A Guide to Doing Business in **Iran**

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Introduction

The legal landscape for doing business in Iran has changed significantly recently. On July 14, 2015, the P5+1 (the United States, the United Kingdom, Germany, France, China and Russia), the European Union and Iran agreed and signed a Joint Comprehensive Plan of Action ("**JCPOA**") contemplating the easing of certain Iran related sanctions. On October 18, 2015, Adoption Day, the JCPOA came into effect and signatories began embarking on the steps necessary for implementation of the JCPOA. On January 16, 2016, and after the International Atomic Energy Agency's verification of Iran's commitments under the JCPOA, the United Nations, the European Union and the United States ceased the application of sanctions relating to certain sectors of business activity with respect to Iran (i.e. no longer restricting non-US persons from engaging in the following activities) including:

- Finance and banking;
- Insurance;
- Oil, gas and petrochemicals;
- Shipping and ship building;
- Transport;
- Gold and other precious metals, bank notes and coinage;
- Other metals;
- Automotive sector;
- Software; and
- Dealings with certain previously prohibited individuals and entities.

In subsequent years, further existing sanctions are to cease upon verification and compliance pursuant to the JCPOA (or certain sanctions may "snap back" due to non-compliance).

United States Sanctions

It is important to note that the US sanctions on Iran restricting US persons from dealings related to Iran ("**US Primary Sanctions**") continue in full force and are not affected by the JCPOA (as opposed to the US sanctions regime concerning non-US persons' dealings related to Iran ("**US Secondary Sanctions**"); such US Secondary Sanctions largely ceased to apply as of January 16, 2016, as contemplated by the JCPOA and as discussed above).

Most interestingly though, a foreign entity owned or controlled by a US entity may now engage in transactions, directly or indirectly, with the Government of Iran or any person subject to the jurisdiction of the Government of Iran (pursuant to 'General License H' as stipulated by the Office of Foreign Assets Control of the US Department of the Treasury (**"OFAC"**)), which activities were all previously prohibited. Also, US persons may now apply to OFAC for a license for the sale, lease or servicing of commercial passenger aircraft with respect to Iran. However, dealings with US dollar transactions will continue to be effectively prohibited for non-US persons and US persons given that the US Primary Sanctions pertaining to prohibitions on US dollar clearing continue and have not ceased. As a result, the foreign currency of choice in doing business in Iran is the Euro which is not subject to such restrictions.

United Arab Emirates Sanctions

In the United Arab Emirates, much of the previously applicable United Nations sanctions which restricted business with Iran (as discussed above) are no longer applicable. As a result, individuals and entities are no longer generally restricted from dealings related to Iran, subject to any remaining sanctions regimes relating to Iran (such as pursuant to the continuing human rights sanctions, proliferation-related (i.e. nuclear capable ballistic missiles) sanctions and support for terrorism sanctions).

Doing Business in Iran

Given the above opportunities created by the JCPOA, a primer on Doing Business in Iran is warranted.

Iran has one of the largest economies in the Middle East, and it has the second largest population in the region, with about 80 million people. Iran ranks second in the world in natural gas reserves, and fourth in crude oil reserves. The economy is dominated by direct and indirect revenues from the petroleum and natural gas sectors, although the agricultural and service sectors in the country are active, and there has been an increase in the manufacturing and financial sectors as well.

As discussed, Iran had been under a strict international sanctions regime for over three decades, which has eased given the JCPOA. The opportunities in oil, gas, retail, manufacturing, financial, shipping and many other sectors are vast. Recent opportunities include the sale of commercial aircraft, the joint venture development of oil and gas fields, investments into the hospitality sector, shipping sector transactions and dealings with Iran's private financial institutions. However, an investor must remember that certain Iranian business sectors are subject to entrenched monopolies, duopolies or other opaque, hard wired business alliances which will be difficult to penetrate. Also, doing business in Iran requires compliance with Iranian business etiquette and traditional cultural norms which are distinctly different.

Language skills (Farsi) are also strongly recommended at this very early stage in Iran's economic re-opening to global markets.

Foreign businesses generally establish a presence in Iran through branches and representative offices. Alternatively, certain foreigners elect to conduct business through a limited liability company or a private joint stock company, often times with seasoned local partners.

In addition, the Government of Iran has established various free zones, regulated by relevant free zone authorities. Free zones allow foreign companies to form wholly owned subsidiaries. Certain free zones like the Kish Free Zone offer a 15 to 20 year tax exemption to all investors and protections for foreign investment. Other incentives include an exemption from customs duty on certain imported products.

As a further incentive for foreign investment in Iran, the Foreign Investment Promotion and Protection Act, discussed below, allows repatriation of sales related profits for foreigners; provides for fair compensation in the event of nationalization; allows for international arbitration in the event of disputes; and provides for other investment incentives for foreigners.

The JCPOA contains the implied promise of business opportunities in Iran for many foreign businesses and the exciting prospects of improving the business capabilities and infrastructure of a nation. However, further non-nuclear related sanctions, the geopolitical environment, traditional Iranian business culture, and distinctive Iranian laws and regulatory practices may serve as hurdles. Such opportunities (and hurdles) also carry with them the hope of increased cultural and political understanding through mutual business prosperity.

Foreign Investment Promotion and Protection Act

The Foreign Investment Promotion and Protection Act (**"FIPPA"**) was introduced in 2002 to improve the legal framework surrounding foreign investments and to provide more opportunities for foreign investments in Iran. The introduction of this law brought about key changes with regard to foreign investment such as the introduction of a tax regime with a flat rate of 25%, complete exemption for export generated revenues, the removal of a number of tariff barriers as well as several other regimes aimed at liberalizing foreign trade.

According to Article 1 of FIPPA, a Foreign Investor is one who is a non-Iranian natural/juridical person or an Iranian who uses capital having a foreign origin. It is important to note that in order to qualify as a Foreign Investor under FIPPA, one must obtain an Investment License. An application for the Investment License must be made to the Organization for Investment, Economic and Technical Assistance of Iran.

Once the application is made, approval is subject to the review of the Foreign Investment Board (“**Board**”). Subsequently, the license will be issued upon the confirmation and signature of the Minister of Economic Affairs and Finance.

Once the Foreign Investment License has been issued, Foreign Investment can be made in Iran by utilizing Foreign Capital. Foreign Capital, according to Article 1 of FIPPA, refers to the different types of capital whether in cash or in kind, imported into Iran by a Foreign Investor.

Article 2 of FIPPA stipulates the criteria to be met in order for Foreign Investment to be made in Iran. The main condition for allowing Foreign Investment in Iran is that it should promote the development of producing activities in Industry, Mining and Agriculture. The investment should bring about economic growth and increase employment opportunities and exports. It should not pose any kind of threat to national security or cause any damage to the environment. Additionally, the admission of Foreign Investment should not entail any kind of concessions from the government.

According to Article 3 of FIPPA, Foreign Investments can be admitted into Iran under two categories. The first category is Foreign Direct Investment in areas in which the activities of the private sector are permitted. The second category is Foreign Investment in all sectors within the framework of “Civil Participation”, “Buy-Back” and “Build- Operate- Transfer” schemes, where the return on capital and profits are solely from the project in which the investment was made. Also, such returns must not be dependent on any guarantee provided by the Government.

Foreign Investments in Iran enjoy certain protections provided by FIPPA. The three major protections are as follows:

(i) Pursuant to Article 8 of FIPPA, Foreign Investments made under the Act shall be treated equally to local investments in terms of the rights, protections and facilities available to both.
(ii) According to Article 9 of FIPPA, Foreign Investments shall not be subjected to expropriation or nationalization unless for public interest. This must be done through legal means and in no way should be discriminatory. This article also provides that appropriate compensation should be paid based on the real value of the investment before the expropriation.
(iii) Articles 13 and 14 of FIPPA provide for the transfer of profits abroad. Subject to the fulfillment of certain obligations, approval by the Board and confirmation by the Minister of Economic Affairs and Finance, profits derived from foreign capital/investment can be transferred abroad.

In the event of any dispute between Foreign Investors and the Government of Iran with respect to the investments made under FIPPA, Article 19 of FIPPA states that the dispute if not settled by the process of negotiation must be referred to the domestic courts. However, if the Government of Iran has entered into a Bilateral Investment Agreement with the government of the Foreign Investor, the method of settlement of disputes provided in the law ratifying the agreement must be followed.

Protection under Bilateral Investment Treaties

An investment will attract protection under the bilateral investment treaties to the extent that the parties have entered into an investment agreement. Iran has concluded bilateral investment treaties with more than 60 countries, which provides for the promotion, admission and protection of investments of the contracting parties. The following are the objectives of the bilateral investment treaties:

- Desiring to intensify economic cooperation to the mutual benefit of the contracting parties;
- Intending to utilise their economic resources and potential facilities in the area of investment as well as to create and maintain favourable conditions for investment by the investors of the contracting parties in each other's territory; and
- Recognising the need to promote and protect investment by the investors of the contracting parties in each other's territory.

The bilateral treaties provide for the fair and equitable treatment and full protection and security of the investments in each other's territory. The treaties prohibit the host State from adopting arbitrary and politically motivated measures against investments and requires the host State to provide legal and political stability. Further, the treaties provide for the equal treatment of investors of the contracting parties by assuring that the foreign investors will be treated no less favourable than its own investors with respect to their investment activities. Investors are protected from expropriation, nationalisation or any other measure equivalent to expropriation or nationalisation, except if an expropriation is taken for public purposes, in accordance with due process of law, in a non-discriminatory manner and upon payment of effective, prompt and appropriate compensation. The bilateral investment treaties provide for the transfer of the initial capital, profits and capital gains of the contracting party out of its territory freely and without any delay. Additionally, investors suffering losses or damages due to any armed conflict, revolution, insurrection, civil disturbance or any other similar state of emergency in the territory of the other contracting party shall be indemnified, compensated by the other contracting party.

Forms of Business Organization available to Foreign Investors

Private Joint Stock Companies

This business entity is most commonly used by foreign owners intending to incorporate a business in Iran. To register this type of entity, the company would need to appoint at least two (2) directors and three (3) shareholders who can be of any nationality.

While clients are required to submit financial statements to the government annually, they will be exempted from the requirements of an audit if:

(i) their annual revenue is lower than IRR 4,104,849; or
(ii) their total assets are lower than IRR 8,209,698.

Limited Liability Company

A limited liability company can be incorporated with a minimum of two (2) shareholders and one (1) director of any nationality. This type of business entity is mostly incorporated for the purpose of trading.

Public Joint Stock Company

A public joint stock company is used by those wishing to raise public capital. To register this type of entity, the company would need to appoint at least two (2) directors and five (5) shareholders who can be of any nationality.

It is mandatory for this type of entity to issue at least 20% of its shares to the general public. It is also mandatory to list the company on the national stock exchange. Public joint stock companies must submit audited financial statements to the government annually.

Branch Office

In accordance with Iranian Law, a branch office can be established without the need for any Iranian participation. The branch is simply an Iranian registered extension of the parent company setting up the branch and thus the shareholders and directors are the same and do not require any form of re-appointment. However, a resident legal representative must be appointed in Iran to carry out legal proceedings and other official communications.

Although a branch office can only pursue business activities within the scope defined by the parent company, it will still be allowed to invoice local customers, sign local sales contracts and receive revenue.

Iran Petroleum Contract

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. 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 once those phases were completed. In contrast, the IPC allows contract terms of up to twenty five (25) years.

Dispute Resolution

There exist two major dispute resolution institutions in Iran, namely the Arbitration Centre of Iran Chamber and the Tehran Regional Arbitration Centre. In addition, Iran's accession to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 2001 has since enabled foreign investors to refer disputes to international arbitration and made foreign arbitral awards recognisable and enforceable in Iran. Iran is also a signatory to numerous bilateral investment treaties which include provisions on dispute resolution.

Protection of Intellectual Property

Since 2001, Iran has been a member of the World Intellectual Property Organisation ("**WIPO**") - the global forum for intellectual property services, policy, information and cooperation. Further, it has acceded to numerous WIPO 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 and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

Copyright and Related Rights

In Iran, copyright and related rights are protected under The Law for Protection of Authors, Composers and Artists Rights (1970) and The Law of Translation and Reproduction of Books, Periodicals and Audio Works (1973). Additionally, the Electronic Commerce Act (2003) provides protection to works published online. Since Iran is yet to accede to any international convention or agreement on copyright and related rights protection, there are some gaps in the law and contrary regulations with international conventions in its legal system.

Protection of Industrial Property

Patents, utility models, industrial designs, trademarks, service marks, trade names, indication of source or appellations of origin and the repression of unfair competition are the protections of industrial property offered by the Paris Convention for the Protection of Industrial Property under Article 2(2), with respect to which Iran is a contracting member.

Trade- Industrial Free Zones and Special Economic Zones

The Trade-Industrial Free Zones in Iran have been created in order to attract foreign direct investment and for promoting growth and economic diversification, whereas, the Special Economic Zones have been developed for improving the supply and distribution of networks and for the transit of goods. The Trade-Industrial Free Zones and the Special Economic Zones help promote investment, aid production of industrial goods and services and create an active presence in the local and international markets. There are seven (7) Trade-Industrial Free Zones in Iran namely, the Kish free zone, Qeshm Free Zone, Chabahar Free Zone, Aras Free Zone, Anzali Free Zone, Maku Free Zone and Arvand Free Zone.

The activities carried out in the Special Economic Zones are subject to the laws of the mainland. However, the Trade-Industrial Free Zones have independent rules and regulations to govern their activities.

Taxation System for Foreign Investors

All foreign investors doing business in Iran or deriving income from sources in Iran are subject to taxation. Under the Direct Taxation Law (1987), as amended, there is no discrimination with regards to taxation of domestic and foreign investors or the granting of tax exemptions and discounts.

Taxable Income in Iran

- Iranian resident companies are taxed on their income derived inside and outside the country.
- Non-resident companies are taxed in Iran on their income derived from Iran.
- Branches registered in Iran by foreign companies are taxed in Iran only on the profits derived from the work carried out inside the country.

Corporate Income Tax Rate

As stipulated in Article 105 of the Direct Taxation Act, foreign legal entities must pay taxes at the flat rate of 25% on all taxable income earned through investments in Iran. Companies quoted on the Stock Exchange and Commodity Exchange, however, are eligible to a reduced corporate income tax rate of 22.5%. Legal or real persons will not be taxable for the stocks or the dividends of their shares in other companies.

Tax Exemptions

Activity	Level of Exemption	Duration of Exemption
Agriculture	100%	Perpetual
Industry & Mining	80%	4 Years
Industry & Mining in Less-Developed Areas	100%	20 Years
Tourism	50%	Perpetual
Handicraft	100%	Perpetual
Education & Sport Services	100%	Perpetual
Cultural Activities	100%	Perpetual
Salary in Less-Developed Areas	50%	Perpetual
All Economic Activities in Free Zones	100%	20 Years

Value-Added Tax

In Iran, Value-Added Tax (“**VAT**”) is levied on the supply, provision and importation of all goods and services bar those listed in Article 12 of the Value Added Tax Act (“**VATA**”) which are exempt from this tax. As stipulated in Article 13 of the VATA, VAT is not levied on the exports of goods and services through official customs gates. Taxes paid on such items are refunded upon the provision of a bill of export (for goods) and proving documents and certificates. The VAT rate in Iran currently stands at 9%.

Agreements to Avoid Double Taxation

The Government of the Islamic Republic of Iran has signed mutual agreements to avoid double taxation with the following states: Armenia, Austria, Bahrain, Belarus, Bosnia & Herzegovina, Bulgaria, China, Croatia, Cyprus, France, Georgia, Germany, Indonesia, Jordan, Kazakhstan, Kyrgyzstan, Lebanon, Malaysia, Pakistan, Poland, Qatar, Romania, Russia, South Africa, Spain, Sri Lanka, Switzerland, Syria, Tajikistan, Tunisia, Turkey, Turkmenistan, Ukraine, Uzbekistan and Venezuela.

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