



Newsletter No. 209 (EN)

**Business Opportunities
for Foreigners in Iran:
A Legal and Tax Update**

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I. Introduction

The reduction of international sanctions against Iran, in particular the sanctions by the European Union¹ and the United Nations, has opened the country's market for new foreign investment. In the *Joint Comprehensive Plan of Action*, the parties agreed on a phased reduction of the sanctions starting on the *Implementation Day* on 16 January 2016.

Especially European sanctions regarding the transfer of funds to the E.U., banking activities, the import and transport of Iranian oil, gas and petrochemicals have been lifted. Further sanctions will be abolished step by step. As U.S. sanctions partially remain in force, primarily European and Asian companies are currently exploring business opportunities in Iran.

This newsletter shall give an overview on business opportunities for foreign investors in Iran.

¹ See Annex II (Sanctions related commitments) of the Joint Comprehensive Plan of Action: http://www.ceas.europa.eu/statements-ceas/docs/iran_agreement/annex_2_sanctions_related_commitments_en.pdf (last retrieved on: 06 December 2016).

II. Company Set-Up

The *Iranian Commercial Code* (“**IR-CC**”) includes the following forms of companies, corporations and partnerships:

- Joint Stock Company (public (*Sherkat Sabami Am*) or private (*Sherkat Sabami Khass*)), similar to a German small AG;
- Limited Liability Company (*Sherkat ba Masouliyat Mahdoud*), similar to a German GmbH;
- General Partnership (*Sherkat Ta'zamon*), similar to a German GbR;
- Limited Partnership (*Sherkat Mokhtalet Gheyr Sabami*), similar to a German KG;
- Joint Stock Partnership (*Sherkat Mokhtalet Sabami*);
- Proportional Liability Partnership (*Sherkat Nesbi*), similar to a German oHG;
- Production and Consumption Cooperative (*Sherkat Ta'avoni Towlid va Masraf*).

In practice, the *Limited Liability Company* (“**LLC**”) is the most relevant and common entity type, mainly used by smaller businesses or for trading (*see under 1.*). The *Private Joint Stock Company* (“**PJSC**”) is also used very often as a company form. Which form

is chosen, depends on the company's specific business plans.

The LLC is preferred because the set-up procedure of an LLC is quick, easy and less formal. Besides, the set-up, structure and operation of an LLC is less expensive than the respective costs of a PJSC.

However, for *Joint Ventures* (“JV”) between foreigners and Iranians, the most frequently used company form is the PJSC (*see under 2. and. 3.*).

1. Limited Liability Company

The foundation of an LLC requires at least two partners and one manager, regardless of which nationality. The directors are chosen from the partners or from outside of the company. They can manage the LLC for a limited or unlimited period of time.

If the company consists of more than twelve partners, a board of supervisors must be established to control them.

The minimum capital is IRR 1,800,000 (approx. USD 50). We would advise to have a fully paid up capital of IRR 35,000,000 (USD 10,000), so the company is considered reliable.

The capital is not divided in shares. The partners are liable for the company's debts, limited to the extent of their contributions only. But the liability of the shareholders is only limited if the company's name contains the phrase “*limited liability*”.

The company's name has to be in Farsi. The name of the company should not include the name of any of the partners. Otherwise, the

partner whose name is part of the company's name will by third parties be looked upon as a member of a general partnership.

A partner's contribution cannot be transferred to a third party without a three quarters majority consent of the partners as well as the notarization of a deed. Therefore, the transfer process tends to be quite complicated.

The LLC can be owned up to 100 % by foreigners under certain conditions (*see under III. 1.*).

2. Joint Ventures

Foreign companies may also establish a *contractual* or a *corporative Joint Venture* (“JV”) with Iranian partners. This may be advisable when entering the Iranian market. It should particularly be taken into consideration at this stage, since the market is partly developed in crucial areas only. An Iranian partner may help to set up respective structures.

To form a JV, at least two (juristic) persons must gather their capital and knowledge with the aim to make profit by running a business. As in other jurisdictions, the selection process of a JV partner is of the essence. Lorenz & Partners can assist in finding reliable partners.

JVs are not expressly regulated by law. The parties can arrange a JV based on the legal form of a civil partnership according to Art. 573 of the *Iranian Civil Code* and determine the details of their partnership in a contract. Art. 3 of the *Foreign Investment Promotion and Protection Act* (“FIPPA”) also states civil partnerships as a method of in-

vesting, which can be established in the form of a JV.

In the corporative JV, partners establish a company known as a *Joint Venture Company* (“JVC”), an independent legal entity, whereby each of the partners owns a specific percentage of its shares. In this case, JVCs are often operated as PJSC allowing foreign investors to control the management more effectively.

3. Private Joint Stock Company

The shareholders of an Iranian joint stock company participate in paying up the registered capital, ownership, profit and losses, and the distribution of assets in liquidation, in proportion to the shares held. The liability of each shareholder is limited to the par value of his shares. The PJSC is an independent juridical person; the shareholders have the usual shareholder rights, including the right to attend shareholders’ meetings, receive financial reports, elect and replace the board of directors, and vote on major decisions of the company.

There are no legal restrictions with respect to the nationality of persons who may form a PJSC. As a matter of policy, however, the Iranian government generally requires Iranian shareholders’ participation in fields of activities deemed important to the nation’s development programs.

The most striking features of a PJSC are that it has certified shares, a minimum of three shareholders, as well as a minimum capital of IRR 1,800,000 (approx. USD 50). We advise a fully paid up capital of at least IRR 350,000,000 (approx. USD 10,000).

Although only 35 % of a company’s capital needs to be paid in at the time of the formation, 100 % of the capital must be subscribed.

The management board of members has to change every two years. Re-election of the members is possible. The management board of members has to present a fiscal report to the assembly of shareholders every year regarding the last fiscal year. This report will have to be approved by the assembly of shareholders.

4. Timeline

The set-up of a company will take, depending on its form, an average of three months after submitting all necessary documents.

III. Investment Promotions and Incentives

1. Foreign Investment Promotion and Protection Act

A foreign investment can be carried out either in accordance with the regulations as prescribed in the *Companies Registration Act* or those of the *Foreign Investment Promotion and Protection Act* (“FIPPA”). Since the latter offers more incentives, this newsletter will only elaborate on the FIPPA.

The FIPPA applies to foreign direct investment in the fields of permitted activities in the private sector, for the purpose of development and promoting production activities in industry, mining, agriculture and services, as well as under certain circumstances in the public sector. For the investment of foreign governments, special rules apply.

Foreign investment does not require the investor being a non-Iranian individual or an entity. The FIPPA also applies to Iranian investors using capital originating from abroad.

Under the FIPPA, the foreign investor receives the status of a domestic investor, Art. 9 FIPPA. Most importantly, 100 % of the shares can be held by foreign individuals or entities. There is also no limitation regarding the investment volume, profit transfer or capital repatriation. The FIPPA guarantees protection against expropriation (*unless in public interest and in a non-discriminatory manner*). It also facilitates the procedure of acquiring a residence and work permit. For foreign investors, directors, experts and their immediate family members, a residence permit of three years can generally be issued.

To acquire the benefits under the FIPPA, the investor has to submit an application with the *Organisation for Investment, Economic and Technical Assistance of Iran* (“**OIETA**”).² An investment license will be issued by the OIETA with the approval of the *Minister of Economic Affairs and Finance* within approx. 15 days (*depending on the range of the investment*) if the following conditions are fulfilled:

- The investment provides economic growth, promotes technology, quality of products, increases employment

opportunities and exports, and enables to enter international markets;

- The investment does not jeopardize national security and public interests or harm the environment or interrupt the national economy or disrupt products of domestic investments;
- The investment does not involve the granting of any special rights resulting in a monopoly;
- The value ratio of goods and services produced by aggregate of foreign investments does not exceed 25 % in each economic sector and shall not exceed 35 % in each economic branch, Art. 5, 6 FIPPA.

2. Free Trade-Industrial Zones and Special Economic Zones

Apart from the investment incentives granted under the FIPPA, there are numerous *Free Trade-Industrial* and *Special Economic Zones* in which investors can set-up their business:

a) Background

Free Zones were created based on the *Law on Administration of the Free Trade/Industrial Zones* in September 1993. The first Free Zones were Kish Island, Qeshm Island and the Port of Chabahar. Step by step, specific laws and by-laws were adopted which stipulated provisions regarding import, export, investment, insurance, banking, labour and employment in the aforementioned zones. As far as there are special laws, the laws governing the Iranian mainland (*general Iranian laws*) do not apply.

² The application form can be downloaded at http://www.investiniran.ir/OIETA_content/medi_a/image/2014/03/3719_orig.pdf (last retrieved on: 06 December 2016).

The *Free Trade Industrial* and *Special Economic Zones* shall contribute to prosperity, economic development and growth, promotion of investment, active presence in local and international markets, production of industrial goods and services increase in national income and employment. Therefore, investors are granted various tax and legal incentives if establishing a foreign company in a *Free Trade Industrial* or *Special Economic Zone*. For instance, the trade and industrial activities are facilitated in these zones by reducing, among other things, formalities regarding customs, banking and financial systems, insurance and labour laws.

Compared to *Special Economic Zones*, *Free Trade-Industrial Zones* have significant advantages. The most important one is the tax exemption which is only granted in the *Free Trade-Industrial Zones*.

b) Free Trade-Industrial Zones

There are seven *Free Trade-Industrial Zones* (“**FTIZ**”). Herein may be granted:

- Tax exemption for 20 years from the date of commencement of operation for all economic activities;
- 100 % foreign ownership;
- Freedom to repatriate capital and profits;
- Protection and guarantees for foreign investments;
- Abolition of entry visas and easier issuance of residence permits for foreigners;
- Facilitated regulation on labour relations, employment and social security;

- Transfer of manufactured goods outside the trade zones without paying customs duties;
- Right to employ trained and skilled manpower in all different skill levels and professions;
- Utilization of raw materials, oil and gas as feedstock and fuel for all industrial activities.

c) Special Economic Zones

There are various *Special Economic Zones* (“**SEZ**”) located near the inner-borders of Iran in order to facilitate import and export of goods. The incentives in the SEZ include:

- Maintenance of goods in trust;
- Import of goods from abroad or from FTIZ or industrial areas with minimal customs formalities and quick internal transit will be performed in accordance with the relevant regulations;
- Some log entry of merchandise can be carried out without any customs formalities;
- Goods imported from outside or from industrial areas or other commercial zones can be exported without any customs formalities;
- All the goods imported into the region for the required production or services are exempted from the general import-export laws;
- Goods manufactured in SEZ are not subject to price regulation.

IV. Tax Law

Iran concluded double taxation agreements with many countries, among others, Austria, France and Germany. The double taxation agreement with Germany came into effect on 30 December 1969. A new double taxation agreement with Germany is currently under negotiation.

The major national tax laws are the *Direct Taxes Act (2010)* (“**IR-DTL**”) and the *VAT Law (2008)* (“**IR-VATL**”). The most important taxes are the salary income tax, the tax on business income and the corporate income tax. Others important taxes include VAT (9 %) and stamp duty.

1. Salary Income Tax

The salary income tax is the tax imposed on the total income an employee obtains for services rendered with regards to an occupation.

It is paid by the employer by making a salary deduction and submitting the tax directly to the competent tax authority.

The taxation rate depends on the amount paid to the employee:

- Up to IRR 138,000,000 (approx. USD 4,000) annual salary: exemption from the salary income tax;
- From IRR 138,000,001 to 966,000,000 (approx. USD 4,000 to 28,000) annual salary: 10 % salary income tax rate;
- Exceeding IRR 966,000,000 (approx. USD 28,000) annual salary: 20 % salary income tax rate.

2. Tax on Business Income

The tax on “business income” is imposed on the income earned when working independently. Artisans as mentioned in Art. 96 IR-DTL have to maintain the necessary documents and records regarding the business income tax.

The tax rates are as follows:

- 15 % for an annual income up to IRR 30,000,000 (approx. USD 900);
- 20 % for an annual income from IRR 30,000,001 to 100,000,000 (approx. USD 900 to 2,900);
- 25 % for an annual income from IRR 100,000,001 to 250,000,000 (approx. USD 2,900 to 7,200);
- 30 % for an annual income from IRR 250,000,001 to 1,000,000,000 (approx. USD 7,200 to 28,600);
- 35 % for an annual income over IRR 1,000,000 (approx. USD 28,600).

3. Corporate Income Tax

Iranian corporate income tax is based on the declared accounting profit. Unless other rates are prescribed by the IR-DTL, corporate income is taxed at a flat rate of 25 %. Taxable income is the income of companies derived from sources in Iran or abroad, minus the loss resulting from non-exempt sources, minus the prescribed exemptions.

V. Summary

The Iranian government grants a range of investment promotions and incentives, such as 100% foreign ownership, tax exemptions

and protection against expropriation. Furthermore, foreign investors can choose from a range of legal forms provided by the Iranian Commercial Law.

Even though Iran has a developed legal system, it may hold surprises. Finally, it should be kept in mind that the *Joint Comprehensive*

Plan of Action abolished some, but not all sanctions against Iran. It is therefore advisable to engage a law firm which is experienced in Iranian and international business and tax law in advance when structuring investments.

*We hope that the information provided in this newsletter was helpful for you.
If you have any further questions please do not hesitate to contact us.*

LORENZ & PARTNERS Co., Ltd.

27th Floor Bangkok City Tower
179 South Sathorn Road, Bangkok 10120, Thailand
Tel.: +66 (0) 2-287 1882
E-Mail: info@lorenz-partners.com