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Registration of 100% Foreign Owned Companies Possible in Mainland Iran Without Investment License

Following a very recent directive, the Tehran Company Registration Office will now permit the registration of up to 100% foreign controlled companies in mainland Iran without the need for presenting a foreign investment license. Prior to this directive, it was possible to have more than 49% shares of an Iranian company registered in Tehran and mainland Iran only pursuant to an investment license. Therefore, those foreign companies not qualifying for an investment license were able to only register an Iranian company with a 49% shareholding.

With the removal of the requirement of an investment license, foreign persons can now register up to 100% foreign owned Iranian companies without any need for obtaining an investment license. Such benefit was only available in the Iranian free trade zones until now.

The New Law of Registration of Patents, Industrial Designs and Trademarks

The Law of Registration of Patents, Industrial Designs and Trademarks (the "Law") was approved by the Parliament on October 28, 2007 and subsequently ratified by the Guardians Council on January 23, 2008. The Parliament has ratified an experimental enforcement period of five (5) years for this Law. This Law abrogates the Trademarks and Patents Registration Act of 1931 and is currently the most important regulation with respect to protection of trademarks and industrial property in Iran.

To enjoy the protection of the Law with respect to a patent, trademark, trade name, or industrial design, the interested party must properly register it with The Office of the Registrar of Companies, Trademarks and Patents (the "Registrar"). The Law sets forth detailed requirements for filing an application with the Registrar. Once the application has been approved, the Registrar shall inform the public of the patent or trade name or industrial design via registration in the legal gazette, and issue a Registration Certificate to the applicant.

The Law also specifies what type of inventions, marks, and designs may be registered. The Law defines patent, mark, trade name and industrial design as follows:

- A patentable invention is as an invention that has resulted from the thought process of an individual and introduces a special product or process and solves a problem in a profession, industry, technology, and the like. A patent may be registered provided that it is novel and original. The invention must also have an industrial application. Certain categories are not patentable. Such exclusions include but are not limited to discoveries, scientific theories, mathematical methods and artistic works; diagnosis and treatment methods for human or veterinary illnesses; anything that is previously disclosed or used in industry; or any invention that is against moral or public order.

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Patents are generally valid for a period of 20 years.

- "Mark" is defined as any visible sign which distinguishes the products or services of one person from another, and "trade name" as any name or title that identifies an individual or legal entity. Similar to patents, marks and trade names may be registered, with certain exceptions. For example, any mark that resembles or is the translation of another trademark or trade name of a similar product that is in use and well known in Iran, or any mark that resembles military badges, flags, and other official insignias may not be registered. Similarly names that may deceive or mislead the public or commercial centers about the nature of the institution's activities may not be registered. The registration of a trademark is valid for ten years, and may be renewed thereafter for consecutive ten year periods.

- "Industrial Design" is any combination of lines and/or colors, and/or any three dimensional shape with lines, with or without colors, in a manner that such design alters the design and/or appearance of an industrial product or a handy craft object. An Industrial Design may be registered in Iran only if it is novel and original.

Any person who successfully registers a patent, trademark, or industrial design shall have exclusive rights with respect to it. Use of the invention, trademark, or industrial design by anyone other than the registered owner is prohibited and the registered owner may bring a claim in court for any such unauthorized use. With respect to trademarks, this exclusivity right extends to use of marks that resemble the registered trademark and could lead to public deception with respect to the product in question. Similarly, any unauthorized use of trade names, or use of trade names by third parties in a fashion that could lead to deception of the public is considered illegal.

With respect to the exclusivity of patents, it should be noted that the Law provides for an exemption when the government is seeking to use a patented invention for national security, health, economic, and other such reasons. Also, the Law specifies that any monetary benefits of an invention of an employee or consultant/contractor during the course of his employment belong to the employer unless otherwise noted in the employment contract.

Any changes concerning the possession of a patent and/or registration of an industrial design, or trademark, must be filed at the Registrar's. The registered owner of the patent, trademark, or industrial design has the right to assign, transfer, or license her rights. Such assignment or license must be registered at the Registrar to be valid. With respect to license of a trademark, the licensing agreement must also be registered with the Registrar. The Registrar must provide notice of the licensing via publication, but the contents of the licensing agreement shall remain confidential. Additionally, the Law requires that the licensing agreement ensures the licensor's efficient control of the quality of the products and/or services in question, and the licensee must provide needed services to consumers. Otherwise, the license agreement shall be regarded as null and void.

Interested third parties may apply to the courts for the cancellation of a patent, trademark, or industrial design. Such parties must prove that the invention was not novel or that the registration was done in contravention of the Law. Additionally, if a registered trademark is not commercially

utilized within three full years after its registration, any interested party may apply to the courts for the cancellation of said trademark. Cancellation shall not be granted if non-use of the trademark was due to force majeure reasons.

The Law on Value Added Tax

The Law on Value Added Tax (VAT Law) was approved by the Parliament on May 6, 2008 and confirmed by the Guardians Council on June 8, 2008. The timeline for the implementation of the law remains undefined however amidst opposition from various merchant groups in the country.

The VAT Law defines the criteria for calculation of the VAT tax and special charges levied on supply of goods and services. The Law defines added value as the difference between the value of goods at the time of transaction and their price when they were purchased or acquired for the first time. The Law defines the value-added tax rate as 1.5 percent, while specifying a special tax rate for some luxury commodities and exempting some basic items from taxation.

The Law also imposes a VAT tax on services rendered, provided that they are performed for a third party and in exchange for consideration. When goods and/or services are exchanged with one another, the Law imposes a VAT tax on both parties of the transaction. In addition to sale of goods, VAT taxes are to be paid in cases of transfer of title of automobiles, as well as on charges paid by passengers traveling between cities in Iran.

A majority of basic commodities such as food and medicine, agricultural products, animal and fish products, books, immovable properties, public transportation services and handmade carpets are exempt from the VAT tax. In contrast, certain non essential commodities and luxury goods are taxed at a special rate. For example, cigarettes and tobacco products shall be taxed at a special rate of 12%.

It should be noted that the VAT tax does not apply to goods which shall be exported through official channels. The exporter of goods and services may receive a refund of any VAT taxes paid by submitting the exit sheets and necessary supporting documents to the tax authorities. Foreign passengers may also receive a refund of the VAT tax they may have paid for any product on the condition that they exit the country no more than 2 months after the date of the transaction for which taxes were paid.

The Law specifies that any transaction conducted without payment of the VAT tax is considered as smuggling. Further, penalties are imposed on taxpayers who fail to submit their tax returns when due, on those who fail to complete the requested information on invoices, those who refuse to present requested books and documents to the tax authorities, and those merchants who fail to insert real costs on invoices. Merchants are required to use cashier machines, books, invoices, and other accounting methods determined by the tax authorities, and are also required

to maintain such books and financial records for 10 years after the close of each financial year.

Privatization: Highlights of the New Law on Privatization in Iran

Following the introduction of general policies of Article 44 of the Constitution set forth by the

Supreme Leader, the new law on privatization titled The Law Amending Some Provisions of The Fourth Development Plan and Implementing General Policies of Article 44 of the Constitution, (hereinafter the "Law") was approved by the Parliament on January 28, 2008 and ratified by the Expediency Council on July 21, 2008. This Law is intended to fill the regulatory gap which the previous laws (i.e. the Third and Fourth Development Plans) could not fill. Most significantly, this Law has clarified the scope of activities of various economic sectors (public, private, and cooperative). The Law has also introduced provisions to ensure fair competition and to prevent monopoly and anti-competitive dealings.

Article 2 of the Law classifies the various economic activities into three groups and defines the ownership and management of each group as follows:

- Group 1 contains all economic activities other than those that fall into Group 2 or Group 3. State ownership, investment, and/or management in this group is prohibited. All enterprises in this group must be ceded to non-state sectors by the end of the Fourth Development Plan.
- Group 2 contains activities enumerated in Article 44 of the Constitution. Up to 80% of the share value of these enterprises must be ceded to non-state sectors by the end of the Fourth Development Plan. This group includes large industries (including downstream oil and gas large industries) and large mines (except oil and gas); foreign trade activities; banking by non-government public entities and instrumentalities, cooperatives and public joint stock companies (with restrictions); insurance; supply of energy including the generation and import of electricity for domestic consumption and exports; all matters regarding post and telecommunication (with significant exceptions); roads and railways; aviation; and shipping.
- Group 3 contains entities and activities, the ownership and management of which, shall remain with the government. This group includes any confidential and necessary military production; telecommunication mother networks; NIOC and exploration and production of oil and gas; oil and gas resources; banking: Central Bank of Iran, Melli Bank, Sepah Bank, Industry and Mine Bank, Export Development Bank, Agriculture Bank, Maskan Bank, Bank for Mine Development; Central Insurance and Iran Insurance Company; main power distribution systems; Iran Aviation Organization; Iran Harbor and Sailing Organization; dams and water distribution systems; and radio and television.

The Law has also determined the maximum participation of various groups in certain activities. For example, the maximum shareholding in non state banks and private financial/credit institutions may not exceed 10% for public joint stock companies or non-state public entities, and 5% for all other legal and/or natural persons. Also, any commodity or service provided by non-state public entities shall not exceed 40% of the market proportion for each commodity or service.

Article 20 of the Law specifies the methods by which state companies may be ceded to non-state sectors. These methods include offering shares to the public on the national and/or foreign exchanges, as well as sale of shares to qualified Iranian or foreign bidders. Should the

bidding prove unsuccessful for at least two times for a given state enterprise, the enterprise in question may then proceed to sell its shares via negotiation with private parties subject to the approval of the Ceding Board. It should be noted that any ceding to persons with foreign capital must be consistent with The Foreign Investment Promotion and Protection Act (FIPPA).

Chapter 9 of the Law, articles 43 to 84, set forth important provisions necessary for achieving the objectives of privatization. These articles are aimed at facilitating fair competition and are intended to prohibit the creation of monopolies. These provisions prohibit anti-competitive dealings, including but not limited to price fixing, dumping, tie-in agreements, discriminatory pricing, and abuse of a dominant position. Mergers that would lead to distortion of competition market concentration, and/or formation of a monopoly are also prohibited. To help ensure fair competition and combat anti-competitive dealings, the Law has directed the formation of The Competition Council and has specified punitive measures for such anti-competitive dealings.

Finally, a number of official bodies are to be formed to regulate the implementation of the Law and the process of privatization in general. The most notable of these include The Ceding Board, The High Council on Implementation of General Policies of Article 44 of the Constitution, and The Competition Council.

Privatization: The Executive By-Laws on Pricing State Owned Shares Have Been Approved

“The Executive By-Law on Pricing the State Owned Shares, Discounts and Methods of Payment by the Buyers” was approved on 21 April 2008 to implement the pricing provisions of the privatization laws. These by-laws specify the methods of pricing state-owned shares which are to be ceded to the private sector. According to the by-laws, the pricing of such state-owned shares shall be carried out by a designated Share Pricing Expert, and such pricing must then be approved by the Ceding Board. This process is to be completed for all ceding methods, including sale of shares on Iranian and/or Foreign Exchanges, sale of shares via bidding, and/or through negotiations with private parties.

The Law Amending Compulsory Third Party Liability Insurance Act re. Land Transport Vehicles

“The Law Amending Compulsory Third Party Liability Insurance Act re. Land Transport Vehicles” (hereinafter the “Law”) was approved by the Parliament on July 6, 2008 and further ratified by the Guardians Council on August 6, 2008.

As provided by the earlier law, the new Law requires owners of transportation vehicles and railway trains to obtain third party liability insurance policies, covering any loss or damage to third parties. The owner will be exempt from this responsibility however, if the user of the vehicle already has such insurance in place. The new Law specifies the risks which are covered which include all types of traffic accidents, explosion of vehicle, and/or damages caused by the vehicle’s cargo A “third party” or “beneficiary” is defined as any person who suffers a loss or

damage as a result of someone else's operation of a vehicle.

The law does not consider a driver who is at fault as a "beneficiary".

A notable addition of the new Law is the introduction of a fund called "The Compensation Fund for Bodily Injuries". This fund is designed to reimburse victims of hit and run accidents, and those injured by uninsured drivers. The victims of such accidents may present their documentation and medical file to the aforementioned fund for reimbursement. Further, under this Law, Iranian courts are required to accept the third party insurance policy as a bond to release the driver, as long as the authenticity of the policy is certified by the respective underwriter.

A New Law is Aimed at Boosting the Housing Construction Market

On 14 May 2008, the Parliament passed "The Law on Organizing and Protection of Housing Supply and Construction" (hereinafter the

"Law"). The Law was ratified by the Guardian Council on 22 May 2008. This Law is intended to increase investment, from both foreign and domestic sources, in the Iranian construction and housing markets. To this end, the Law requires the government to provide various mechanisms to boost construction. For instance, the Housing and City Planning Organization is to provide land to builders at discounted prices, or in installments, or through leasing or hire-purchase (i.e rent to own) contracts. Other such measures include construction loans with low interest rates to be provided by government banks, and tax exemptions.

In an innovative move, Article 14 of the Law requires the Ministry of Finance and Economic Affairs to cooperate with Iran Central Bank and the Housing Ministry to provide the necessary funds for financing of construction of homes within the country via the following mechanisms:

- Formation of a secondary mortgage market and issuance of mortgage backed Musharikah Certificates;
- Establishment of financing companies to provide funds for home construction;
- Use of leasing companies for financing of construction through leasing or hire purchase contracts;
- Issuance of Musharikah Certificates and other Islamic financial instruments such as Sukuk and Istisna with different maturities;
- Attraction of foreign investment in large scale housing construction projects;
- Use of mutual funds to finance large scale housing construction projects.

It should be noted that this is the first time in the Iranian financial and capital markets that such measures have been used to raise necessary capital for such construction and housing projects. Lastly, this Law exempts all financial instruments in the capital market, such as Sukuk, from payment of taxes in case of any profits derived from the transaction.

Recent Treaties Between Iran and Other Countries

- Treaty between IR Iran and Italy re: Income Tax- Mar 2007
- Cultural Collaboration Treaty between IR Iran and Algeria- May 2007
- Treaty between IR Iran and Republic of Lithuania on International Product and

People's Road Transportation-May 2007

- Custom Treaty between IR Iran and Bella Russia- Jun 2007
- Treaty between IR Iran and Bella Russia re: Prevention of Natural Disaster Catastrophes Aug 2007
- Treaty between IR Iran and Indonesia on Foreign Investment Aids. Aug 2007
- Treaty between IR Iran and Syria on Mutual Cooperation on Custom Affair. Aug 2007
- Trade Treaty between IR Iran and Swiss- Aug 2007
- Treaty between IR Iran and Saudi Arabia on Transportation by Water-Aug 2007
- Bilateral Custom Treaty between IR Iran and Serbia-Aug 2007
- Bilateral Treaty between IR Iran and Georgia re: Customs Administration. Sep 2007
- Air Transportation Treaty between IR Iran and Tunisia. Sep 2007
- Investment Bilateral Treaty between IR Iran and Libya. Sep 2007
- Bilateral Investment Treaty between IR Iran and Greece. Sep 2007
- Decree on 4 attachments of the ECO Agreement-Mar 2008
- Treaty to Assist on Civil and Criminal Laws between IR Iran and Kirgizstan-Apr 2008
- Bilateral Treaty between IR Iran and Kuwait to Support Foreign Investors- Apr 2008
- Transportation Treat y between IR Iran and Malaysia- May 2008
- Commercial Treaty between IR Iran and Cuba- Jun 2008
- Bilateral Investment Treaty between IR Iran and Sir Lanka and Its Amending Protocols. Jun 2008
- Bilateral Tax Treaty between IR Iran and Kuwait. Aug 2008
- Bilateral Security Agreement between IR Iran and Bosnia-Herzegovina. Sep 2008
- Preferential Trade Treaty between IR Iran and Syria. Sep 2008
- Bilateral Customs Agreement between IR Iran and Sri Lanka. Oct 2008

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