

EXPEDIENCY COUNCIL RATIFIES THE LAW FOR THE ATTRACTION AND PROTECTION OF FOREIGN INVESTMENT

The Law on Attraction and Protection of Foreign Investment (LAPFI) in Iran has been finally ratified after months of conflict between the Iranian Parliament and the Guardian Council. The Expediency Council put an end to the disputes by making certain amendments and ratifying the changes on 26 May 2002.

The following is a summary of the changes/amendments introduced by the Expediency Council:

- The Parliament and Guardian Council disagreed on the definition of foreign investor. The Parliament had included Iranian expatriates residing abroad within the definition of foreign investor. However, the

Guardian Council objected to this. Subsequently, the Expediency Council permitted the inclusion of Iranian expatriates in the definition of foreign investor. As such, under the new LAPFI, it is the nationality of the capital (being of foreign origin) which would determine the eligibility of the investment for protector as opposed to the nationality of the investor.

- In previous drafts, the Parliament had allowed the inclusion of foreign governments and international organizations as foreign investors. This was objected to by the Guardian Council. The Expediency Council has allowed for participation of foreign governments in investments in Iran as long as the Parliament provides for such

permission on a case by case basis. Further, such investment by governments will be deemed as “private” investments and not subject to any state immunities.

- The Expediency Council has also set the overall ceiling of foreign investment in the Iranian economy. Overall foreign investment is limited to 25% in each economic sector and up to 35% in each sub-sector. However, those foreign investments that lead to export of goods and services (except crude oil) are exempted from the above limitations.
- The Expediency Council let stand the business disruption provision within the new LAPFI. Under this principal, where a direct government act, regulation

or law disrupts the operations of a project (without nationalization), the government will be under obligation to undertake the financial obligations of the project while such disruption is in place. This provision is more for the protection of the interest of lenders to a project. For example, if the government cuts the gas to a power plant since it needs the gas for domestic consumption it will have to pay the loan installments of the project for the duration of the disruption.

- The Expediency Council has accepted the provision that foreign investors cannot be provided with any special rights in comparison to domestic investors and that foreign investors cannot get any monopolistic rights. In one of the drafts submitted by the Parliament, there was a provision for the foreign investor whereby they were guaranteed against negative changes in law (such as tax law) for a

period of 10 years. This was objected to by the Guardian Council as unconstitutional as it provided rights not available to the domestic investor and confirmed by the Expediency Council.

- Foreign investors are absolutely prohibited from owning land in Iran.

The Expediency Council has instructed the Council of Ministers to draft the implementing regulations within 60 days. Once this is done, the new LAPFI will come into effect replacing the current one.

We are enclosing the translation of the text amended and ratified by the Expediency Council. **As this is not the official published text there may be modifications. If so, we will submit any possible changes in our subsequent newsletter.**

**THE LAW ON
ENCOURAGEMENT
AND PROTECTION OF
FOREIGN
INVESTMENT**

**Chapter One
General Regulations**

Article 1: The terms used in the present Law shall have the meanings specified below:

Law: Law for Encouragement and Protection of Foreign Investment.

Foreign Investor: Any non Iranian or Iranian natural person or legal entity using foreign sourced capital who has obtained the Investment License mentioned in Article 6 of this Law.

Foreign Capital: Various types of cash and non cash capital brought into Iran by the Foreign Investor, and include the following:

A) Sums in cash entering the

country in the form of exchangeable currency though the Iranian banking system or other means approved by the Central Bank of the Islamic Republic of Iran.

B) Equipment and machinery

C) Tools and spare parts, raw material, manufacturing parts, additives and auxiliary material.

D) Patent rights, technical know-how, trade names, trademarks and specialized services.

E) Transferable dividends of stocks belonging to the Foreign Investor

F) Other authorized cases with the approval of the Council of Ministers.

Foreign Investment: The utilization of Foreign Capital in an existing or newly established economic entity upon issuance of Investment License.

Investment License: A license to be issued in conformity with Article 6 of this Law for each case of Foreign Investment.

Organization: The Organization for Investment, Economic and Technical Assistance of Iran (OIETAI) subject of Article 5 of the Law on Establishment of Ministry of Economy and Finance (1974).

High Council: High Council on Investment subject of Article 7 of the articles of association of the Organization for Investment, Economic and Technical Assistance of Iran approved on May 2, 1975.

Board: Foreign Investment Board mentioned in Article 6 of this Law.

**Chapter Two
General Criteria for
Acceptance of Foreign
Capital**

Article 2: Admission of Foreign Investment under this Law for construction and productive

activities in the fields of industries, mines, agriculture and services shall in addition to compliance with other prevailing laws and regulations, satisfy the following criteria:

- A) Shall lead to economic growth, promote technology, promote quality of products, increase employment opportunities, increase exports and entering the international markets.
- B) Does not jeopardize national security and public interests or harm the environment or interrupt national economy or disrupt products of domestic investments.
- C) Shall not involve granting concession by the government to Foreign Investors; concession shall mean special rights that put Foreign Investors in an exclusive and monopolistic position.
- D) The proportion of the value of goods and services produced by Foreign Investment under this Law in comparison with the value of

goods and services supplied in domestic market at the time of issuance of Investment License, in each economic sector shall not exceed 25% and in each economic branch shall not exceed 35%.

Determination of branches and ceiling of foreign investment in each branch shall be made by Council of Minister's regulations.

Foreign Investment for exportation of goods and services, excluding for crude oil, shall be exempted from the mentioned proportions.

Note: The Law Pertaining to Ownership of Real Property by Foreign Citizens approved on July 7, 1931; remains applicable. Ownership of any kind and any amount of real property by Foreign Investors is not permitted under this law.

Article 3: Foreign Investment admitted in compliance with the provisions made in this Law shall enjoy and benefit from the facilities and protections

stipulated in this Law. These investments could be accepted in the following two ways:

- A) Direct Foreign Investment in those fields that private sector activity is authorized.
- B) Foreign Investment in all sectors within the schemes of "civil partnership," "buy backs," and "build, operate and transfer (BOT)" where the return of principal and profit arises solely through the activity of the same investment project and does not rely on any guarantee by the government, government companies or banks.

Note 1: While Foreign Investment or the interest thereof invested through the build, operate and transfer (BOT) scheme according to Clause B of the present Article is not fully depreciated, imposition of ownership rights by the Foreign Investor onto the investment project firm in proportion with retained share capital shall be permissible.

Note 2: In the case of investments subject to Clause B of Article 3 of this Law, should laws or government regulations lead to prohibition or cessation of approved financial agreements, then the government shall procure and pay the resulting damages with the ceiling being the matured and due installments. Limits of the reimbursable undertakings according to this Law shall be approved by Council of Ministers.

Article 4: Investment in Iran by foreign government(s) shall be approved by the Parliament in each case. Investment by foreign government companies shall be treated as private investment.

Chapter Three

Decision-Making Forums

Article 5: The Organization is the only official body for encouragement of Foreign Investments and implementation of its relevant affairs. All applications by Foreign Investors for such matters as admission, entry, utilization, and repatriation

of capital into the country shall be submitted to the Organization.

Article 6: In order to review and study the applications, as mentioned in Article 5, a Board called “the Foreign Investment Board” shall be set up to be presided over by the Deputy Minister of Economy and Finance as the head in-chief of the Organization and include Deputy of Minister of Foreign Affairs, Vice-Chairman of the State Management and Planning Organization, Vice-Chairman of the Central Bank of Iran, as well as the deputies of other ministries concerned, as the case may be.

Investment Licenses shall be issued upon approval of the Board and confirmation and signature of the Minister of Economy and Finance.

The Board shall be obliged to observe the criteria set forth in Article 2 of this Law when approving licenses for Foreign Investment.

Note: Within a maximum of 15

days from the date of application the Organization shall complete preliminary examination and recommend its decision to the Board. The Board must within one month of receiving the application, examine and announce its final decision in regards to the application.

Article 7: As a matter of facilitation and acceleration of matters of application and activity of Foreign Investments in the country all relevant bodies including the Ministry of Economy and Finance, the Ministry of Foreign Affairs, the Ministry of Commerce, the Ministry of Labor and Social Affairs, the Central Bank of the Islamic Republic of Iran, Islamic Republic of Iran Customs, Office for Corporate Registration and Industrial Ownership and the Environment Protection Organization must name to the Organization a representative with full authority certified by the highest official of each body. The representatives will act as coordinators and delegates to the Organization on all matters relating to each body.

Chapter Four
Guarantee and Transfer of
Foreign Capital

Article 8: Foreign Investments subject to this Law shall enjoy all rights, protections and facilities available to domestic investments in a non-discriminatory manner.

Article 9: Foreign Investments shall not be appropriated or nationalized unless for the public good, through a legal due process, in a non discriminatory manner, and against payment of appropriate compensation based on the real value of the investment immediately before the appropriation.

Note 1: Compensation requests must be submitted to the Board within a maximum of one year after appropriation or nationalization.

Note 2: Disputes resulting from appropriation or nationalization will be settled according to Article 19 of the present Law.

Article 10: Transfer of ownership of the whole or a part

of the Foreign Capital to a domestic investor or upon the Board's approval and confirmation of Minister of Economy and Finance, to another Foreign Investor shall be permissible. In case of transfer to another Foreign Investor, the transferee shall have at least the qualifications of the original investor and will replace or join the original investor in terms of application of the regulations of the present Law.

Chapter Five
Regulations Pertaining to
Admission, Import and
Export of Foreign Capital

Article 11: Foreign Capital may enter the country and be covered under this Law through one or a combination of the following:

- A) Cash sums converted to Rials.
- B) Cash sums not converted to Rials to be used directly for purchases and orders related to and utilized for the Foreign Investment.
- C) Non-cash items upon

completion of the evaluation procedure by the competent authorities

Note: The executive by-laws of the present Law shall specify the relevant procedure for evaluation and registration of Foreign Capital.

Article 12: The applicable foreign exchange rate for entry and repatriation of the Foreign Capital as well as all foreign exchange transactions in the case of a unified exchange rate will be that prevailing rate in the country's official network and otherwise the daily free market rate as recognized by the Central Bank of Iran will be applicable.

Article 13: The principal and interest of Foreign Capital or any portion of the capital remaining in Iran may be transferred abroad with a three-month notice to the Board upon fulfillment of all outstanding obligations, payment of legal deductions and the approval of the Board and confirmation of Minister of Economy and Finance.

Article 14: The profits of Foreign

Investment may be transferred abroad upon deduction of taxes, duties and legal reserves with the approval of the Board and confirmation of the Minister of Economy and Finance.

Article 15: Payments for the principal part of financial facilities and related expenses of Foreign Investors, contracts related to patent-right, know-how, technical and engineering, trade name and trademark, management and other similar contracts within the frame of Foreign Investment may be transferred abroad according to the provisions of the Board and confirmation of the Minister of Economy and Finance.

Article 16: Transfers mentioned in Articles 13, 14 and 15 shall be done with due regard to the provisions of Clause B of Article 3 hereof.

Article 17: Acquiring foreign exchange for transfers mentioned in Articles 13, 14

and 15 is permissible through the following methods:

- A) Purchase of foreign exchange from the banking network.
- B) Using the foreign currency earned through the export of commodities produced, or the foreign currency earned through service activities of the firm in which the Foreign Capital is invested.
- C) Export of authorized goods with due regard to relevant laws and regulations.

Note 1: Application of one or a combination of the above methods shall be provided for in the Investment License.

Note 2: The Central Bank of Iran is obligated to supply the foreign currency equivalent of transferable sums mentioned in Clause (A) above to the Foreign Investor, with the approval of the Organization and confirmation of the Minister

of Economy and Finance.

Note 3: If the Investment License is based on Clauses (B) and (C) of this Article, the said License shall be regarded as an export license.

Article 18: The repatriation of the part of Foreign Capital which is imported into the country within the framework of the Investment License but remains unused, shall not be subject to any foreign exchange or imports-exports' laws and regulations.

Chapter Six **Settlement of Disputes**

Article 19: Any disputes which may arise between Foreign Investors and the government over the reciprocal undertakings in the framework of investments mentioned in the present Law, and which can not be settled through negotiations, shall be examined by domestic courts of law, unless another mode of settlement of disputes has

been agreed upon within a law on bilateral investment agreement with the government of the Foreign Investor.

Chapter Seven **Final Regulations**

Article 20: Relevant executive bodies are required to accommodate the requests of the Organization in matters concerning issuance of visas, residence, work and employment permits, which shall be required for and related to Foreign Investors, managers and/or experts working for private sector involved in Foreign Investments subject to this Law, and for their next of kin.

Note: Disputes between the Organization and executive bodies will be settled upon opinion of the Minister of Economy and Finance.

Article 21: The Organization shall provide public accessibility of investment and Foreign Investors related information,

information on investment opportunities, Iranian partners, fields of activity and other information available to the Organization.

Article 22: All ministries and government companies and organizations as well as those public institutes whose titles must be stipulated in law to be subject thereto, are required to provide the Organization with all information needed for Foreign Investment and reports on Foreign Investments made, so that the Organization could act upon them according to the above Article.

Article 23: The Minister of Economy and Finance shall provide the relevant Parliament commissions with a report on the performance of the Organization with respect to Foreign Investment subject to this Law every six months.

Article 24: As of the date of approval of this Law and its executive by-laws, the former

Law on Attraction and Protection of Foreign Investment (1955) and the relevant by-laws are repealed. All Foreign Capitals subject to the former law will be covered by this Law. The provisions made in this Law may be repealed and abrogated by any subsequent and upcoming laws and statutes only if a provision shall be stipulated in them reiterating such nullification.

Article 25: The executive by-laws of the present Law shall be prepared by the Ministry of Economy and Finance and subsequently approved by the Council of Ministers within 2 months.

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