGAPORE LLP

SHARDUL AMARCHAND MANGALDAS & CO

SHIN & KIM

URÍA MENÉNDEZ

VIETNAM INTERNATIONAL LAW FIRM (VILAF)

CONTENTS

EDITOR'S PREFACE

I am pleased to present the fourth edition of *The Foreign Investment Regulation Review*. This year's edition features contributions from 46 authors from 21 countries. Our contributors provide important insight into the regulatory framework for foreign investment review in their respective countries, as well as an overview of current trends and developments in this field.

In 2015, global foreign investment increased to its highest level since the global economic crisis began in 2008. The primary factor in the global growth of foreign investment was the significant increase in cross-border mergers and acquisitions.

Within this context, foreign investment reviews will continue to present complex issues for businesses, regulatory authorities and legal counsel. Legal practitioners and companies seeking to do business internationally will benefit by familiarising themselves with the regulatory frameworks outlined in this treatise. Of particular importance, this edition provides readers with practical guidance to navigate investments in major jurisdictions by anticipating key timing and substantive issues. It also brings to the readers' attention key policy or 'soft' considerations when investing in a particular jurisdiction. We hope this edition will assist investors and businesses being acquired to better evaluate and manage the legal and political risks associated with investments that may be subject to foreign investment review, ultimately reducing transaction uncertainty and delay.

I would like to express my gratitude to each author and law firm involved in this project for the commitment of both their expertise and their time.

Please note that the views expressed in this book are those of the authors, and not those of their firms, any specific clients, the editor or the publisher.

Brian A Facey
Blake, Cassels & Graydon LLP
Toronto
September 2016

Chapter 9

IRAN

Ardeshir Atai[1]

I INTRODUCTION

This chapter outlines the legal framework governing foreign investment in Iran. Following the implementation of the Nuclear Deal in January 2016 and the gradual lifting of sanctions on the Iranian economy, a new market is opening up for foreign investment. Foreign companies are expressing great interest in establishing a legal presence in Iran and conducting business through the export and distribution of their products in Iran, forming joint ventures with local partners and acquiring shares of Iranian companies. The vast quantities of natural resources in Iran, including oil, gas, minerals and petroleum, and the need for foreign capital investment, technology and management know-how for their exploitation, development and production, are strong factors for attracting multinational companies into the Iranian market. In addition, the government has always given priority to foreign investment to encourage international companies to participate in the economic development of the country by undertaking investment projects in Iran.

II FOREIGN INVESTMENT REGIME

The foreign investment regime comprises different pieces of legislation, regulations, by-laws and policy documents. The main sources of law concerning foreign investment include, *inter alia*, the following:

a the Constitutional Law sets forth principles regarding, *inter alia*, the economy and financial affairs (Article 44), the prohibition on concessions to foreigners (Article 81) and the arbitration of government disputes (Article 139);

b economic development plans enacted for a five-year period covering, *inter alia*, general policies adopted by the government concerning investment and the development of public utility and infrastructure projects;

1 Ardeshir Atai is a partner at Atai & Associates Law Firm.

c the Annual National Budget Law concerns the government budget and the allocation of financial resources for government expenditure;
d the general policies under Article 44 of the Constitution concerning privatisation of the economy; and
e the Foreign Investment Promotion and Protection Act (FIPPA), enacted in 2002, governs the admission and treatment of foreign investors and investments.

i The general policies of Article 44 of the Constitution

The Law amending some Provisions of the Fourth Economic Development Plan and Implementing General Policies of Article 44 of the Constitution (Privatisation Act) was approved by Parliament on 28 January 2008 and ratified by the Expediency Council on 21 July 2008.

The Privatisation Act has classified economic activities, including the production, sale and purchase of goods and services, into three groups.[2] Group one includes all economic activities other than those contained in groups two or three. The government is prohibited from ownership, investment and management in these groups of activities. All companies listed in group one must be assigned to non-state actors by the end of the fourth economic plan. Group two includes economic activities contained in Article 44 of the Constitution. The government must assign 80 per cent of the share value in such activities to non-state actors by the end of the fourth plan.[3]

Group three includes those activities in which ownership and management remains with the government as follows:
a mother telecommunications network;
b military production;
c the National Iranian Oil Company (NIOC), and the exploration and production of oil and gas;
d oil and gas mines;
e Bank Markazi Iran, Bank Melli Iran, Industry and Mine Bank, Export Development Bank of Iran, Bank Keshavarzi, Bank Maskan and Bank for Mine Development;
f Central Insurance and Iran Insurance Company;
g the main power distribution system;
h Iran aviation activities;
i Iran Ports and Maritime Organisation;
j the dam and water distribution system; and
k radio and television.

The sale of shares of state companies to the private sector is possible through public offerings in domestic or foreign stock exchanges or tenders.[4] In cases where there are no purchases following two consecutive tenders for the sale of government shares, the sale of government

2 Article 2 Privatisation Act 2008.
3 Ibid.
4 Article 20 Privatisation Act 2008.

companies can be conducted through direct negotiations with private parties subject to the approval of the Assignment Board.[5] Persons with foreign capital may purchase shares in accordance with the provisions of FIPPA.[6]

ii FIPPA

According to FIPPA, foreign investors may import capital into Iran in the form of cash and non-cash, including machinery, know-how, trademarks and brand names, and other types of capital and specialised services.[7]

The main privileges and guarantees granted to foreign investors under a FIPPA licence are as follows:

a non-discriminatory treatment (i.e., the same treatment as that of national investors) of foreign investors and investments;[8]

b protection of foreign investment against nationalisation and expropriation through payment of compensation;[9]

c repatriation of capital and profits in the form of foreign currency at the official exchange rate through the banking system;[10] and

d the ability to purchase real estate.[11]

FIPPA distinguishes between two types of investments: foreign direct investment in the fields of activities that are open to the private sector; and foreign investments in all sectors within the framework of civil partnership, buyback and build, operate and transfer (BOT) agreements.[12]

Therefore, both types of equity and debt investments are authorised. Equity or direct investments are possible through an acquisition of shares of an existing company by a foreign investor or through establishing a wholly owned Iranian company for undertaking investment operations. Debt or non-equity-based investments refer to instances where the foreign contractor undertakes investments in government sectors through concluding contracts with the related government company or organisation for developing infrastructure projects.

iii Foreign investment in the free trade zones (FTZs)

The Law on Administration of Free Trade-Industrial Zones, enacted in 1993, and the Law on Establishment of Special Economic Zones (SEZs), enacted in 2005, set forth the rules and regulations concerning commercial activities in the FTZs and SEZs.

There are currently seven FTZs: Aras, Arvand, Anzali, Chabahar, Qeshm, Kish and Maku. There are 23 SEZs operating in the country, the main zones of which are Pars, Shiraz, Payam, Lorestan, Boushehr, Sirjan, Sarakhs, Salafchegan, Yazd, Birjand, Rafsanjan, Mehran, Salmas, Arak, Lamard and Imaam Khomeini port. Foreign investment activities in the SEZs are subject to the provisions of FIPPA.

5 Note 2, Article 20 Privatisation Act.
6 Note 1, Article 20 Privatisation Act.
7 Article 1 FIPPA 2002.
8 Article 8 FIPPA 2002.
9 Article 9 FIPPA 2002.
10 Articles 12 to 16 FIPPA 2002.
11 Article 34 FIPPA Regulations.
12 Article 3(a) and (b) FIPPA 2002.

The Regulations on Investments in FTZs were approved in 1994. The main incentives and privileges offered to foreign investors undertaking investments in FTZs are as follows:

a a 20-year tax exemption for all commercial activities;

b a waiver of visa requirements for foreign nationals;

c the establishment of companies with 100 per cent foreign ownership of shares;

d the free transfer of currency and repatriation of profits (as an exception, financial transactions conducted between an FTZ and the mainland are subject to foreign currency exchange controls);

e the import and export of goods between the zones and from outside Iran are exempt from the Export–Import Regulations and should only be registered at the Customs Office; and

f the payment of compensation in the case of the nationalisation and expropriation of foreign investment.

iv Foreign investment in the securities and capital markets

Pursuant to Article 15 of the fourth plan, which required the Central Bank of Iran and the Ministry of Economic and Financial Affairs to facilitate foreign investment in the capital markets, the Securities Market Act of Iran was enacted in 2005. The Regulations governing Foreign Investment in the Stock Exchange and Over the Counter Markets (Foreign Investment Regulations) were approved in 2010.

Requirement for a trading licence

According to the Foreign Investment Regulations, foreign investors must apply for a trading licence by submitting a request together with the necessary information and documents to the Securities and Exchange Organization (SEO) of Iran. Foreign nationals are allowed to engage in securities transactions in the stock exchange and over-the counter (OTC) markets in accordance with the provisions of the Foreign Investment Regulations and within the limitations stipulated in the trading licence.[13] The SEO is obligated, within seven working days of receiving complete information and documentation, to issue the trading licence and inform the same to the applicant or his or her representative.[14] The Regulations distinguish between two types of investment: foreign investment and strategic foreign investment.

Non-strategic foreign investment

Foreign investment is defined as investment by foreign nationals who have obtained a trading licence from the SEO.[15] Foreign investors are authorised to invest in the stock exchange or OTC markets within the ceilings specified in FIPPA unless the High Council of Securities and Stock Exchange decides to implement certain restrictions.[16] The restrictions on the ownership of shares by non-strategic foreign investors in the stock exchange or OTC markets are as follows:

13 Article 2 Foreign Investment Regulations 2010.

14 Article 5 Foreign Investment Regulations 2010.

15 Article 1(9) Foreign Investment Regulations 2010.

16 Article 3 Foreign Investment Regulations 2010.

a the number of shares owned by the all of the foreign investors together shall not exceed 20 per cent of the total number of shares of the companies listed in the stock exchange or OTC market, or 20 per cent of the number of shares of the listed companies in the stock exchange or OTC market; or

b the number of shares owned by each foreign investor in any company listed in the stock exchange or OTC market shall not exceed 10 per cent of the number of shares of that company.[17]

Strategic foreign investment

Strategic foreign investment refers to foreign investment that purports to acquire ownership exceeding 10 per cent of the shares of a company listed in the stock exchange or OTC markets, or where, after acquiring shares of a company listed in the stock exchange or OTC markets, the investor acquires control of a seat on the board of directors of that company.[18] Once the strategic foreign investor has purchased shares, he or she is not allowed to sell the original shares for a period of two years without the permission of the SEO. The sale of these types of shares is subject to compliance with regulations concerning bulk trading of shares in the stock exchange or OTC markets.[19]

III TYPICAL TRANSACTIONAL STRUCTURES

i Types of operation

Depending upon the nature and type of investment and economic sector, foreign investors can undertake investment projects either jointly with an Iranian partner or independently. To implement investment projects, the foreign investor is required to establish an Iranian company as special purpose vehicle to own and manage the project. The Iranian Commercial Code envisages several types of commercial companies. The most suitable vehicles for structuring investment are the private joint-stock company (PJSC) and the limited liability company (LLC).

PJSC

Iranian law allows foreign investors to establish a wholly-owned Iranian company to engage in commercial activities, including investment projects. The most common form of commercial enterprise for investment is the PJSC. The liability of shareholders in a PJSC is limited to the amount of their respective shareholdings in the company.[20]

17 Article 7 Foreign Investment Regulations 2010.

18 Article 1(10) Foreign Investment Regulations 2010.

19 Article 8 Foreign Investment Regulations 2010.

20 Article 1 Commercial Code 1969 (as amended).

LLC

A foreign company may establish a wholly owned LLC. An LLC is a simple form of Iranian company with limited liability, and may be formed by two partners with a minimum capital of US$1,000. LLCs do not issue share certificates.[21] The founding partners may act as directors, one of whom could take the position of the managing director.[22]

Joint ventures

In cases where the foreign investor decides to undertake an investment project jointly with an Iranian partner, it may enter into a joint venture agreement with the partner. The joint venture agreement contains the parties' intention in establishing the joint venture company, the terms and conditions for their cooperation, the limits of their financial liabilities, the management and the extent of contribution of each partner.

Branch office

Foreign companies may register a branch office in Iran for the purpose of carrying out marketing, trade and business activities. A branch office is a simple form of business entity that does not require share capital or an Iranian partner. A chief representative (general manager), who will be in charge of operating the branch, is nominated by a board resolution of the parent company.

ii Public utility and infrastructure projects

Foreign companies may engage in contracting activities to implement public projects such as the construction of refineries, independent power plants and petrochemical factories, and public projects in the telecommunications, transportation, oil, gas, petroleum and mining sectors. Such projects are offered by the government through tender processes. Contracts may be offered in the form of public private partnerships, engineering, construction and procurement, BOT and other methods of financing arrangements. Regarding the new Iranian Petroleum Contract, the government has announced a new contractual framework to replace the buyback arrangement.

In some cases, foreign contractors are required to comply with local content requirements concerning the establishment of a joint foreign–Iranian consortium for undertaking certain projects and contracts.

iii Public procurement and tenders

Large government public utility and infrastructure projects are awarded through tenders or invitations to qualified contractors to submit their bids for projects. Qualified companies are selected on basis of their technological capabilities, technical expertise and past performance in similar projects. The Tender Act, enacted in 2008, lays down the rules and procedures concerning public tenders. In international tenders, domestic bidders have priority over foreigners.

21 Article 102 Commercial Code 1969 (as amended).

22 Article 104 Commercial Code 1969 (as amended).

iv Local content criteria

The Law of Maximum Utilisation of Technical, Engineering, Production, Industrial and Executive Capacities of the Country (Local Content Law), enacted in 1997, sets forth the rules and regulations concerning local content criteria. The scope of application of the Local Content Law covers a broad range of entities, including:

a ministries, organisations, institutions, state companies and companies affiliated to the government;

b banks, institutions and non-state public organisations;

c public institutions and public companies, foundations and Islamic revolutionary institutions; and

d all organisations, companies and institutions, bodies and units governed by specific laws, including NIOC, National Iranian Gas Company, the National Petrochemical Company, the state aviation company, state broadcasting, National Iranian Steel Company, National Iranian Copper Industries Company and their affiliates.[23]

According to the Local Content Law, the procurement of engineering and construction services from foreign suppliers by government entities is prohibited. In the event of a lack of domestic capacity for the implementation of projects, a partnership between domestic and foreign companies shall carry out projects on condition that the share of domestic suppliers makes up at least 51 per cent of the total value of the project.[24] The winning bidder is also required to procure all products and services required for the related project from domestic producers and suppliers.[25] The Council of Economy, upon the recommendation of the Management and Planning Organization, may authorise derogation from the above requirements.[26]

IV REVIEW PROCEDURE

i Definition of foreign investor and investment

FIPPA defines foreign investor as non-Iranians, and Iranian natural or juridical persons using capital with foreign origin, who have obtained an investment licence.[27] FIPPA defines foreign investment as the utilisation of foreign capital in new or existing economic enterprises after obtaining the investment licence.[28]

ii Definition of foreign capital

Foreign capital is defined as various types of capital, whether cash or non-cash, imported into the country by a foreign investor and comprising the following:

a cash funds in the form of convertible currency;

b machinery and equipment;

c tools, raw materials, spare parts, complete knock-down;

23 Article 1 Local Content Law 1997.

24 Article 3 Local Content Law 1997.

25 Note 1, Article 3 Local Content Law 1997.

26 Note 1, Article 3 Local Content Law 1997.

27 Article 1 FIPPA 2002.

28 Article 1 FIPPA 2002.

d patent rights, technical know-how, trademarks and brand names, specialised services;
e transferable dividends of foreign investors; and
f other permissible items approved by the Cabinet of Ministers.[29]

iii Conditions for admission of foreign investment

As a requirement for admission of foreign investment under FIPPA, the investment must comply with the prevailing laws and regulations, and must be for the purpose of the development and promotion of production activities, industry, mining, agriculture and services.[30] In addition, the foreign investor must meet the following conditions:

a the investment should lead to economic growth or the upgrade of technology, enhance the quality of products, and increase employment opportunities and exports;
b the investment should not threaten national security or public interest, or cause harm to the environment. In addition, it must not interrupt the country's economy or jeopardise production by local investments;
c the investment should not entail granting concessions by the government to foreign investors. A concession means a special right that places a foreign investor in a monopolistic position; and
d the ratio of the value of goods and services produced by foreign investments to the value of goods and services supplied to the local market at the time of the issuance of investment licence shall not exceed 25 per cent in each economic sector and 35 per cent in each sub-sector. The fields and extent of investment in each field shall be determined through by-laws to be approved by the Council of Ministers. Foreign investment for the production of goods and services (other than oil and gas) for export purposes shall be exempt from the aforesaid ratios.[31]

iv Importation of capital funds

The importation of foreign capital into Iran shall be through one of the following methods: cash funds to be converted into rials; cash funds not to be converted into rials, but to be used directly for purchases and orders related to the foreign investment; and non-cash items after evaluation by the competent authorities.[32]

v Admission authority

The Organization for Investment, Economic and Technical Assistance of Iran (OIETAI) is the authority in charge of the regulation and supervision of foreign investment. Applications by foreign investors concerning admission, importation, utilisation and repatriation of capital should be submitted to the OIETAI.[33] The OIETAI is obligated to submit investment applications received from foreign investors together with its own recommendations to the

29 Article 1 FIPPA 2002.
30 Article 2 FIPPA 2002.
31 Article 2(a)-(b) FIPPA 2002.
32 Article 11 FIPPA 2002.
33 Article 5 FIPPA 2002.

Foreign Investment Board (Board) within a maximum period of 15 days from the date of receipt of the application. The Board must review the application within a maximum period of one month from the date of submission and notify its final decision in writing.[34]

V FOREIGN INVESTOR PROTECTION

i Investment agreements

In addition to FIPPA protection, foreign investments enjoy protection under international law instruments. Iran has signed various bilateral, multilateral and regional investment agreements.

Multilateral Investment Guarantee Agency (MIGA)

In 2003, Iran acceded to the World Bank Convention establishing MIGA, which was adopted in 1985. MIGA provides qualified foreign investors with insurance cover against the political risks of expropriation, currency transfer, breach of contract, and war and civil disturbances.

Economic Cooperation Organization (ECO)

Iran is a founding member of the ECO, established between Iran, Pakistan and Turkey under the Treaty of Izmir in 1977. In 2009, Iran ratified the Agreement on Promotion and Protection of Investment of the Economic Cooperation Organization, a regional intergovernmental organisation including Afghanistan, Azerbaijan, Iran, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkey, Turkmenistan and Uzbekistan. The ECO investment agreement guarantees fair and equitable treatment (FET), monetary transfers, non-expropriation and access to a dispute resolution procedure.

Organisation for Islamic Cooperation (OIC)

The OIC is the second-largest intergovernmental organisation after the United Nations, and consists of 57 states spread over four continents. Iran has ratified the Agreement for the Reciprocal Promotion and Protection of Investments between OIC Members that entered into force in 1986. The OIC investment agreement protects foreign investments against unfair and discriminatory treatment, non-compensatory expropriation and currency inconvertibility.

ii Bilateral investment treaties (BITs)

Iran has signed many BITs with other countries for the reciprocal promotion and protection of foreign investment in Iran. Iran has BITs with various European states, including Austria, Belarus, Croatia, Cyprus, Finland, France, Germany, Greece, Italy, Macedonia, Poland, Romania, Serbia, Slovakia, Spain, Sweden, Switzerland and Ukraine. Asian trading partners with which Iran has BITs include Azerbaijan, Armenia, China, Georgia, Indonesia, Kazakhstan, Korea, Lebanon, Malaysia, Singapore, Tajikistan, Turkey and Turkmenistan. On the African continent, Iran has signed treaties with, *inter alia*, Algeria, Tunisia, Kenya and South Africa. Iran is party to BITs with the Persian Gulf states of Bahrain, Kuwait, Qatar and Oman. The majority of Iranian BITs contain common denominators of international

34 Article 6 FIPPA 2002.

investment law including, *inter alia*, provisions concerning the scope of application, treatment standards, repatriation of funds, expropriation and dispute resolution procedures, as outlined below.

Scope of application of Iranian BITs

Iranian treaties condition the application of investment protection standards on approval of the investment by the OIETAI. Therefore, foreign investors must make an application to the OIETAI in compliance with the rules and regulations of FIPPA and obtain licence to enjoy the protections envisaged in the applicable investment treaty, including access to international arbitration.

Definition of investment

Iranian BITs define investment as any kind of assets invested directly or indirectly by the investor in the host state, including moveable and immoveable property, shares, stocks and other interests in companies, contracts, and claims to money and intellectual property rights.

Substantive treatment standards

Iranian treaties guarantee FET, national treatment, most favoured nation treatment standards, the transfer of funds, non-expropriation and the observation of commitments. According to arbitral jurisprudence, the FET obligation requires the host state to observe the principles of due process of the law and natural justice. Therefore, an investor must have access to the courts, fair hearings and the right of appeal against judicial decisions. The obligation to treat foreign investors fairly and equitably extends to administrative decision-making and procedural fairness. Other requirements include the transparency, predictability, certainty and stability of the legal system of the host state. Therefore, the host state must inform a foreign investor concerning new laws and regulations, policies and judicial decisions affecting its foreign investment.

Expropriation standard

The expropriation standard in BITs prohibits the host state from expropriation of investment assets of a foreign investor, unless the expropriation is for a public purpose in accordance with the due process of law, is carried out in a non-discriminatory manner, and is accompanied by payment of effective, prompt and appropriate compensation. International tribunals employ the 'full fair market value' of investment as a common method of valuation of an investment as a going concern.

Investor–state dispute resolution

The dispute resolution procedure in Iranian BITs sets forth the rules and procedures for:

a the establishment of arbitral tribunals;
b the appointment of arbitrators;
c the place and language of arbitration proceedings;
d the consent of parties to the arbitration;
e the applicable substantive law; and
f the enforcement of an arbitral award.

The majority of investment treaties signed by Iran grant foreign investors the option of referring disputes with the government or government owned-entities concerning investments to international arbitration pursuant to the *ad hoc* Arbitration Rules of the United Nations Commission on International Trade Law.

VI OTHER STRATEGIC CONSIDERATIONS

i Technology startups and knowledge-based companies

The Law concerning Protection of Knowledge-Based Companies and Institutions and Commercialisation of Innovations and Inventions (Technology Startup Law) was passed in 2011, and lays down the rules and regulations governing the activities of technology startups. In 2013, the Cabinet of Ministers approved the implementing regulations of the Technology Startup Law (Startup Regulations).

Definition of knowledge-based companies

According to the Technology Startup Law, knowledge-based companies and institutions are defined as private companies or cooperative institutions established for the purpose of:

a cooperation and coordination of science and funding;

b development of the knowledge-based economy;

c materialisation of scientific and economic objectives (including expansion and utilisation of innovation and invention); and

d commercialisation of the results of research and development (including designing and production of goods and services) in the field of advanced technology with extra added value, especially for the production of related software.[35]

The above definition is generic, and covers almost all types of activities undertaken by technology startups. The Startup Regulations provide a more specific definition of the fields of activities of knowledge-based companies. According to the Regulations, companies and institutions that are engaged in the 'expansion and utilisation of innovations and inventions' and the 'commercialisation of the results of research and development (including designing and production of goods and services) in the field of advanced technology with high added value' qualify as knowledge-based companies and institutions.[36]

Excluded fields of activities

The following are not considered as fields of activities of knowledge-based companies:

a activities undertaken for the organising of and participation in scientific conferences, library services, teaching and training, ordinary and daily software activities, and any other activities that do not aim to design products or services, or for the enhancement of their quality;

b representatives of foreign companies and companies importing knowledge-based products that are engaged in commercial activities; and

35 Article 1 Technology Startup Law 2011.

36 Article 2 Startup Regulations 2013.

c government companies, non-government public companies and institutions, and companies in which the government, non-state public companies and institutions have more than 50 per cent ownership.[37]

Protections and incentives offered to technology startup companies

The Technology Startup Law offers the following protections and facilities to knowledge-based companies and institutions:

a exemptions from the payment of taxes, tariffs and custom charges, commercial profits and export tariffs for a period of 15 years;

b financing for all or part of the costs of production, supply or utilisation of innovation and technology through the granting of short-term or long-term low-interest or interest-free loans;

c priority for the establishment of research, technology and engineering and production units of knowledge-based companies and institutions in Iran's science and technology parks, growth centres, special economic zones, and special science and technology zones;

d priority for assigning the whole or a portion of the shares owned by the government in research centres and institutions that are eligible for assignment on the basis of the New Privatisation Law to the knowledge-based companies and institutions covered by the Technology Startup Law;

e offering adequate insurance cover for reducing the risks associated with products generated by knowledge, innovation and technology during the entire stages of production, supply and utilisation; and

f simplifying the conditions for participation in tenders concerning the fields of activities defined under the Technology Startup Law, and facilitating the possibility of partnership opportunities for technology startup companies.[38]

Foreign investment in technology startup companies

The Technology Startup Law offers the above-stated protections and incentives to qualified foreign companies on two conditions: the research and development units of foreign companies must be established in Iran's science and technology parks, and more than 50 per cent of the workforce of the foreign company should be Iranian experts.[39]

Governance and funding of technology startups

The High Council of Science, Research and Technology will be responsible for policymaking, planning and overseeing the implementation of the Technology Startup Law.[40]

The Innovation and Flourishing Fund (Fund), affiliated to the High Council of Science, Research and Technology, will be established under the supervision of the Director of the Council to assist with the commercialisation, innovation, inventions, success and utilisation of technical knowledge, including through the provision of support and

37 Note 1-3, Article 2 Startup Regulations 2013.

38 Article 3 Technology Startup Law 2011.

39 Article 4 Technology Startup Law 2011.

40 Article 2 Technology Startup Law 2011.

interest-free financial facilities and other financial facilities without the requirement for a guarantee; and partnerships, with the option of the free assignment of the entire or part of the share of a partnership to knowledge-based companies and institutions.[41]

The financial sources of the Fund cover government assistance; credits allocated in the annual national budget; and any form of investment and assistance by natural and legal persons and subsidiaries and affiliates of government companies, non-government public companies, municipalities and their subsidiaries and affiliated companies.[42] Banks are also authorised to provide part of the financial resources of the Fund.

Establishment of technology consortia in free zones

According to the Technology Startup Law, to create and develop knowledge-based companies and institutions and to strengthen international cooperation, the establishment of engineering, research and technology units in the science and technology parks is authorised.[43] Technology startup companies engaged in the assigned task can benefit from the legal incentives offered by the free zones concerning labour relations, exemptions and tariffs, foreign investment and international financial transactions.[44] According to the Startup Regulations, knowledge-based companies and institutions with a workforce of 50 personnel who possess more than five years' experience and expertise can establish a consortium for the purpose of undertaking the scope of activities specified by the Technology Startup Law.[45]

Technology startups are authorised to enter into partnership with universities, research centres and domestic and foreign companies provided that the majority shares of the consortium are held by domestic knowledge-based companies and institutions. The consortium will be eligible to obtain financial assistance of up to 20 per cent of the costs incurred for conducting activities concerning the commercialisation of the results of research and development activities by providing the necessary evidentiary documentation.[46]

VII CURRENT DEVELOPMENTS

The general policies of the sixth development plan have been adopted by the government and forwarded to Parliament for ratification. The sixth development plan (2016–2021) contains policies on a broad range of issues, including economic development, communications and information technology, social issues, defence and security, foreign policies, legal and judicial issues, culture and science, technology and innovation. The focus of the sixth development plan is to support the establishment of non-government companies for investment in exploration activities, and the operation and development of oil and gas fields, in particular

41 Article 6 Technology Startup Law 2011.

42 Article 6 Technology Startup Law 2011.

43 Article 10 Technology Startup Law 2011.

44 Article 10 Technology Startup Law 2011.

45 Article 5 Startup Regulations 2013.

46 Article 5 Technology Startup Law 2011.

the joint fields within the framework of general policies of Article 44 of the Constitution. The sixth development plan aims to transform the upstream and downstream oil and gas industries through the establishment and strengthening of knowledge-based companies for the designing, engineering and installation of equipment, and the transfer of technology, to achieve self-sufficiency.

Appendix 1

ABOUT THE AUTHORS

ARDESHIR ATAI
Atai & Associates
Dr Ardeshir Atai is a partner at Atai & Associates, an Iranian law firm established in 1975. The firm specialises in international business and investment law.

His practice focuses on foreign investment and arbitration. Dr Atai lectures on international trade law at various Iranian universities, and has published articles in legal journals. Ardeshir is a member of the Chartered Institute of Arbitrators and the London Court of International Arbitration, and is an associate fellow of the Higher Education Academy in the United Kingdom.

ATAI & ASSOCIATES
No. 4, 14th Street
Vozara Ave
Tehran
Iran
Tel: +98 21 88 71 3850
Fax: +98 21 8871 5252
ardeshir.atai@ataiassociates.com
www.ataiassociates.com