

2015



ATAI & ASSOCIATES
ATTORNEYS AT LAW

**DOING BUSINESS
IN
IRAN**



Foreword:

Atai & Associates has the honor to attend this seminar by invitation of Mr. Hanz Chiappetta of Girardi Studio Legale Tributario a prominent Italian law firm with whom we have worked on investment issues for our mutual clients.



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Firm Profile

Atai & Associates established in 1975, is a leading international law firm with a long standing reputation for delivering high-quality services by adding value to client's business including financial institutions, multinational companies, government authorities and international organizations. The Firm has earned an enviable reputation among European, American and Asian corporations for its experience in public international law. Atai & Associates currently serves as a regular advisor to companies operating in Iran's major sectors and industries such as energy, petroleum, mining and oil and gas. Combining an understanding of international markets and dependable interpretation of relevant developments in the legal system, Atai & Associates is highly adept at assisting clients in conducting business in compliance with the Iranian Foreign Investment Promotion and Protection Act (FIPPA). The varied expertise of The Firm's staff ensures efficient and thorough handling of client needs. The Firm is engaged in all aspects of corporate and commercial legal practice and its clients comprise a broad range of industrial, commercial, energy and natural resources, financial and banking, transportation, telecom, food and pharmaceuticals.

OVERVIEW OF THE LEGAL FRAMEWORK FOR DOING BUSINESS IN IRAN 2015

1. Foreign Investment Promotion and Protection Act (FIPPA)

The vast quantities of natural resources such as oil, gas, minerals and petroleum in Iran and the country's need for foreign investment, technology and management know-how for exploitation, industrial development and production has always been a factor in attracting multinational companies to the Iranian market.

In addition, foreign investment has always been priority of the Iranian government to attract international companies to launch projects for achieving developmental needs.

The FIPPA authorizes foreign investors to import capital into Iran in the form of cash, machinery, know-how, brand names, and other types of capital or specialized services.

The above law envisages the following privileges, guarantees and incentives for foreign investors who obtained an investment license:

- a) National treatment (non-discrimination) of foreign investment and investors
- b) Protection of capital against expropriation and nationalization
- c) Repatriation of the capital and profits in foreign currency at official exchange rate through the banking system.

The Organization for Investment, Economy Technical Assistance of Iran (OIETAI) affiliated with Ministry of Economy and Financial Affairs is the body responsible for reviewing applications for foreign investments and approval of projects and issuance of the license to foreign investors.

2. Structuring vehicle for foreign investment

Foreign investors should consider and decide the project to be proposed to OIETAI for their approval of the investment which can be undertaken jointly with an Iranian partner or independently by the foreign company.

In case, the foreign investor decides to invest without participation of Iranian partner, there are no restrictions in this regard.

The foreign investor may establish an Iranian company wholly owned by the investor to undertake the proposed project.

The most common form of commercial enterprise for investment is private joint stock company (PJSC).

The liability of shareholders in the PJSC is limited to the amount of their respective shareholdings in the company.

The foreign investor may also enter into a joint venture agreement with Iranian partner and establish a joint venture company (JVC) for undertaking the investment project.

Procedures for incorporation of PJSC

According to the Iranian Commercial Code, three shareholders are required for formation of PJSC that may include the parent company (foreign investor) and two individuals nominated by the parent company with minimum one share to be qualified for election on the board of directors (BD).

The Board comprises at least two members one of whom should be elected as the chairman.

A managing director should be also elected by the Board, from the board members or outside the Board.

The General Meeting of Shareholders (GM) shall elect an inspector/auditor for the monitoring and supervision of the operations of the Board and company accounts.

Once the PJSC is established, the Board must approach tax authorities to register tax file, apply for the work and residence permit for foreign employees and obtain commercial card from the Iran Chamber of Commerce for export/import and open bank account.

3. Establishing Commercial Presence in the Market

In addition to foreign investment activities, the foreign company interested in developing business in Iran without undertaking direct investment project, may establish commercial presence in market through:

- a) Incorporation of PJSC (see above section 2)
- b) Registration of foreign branch office
- c) Incorporation of limited liability company (LLC)

As an option, foreign entities may register a local branch office for purpose of marketing, trade, and business activities.

Foreign branch office is a simple form of business entity that does not require share capita or Iranian partner.

The branch office is operated by the chief representative to be nominated by the Board Resolution of the parent company.

The Board Resolution should resolve establishment of branch in Iran and appointment of chief representative including the scope of authority for management of the business of the branch office.

A foreign company may also establish a wholly owned limited liability company (LLC).

The LLC is the simple form of Iranian company with limited liability and may be formed by two partners with a minimum capital of \$1000. LLC does not issue share certificate.

The founding partners may act as directors one of whom could take the position of the managing director.

4. Establishing Business through Contractual Frameworks

Foreign suppliers may establish business through appointment of local agent for marketing, promoting and distribution of their products in Iranian market.

Generally, the Iranian law recognizes principle of freewill, mutual agreement of parties and enforceability of contracts.

The general conditions of the agency agreement such as duration of the relationship, commission, right of terminations etc are binding on the parties.

Foreigners may engage in export/import activities through international sale contract governed by the respective laws of their jurisdiction and the company's standard terms and condition for sale and purchase of commodities. Such transactions may be based on trade financing including letter of credit (LC) established by the customer or alternative financial facilities provided by the supplier.

5. Service Contracts for Execution of Projects

The foreign company may also engage in contracting activities for implementing public projects offered by government tenders regarding engineering, construction, EPC contracts, turnkey contracts for building refineries, power generations, petrochemical factories, telecom and petroleum, oil and gas and mining sectors. The above contracts may also be offered in the form BOT, BOO, and other modalities of financing arrangements.

In some cases, foreign contractor is required to comply with local content requirements concerning formation of joint foreign-Iranian consortium for undertaking the project or contract.

Assignment of Intellectual Property (IP) Rights

Foreign companies may enter into contracts with Iranian parties regarding transfer of technology, know-how, trademarks and other IP rights based on royalty fees.

6. Contracting for State projects

Large and public utility and infrastructure projects of the government are awarded through tender or inviting qualified contractors to submit their bids for the underlying project.

Qualified companies are selected on the basis of technological capabilities, technical experts and past performance in similar projects.

Local content requirements (limitations and restrictions)

The Law regarding Maximum Utilisation of Iranian Engineering Capacities requires the foreign contractor company in certain cases, to form partnership with Iranian company for implementation of the project on basis of 49-51% foreign-Iranian shareholding ratio.

The local content requirement could be waived with approval of the relevant authority subject to the high engineering and technological aspect of the project that requires the project to be entirely undertaken by the foreign contractor company.

7. Foreign Currency Transfers

Official rate

Foreign currency at the official rate is not available for international commercial transaction except for authorized basic goods and medicine and certain important development projects within the context of government sponsored projects.

Repatriation of capital and profits and repayment of financial facilities (principal and interest) is allowed for investors who have obtained an investment license subject to approval of the OIETAI at the official exchange rate.

Under present circumstances, due to the sanctions regulations, the import and export of currency to and from Iran through the banking system is restricted.

Before imposition of the sanctions regime, the repatriation of currency by companies was possible at a “special market rate” which was lower than the free market rate in compliance with the rules and procedures of respective bank.

The above mentioned arrangements for exchange of rials to foreign currency are no longer practicable.

Free market exchange rate

During the sanctions period, most foreign currency transactions were conducted through private exchange bureau (licensed by the CBI).

Currently (at the date of writing this memo), the rate of Euro according to official rate of Central Bank of Iran is Rials 3250 per Euro. In contrast, the free market rate is Rials 3900. Therefore, an approximate 10%-15% difference between the official and market rate exists.

8. Taxation

Corporate taxation

All trading companies including Iranian and foreign entities conducting business activities are subject to corporate tax rate of 25% on their taxable income.

Withholding tax

According to the Amended Direct Taxation Act enacted in July 2015, the withholding tax has been removed. However, payments to foreign contractors (i.e.: EPC contractors) are subject to withholding tax. That is 25% of taxable income. Taxable income of such activities are assessed on 10% to 40% of amounts so paid, based on the nature of the activity. Withholding tax` would therefore be between 2.5% to 10%.

Dividend tax

Dividends distributed by companies to the shareholders (including foreign shareholdings) are not subject to taxation.

Payroll taxes

Employees including expatriates working in Iran must pay taxes on their salaries which is directly deducted by the employer and paid to the tax authorities.

The tax applicable to the salaries of foreign nationals working in Iran is determined by the tax authorities according to the table of salaries issued by the said tax authorities.

Salary tax rate

Salary tax for the year 1394 (year starting from March 21, 2015 ending March 19, 2016) is calculated as follows:

- Up to Rls. 138,000,000 (aprx Euro 3,550) per year exempted
- From Rls. 138,000,000 (aprx Euro 3,550) to Rls. 966,000,000 (aprx Euro 25,000) at the rate of 10%
- More than Rls. 966,000,000 (aprx Euro 25,000-) at rate of 20% on the balance of Rls. 966,000,000

The exemption, which is Rls. 138,000,000(aprx Euro 3,550) for the year 1394, will be determined by the parliament in the government budget for each year.

Value Added Tax (VAT)

Company invoices are subject to payment of VAT of 9% for sales and supply of goods and services. The VAT tax is announced by the government annually.

Social security insurance payment

Payrolls are subject to social security premium of 30% of the salary 7% of which is responsibility of employee and 23% to be contributed by the employer.

The ceiling for the calculation of social security contribution for the year 1394, is Rls. 51,532,000 (aprx Euro 1,320) .

Foreign employees who pay same insurance premium in their home country are exempted from the insurance premium upon submission of the supporting documents to the Social Security Organization.

Regarding contracts awarded to contractors (local or foreign), there is a fixed social security charges applicable to the total contract amount on basis of the tariff set by the Social Security Organization.

9. Work and Residence Permit

According to the Iranian labor law, foreign nationals must obtain work and residence permit to be able to work in Iran.

Once the work permit is issued the residence permit will be granted by police authority.

For work and residence permit the employer and employee must complete relevant forms and file with Expatriate Employment Department of Ministry of Labor.

Foreign nationals who have work permit must obtain tax clearance from Expatriates Tax Department in order to be able to receive exit visa to leave the country.

10. Local Employment Law

The relationship between employer and employee are governed by the provisions of the labor law.

Termination of employee by the employer is not possible during the period of employment contract.

If the employer unilaterally terminates the employment agreement, it must pay the employee salary up to the end of the duration of employment contract.

In the event of completion of the term of employment or termination due to any reason; the employer is required to compensate the employee equivalent to one month salary for every year of his/her services at the company.

Working hours and vacation

The law stipulates the working hours for employees which is 44 hours per week. The annual vacation of employees is 30 days including four weekends and there are 26 days bank-holidays during the year.

Notice: *This brochure provides general information only and is not intended to offer legal advice on 'DOING BUSINESS IN IRAN' and you should not act upon any of its content without taking specific advice.*

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