Legal Newsletter

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The 1383 Iranian Fiscal Budget

The fiscal budget for the current Iranian year 1383 (March 2004-March 2005) was ratified by Parliament in late March and became law. The 1383 Budget – which is premised under the overall provisions of the Third Five Year Plan -- is the main fiscal spending authority of the government. The 1383 Budget is estimated at 1,184,506,785,841,000 Rials or approximately $139 Billion.

The following are highlights of provisions related to foreign investment, finance and trade:

Government Foreign Trans-actions

All ministries and government companies are required to conclude their foreign transactions and contracts with a value of more than one million USD, exclusively through international or limited tender formalities. Tender requirements can be waived only by a resolution of the Council of Ministers. Any contract or transaction which is concluded in violation of the tender requirement would not be honored by the Central Bank of Iran.

Energy

Similar to the previous fiscal year, the state utility company, TAVANIR, has been authorized to sell up to 10% of its existing installed power plants to the private sector including domestic and foreign investors.

Also, close supervision over the investments of these companies affiliated to the ministries of oil and energy is provided for under the Budget Bill. Any such investments can be initiated only after approval of the State Management and Planning Organization and quarterly reports on the status of each project must be submitted to the energy commission of the Parliament during the life of the project.

Telecommunications

The Ministry of Information and Communications Technology is authorized to sell frequencies and charge royalties for issuing telecommunications related services to private persons. This is relevant, among other things, to the second GSM license recently awarded by the ministry to foreign investors led by Turkcell.

Commerce

The waiver of the ban on import of cigarettes remains to be in effect this year. Additionally, the import of grain by private persons has been permitted.

In regards to imports of foreign goods and services, this can only be done through legal channels, otherwise it will be deemed trade in contraband. In this relation, all foreign importers of goods and services into Iran are required

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to have registered an official representative in Iran as well as providing for after sale services where required. Failing to do so would result in such goods and services being deemed as smuggled goods.

Money and Foreign Currency

This provision provides the main authority for the government (and related state agencies) to procure foreign debt financing and guarantee its repayment.

The following are some of the highlights in this area:

1) The government is permitted to utilize all those amounts authorized in previous fiscal budgets and not used;

2) Additionally, the government may procure and guarantee repayment of up to $9.3 Billion for certain projects and those that repayment can be made from the proceeds of the project itself such as buy backs.

3) The National Iranian Oil Company is further authorized to obtain financing for oil and gas projects under buy back schemes from pervious fiscal year amounts authorized and not utilized (Iranian years 1377-82).

4) In relation to foreign investments in areas such as power generation, construction of refineries, railways, airports and the like the government may provide guarantees in addition to those provided for under the Foreign Investment Promotion and Protection Act as follows:

   a) Guarantee payments undertaken by state entities in relation to those products that must be purchased by the government;

   b) Guarantee balance of payments in relations to those products that must be sold to the public at subsidized rates; and

   c) The government must ensure that the obligations of those state entities that may become privatized remains intact.

In relation to the foregoing, the Ministry of Economic Affairs and Finance, may on behalf of the government make the aforementioned guarantees so long as the assets and funds of those state entities party to a contract are utilized and does not expose the general assets of the government. In other words, the government will guarantee performance of state entities from those entities' available assets and funds. In case of breach, the government could dip into the accounts and assets of those state entities but may not independently provide for payments.

Parliament Considers New Securities Law

The Draft of the New Securities Law ("DSL") has been submitted to the Parliament after approval of the Council of Ministers. The DSL had been prepared, for the first time, over three years ago but its section 6, dealing with crimes and punishments, had been referred to the Judiciary for their review and commenting. During the last three years DSL was being considered by the Judiciary who did not respond to the Council of Ministers until recently.

Following receipt of the opinion of the Judiciary, the Council of Ministers has submitted the

DSL to the Parliament for their review and approval.

Establishment of Organization for Supervision over Securities

DSL provides for the establishment of the Organization for Supervision over the Securities ("the Organization"), a public non-governmental organization which is in charge of organizing and supervising over the stock exchanges. The articles of association of the Organization shall be approved by the Council of Ministers within three months after the final ratification of DSL by the Parliament. According to DSL, the Organization shall consist of five different pillars including The Council of The Securities, Chairman of the Organization, The Supervisory Board (The Board of Directors), General Secretary and the Auditor.

The Council of Securities ("the Council") is the highest body within the Organization and consists of the following members:

- The Minister of Economic Affairs and Finance,
- Minister of Commerce,
- Chairman of the Central Bank of Iran,
- Chairman of the Chamber of Commerce, Industries and Mines,
- Chairman of the Supervisory Board,
- Two Experts to be proposed by the Minister of Economic Affairs and Finance and appointed by the Council of Ministers.

The Council shall approve the budget and financial statements of the Organization, propose nominees to be appointed as the members of the Supervisory Board, appoint the auditor, chairman and general secretary of the Organization and approve the general policies of the Organization. The Council shall also prepare draft the needed regulations and propose them to the Council of Ministers for their approval.

The Supervisory Board ("the Board") consists of five members who must be appointed by the Council of Ministers from among the experts in the legal, economic, financial or accounting fields.

The foremost responsibilities of the Board are as follows:

- Preparing of the executive instructions for implementation of the DSL once approved;
- Preparation and approval of the regulations on disclosure of information; reporting requirements;
- Registration and issuing permissions for public offering of the securities;
- Issuing licenses for establishment of stock exchanges, brokers' unions and other institutions subject to this law as well as suspension and annulment of such licenses;
- Approval of the regulations on the method of issue of licenses for dealers, brokers etc. and determining the commission rates for transactions;
- Reporting to the Ministry of Economic Affairs and Finance on the activity of the securities market; and
- Adopting measures to protect minority shareholders.

DSL provides for establishment of primary and secondary securities exchanges. The public offering of the securities through publication of subscription notices, marketing and sale of the securities in the primary market would be conditional on permission of registration with the Board. The issuer of the securities shall also report to the Board about the process of the subscription within 15 days from the date of completion of the publication of the securities.

Only government bonds, bonds published by municipalities and bonds published by banks or credit and financial institutes are exempt from the requirement of registration; however there are yet some reporting requirements applicable to such securities.

Once the DSL is approved, the registration of the public joint stock companies shall be made exclusively with the Board and there would be no need for registration of the public companies with the Companies Registrar Office anymore.

The DSL also provides for establishment of secondary markets. As per the DSL, stock exchanges are self-regulating institutions, which shall be licensed by and registered with the Board in the form of non-government joint stock companies. Articles of the stock exchanges must be approved by the Board. The stock exchanges shall prepare regulations concerning method of admission of the securities, classification of the listed companies, amount of commissions etc. and submit to the Board for their approval.

Moreover, DSL provides for a reporting system that must be regulated by the Board. The Board shall regulate and define the standard reporting methods that must be observed by all issuers of the securities. The reporting requirements include the audited annual financial statements, midcourse financial statements and important events reports which shall cover the following events if any:

- Changes in the major shareholders or in the board of directors,
- Sale or acquisition of the subsidiaries or affiliate companies,
- Entering into important contracts,
- Changes in the financial structures,
- Important legal actions against or by the company,
- Any other information that may have a major effect on the value of the securities.

DSL prohibits use of insider information for transactions and provides for sanctions for those who use insider information of companies for their own benefits. The following persons are deemed as being aware of the insider information of companies:

- Directors and vice-directors of the company;
- Inspectors, consultants, accountants, auditors and lawyers of the company;
- Shareholders who hold more than 10% of the shares of the company; and
- Other persons that may have access to the internal information of companies due to their position or responsibilities.

The abovementioned people shall report to the stock exchange and to the Board, all their stock transactions within 15 days from the date of the transaction. Those violating the above regulations may face imprisonment for a term of 6 to 24 months.

DSL provides for more sanctions for a variety of mistreatments such as: Issue of securities without registration, disclosure of the confidential information by brokers, publishing of wrong information in order to affect the price of the securities, failing to observe the reporting requirements etc.

The DSL shall be put into force only after ratification by the Parliament and the Guardian Council.

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Possibility of Foreign Banking Activity In Iran

Until now, foreign banks have been prohibited from engaging in banking activities in Iran. However, under the Fourth Five Year Plan covering periods 2005-2010, a provision has been provided for to authorize such banking activities. Under provisions of Article 29 of the Fourth Five year plan "the branches of foreign banks and credit institutions can be established in Iran and operate under the provisions of the Monetary and Banking Law and the Law on Usury Free Banking. The Central Bank of Iran shall be the authority issuing licenses for the establishment and operation of such branches."

Presumably, should this provision be ratified, such branches would be able to become active in banking operations within the guidelines provided by the above referenced laws.

It should be noted that the Parliament has ratified the Fourth Five Year Plan and submitted the bill to the Guardian Council for ratification. To this end, the fate of this provision would be determined once finally ratified by the Guardian Council or in case of disagreement, by the Expediency Council in Iran.

Recent Treaties between Iran and Other Countries

Bilateral Investment Treaties

Iran has recently ratified Bilateral Investment Treaties with:

- France
- Korea
- Germany
- Romania
- Spain
- Finland
- Bahrain
- Turkmenistan
- Austria

Double Taxation Treaties

Also, Iran has ratified Double Taxation Treaties with:

- Croatia
- Turkey
- Austria
- Jordan

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