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# IRAN INVESTMENT GUIDE

**LEGAL GUIDE**  
SECOND EDITION

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The contents of this publication, current at the date of publication set out in this document, are for reference purposes only. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

Herbert Smith Freehills LLP and its affiliated and subsidiary businesses and firms and Herbert Smith Freehills, an Australian Partnership, are separate member firms of the international legal practice known as Herbert Smith Freehills.

# INTRODUCTION

We are pleased to introduce the second edition of our guide to investing in Iran.

Saturday 16 January 2016 saw an historic moment for the Middle East region when the sanctions in place against Iran were relaxed significantly following compliance by Iran with its nuclear-related commitments pursuant to the Joint Comprehensive Plan of Action (JCPOA). This is being met with a buzz of anticipation by foreign investors and will create a multitude of investment opportunities in virtually all sectors. Recent predictions envisage that Iran will enter an era of high growth as a result of strong exports in oil, gas, petrochemicals and other manufactured goods. This increase in export revenues, together with newly gained access to frozen funds and an inflow of foreign direct investment, should enable Iran to proceed with a large pipeline of projects.

Drawing from our previous experience of working in Iran, this guide aims to describe the key legal aspects that foreign investors should consider when looking to invest in Iran. We hope that you will find this guide informative and helpful when considering the issues and complexities involved with investing in Iran.

This guide was produced together with Atieh Associates and Amereller Legal Consultants, whom we would like to thank for their invaluable input

**Mark Rigotti**  
Chief executive officer  
Herbert Smith Freehills LLP

# NOTE FROM THE AUTHORS AND EDITORS

We will be updating the current sections of this guide and including additional sections as new developments relating to Iran occur, including in relation to the proposed new Iranian Petroleum Contract, the full terms of which are expected to be released later this year.

One notable recent development is the proposed new Commercial Code which was ratified by Parliament on 6 April 2014. However, the Guardian Council refused to ratify the bill in June 2014, ruling that the Parliamentary Commission that had passed the bill on a provisional basis lacked the competence to do so. Therefore, at the date of publication of this guide, the new Commercial Code is still pending approval by the Guardian Council.

Overall, the new Commercial Code sets out extended and improved provisions relating to trader and commercial activities, the rights and obligations of traders, commercial contracts, guarantees, trade documents, natural persons and trading companies, as well as reconstruction and bankruptcy. Other key changes include:

- The range of public joint stock entities that can be formed has been expanded to allow for public joint stock general partnerships and public joint stock co-operative companies. The minimum share capital requirement for establishing public joint stock companies has been increased from Iranian Rial (**IRR**) 5 million to IRR 5 billion.
- The Securities and Exchange Organization must first approve a public joint stock company's financial capabilities before it can be established.
- A prospectus issued by a public joint stock company, inviting the public to invest in its shares, must be published by the Securities Exchange Commission.
- In respect of the shares of a public joint stock company:
  - the number of bearer shares that can be issued is limited to up to 30% of the company's total shares;
  - any issued preferred shares must be registered; and
  - the nominal value of each individual share should not exceed IRR 1 million.
- The minimum share capital requirement for establishing private joint stock companies has been increased from IRR 1 million to IRR 5 million.

Please see the 'Establishment Options' section of this guide below for a summary of the key features of the different Iranian companies, as applicable under the current Commercial Code (which was ratified in 1932).

We will continue to monitor the approval of the new Commercial Code and will update this guide following any new developments, together with any further legislative changes.

We also note that new regulations have recently been adopted by the Council of Ministers regarding Public Private Partnerships (**PPPs**) in Iran. Prior to this, there were no specific laws covering PPPs and any partnerships between the private and public sectors were carried out on an ad hoc basis through agreements and/or specific authorisations under the annual budget laws. The new regulations provide for the participation of the private sector in public projects through a tender process and the overall supervision of PPPs by the Management and Planning Organization. The regulations also require that the private sector entity participating in the tender be appraised under the 1972 Regulations on the Determination of the Competence of and the Referral of Work to Contractors. Given that the new PPP regulations were adopted on 26 August 2015, it is not yet clear what impact they will have on the implementation of PPPs in Iran going forward.

**Joanna Addison**

Partner and Chair of Iran Group, Middle East  
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# HERBERT SMITH FREEHILLS LLP

Herbert Smith Freehills is a leading international law firm, with 3,000 lawyers and 470 partners in over 26 offices spanning Middle East, Africa, Asia, Europe, Australia and the US. Working for some of the largest and most ambitious multinationals across the world, Herbert Smith Freehills provides innovative legal services to corporations, governments, financial institutions and all types of commercial organisations. The firm advises on corporate, dispute resolution, banking and finance, real estate, energy, mining and infrastructure, and offers a full range of specialist services including investment funds, real estate and property, regulatory and competition, employment and employee incentives, construction, insurance, tax and IP/IT.

Herbert Smith Freehills is one of the leading law firms in the Middle East, with offices in Dubai, Riyadh and Doha. The firm has a team of around 50 lawyers (including 10 partners) based in the region, who are available to deliver a full service across the Middle East and beyond.

# HERBERT SMITH FREEHILLS' IRAN PRACTICE

Herbert Smith Freehills has a leading practice in Iran, with our transactional experts being especially recognised in the Iranian oil and gas, power, telecommunications and pharmaceutical sectors. In particular, we have been a leading force in the Iranian oil and gas sphere, having advised international clients on a broad range of transactions relating to the development and commercialisation of Iranian oil and gas projects as well as secondary M&A deals. This has included advising on LNG projects, buy-back contracts, service contracts, gas supply agreements, farm-in agreements, system participation agreements, pipeline crossing agreements, shareholder agreements and sale and purchase agreements. We have also been at the forefront of the Iranian power industry, with extensive experience of advising sponsors and financiers of power plant projects, with particular expertise in advising on and developing novel Islamic finance structures.

We have also been advising international corporations on their Iranian disputes, sanctions issues and risk advisory matters, including providing strategic advice on mitigating and managing business risks, both before and during the implementation of Iranian sanctions. We have witnessed the evolving landscape of legal and commercial risks in relation to Iran, and have assisted numerous international corporations on navigating their businesses with respect to the application of Iranian sanctions.

Our recent experience includes advising a major energy company on the recovery of their investments following a dispute over termination of a multi-billion dollar oil and gas development project, and the possible effects of EU and US sanctions against Iran on their recovery; a multinational energy company in complex cost overrun and delay disputes with various parties relating to energy projects onshore and offshore Iran worth in excess of US\$1 billion and subject to Iranian law; and an Asian bank in relation to US and EU sanctions with regards to payments received from an Iranian bank, including advising on the proposed restructuring of existing payment arrangements.



# IRAN GROUP

Herbert Smith Freehills' Iran Group brings together specialist lawyers from across our global network to advise our clients with interests in Iran.

## WORKING GROUP

The Iran Group is headed up by a Working Group of eight partners who guide their colleagues across the network on matters to do with Iran. The contact details for each of the members of the Working Group are set out below.

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## OFFICE/REGIONAL CONTACTS AND SECTOR SPECIALISTS

Please see page 32 for the contact details of our office/regional heads and our sector specialists for the Iran Group.

Our Iran Group also includes Reza Dadbakhsh, Shazi Askarpour, Fariba Malouf and Kam Jamshidi – Iranian nationals that are based in our London, Dubai, Tokyo, and Australia offices respectively.



# ATIEH ASSOCIATES

Atieh Associates is a leading full-service international business law firm in Iran. Atieh Associates has, for the last 12 years, been consistently ranked as a tier one firm by major international legal directories such as Chambers & Partners, Legal 500 and IFLR1000.

Since its establishment 15 years ago, Atieh Associates has been involved in many of the headline transactions that have occurred in Iran and has advised on a range of issues including in relation to foreign investment, commercial transactions, franchise and agency/distribution agreements, international business transactions (including import and customs regulations), project finance,

transport and shipping, infrastructure, privatisation, legal due diligence, joint ventures, acquisitions, arbitration, taxation, oil and gas, power projects, mining, telecommunications, technology, automotive, build operate transfer agreements (BOT), buy-back agreements, banking, labour and other areas of legal concern.

The members of Atieh Associates are qualified in a number of jurisdictions and are all fluent in at least two languages.

# AMERELLER LEGAL CONSULTANTS

Amereller Legal Consultants is an international law firm with offices throughout the Middle East and Germany. The firm specialises in corporate and commercial law in the Middle East and is one of the few law firms with a direct presence in key markets in the region.

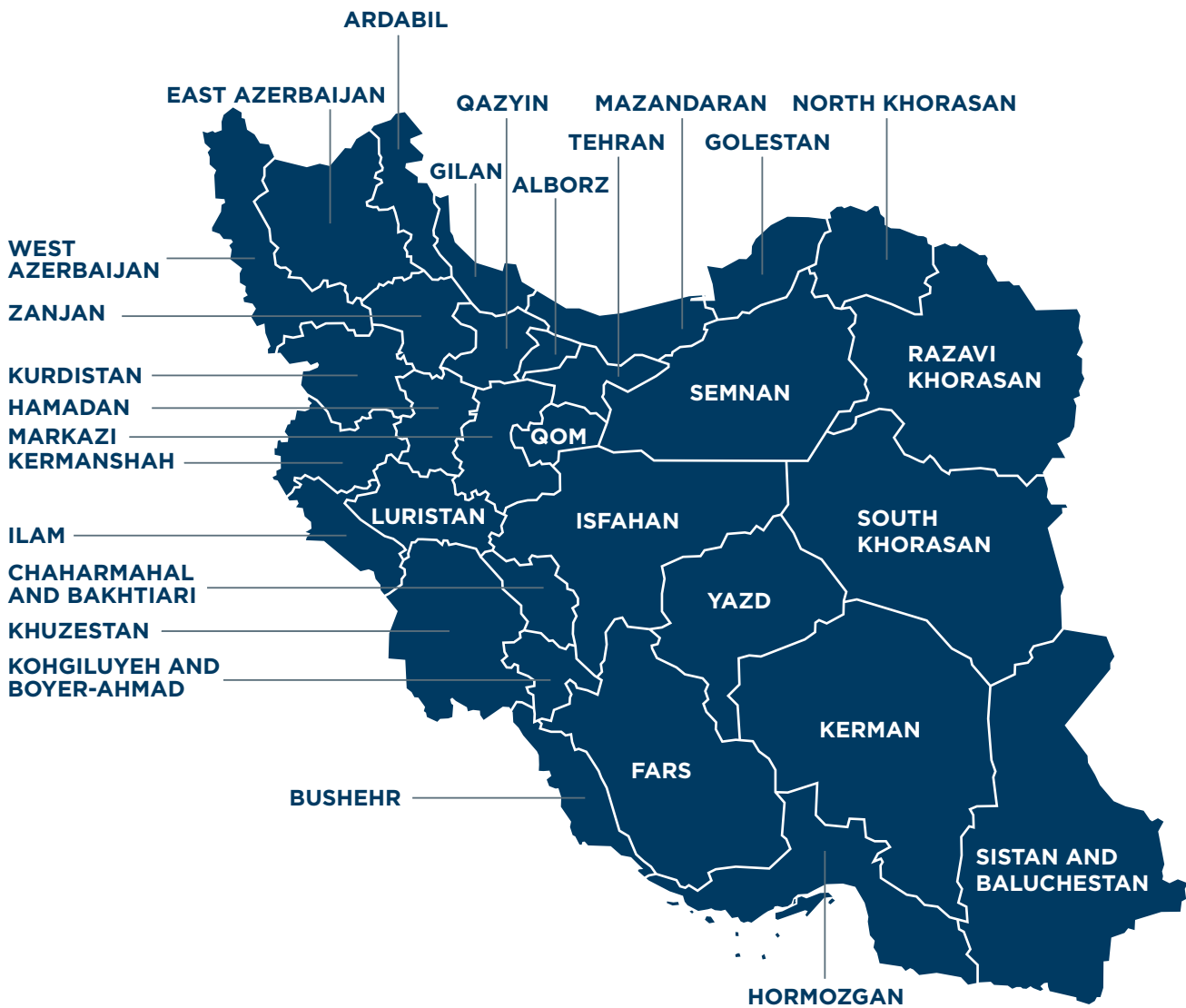
The firm has a total of 70 internationally trained and multilingual lawyers and maintains offices in Dubai, Ras Al Khaimah, Cairo, Damascus, Baghdad, Basra and Erbil (in addition to offices in Munich and Berlin). Through its network of best friend firms, Amereller also covers North Africa and the Middle East. In Iran, Amereller works jointly with the associated firm of Atieh Associates. Within the region, Amereller's lawyers have become trusted legal advisers to many government organisations, individuals, and local and international companies.

Amereller has had leading roles in major transactions in the Middle East, especially in the UAE, Egypt, Libya, Iraq, Saudi Arabia, Syria, Oman and Qatar. The firm is consulted for expert advice and commercial guidance. Its personalised focus on supporting clients across country borders and industry sectors is central to its culture. Key to its success is its sensitivity to the business, cultural and legal nuances of conducting business in the Middle East.

# MAP OF IRAN



# MAP OF IRAN'S PROVINCES



# IRAN AT A GLANCE

(As at the time of publication unless stated otherwise)

## GENERAL INFORMATION<sup>1</sup>

Name of country	Islamic Republic of Iran
Area	1,648,195 km <sup>2</sup>
Population	Second largest in the Middle East and North Africa ( <b>MENA</b> ) region, with an estimated 81.8 million people (as of July 2015)
Capital	Tehran
Literacy	An estimated 86.8% of the population aged 15 and over can read and write
Main Languages	Persian (official), Azeri Turkic and Turkic dialects, Kurdish, Gilaki and Mazandarani, Luri, Balochi and Arabic
Main Religions	Muslim (official) 99.4% (Shia 90-95%, Sunni 5-10%), other (includes Zoroastrian, Jewish, and Christian) 0.3%
Main Industries	Armaments, ferrous and non-ferrous metal fabrication, caustic soda, cement and other construction materials, fertilisers, food processing (particularly sugar refining and vegetable oil production), gas, petroleum, petrochemicals, textiles

## ECONOMIC DATA AND STATISTICS

Currency	Iranian Rial
Trade Organisation Memberships	WTO (observer state), ECO, GSTP, OPEC
GDP	An estimated US\$406.3 billion (as of 2014) <sup>2</sup> Second largest in the MENA region
GDP Per Capita	An estimated US\$5,200 (as of 2014) <sup>3</sup>
Oil and Gas Reserves	Fourth largest proven oil reserves and largest proven gas reserves in the world <sup>4</sup>

**POLITICAL POSITIONS**

Supreme Leader	Ali Khamenei
President	Hassan Rouhani
Vice President	Eshaq Jahangiri
Minister of Foreign Affairs	Mohammad Javad Zarif
Minister of Industry, Mine and Trade	Mohammad Reza Nematzadeh
Minister of Economy and Finance Affairs	Ali Tayebnia
Minister of Energy	Hamid Chitchian
Minister of Petroleum	Bijan Namdar Zanganeh
Minister of Road and Urban Development	Abbas Ahmad Akhondi
Minister of Justice	Mostafa Pourmohammadi
Minister of Labour and Social Affairs	Ali Rabei
Minister of Agriculture	Mahmoud Hojjati
Minister of Science, Research and Technology	Mohammad Farhadi
Governor of the Central Bank of Iran	Valiollah Seif
Speaker of Majlis (Parliament)	Ali Larijani
Secretary of the Guardian Council	Ahmad Jannati
Head of the Judiciary Branch	Sadeq Larijani

# OVERVIEW OF IRAN

## MODERN HISTORY

A rising sentiment against foreign influence and a growing governmental autocracy sparked the 1979 revolution and led to the creation of the Islamic Republic of Iran and the Iranian Constitution. The government formed following the revolution nationalised large sections of the country's industry and propagated the elimination of secularism and the banning of many Western influences. In addition, the Constitution imposed an absolute prohibition on the private ownership of, and participation in, the country's natural resources and biggest industries.

Shortly after the establishment of the new Republic, Iraq invaded Iran and this led to the beginning of the eight-year-long Iran-Iraq War. This conflict, combined with a prolonged decline in oil prices during the late 1980s, resulted in a period of high inflation and slow rate of economic growth compared with the two previous decades of booming growth.

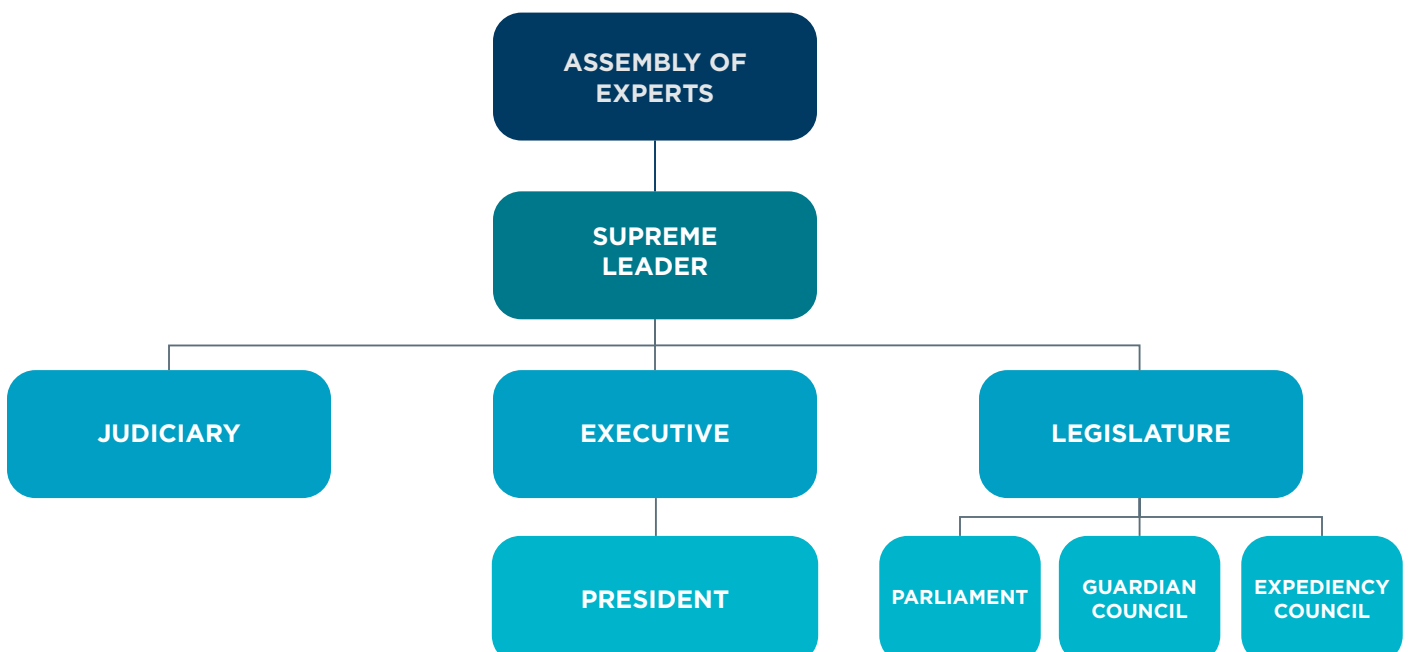
The implementation of a new foreign policy and Iran's First Five Year Economic, Social and Cultural Development Plan in the early 1990s triggered a period of increasing global standing and improved economic revitalisation. It was during this period that the government began a programme of privatisation (and introduced the use of oil and gas buy-back contracts) as a means to encourage domestic private investment and foreign direct investment in the country.

The Iranian government continued its agenda for privatisation in the early 2000s, and enacted a further law modifying the Constitution, which provided further authorisation to privatise up to 80% of the then state-owned companies. However, by 2005 the country's nuclear programme had become the subject of contention with the international community and heralded a new era of sanctions that led to the country's political and economic isolation.

This status quo continued until July 2015, when the P5+1/EU3+3 (China, France, Germany, Russia, the UK and the US) announced that agreement had been reached with Iran on a JCPOA regarding Iran's nuclear programme. See the 'Current Sanctions Position' section of this guide below for a summary of the JCPOA and the lifting of sanctions that occurred on 16 January 2016.

## ADMINISTRATIVE STRUCTURE

Iran is a constitutional Islamic Republic and its political system is set out in the Constitution, which has been in force since 3 December 1979. The diagram below shows the different governing bodies within Iran.



## Assembly of Experts

The Assembly of Experts is comprised of around eighty "virtuous and learned" clerics that are democratically elected to eight-year terms. However, prior to an individual being elected, the Guardian Council determines whether the individual is eligible for a seat in the Assembly.

The Assembly of Experts elects the Supreme Leader and also has the authority to remove him at any time.

## Supreme Leader

The Supreme Leader is the most powerful political office in Iran.

The Supreme Leader is the Commander-in-Chief of the armed forces and, amongst other powers, has the ability to appoint and dismiss the head of the Judiciary, the head of state radio and television networks, the Supreme Commander of the Islamic Revolutionary Guard Corps and various members of the Guardian Council and the Expediency Council.

## Executive and President

Iran has a President as the head of the Executive.

The President is responsible for the implementation of the Constitution and the exercise of executive powers, except for matters directly related to the Supreme Leader. The President appoints and supervises the Council of Ministers, which forms and administers government policy.

The President is elected by public vote for an initial term of four years and is eligible for a second term. However, candidates must be approved by the Guardian Council before running for office.

## Legislature

The legislature is made up of the following:

- Parliament, which has responsibility for proposing and ratifying new legislation, drafting legislation and ratifying treaties.

Members of Parliament are elected by public vote for four-year terms. However, candidates must be vetted by the Guardian Council before running for office.

- The Guardian Council, which interprets the Constitution and also vets legislation ratified by Parliament to ensure its compliance with the Constitution and Islamic principles.

Members of the Guardian Council consist of representatives of the Supreme Leader and others appointed by Parliament.

- The Expediency Council, which is an advisory body to the Supreme Leader and mediates disputes between Parliament and the Guardian Council.

Members of the Expediency Council consist of the heads of the three government branches, clerical members of the Guardian Council and various other members appointed by the Supreme Leader. The Expediency Council has the power to override the Guardian Council's ability to veto legislation.

## Judiciary

The Judiciary is responsible for implementing legislation passed by the Legislature. The head of the Judiciary is appointed by the Supreme Leader and has the power to appoint the head of the Supreme Court and the Chief Public Prosecutor.

Please see the 'Litigation' section of this guide for a description of the court system in Iran.

## SOURCES OF LAW

The sources of Iranian law are set out below. The laws are listed in order of hierarchy, and if there is any conflict between the laws, the law which appears first in the list will prevail:

- the Constitution;
- regular laws or Acts of Parliament;
- decrees issued by ministers;
- regulations issued by ministries or other executive agencies, which are normally issued under the authority and for the implementation of Acts of Parliament; and
- circulars issued by ministries or executive agencies, which are normally issued for the purpose of regulating matters of a more administrative nature.

Acts of Parliament cannot contradict the Constitution or Islamic principles. Accordingly, and as set out above, all enactments of Parliament should be approved by the Guardian Council. In cases where Parliament and the Guardian Council disagree, the matter is referred to the Expediency Council for a final decision.

# THE CURRENT SANCTIONS REGIME

## THE PRIOR SANCTIONS REGIME

Since Iran's nuclear programme became public in 2002, the UN, the EU, the US and several other countries have imposed a complex and increasingly comprehensive framework of economic sanctions on Iran.

The UN sanctions included:

- a ban on arms exports and the supply of nuclear-related technology; and
- an asset freeze on key individuals and companies.

The sanctions imposed separately by the EU included wide-ranging prohibitions and/or restrictions on:

- transactions with Iranian banks and financial institutions, and payments between EU persons and Iranian persons;
- import, purchase, transport, financing and insurance of Iranian crude oil and petroleum products, and related restrictions on natural gas and petrochemical products;
- sale, supply or export of certain goods, and restrictions on related services;
- investment in certain industry sectors and in the public sector, and restrictions on related services;
- the provision of insurance and reinsurance to non-natural Iranian persons or the Iranian government; and
- dealings with a list of designated individuals and organisations as well as a freeze of their assets.

The US sanctions generally prohibit US persons and entities (which include, in addition to US citizens, "green card" holders, entities organised under the laws of the US or any jurisdiction within the US, any person in the US and any entity owned or controlled by a US person) from engaging in or facilitating most transactions concerning Iran or with a list of specially designated persons and entities (SDNs).

The US also imposed or continues to impose sanctions prohibiting non-US persons and entities from engaging in various transactions related to Iran's energy sector or advanced Iranian weapons programmes. These so-called "secondary" sanctions aimed to discourage business between third countries and Iran, focusing, in particular, on financial services, underwriting and insurance services, and transactions and services relating to oil, petroleum and petrochemical products.

## THE JCPOA

In the early hours of 14 July 2015, it was announced that the P5+1/ EU3+3 (China, France, Germany, Russia, the UK, the US) had reached agreement with Iran on the JCPOA. This was then endorsed by the UN Security Council on 20 July 2015, and came into effect on 18 October 2015 (**Adoption Day**).

The JCPOA provides for the lifting of all UN Security Council sanctions as well as most EU and some US sanctions related to Iran's nuclear programme, subject to compliance by Iran with its obligations regarding its nuclear programme.

On 16 January 2016, the US and the EU announced that Iran has fulfilled its nuclear related commitments, as verified by the International Atomic Energy Agency (**IAEA**). Thus, most US secondary sanctions and the EU's nuclear related sanctions were lifted on that day. This lifting of sanctions presents an opportunity for many foreign investors to enter the Iranian market, subject to ensuring that they remain compliant with those sanctions that remain in effect.

The expected timeframe for the lifting of sanctions under the JCPOA is as follows:

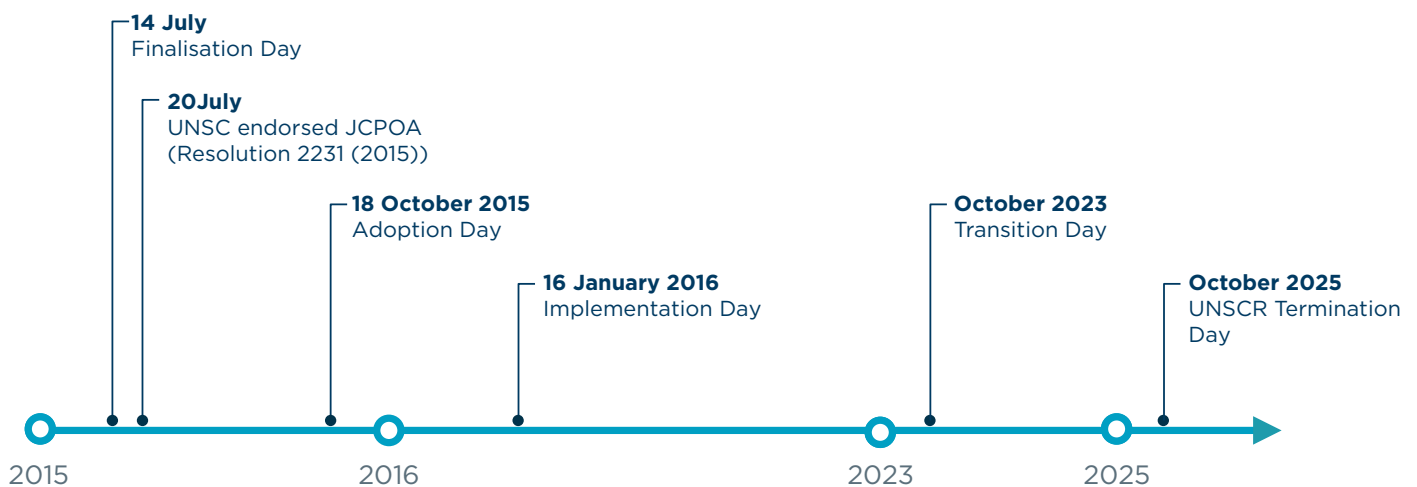
- On **Adoption Day**, (18 October 2015), JCPOA participants began making the necessary arrangements and preparations for the implementation of their JCPOA commitments. Accordingly, on Adoption Day:
  - the EU High Representative and Iranian Foreign Minister made a joint statement confirming that Iran would start the implementation of its nuclear-related commitments and the IAEA would make preparations for the monitoring and verification of Iran's actions;
  - the US President issued a memorandum to US government agencies to direct them to take all appropriate measures to ensure that US commitments on Implementation Day would be accomplished promptly and effectively;
  - the EU published its new legislative measures for the lifting of its nuclear-related sanctions, and the US Secretary of State issued contingent waivers of certain statutory sanctions, to take effect on Implementation Day; and
  - the US Office of Foreign Assets Control (**OFAC**) also issued a statement and guidance describing the steps the US government was taking to proceed towards Implementation Day.

In addition, the Joint Commission created by the JCPOA held its inaugural meeting on 19 October 2015 in Vienna, when it took stock of the measures taken to date by the participating countries both on nuclear and on sanction related matters to begin the implementation of the JCPOA.

- On **Implementation Day** (16 January 2016), the IAEA announced that Iran had complied with its commitments under the JCPOA, leading to simultaneous implementation of UN Security Council, EU and US sanctions relief, as further set out below.
- Following Implementation Day, later stages, known as **Transition Day** (8 years after Adoption Day) and **Termination Day** (10 years after Adoption Day), are envisaged, where the final lifting of sanctions is foreseen.



## JCPOA TIME LINE



## SANCTIONS RELIEF FROM IMPLEMENTATION DAY

On Implementation Day:

- under the JCPOA, a UN Security Council resolution terminated all provisions of previous UN resolutions that imposed sanctions on Iran;
- the EU legislative measures published on Adoption Day will take effect:
  - lifting most EU nuclear-related economic and financial sanctions (subject to the restrictions set out below); and
  - removing a total of 331 individuals and entities from the EU list of individuals and entities subject to asset-freezing measures (which included state-owned energy companies such as the National Iranian Oil Company (**NIOC**), and the Central Bank of Iran);
- the US contingent statutory waivers published on Adoption Day took effect, waiving the imposition of the US sanctions in respect of:
  - the "secondary" sections in respect of non-US persons and entities in most scenarios; and
  - certain "primary" sanctions applicable to US persons related to the sale of commercial passenger aircraft and spare parts and components for such aircraft, as well as associated services (including underwriting, insurance, and reinsurance);
- the US also removed designations as SDNs for the individuals and entities (including the NIOC) listed in Attachments 3 and 4 to Annex II of the JCPOA.

For further details of the sanctions relief that took effect from Implementation Day, please refer to our legal briefing released on 18 January 2016, which can be accessed at <http://sites.herbertsmithfreehills.vutrevx.com/113/10832/landing-pages/iran-client-alert--e--19-january-2016.pdf>.

## RESTRICTIONS ON THE LIFTING OF SANCTIONS

The implementation of the sanctions relief following Implementation Day remains subject to certain conditions and restrictions:

- Most of the "primary" US sanctions applicable to US persons remain in force. These impose broad prohibitions on transactions with Iranian persons. In practice, this may also mean that non-US third parties, including banks, may continue to adopt a cautious approach in dealing with Iran, especially if they have links with the US.
- Not all Iran-related EU sanctions have been removed - for example, those expressly related to human rights issues remain in force. These include, amongst other things, restrictions relevant to the telecommunications industry, and certain asset freezes. Other restrictions which remain include restrictions relating to military goods and to graphite and listed raw or semi-finished metals.
- Certain persons and entities remain SDNs and EU asset freeze targets.
- Certain persons or entities that have been removed of "SDN" status remain blocked in the US due to the determination that they are part of the Government of Iran or Iranian financial institutions.
- The JCPOA contains a mechanism by which UN Security Council sanctions will "snap back" into place if a dispute, for example regarding ongoing Iranian compliance with IAEA obligations, is not resolved favourably. The EU/US may also seek to re-impose sanctions in such a scenario.

## CURRENT SANCTIONS POSITION (CONTINUED)

### **PRACTICAL CONSIDERATIONS AND RISK MANAGEMENT**

The effect of the restrictions outlined above is that foreign investors will need to continue to monitor the position closely and to seek specific legal advice before exploring any business opportunities in Iran to ensure they are compliant with relevant sanctions.

The key to managing risks under sanctions laws is conducting appropriate risk-based due diligence, both on proposed contractual counterparties (partners, intermediaries, suppliers, customers, etc) and transaction structures. This will include ensuring that the identities of all individuals and entities with whom any dealings are envisaged are known and screened against the relevant sanctions lists, as well as ensuring that discussions do not extend beyond the scope of what is allowed under relevant sanctions.

In particular, specific advice should be sought before discussing any possible future transactions in reliance on the Implementation Day relaxation of sanctions. Under the applicable sanctions, investors' ability to enter into any negotiations, and what (if anything) may be agreed, will depend on the nature and identity of the proposed counterparties, the industry sector and the type and structure of transaction intended.

US persons, in particular, should seek specific advice about any dealings with Iran. Further, non-US investors should consider putting in place appropriate controls where they have US affiliates, important support functions based in the US, or US directors or employees working in their business, to avoid creating risks under US law.

If an investor is intending to enter into a continuing relationship with a particular counterparty, the investor should periodically refresh its due diligence review as the risk profile of its counterparty can change, for example if it is acquired by an SDN.

Even now that certain sanctions have been lifted, particularly in view of the "snap back" provisions (and the potential for the next US administration to take a different view of JCPOA implementation), investors should consider at the outset negotiating appropriate representations, warranties, exit and termination rights and remedies with their counterparties so that they can take appropriate steps to protect themselves should the sanctions framework, or the risk profile of a business relationship, turn adverse. This is especially important because it is unclear whether, or how, the EU and US would treat the unwinding of commercial arrangements entered into in reliance on the JCPOA if "snap back" happens, and, therefore, execution of such contracts might trigger commercial and sanctions risk in a "snap back" scenario.

# ESTABLISHMENT OPTIONS

## FOREIGN OWNERSHIP

Iran permits 100% foreign ownership of onshore entities in many industries and sectors without the need for a foreign investment licence or indeed any other type of licence.

However, certain sectors are reserved solely for the exclusive control of the state and no foreign ownership (nor, in fact, Iranian private ownership) is allowed in these sectors. These include, by way of example, the following:

- major telecommunication networks;
- major water supply and power transfer networks;
- ownership of oil and gas resources;
- investment in crude oil and gas production and extraction companies; and
- investment in existing state-owned companies, such as the NIOC, the Central Bank of Iran and other state-owned banks, the Central Insurance of IR Iran, the Civil Aviation Organization and the Ports and Maritime Organization.

In addition, foreign ownership is restricted to a minority interest in the banking, insurance, mobile services and airport services sectors. It is also likely that, in practice, foreign ownership in joint ventures for those sectors that typically have state involvement (such as petrochemicals, ports and airports) will also be limited to a minority interest, but foreign involvement is permitted and encouraged.

## FOREIGN INVESTMENT AND FIPPA LICENCE

The Foreign Investment Promotion and Protection Act (**FIPPA**) (enacted in 2002), and its implementing regulations, aim to protect and encourage foreign investment made in Iran.

Although a foreign investment license is not strictly necessary in many sectors, it is typically recommended (even where 100% foreign investment is permitted) since the FIPPA affords a number of additional benefits to a licensed foreign investor.

The benefits that foreign investors may enjoy under a FIPPA licence include (amongst others):

- the potential right to invest in a broad range of sectors, including infrastructure, without any limits on the percentage of foreign investment, except in respect of those areas that are reserved solely for the exclusive control of the state (as set out above);
- the availability of new types of permitted foreign capital exposure (such as project financing, buy-back arrangements, BOT schemes and civil partnerships);
- the right to freely repatriate investment capital (including principal capital, dividends and capital gains) in any exchangeable currency;
- the right to certain protections from nationalisation;

- the right of long-term residency/multiple entry visas for the employees of the foreign investor; and
- the right to compensation for governmental expropriation or interruption of the commercial activities of the foreign investor.

Whilst these are significant benefits, they are more limited in scope than the investment protections typically afforded by Iran's bilateral investment treaties (which typically also provide for fair and equitable treatment, full protection and security and 'most favoured nation' guarantees). There are also investment protections afforded by the Organisation of Islamic Cooperation treaty to persons from the 27 ratifying member states. Investors should therefore check whether it is possible to rely on these treaties.

Moreover, it is important to note that where a foreign investor has obtained a FIPPA licence, any disputes between it and the Iranian state (that cannot be resolved amicably by the parties) are required to be submitted to the jurisdiction of the Iranian courts. Please see the 'Litigation' section of this guide below for a summary of the Iranian court system.

The licensing authority for FIPPA investment protection is the Center for Foreign Investment Services at the Organization for Investment, Economic and Technical Assistance of Iran (**OIETAI**), which provides support to foreign investors seeking to establish a presence in Iran.

To apply for a FIPPA license, a formal application, accompanied with supporting documents, should be submitted to the OIETAI, together with a copy of the preliminary agreement issued by the relevant administrative organisation or ministry for the implementation of the relevant project. The OIETAI will present the application to the Foreign Investment Board, comprised of deputy ministers from relevant ministries, the deputy head of the State Management and Planning Organisation and the deputy governor of the Central Bank. If the application is approved then a draft license will be issued for review by the investor, and subsequently the OIETAI will issue the final license. The full process should, in principle, take no longer than approximately 60 days.

## ESTABLISHMENT OPTIONS (CONTINUED)

### TYPES OF COMPANIES

The most common business entities used in Iran by domestic and foreign investors are private joint stock companies, public joint stock companies and limited liability companies. We have set out below a summary of these types of companies.

As noted in the 'Note from the Authors and Editors' section of this guide above, the new Commercial Code was ratified by Parliament on 6 April 2014 and is still pending approval by the Guardian Council. If this new Commercial Code comes into effect, it will change some of the features of the entities listed below.

TYPE OF LEGAL ENTITY	NUMBER OF SHAREHOLDERS/MEMBERS	MINIMUM SHARE CAPITAL REQUIREMENTS	TYPES OF SHARES	LIABILITY OF SHAREHOLDERS/MEMBERS	BOARD OF DIRECTORS	AUDITOR
<b>Private joint stock company</b>	At least 3	IRR 1 million	Ordinary or preferred shares either in bearer or registered form	Limited to the payment of the par value of such shares	Mandatory	Mandatory
<b>Public joint stock company</b>	At least 5	IRR 5 million	Ordinary or preferred shares either in bearer or registered form	Limited to the payment of the par value of such shares	Mandatory	Mandatory
<b>Limited liability company (LLC)</b>	At least 2	None	LLCs don't have shares. The members own a percentage of the capital of the company	Extent of their contribution to the capital (although this is not the case if the name of the LLC is the same as the name of a member)	Optional but need managing director	Optional

### COMPANY REQUIREMENTS AND RESTRICTIONS

We set out below some key requirements and restrictions for Iranian companies.

TOPIC	REQUIREMENT
<b>Share capital</b>	<p>The share capital of an Iranian company must be registered in IRR.</p> <p>Share capital can be paid in cash or in kind. If shares are paid in kind, they will need to be valued by a valuation expert registered at the Ministry of Justice. If shares are paid in cash, then at least 35% must be paid up upon incorporation and the remaining over a five-year period.</p>
<b>Directors</b>	<p>As noted above, an LLC is not required to have a board of directors but a managing director is mandatory.</p> <p>In respect of joint stock companies, the directors must be appointed from amongst the shareholders. This is not a requirement for LLCs. Joint stock companies are required to have a chairman and vice-chairman of the board of directors, and the board of directors must also appoint a managing director, although the managing director does not need to be a board director.</p> <p>The board of directors of a company may be either Iranian nationals or foreign nationals, and there are no restrictions in this regard.</p>

TOPIC	REQUIREMENT
<b>Public share offers</b>	Only public joint stock companies can offer their shares to the public.
<b>Transfer restriction</b>	In respect of joint stock companies, a shareholder may not transfer its shares without the consent of shareholders representing two thirds of the company's share capital.
<b>Ownership of land</b>	Iranian companies with foreign ownership are permitted to own land in Iran.
<b>Licensing requirements</b>	<p>Generally speaking, the Iranian legal system does not over-burden companies with licensing requirements, and most operations do not require a specific licence. However, the following licences are required in respect of certain operations:</p> <ul style="list-style-type: none"> <li>▫ commercial card: this is a type of general trade permit which is issued by the Iran Chamber of Commerce, Industries and Mines and is required by all entities wishing to import and export</li> <li>▫ guild licence: this is required by those persons active in an activity covered by a Guild Union, such as shops and professional services</li> <li>▫ establishment followed by operations licence: this is required by companies involved in manufacturing</li> <li>▫ exploration followed by operations licence: this is required by those companies involved in mining</li> <li>▫ product registration with the Ministry of Health (<b>MOH</b>): this is required by those persons involved in the import of foods, beverages and pharmaceutical and health products.</li> </ul>
<b>Translation of key documents</b>	<p>All official documents, including the constitutional documents of a company, are required to be in Farsi. Private agreements and documents that are not considered to be "official documents" (and which do not need to be notarised), such as a shareholders' agreement, can be in a language other than Farsi. However, to the extent that these documents are to be filed with any Iranian court, they will need to be officially translated into Farsi.</p>
<b>Corporate tax</b>	<p>Companies incorporated in Iran are subject to corporate tax on their worldwide income. This corporate tax is currently set at 25% of the profits of a company and is payable to the local tax authorities within four months of the end of the financial year. There is no further tax payable on dividends when they are distributed.</p> <p>The FIPPA does not provide for tax holidays. However, there are a number of tax holidays and exemptions generally available depending on the activity and location of the activity regardless of the nationality of the shareholders. For example, most proceeds earned by an Iranian company as a result of the export of goods and services are exempt from taxation. Furthermore, there are tax holidays of up to 15 years available for those businesses in "less developed areas" of Iran.</p>
<b>Labour law</b>	Residency and work permits must be issued for any foreign managers and foreign employees working in Iran. Strictly speaking, there are no restrictions in relation to the hiring of foreign employees under Iranian labour law. However, in practice, the authorities will require that a specified number of Iranians be hired for each foreign employee.
<b>Registered Iranian address</b>	Every legal entity established in Iran will need to have a registered address in Iran.

## ESTABLISHMENT OPTIONS (CONTINUED)

### KEY CONSIDERATIONS

#### Minority protections

The Commercial Code provides certain protections to minority shareholders of Iranian companies. For example, the following protections are afforded to joint stock companies:

- Shareholders holding a fifth of the share capital can call a meeting of the shareholders;
- The shareholders are permitted to agree on a distribution of profits that is different to the shareholding percentages (this is also possible for LLCs);
- Minority shareholders can pool their votes to elect directors (members of LLCs are also permitted to pool their votes);
- All shareholders have the right to review the accounts of the company (this is also possible for LLCs); and
- A two-thirds majority is required to pass any resolutions at an extraordinary shareholders meeting (in respect of LLCs, a majority holding three quarters of the capital plus a numeric majority of the members is required). The decisions that are required to be passed at an extraordinary shareholders meeting include any amendment to the articles of association, an increase or decrease in share capital and the liquidation of the company (although a decision to liquidate the company only requires a simple majority for LLCs).

As noted, some of the protections set out above are also applicable for LLCs.

#### Local content laws

Iran has had public procurement and tender laws in place for a number of years. The Maximum Usage of Production of Services and Capabilities Act 2012 (**MUPSCA**) (which replaces the previous 1997 local content legislation) continues to require state-owned entities to give preference, at all times, to domestic goods and service providers.

The MUPSCA applies to all state entities (whether ministries, corporations or companies in which 50% or more of the shares are owned by the state or a state-owned entity) and their affiliated companies. This includes the Ministry of Petroleum and its subsidiary companies (eg the NIOC and the National Iranian Gas Company). The MUPSCA may also be relevant for foreign companies since state-owned entities are required to include local content obligations in their contracts entered into with private companies.

MUPSCA requires state-owned entities to award all contracts for goods and services to Iranian-owned companies. If there is no Iranian-owned company able to provide the relevant goods and services, then the contract may be awarded to a joint venture composed of Iranian and foreign companies or it may be awarded to foreign companies, with the approval of the highest ranking executive of the state-owned entity. In any event, at least 51% of the value of the

works of a contract must be carried out in Iran unless an exception is granted by the highest ranking executive of the state-owned entity and the Ministry of Industry, Mines and Trade (**MIMT**).

Waivers from the various requirements of MUPSCA may be approved on a case-by-case basis.

### BRANCHES OR REPRESENTATIVE OFFICES OF FOREIGN ENTITIES

Since 1997, foreign companies (to the extent that their jurisdiction of incorporation also permits Iranian entities to establish a presence in that jurisdiction) are permitted to establish either (i) a branch or (ii) a representative office. We note that although the law refers to these two forms of establishments interchangeably, they tend to be used for different types of activities.

Branches are the more common option and they are able to engage in the following activities:

- the supply of after-sales services;
- operating a contract concluded with Iranian nationals or legal entities on behalf of the foreign parent;
- investigating the possibility of investing in Iran;
- carrying out certain restricted activities, as authorised by the Iranian government, for example the provision of services in the field of transportation, which requires a special licence; and
- providing technical and engineering services and the transfer of technical knowledge and technology.

Other than the specifically permitted activities, branches and representative offices cannot engage directly in commercial activities.

Branches and representative offices are required to:

- file audited financial statements annually with the Iranian authorities;
- appoint a locally based representative, known as the principal manager, who will be responsible for the day-to-day management of the branch or representative office;
- have a registered address in Iran (as there are restrictions on the ownership of land by foreign persons, branches and representative offices are only permitted to lease office premises); and
- comply with Iranian laws relating to labour, taxation and social security. As with a company, residency and work permits must be issued for any foreign managers and foreign employees working in Iran.

The parent company will be liable for the operations of the branch or representative office.

## FREE TRADE ZONES AND SPECIAL ECONOMIC ZONES

Iran has established a number of Free Trade Zones (**FTZs**) and Special Economic Zones (**SEZs**), the aim of which includes the promotion of international trade and foreign investment and also, in the case of SEZs, the economic development of lesser developed areas in Iran.

The FTZs and SEZs provide various economic and regulatory freedoms to investors (more extensively in FTZs than in SEZs) and exist outside of the national customs regime. As a result, the export and import of goods between an FTZ and foreign countries are exempt from customs duties. Goods may be transferred from FTZs to

mainland Iran without being subject to customs duties in certain limited circumstances.

As at the date of this publication, there are seven FTZs and 17 SEZs.

While foreign investment in FTZs is subject to special investment regulations specific to each FTZ, SEZs are not jurisdictionally distinct from mainland Iran.

An overview of the key features of FTZs and SEZs is set out below.

	FTZs	SEZs
<b>Foreign ownership</b>	<p>100% foreign ownership in an investment vehicle is permitted (although this is also possible in mainland Iran).</p> <p>However, the sale of FTZ land to foreign nationals and companies or foreign-owned Iranian companies (even where only partly foreign-owned) is prohibited.</p>	<p>Same as FTZs, except that the sale of SEZ land to Iranian companies owned by foreign nationals is permitted (as is the case in the mainland of Iran).</p>
<b>Tax</b>	<p>20-year tax exemption for income derived from all economic activities within the FTZ.</p>	<p>No tax exemption although many SEZs are located in less developed areas where commercial operations benefit from certain tax exemptions in any event.</p>
<b>Import/export of goods</b>	<p>The import and export of goods between FTZs and between an FTZ and foreign countries are exempt from customs duties. Goods may also be transferred to mainland Iran without being subject to customs duties in certain limited circumstances under FTZ customs regulations.</p>	<p>Same as FTZs.</p>
<b>Labour law</b>	<p>FTZ labour regulations apply in FTZs to the exclusion of mainland Iranian labour law. Foreign nationals working in the FTZs are exempt from visa requirements and enjoy residence permit support from the FTZ.</p> <p>The employment of foreign workers in each FTZ is capped at 10% of all employees working at the FTZ.</p>	<p>Mainland Iranian regulations apply.</p>

# KEY CONTRACT LAW ISSUES

## BASIC CONTRACT LAW PRINCIPLES

The contract law of Iran is contained in the Iranian Civil Code. In general, Iranian contract law is not markedly different from many other civil law jurisdictions.

Under Iranian law, contracting parties enjoy the freedom to agree terms which govern their relationship, a principle which is enshrined in Article 10 of the Civil Code: "*Private contracts shall be binding on those who have concluded them, providing they are not contrary to the explicit provisions of a law*". Iranian courts typically recognise the sanctity of contract and, when interpreting a contract, the courts will seek to hold the parties to the literal terms of their agreement.

Contracts are generally enforceable unless they breach mandatory provisions of law or public order (such as provisions relating to gambling or the charging of interest), in which case the illegal provisions of the contract may be considered void and can be struck out.

There is no requirement for a contract to be in writing, and verbal contracts are enforceable under Iranian law. The basic conditions for a contract to be valid are intention and mutual consent, capacity, specificity of subject matter and lawfulness of the cause of transaction. A contract will be unenforceable if consent to the transaction was obtained as a result of mistake or duress or if there is a mistake connected with the subject of the transaction.

## PRIVITY OF CONTRACT

Contracts will only bind the parties thereto. Third parties will not be bound unless the contract is made on their behalf, whether this is stated expressly or established by evidence.

## CONTRACTUAL REMEDIES

Specific performance is the preferred remedy for breach of contract under Iranian law, and the courts can order the parties to the contract, or a third party, to perform. If performance is impossible, damages may be awarded.

In general, a party is entitled to recover damages for non-performance, or delayed performance, of a contract, and loss of profit is generally not recoverable under Iranian law.

Agreements between the parties relating to damages will generally be upheld provided they do not breach mandatory provisions of law or public order. Parties are allowed to agree provisions for liquidated damages, and these will generally be enforceable.

Contractual clauses in respect of exclusion and limitation of liability are, in principle, enforceable under Iranian law. However, liability for personal injury and death cannot be excluded under Iranian law.

The Islamic doctrine of "la zarar" (meaning "no harm") could impose an obligation to mitigate loss suffered. Under this doctrine, a person who is entitled to perform an act must perform it so as not to harm the interests of others.

## TERMINATION AND FORCE MAJEURE

It is difficult to terminate a contract unilaterally unless a right of termination is expressly set out in the contract. For this reason, contracts should be drafted with robust provisions and procedures for termination and/or suspension. In the absence of express contractual provisions, caution needs to be exercised when terminating agreements.

There is no explicit *force majeure* provision under Iranian law. However, a court will generally enforce *force majeure* provisions if they are contained in a contract.

## CHOICE OF LAW

In relation to a contract between an Iranian national (or Iranian company) and a foreign national (or foreign company), Iranian law provides that if a contract is signed in Iran, it will be governed by Iranian law (irrespective of the choice of the parties). If the contract is signed in another jurisdiction, then the law of that jurisdiction will govern the contract unless the parties have chosen the law of another jurisdiction, and under the conflict of laws rules of the jurisdiction where the contract was signed, such choice is valid. If there is no explicit choice of governing law, the law of the place of execution of the contract will govern the contract.



# AGENCY AND DISTRIBUTION ARRANGEMENTS

## APPLICABLE LAWS

There is no specific law governing commercial agency in Iran. The legal concept of "agency" is defined in the Civil Code, which governs the general nature of all contractual relationships in Iran, including the relationship between a principal and its attorney/agent.

Unlike other Middle Eastern jurisdictions, there are no legal or regulatory restrictions applicable in relation to issues such as exclusivity, termination and territory.

## REGISTRATION OF THE COMMERCIAL AGENT OR DISTRIBUTOR

The ministerial department responsible for registering agents and distributors is the MIMT.

The MIMT has issued regulations and instructions which require agents and distributors of durable or capital products, such as machinery, to be registered. In practice, these regulations and instructions are only enforced with respect to a very limited number of products.

In addition, the import of certain products also requires the registration of those products with an appropriate ministry. These predominantly relate to the importation of pharmaceutical, food and beverage and medical products, all of which require registration with the MOH. Such registration is effected by the local agent or distributor of the product in whose name the product will be registered.

The consequences of engaging an agent or distributor without making the requisite registrations with the appropriate ministries (such as the MIMT or MOH) are that:

- it will typically not be possible to obtain the necessary orders for the importation of goods;
- the imported products, which are brought into Iran by an unregistered agent or distributor, may be confiscated by the authorities; and
- a registered agent or distributor (and the Consumer Protection Organisation through the State Punishment Organisation) may make claims against an unregistered agent before the competent authorities.

## PROTECTIONS FOR AGENTS OR DISTRIBUTORS UPON TERMINATION

### Registered agents or distributors

The MIMT and the MOH are able to exercise protectionist policies vis-à-vis registered agents or distributors. The policies of these ministries are constantly shifting. The MIMT's current practice in respect of a principal's purported termination of an agency or distribution agreement is to form a committee to determine whether the termination was proper. The MIMT will only de-register a former agent or distributor if the committee deems the termination to have been legally effective. Previously, the practice was to obtain the consent of the registered agent or distributor before termination.

### Unregistered agents or distributors

An unregistered agent's or distributor's appointment may be terminated pursuant to the provisions of the Civil Code. Under the Civil Code, an appointment of an agent or distributor may be dissolved by:

- resignation of the agent or distributor;
- expiry or termination of the agency or distribution agreement under its terms; or
- the death or insanity of the principal, or of the agent or distributor.

## KEY CONSIDERATIONS

### Minimum term

There is no requirement for a minimum or maximum term.

### Governing law and jurisdiction of agreement

There are no legal requirements relating to the governing law and jurisdiction of an agency or distributor agreement. However, in practice, it may be difficult to enforce a foreign judgement in Iran as the local courts may reject a foreign judgement or award on the grounds of public policy.

Please see the 'Litigation' and 'Arbitration' sections of this guide below for a summary of the enforcement of foreign judgements and arbitral awards in Iran.

### Exclusivity

Generally, there is no requirement for exclusivity under a commercial agency or distributor agreement. However, specific sectors may impose requirements in relation to certain products (for example, pharmaceutical products).

# FINANCE

## INTRODUCTION TO THE IRANIAN BANKING SYSTEM

Following the Islamic Revolution of 1979, much of the Iranian banking system was nationalised and, in 1983, the Law for Usury-Free Banking was passed, requiring all banks within Iran to base their banking products on the principles of *Shari'ah*, and, in particular, the prohibition of *riba* (being, among other things, borrowing and lending with interest). As such, the Iranian banking system follows Islamic banking principles. Unsurprisingly therefore, Iran is a key player in Islamic finance, making up over a third of the estimated total of Islamic banking assets globally.

The creation of private banks in Iran was first permitted in 2000. In addition to privately established banks, a number of previously state-owned banks have recently been privatised, and the participation of foreign investors in the capital of Iranian banks is now permitted (albeit under very strict conditions).

## ISLAMIC FINANCE

Islamic finance will often seek to create certain economic relationships that are similar in principle to conventional banking but in a way that is compliant with the requirements of *Shari'ah*. The key principles of *Shari'ah* relevant to Islamic finance are:

- *riba* – money cannot be used to make money, and therefore one should not charge for its use. As such, the charging of interest is prohibited. Money may, however, be used to make a return on an investment, if that return is based on an exchange or ownership of assets and the money is invested in productive enterprises involving a sharing of commercial risk between the bank and the client (such as a joint venture, whereby both the risk and the profit are pooled);
- speculation, or *maisir* – contracts relying on chance or speculation to generate a return are not permitted;
- uncertainty, or *gharar* – the fundamental terms of a contract, such as subject matter, price and time for delivery, must be certain at the time that the contract is entered into;
- unjust enrichment or exploitation – contracts where one party is perceived to exploit another or gain unjustly at another's expense are prohibited. For example, banks cannot gain financially by charging and retaining late payment fees (known commonly as default interest) when the company to which the finance was granted is in default. It is permissible that banks may impose late payment fees as an incentive for prompt payment, but the bank is only permitted to deduct its actual costs incurred due to the late payment, and must pass on any excess to charity; and
- unethical investments – the purpose of the financing must be permitted by *Shari'ah*. As such, financial involvement in activities such as gambling, alcohol or pork products is prohibited.

The Law for Usury-Free Banking prescribes various modes of financing transactions which are deemed to be compliant with *Shari'ah* and are therefore permitted. These modes are generally based upon an element of asset investing or risk sharing. The primary techniques for the purposes of commercial clients are:

- *mudaraba*, or profit sharing, whereby banks provide capital for an undertaking, and the profit is shared between the bank and the client at a rate agreed at the start of the venture;
- *musharaka*, or partnership, whereby the bank and the client pool their capital on a joint-ownership basis for the carrying out of a specific venture. This technique may be used in long-term investment projects, and is similar to a conventional partnership or joint venture structure;
- *murabaha*, whereby the bank purchases commodities and sells them on to the client on deferred payment terms for a profit, and either the client uses those commodities for its own business purposes or itself sells them on immediately via an intermediary (with the proceeds of that sale effectively being akin to a drawdown under a conventional loan). This can be used in a broad spectrum of transactions, including project finance and leveraged buyouts;
- *salaf*, or purchase with deferred delivery, whereby the bank purchases future products of its client at an agreed price, in order to provide a source of working capital to its client;
- *ijarah be shart-e-tamlik*, or lease purchase, whereby the bank buys an asset from its client, and then leases it back to the client for prescribed rental payments which reflect the amount of profit agreed at the outset of the contract. This structure can also be used to facilitate a sale and leaseback financing with the client, with rental payments being structured on an amortising basis. This can be used to provide, for example, asset finance in respect of equipment, as well as longer term or project financing;
- *joalah*, or a transaction based on commission, whereby the client provides a service to the bank in return for a pre-agreed fee; and
- *istisna'a*, a contractual scheme based on which a party undertakes to build, manufacture, construct (or transform) and deliver something in return for a certain sum in an agreed timeframe.

Generally speaking, certain types of economic activity are best served by certain techniques:

ECONOMIC ACTIVITY	SUITABLE TECHNIQUE
Industrial, mining, projects, etc	<i>Musharaka, ijarah be shart-e-tamlik, salaf, murabaha, istisna'a</i>
Commercial	<i>Mudaraba, musharaka, joalah</i>
Services	<i>Joalah, ijarah be shart-e-tamlik, mudaraba</i>

CONVENTIONAL FINANCE

While Iranian banks are not permitted to offer conventional banking services, there is no restriction on Iranian entities borrowing from foreign banks on a conventional basis, and even the Central Bank of Iran has a history of borrowing under such premises. In practice, the standard loan agreements of foreign lenders are often used. Such loan agreements often provide for the governing law to be other than Iranian law (typically, English law) and the courts of another country or arbitration centres will have jurisdiction to settle disputes arising under those agreements.

While theoretically the charging and payment of interest under such loan agreements is prohibited under the Law for Usury-Free Banking, in practice, interest is regularly charged and paid, including on borrowings of the Central Bank of Iran.

Any foreign bank that seeks to set up business in Iran will need a licence from the Central Bank of Iran, though no licence is required if loans are made from outside Iran. Furthermore, Iranian law requires that the participation of foreigners in Iranian banks be limited to a minority interest.

PROJECT FINANCE

Unsurprisingly, in light of the sanctions that have previously been imposed on Iran, project finance is a relatively underdeveloped concept, and, accordingly, administrative and legal challenges are likely to arise during the structuring and putting in place of a project financing.

Given the position of Islamic finance within the Iranian banking system, it is likely that multisourcing will be a prominent aspect of the financing of Iranian projects in the future, with foreign banks, offshore banking units within free trade zones and export credit agencies providing dollar liquidity along conventional lines, and Islamic/Iranian banks providing Islamic financing for specific aspects of the financing.

For example, the financing of an integrated power and water project could be structured as follows:

ASPECT OF THE PROJECT	FINANCING PRODUCT
Desalination units	Ijara be shart-e-tamlik
Working capital	Conventional debt provided by a commercial lender
Costs under the EPC contract	Conventional debt provided by commercial lenders  Debt provided by an export credit agency of the same country as the EPC contractor, either on a conventional or Islamic basis

Structuring the transaction is likely to be key for any project financing. The ability for banks to take security over the assets of a project is one of the major concerns for sponsors seeking to secure finance for a project (for further details on security, see the 'Taking Security' section of this guide below). In this respect, a project sponsor may wish to choose an Iranian company as the vehicle for the project company because it is easier for an Iranian company to own, and create security over, its assets than for a foreign company. While a foreign company can own certain immovable property, the ability to do so is severely restricted and may be subject to complicated procedures which may make such ownership prohibitive. Please see the 'Establishment Options' section of this guide above for a more detailed explanation of the forms of investment vehicles which are available to foreign investors in Iran.

In addition, lenders will generally be more comfortable lending to a project company incorporated in a jurisdiction with which they are familiar, and there may be tax advantages for the sponsors in such an arrangement. This, coupled with the advantages of an Iranian company, may suggest, for example, the use of both an offshore company to sign key project documents, and an Iranian company to own any project assets. Security can then be taken against the assets of the local project company, and the shares and assets of the foreign SPV (which would include its shares in the local project company). Ultimately, this would be decided on a case-by-case basis, and may become irrelevant over time, as project financiers become more familiar with Iran.

# TAKING SECURITY

## TYPES OF SECURITY, ASSET CLASSES AND ENFORCEABILITY

Under Iranian law, security may or may not be granted over different types of assets, as set out below:

ASSET	TYPE OF SECURITY	ENFORCEABILITY LIMITATIONS OR REQUIREMENTS
Land	Mortgage	<p>In order to be enforceable, a mortgage over land must be registered with a notary public and with the Documents and Estates Registration Office.</p> <p>However, land cannot be directly owned by foreign nationals or foreign companies. While a foreign bank could theoretically take a mortgage over Iranian land, its interest therein would have to be transferred to an Iranian national upon enforcement.</p> <p>Alternatively, where land is held by an Iranian entity which itself is owned by a non-Iranian entity, the bank is able to take security over the shares in the non-Iranian entity which owns the Iranian entity, which in turn holds the land.</p>
Shares in an Iranian company	Pledge	<p>Although certain Iranian jurists contend that the taking of security over shares is not permissible under Iranian law, on the basis that shares are intangible assets, the practice of many notaries who register such security, and the recognition of such security rights by the Tehran Stock Exchange, would suggest that this is possible.</p> <p>As an alternative, lenders may feel more comfortable taking security over the shares in an entity sitting higher up the corporate structure where that entity is incorporated in a jurisdiction which provides greater certainty as to the enforceability of share security.</p>
Assets, including fixed or immovable assets	Floating charge	<p>The enforceability of such security is questionable (in particular with respect to future assets) because under Iranian law no security can be taken over assets which do not exist at the time when the security document is entered into.</p> <p>However, this risk can be mitigated by imposing an obligation on the chargor in the security document, whereby the chargor will sign an addendum confirming that the security covers the new asset, once that asset is acquired by the chargor.</p>
Rights under a contract (receivables)	None	<p>Strictly speaking, no form of security interest can be granted, but a person with a right to receive sums under a contract can assign its rights to a third party, by way of contract and notification of the assignment to the counterparty.</p> <p>In the context of project documents under a project financing, while Iranian entities may be unfamiliar with concepts such as step-in rights and direct agreements, Article 292 of the Civil Code expressly permits assignment, and Article 10 of the Civil Code provides that all contracts are binding unless prohibited by a specific law.</p>
Insurance	None	<p>Strictly speaking, no form of security interest can be granted, but, as set out above, a person with a right to receive sums under a contract can assign its rights to a third party.</p>

Security over immovable property must be registered before a notary public and will only become effective thereafter. The registration of security over certain movable property such as ships is also mandatory. A failure to register security (where registration is required) will result in that security becoming unenforceable. Where registration is not required, it may nonetheless be desirable for the purposes of proving the existence of the security and the date of its creation. To the extent that security is registered with a notary public, government dues equivalent to 0.5% of the amount secured must be paid.

It is possible to grant second-ranking security over an asset which has already had security granted over it; in such circumstances, the security will be documented (and, where applicable, registered) as being subordinated.

An Iranian company can give a guarantee for the debt of a borrower within Iran or overseas.

## **ENFORCEMENT OF SECURITY**

In common with many other jurisdictions in the Middle East, a secured creditor may not take self-help remedies when enforcing its security. Instead, the creditor will need to refer its claim either to a notary public or a court.

Where security is registered with the notary public, and the enforcement of the security can also be entirely performed by the notary, the creditor must refer its claim to the notary. This would apply to enforcement of security over immovable assets such as land and buildings.

Where a borrower or any other person needs to perform a specific action in order for the security to be enforced, the creditor must refer its claim to the court. This would apply to enforcement of security over assets other than immovable assets.

As such, creditors may often be required to take their claim to court in Iran in order to enforce their security. Given the relative cost and time implications of such action, this may not be ideal. It is not lawful under Iranian law for lenders to require a security provider to provide an irrevocable power of attorney, enabling the lender to act in the name of the security provided if required for enforcement purposes.

Enforcement proceedings may take six to twelve months in straightforward cases, although much will depend on the complexity of the matter and the efficiency of the court in question.

## **PRIORITY AND PREFERENTIAL CREDITORS**

If a borrower becomes insolvent, the question of whether the secured assets will be protected from the general creditors of the borrower depends on the type of security and whether it is registered. If the security is perfected by way of registration, the assets will be protected from general creditors. However, if the security has not been registered, then the secured lender will ordinarily not enjoy any priority over other creditors.

In circumstances where priority does exist, a secured lender will rank above any unsecured creditor or creditor with lower-ranking security in receiving amounts owed to it out of the proceeds of sale of the secured assets. Where the proceeds of sale of secured assets are insufficient to cover the entire amount owed to the secured creditor, the secured creditor will rank *pari passu* with other ordinary creditors for the unpaid amount.

# LITIGATION

## CIVIL COURT SYSTEM

The civil courts in Iran are divided into three categories:

- the Court of First Instance;
- the Appellate Court; and
- the Supreme Court.

The Court of First Instance has jurisdiction over civil cases. A judgment from the Court of First Instance is final and binding.

The Appellate Court reviews cases which have been appealed from the Court of First Instance. Appeals can be made on the basis of an error of fact, an error of law or procedural irregularities. It is permitted to introduce new evidence at this judicial level.

The Supreme Court only considers cases addressing points of law. It can uphold a judgment or set it aside on certain grounds. The Supreme Court cannot, however, render a new judgment, rather it must refer the case back to the lower competent court to re-examine the case and give a judgment. Unless the head of the Judiciary regards the judgment as contrary to *Shari'ah* or national law, there is no appeal process from the Supreme Court.

In respect of tax and labour disputes, these are dealt with by the tax office and the labour office respectively. Labour disputes are submitted to the Labour Dispute Settlement Board and the Appeal Board (if there is an appeal). Tax disputes are referred to the Board of Settlement of Tax Disputes and which may also involve up to three levels of appeal. Labour and tax claims decisions are considered administrative decisions and therefore can be referred to the Administrative Justice Tribunal for judicial review.

## KEY CONSIDERATIONS

Judges rule on matters of both fact and law. If the case concerns an issue that has not previously been addressed under Iranian law, the judge shall base his judgment on Islamic sources or authoritative religious injunctions.

An important point to note is that there is no time limitation for bringing civil claims under Iranian law.

At the Court of First Instance, there is no disclosure process. The claimant is required to set out any supporting evidence with the statement of claim and then again at trial. Similarly for a defendant, evidence can be provided as part of his defence statement and then again at trial. If the judge deems it necessary, he can order independent evidence to be presented to assist the Court.

In the Appellate Court and the Supreme Court, the claimant is required to provide the evidence on which it is seeking to rely to the defendant, who has 10 days to respond with its own evidence. In the absence of a response from the defendant, the hearing will proceed regardless.

## PROCEDURAL TIMETABLE

The timetable for civil cases is either provided for in legislation or determined by the court depending on the circumstances of the case. The court will often be guided by time limits which are deemed suitable for certain types of cases, and parties have little input into the procedural timetable.

In general, proceedings are very lengthy in Iran, with cases potentially running for a number of years. The speed at which a case is dealt with is often determined by the complexity of the case, the court's workload and the level of cooperation between the parties.

## INTERIM MEASURES

The two most common forms of interim measures are:

- *Interim writ of attachment*: the court may grant this relief to the claimant at any stage in certain circumstances such as cases where there is a concern the subject of the claim may deteriorate or be destroyed. The court may direct the claimant to deposit a cash sum equivalent to the loss to the defendant arising from the grant of the interim writ of attachment; and
- *Protection*: when a case is urgent, protection measures can take the form of an attachment order over a defendant's property or an injunction either compelling performance or ordering against it. The claimant is required to deposit appropriate security, as determined by the court, to cover the defendant's likely loss arising from the interim relief. Without this payment, the court will not make the order.

## COSTS

If a successful party claims legal costs in its statement of claim/ defence, or during the course of the first hearing, the court can direct the losing party to pay the winning party's legal costs.

For non-Iranian claimants, there is a requirement to provide a guarantee for costs if so requested by an Iranian defendant. Such a request is to be made not later than the first scheduled court hearing. The court does have discretion to waive this requirement if Iranian nationals are not required to make a security deposit in the home country of the claimant.

## APPEALS

The primary criterion which must be satisfied in order to appeal a Court of First Instance judgment regarding a financial claim is that the value of the claim is above IRR 5 million (approximately USD 150). It is possible to appeal to courts with respect to decisions made on all non-financial claims.

Parties may agree, in writing, to waive their right to appeal except in regard to the court's competence or qualifications of the judge. At Appellate Court level, the parties may request either a retrial or refer the case to the Supreme Court on a point of law. In terms of the impact of an appeal on enforcement, an appeal from the Court of First Instance to the Appellate Court suspends enforcement, but referrals to the Supreme Court do not until the case is referred back to the lower courts to give a new judgment.

## IMMUNITY FROM SUIT

State entities do not enjoy immunity from civil proceedings although state property is exempt from seizure and confiscation.

Regarding immunity of foreign state entities, Iran adopts a doctrine of restrictive state immunity, meaning acts of a governmental nature are immune from civil proceedings but those of a commercial nature are not. In 2008, the Iranian parliament ratified the UN Convention on Jurisdictional Immunities of States and their Property.

## FOREIGN JUDGMENTS

A judgment issued by a foreign court can only be enforced by way of an Iranian court order, which will only be granted if:

- there is reciprocity of recognition of Iranian judgments in the country where the judgment was given;
- the content of the foreign judgment is not contrary to public order or morals;
- enforcement of the judgment is not contrary to special legislation or international conventions to which Iran is a member state;
- in the issuing country, the final judgment is final and enforceable;
- an Iranian court has not rendered a judgment contrary to the foreign judgment; and
- the Iranian courts do not have exclusive jurisdiction over the case (for example, cases relating to Iranian real property).

There are limited precedents of foreign judgements having been enforced in Iran.



# ARBITRATION

## INTRODUCTION

The origins of Iran's arbitration laws date back to the initial enactment of the Provisional Civil Procedure Code in 1906.

Today, arbitration in Iranian law is governed by (i) the 2000 Civil Procedure Code (**CPC**) (Articles 454 – 501); (ii) the 1997 Law on International Commercial Arbitration (**LICA**); and (iii) the Law Ratifying the 1958 New York Convention 2001. The provisions of the CPC essentially govern domestic arbitration, whereas the LICA is intended to focus on international commercial arbitration and is based on the UNCITRAL model law.

## ARBITRAL INSTITUTIONS

There are two major arbitration bodies in Iran.

The Tehran Regional Arbitration Centre (**TRAC**) was established in 2004. TRAC is intended to operate as an independent international organisation and it functions under the auspices of the Asian-African Legal Consultative Organization. The stated aim of TRAC is to promote international commercial arbitration throughout the region and to assist existing arbitration institutions administer *ad hoc* arbitrations under the UNCITRAL rules.

The Arbitration Center of Iran Chamber (**ACIC**) was established in 2001. The aim of ACIC is to provide an internationally accepted body for domestic and international commercial disputes.

## THE LICA

The LICA was introduced in 1997 and replaced provisions of earlier laws dealing with international commercial arbitrations where the place of the arbitration is Iran. The LICA is based on the UNCITRAL model law and has been widely viewed as an improvement to the administration of international commercial arbitrations in Iran.

One important difference to note between the LICA and the UNCITRAL model law is that, under the LICA, an arbitration is determined as being international if only one of the parties to the arbitration agreement is of non-Iranian nationality under Iranian law.

The LICA only applies to international arbitration conducted in Iran (i.e. where there is at least one foreign party involved and where the seat of arbitration is in Iran).

## THE ARBITRATION AGREEMENT

Like the UNCITRAL model law, the LICA recognises both an arbitration clause within the agreement between the parties or a separate agreement entered into before or after the dispute has arisen.

For an arbitration agreement to be valid, the subject matter of the arbitration must be capable of being referred to arbitration under Iranian law. Article 496 of the CPC prescribes that certain matters are deemed as not being capable of being resolved by way of arbitration.

These are insolvency disputes, marriage-related disputes and probate disputes.

## APPLICABLE ARBITRAL RULES

The parties, to a large extent, are free to agree between themselves on the procedures that will govern the arbitration including via the adoption of arbitration rules of arbitral institutions (such as TRAC and the ACIC).

There are certain mandatory provisions under the LICA which the parties must adhere to, but aside from those the parties are free to adopt the arbitration rules of any arbitral institution of their choosing. Should the parties fail to agree on the procedural rules, the arbitrators may determine the procedure, which will be in accordance with the provisions of the LICA.

## INTERIM MEASURES

Prior to the enactment of the LICA, only the courts in Iran had the authority to issue an interim order. For domestic arbitrations, conducted under the provisions of the CPC, this remains the case. However, for arbitrations under the LICA, the arbitrators may also issue interim measures at the request of either party. It is open to the parties to agree that certain restrictions on the courts be imposed with regards to granting interim measures.

Under Iranian law there are two main types of interim measures available, namely injunctive relief and security.

Injunctive relief can include orders to preserve the state of affairs previously existing, or orders directing one party to take, or not to take, steps in relation to specified assets. Iranian law terms orders of specific performance as a form of injunctive relief.

Security relief may include security for costs, other attachment orders, or an order that certain assets be placed in the custody of a third party.

## CHALLENGING A FOREIGN ARBITRAL AWARD

As is standard in international arbitration, there is no right of appeal against an award. A party may, however, apply to have an award set aside on certain grounds. Article 33 of the LICA sets out those grounds as follows:

- One of the parties lacked capacity to enter into the arbitral proceedings;
- The arbitration agreement entered into by the parties was not valid under the law which the parties chose to govern it or, where the governing law was not specified, the arbitration agreement clearly contradicted the laws of Iran;
- There was a failure to comply with the provisions of the LICA concerning the service of the request for arbitration or notices of appointment of an arbitrator;



- The arbitral tribunal was not correctly constituted under either the terms of the arbitration agreement or, where the arbitration agreement did not address the composition of the tribunal, the provisions of the LICA;
- The party seeking to set aside the award was unable to present its evidence and documents due to reasons beyond its control during the course of the arbitration;
- Where any award, or a section of an award, by the arbitrator is found to be outside the authority of the arbitrator. It should be noted that if the award consists of separate sections, only the section that is outside the arbitrator's authority, or scope, would be set aside;
- Where an arbitral award is based on the opinion of an arbitrator who was determined as not being capable of fulfilling his duties;
- If the arbitral award is based on a document presented during the proceedings which is proven to be a forgery; and
- If it is discovered, after the arbitral award has been issued, that evidence was withheld or concealed by the other party, and such evidence is relevant to the claim of the party requesting the award to be set aside.

The party making the request to set aside an award has three months from the date of notification of the award to make the request to the competent court. Requests outside of this time limit will not be considered.

Additional grounds on which an arbitral award can be set aside are:

- in cases where the subject matter of the arbitration is deemed to be against public or national security;
- if the award concerns immovable property located in Iran; or
- if the subject matter of the arbitration was not capable of being resolved by way of arbitration.

## ARBITRATION INVOLVING IRANIAN STATE OR PUBLIC PROPERTY

Article 139 of the Constitution of Iran provides that any attempt to refer a dispute to arbitration where the subject matter concerns public and governmental properties requires the approval of the Council of Ministers. If a party is foreign, the approval of the Consultative Assembly (the Iranian Parliament) is also required.

The CPC, LICA and Iran's ratification of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the **New York Convention**) all require compliance with Article 139.

## ENFORCING ARBITRAL AWARDS

Arbitral awards handed down in Iran are final and binding and, upon the written request of a party to the competent court, will be enforced.

Iran is a signatory to the New York Convention. Therefore, international arbitral awards handed down in New York Convention states can be enforced in Iran and there are precedents of this having occurred. However, there are a number of reservations in place:

- As stated above, Article 139 of the Constitution of Iran contains certain approval requirements where the subject matter of the arbitration concerns public and governmental properties;
- Iran will only apply the provisions of the New York Convention to the recognition of arbitral awards made in the territory of another signatory State; and
- The application of the New York Convention appears to be limited to disputes arising out of what are deemed commercial legal relationships under Iranian law.

## COSTS

The LICA does not address the issue of costs of the arbitration and the matter is left to the parties to agree. If the parties have agreed to an institutional arbitration, the costs will be in accordance with the prescribed rates of the selected institution.

In terms of awarding costs, such legal costs, tribunal expenses and other costs are normally borne by the losing party. The arbitrator would address this in the arbitral award.

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# GLOSSARY AND ABBREVIATIONS

**ACIC**

Arbitration Center of Iran Chamber

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**CPC**

Civil Procedure Code

**ECO**

Economic Cooperation Organization

**FIPPA**

Foreign Investment Promotion and Protection Act

**FTZ**

Free Trade Zone

**GSTP**

Global System of Trade Preferences among Developing Countries

**IAEA**

International Atomic Energy Agency

**IRR**

Iranian Rial

**JCPOA**

Joint Comprehensive Plan of Action

**LICA**

Law on International Commercial Arbitration

**LLC**

Limited Liability Company

**MENA**

Middle East and North Africa

**MIMT**

Ministry of Industry, Mines and Trade

**MOH**

Ministry of Health

**MUPSCA**

Maximum Usage of Production of Services and Capabilities Act 2012

**New York Convention**

1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards

**NIOC**

National Iranian Oil Company

**OFAC**

US Office of Foreign Assets Control

**OIETAI**

Organization for Investment, Economic and Technical Assistance of Iran

**OPEC**

Organization of the Petroleum Exporting Countries

**PPPs**

Public Private Partnerships

**SDNs**

Specially Designated Persons And Entities

**SEZ**

Special Economic Zone

**TRAC**

Tehran Regional Arbitration Centre

**WTO**

World Trade Organisation

## NOTES



# ENDNOTES

1. The information in this table was obtained from the CIA World Factbook at <https://www.cia.gov/library/publications/the-world-factbook/geos/ir.html>
2. This information was obtained from the World Bank website at <http://www.worldbank.org/en/country/iran/overview>
3. This information was obtained from the World Bank website at <http://www.worldbank.org/en/country/iran/overview>
4. This is based on the BP Statistical Review of World Energy 2015

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