

# Foreign Investment in Iran

## Introduction

The first legislation regulating and providing protection for foreign investments in Iran was the Law on Attraction and Promotion of Foreign Investment (known as LAPFI) and its Implementation Regulations, approved in 1955 and 1956 respectively.

LPAFI was subsequently replaced with the Foreign Investment Promotion and Protection Act (known as FIPPA) and its Implementation Regulations approved in 2002 (the "Regulations").

FIPPA and the Regulations are designed to encourage and protect foreign investments in Iran whether by way of equity investment in Iranian companies or in financing of Iranian projects.

## General

FIPPA covers investments made for the purpose of "*development and promotion of production activities in industry, mining, agriculture and services*" for the purpose of bringing about economic growth, upgrading technology, enhancing quality of products, increasing employment opportunities and exports.

To be eligible for FIPPA coverage, the foreign investment should not (i) pose any threat to national security and public interests of Iran; (ii) cause damage to the environment, (iii) disrupt the country's economy; (iv) jeopardize production by local investments; or (v) entail grant of concession to foreign investors. For FIPPA purposes "*concession*" is defined to mean "*special rights which place the Foreign Investors in a monopolistic position*".

The ratio of the value of goods and services produced by the foreign investments to the value of goods and services supplied to the local market, at the time of issuance of the Investment License, should not exceed 25% in each economic sector and 35% in each field (sub-sector).

FIPPA coverage for investments made by foreign governments is subject to approval of the Iranian Parliament. However, investment by foreign government companies is deemed as private investment.

FIPPA coverage is granted upon application by the foreign investor and approval of the Foreign Investment Board whereupon the Investment License is signed by the Ministry of Economic Affairs and Finance and is issued to the applicant foreign investor.

The foreign investment may be imported into the country by way of one or a combination of the following:

- (1) cash funds to be converted into Rials;
- (2) cash funds not to be converted into Rials but to be used directly for purchases and orders related to the foreign investment;
- (3) machinery and equipment;
- (4) tools and spare parts, CKD parts and raw, addable and auxiliary materials;
- (5) patent rights, technical know-how, trade marks, trade names and specialized services; and
- (6) other permissible items approved by the Council of Ministers (the Cabinet).

Non-cash investments should be evaluated. The evaluation process could differ depending on the type of the proposed non-cash investment.

Assignment of all or any part of the foreign investment covered by the Investment License to a local or, subject to approval of the Investment Board and confirmation by the Ministry of Economic Affairs and Finance, to another foreign investor is permitted provided that the assignee has at least the same qualifications as the initial investor.

### **Investment in Iranian Companies**

The foreign investor may invest by either taking an equity interest in an Iranian company that is in the process of incorporation (greenfield investment) or by buying shares in an existing Iranian company.

While in practice the participation of foreign nationals in Iranian companies is limited to 49%, there is no such limit in case of foreign investments registered under FIPPA in that in such cases the foreign shareholding is limited to the ratio stated in the relevant Investment License and can be up to 100% although license for 100% foreign ownership is not easily granted.

Any transfer of shares held by the foreign investor to another foreign national is subject to obtaining from the Investment Board of an amendment to the original Investment License. Otherwise, the new foreign shareholder may not benefit from the protections afforded by the Investment License issued to its predecessor.

Although the law provides for the possibility of registering an already existing investment under FIPPA, it is advisable to obtain the Investment License prior to commencing the investment.

## **Foreign Investment in Buy-Back and BOT Projects and Civil Partnerships (where the contractor is an unincorporated joint venture or consortium)**

FIPPA coverage is available not only for equity investment in Iranian companies but also to *“foreign investment in all sectors within the framework of “civil partnership”, “buy-back” and “build-operate-transfer” (BOT) schemes where the return of capital and profits accrued is solely emanated from the economic performance of the project in which the investment is made”*.

FIPPA coverage for investment in civil partnership, BOT or buy-back schemes is available only if the return of capital and profit is not guaranteed by the government or government companies and/or banks.

### **Protection Afforded**

Registration of the foreign investment in an Iranian company will provide the foreign investor/shareholder with the following protections:

- (1) the foreign investor will enjoy the same treatment as that afforded to local investor
- (2) importation of the foreign investment amount, in cash or in kind, is only subject to the Investment License and no other licenses are required;
- (3) subject to any limitation stated in the relevant Investment License, the ratio of foreign investment in each individual case is not subject to any limitation;
- (4) the foreign investment is guaranteed against nationalization and expropriation and the foreign investor is entitled to compensation in an amount equal to the real value of the investment immediately before nationalization or expropriation;
- (5) repatriation of the principal amount of the investment, profit earned and capital gains derived from utilization of the invested amount in the form of cash and/or goods (as provided in the Investment License) is guaranteed;
- (6) free export of the goods produced by the investee enterprise is guaranteed and, in case any restrictions are imposed on such exports, the product can be sold locally and the proceeds of such sale transferred abroad through the banking channels.

Registration of the foreign investment under FIPPA in buy-back projects as well as BOT and civil partnership schemes will, in addition to those listed above, also enjoy the following protections:

- (1) in case, due to enactment of new legislation or government decisions the implementation of the financing agreement (arrangements) is barred or stopped, the government guarantees the repayment up to the ceiling of matured installments; and

- (2) in BOT and civil partnership cases where a government agency is the sole purchaser and/or supplier of the relevant goods and services at subsidized prices, the purchase of the goods and services produced by the project in which the foreign investment is made is, within the framework of the existing legislation, guaranteed by the Government.

## **Repatriation**

Repatriation of the principal amount of investment and profits shall be by way of export proceeds of the relevant product and/or foreign exchange earned through provision of services by the investee enterprise and/or exportation of other permissible goods.

## **Authority in Charge**

The authority in charge of the implementation of FIPPA is the Organization for Investment, Economic and Technical Assistance (known as OIETA), which is organized and operates under the Ministry of Economic Affairs and Finance.

Foreign Investment applications are submitted to OIETA, which after examining the application and completing the information required, submits it, with its own recommendation, to the Investment Board.

Following approval of the application, the Investment License is issued and signed by the Minister of Economic Affairs and Finance.

Although it seldom happens that the OIETA recommendation is not approved by the Investment Board or that despite the decision of the Investment Board the Minister refuses to sign the Investment License, the possibility cannot be entirely ruled out.

## **The Process of Evaluation**

Upon submission of the relevant Investment Application and the relevant documents to OIETA, OIETA is required to prepare a report on the application and submit it, together with its recommendations, to the Investment Board.

OIETA may, in the process of its examination of the application, ask for additional information or documents from the applicant investor. This could delay the process.

OIETA is required to ask the opinion of the Ministry under which the company or project for which the investment is intended falls. The Ministry should respond within ten days. Otherwise, it is deemed that the Ministry has no objection to the proposed foreign investment.

After completion of the OIETA report and recommendation, the relevant application is put on the agenda of the Investment Board. The Investment Board normally holds its meeting every fortnight.

After approval by the Investment Board the draft Investment License is prepared and submitted to the applicant and, after the approval of the proposed draft by the applicant, the Investment License is issued.

A. Avanesian  
Torossian, Avanesian & Associates