SABETI ✣ KHATAMI

DOING BUSINESS IN IRAN 2024

This guide has been prepared by Sabeti & Khatami to offer a summary of the most common topics of interest to foreign businesses participating in the Iranian market or considering doing so.

Sabeti & Khatami is a market-leading legal practice offering clients first-rate advice, commercial awareness, effective solutions and outstanding service on matters of Iranian law with an international element. The firm is listed as a leading firm in Iran in Chambers (Band 1), Legal 500 (Tier 1) and International Financial Law Review, and our team includes lawyers admitted in New York, Ontario (Canada) and England & Wales. Examples of our experience are available at *www.sabeti-khatami.com*.

This guide is divided into the following sections:

1. Legal system and judicial order
2. Foreign investment
3. Corporate vehicles
4. Employment law
5. Tax law
6. Antitrust and competition
7. Intellectual property
8. Data protection

We would be pleased to respond to requests for further information on the material covered here or more broadly. Feel free to contact us at *info@sabeti-khatami.com*.

1. LEGAL SYSTEM AND JUDICIAL ORDER

An overview of the legal system of Iran

Iran has a civil law system into which Islamic law has long been integrated. The civil code was first adopted in 1928, drawn mostly from the French and Belgian codes, but modifying the rules to accord with Sharia (Islamic law).

Legislative power is primarily vested in a parliament (*Majles*), which enacts laws and ratifies treaties subject to the approval of the Guardian Council (*Shora-e-Negahban*). The Guardian Council consists of jurists and lawyers and is constitutionally charged with ensuring that parliamentary acts are consistent with Sharia and the Constitution. This mechanism has largely removed the possibility of courts overruling laws by relying on their own interpretation of Sharia. Another constitutional body, the Expediency Council (*Majma-e-Tashkhis-e-Maslahat*), resolves disagreements between parliament and the Guardian Council on proposed legislation.

Under Article 138 of the Constitution, the executive branch has the power to issue implementing regulations which are necessary for performing its executive and administrative functions. Executive branch regulation is extensive, and can be rapid and volatile in policy areas experiencing turbulence, for example foreign exchange, import-export and banking of late; however, the regulations issued by the executive branch cannot be contrary to the laws enacted by the parliament.

The office of the Supreme Leader is constitutionally empowered to issue state decrees (*hokm-e hokumati*) on rare occasions, and otherwise exerts direct or indirect oversight over each branch of government.

The judiciary and court system

The judiciary consists of dispute settlement councils and trial, appellate, administrative and specialised courts. Its head is appointed by the Supreme Leader.

General courts of first instance. General courts of first instance have general jurisdiction to hear all civil and criminal disputes unless a matter falls within the exclusive jurisdiction of a specialised court. There may be specific branches of the general courts or specific courthouses that deal with particular issues; for example, in 2021, a courthouse consisting of courts of first instance and appeal was established in Tehran to handle certain commercial disputes, including those related to commercial sale and purchase of goods and corporate mergers and acquisitions. In addition, intellectual property disputes must be referred to a special branch of the general court in Tehran. Apart from these, there are no specialist branches of the general civil courts.

Courts of appeal. Courts of appeal are established in each provincial capital, and have jurisdiction to hear appeals from courts of first instance within the province. Appeals must be on grounds that the lower court had an error of law or erroneously decided on its lack of competence. The right of appeal is not automatic and depends on factors including the nature of the dispute and the claim size. In some provinces, there are separate civil and criminal branches of the courts of appeal.

Supreme Court. The Supreme Court is the highest appellate court, with over 50 branches of identical competence. It hears appeals in panels of two (in civil cases) or three (in criminal cases) judges. Supreme Court appeals are limited to issues of law where there are conflicting decisions among the courts of appeals, civil decisions in first instance courts where the time for appeal to the court of appeals expired without an appeal being made, procedural matters in civil cases appealed from the courts of appeal, substantive issues in criminal cases and certain family law matters.

While there is no concept of binding judicial precedent, the Supreme Court sometimes issues “unifying judgments” on questions where courts of appeal have come to conflicting decisions, and these are binding on lower courts.

Specialised courts. There are also certain specialised courts such as revolutionary courts (for specific crimes related to, for example, national security, corruption and narcotics),

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military courts (for criminal charges against members of the military), family courts (for disputes relating to family issues, such as marriage, divorce and child custody), and the clerical courts (for criminal charges against members of the clergy). These courts have their own appellate bodies.

In addition, dispute settlement councils form a small-claim dispute resolution system and have jurisdiction to hear small financial claims. Appeal from their decisions is possible before the courts of first instance.

Administrative Justice Tribunal. The Administrative Justice Tribunal has jurisdiction to hear complaints by any person concerning decisions or actions of executive bodies, decisions of dispute settlement bodies (e.g., in tax, social security and labour disputes), non-governmental public institutions or public officials. It has first instance and appeal divisions.

2. FOREIGN INVESTMENT

Overview

In the past four decades, Iran has gradually moved from a centralised, state-run economy to embrace private sector participation and foreign investment, although certain strategic sectors such as oil and gas, water and electricity supply networks, and broadcasting remain under government monopoly. Foreign investment in these restricted sectors is possible through contractual arrangements, such as buy-back arrangements and build, operate and transfer agreements.

Where foreign investment is permitted, full foreign ownership is possible in most sectors, such as power generation (including renewables), e-commerce and food and beverage. In other sectors, total foreign investment in a company is subject to a cap, for example 49% in insurance companies, or 40% in banks or credit institutions.

In case of regulated sector, such as capital markets, insurance, banking, automotive, tobacco and telecommunication, foreign investment is subject to sector-specific laws which may require specific licenses and approvals. For instance, foreign ownership of shares in an insurance company would require, depending on ownership percentage, approval of Central Insurance of Iran (the regulator), or the High Council for Insurance and the Council of Ministers. Or a foreign investor wishing to invest in listed securities must obtain a transaction license from the Central Securities Depository of Iran (**CSDI**). In such cases, sector-specific laws also govern the application procedure for and consequences of failure to obtain foreign investment approval. For instance, a foreign person’s application for a transaction license to invest in securities must be accompanied by a passport (for natural persons) or articles of association and registration information (for legal persons), and is usually submitted through a securities broker to CSDI, who will issue the license within seven working days. These approvals may impose commitments on foreign investors. For example, holders of transaction licenses for investment in securities must keep their information with the Securities and Exchange Organisation (the regulator) up-to-date, and must provide any

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additional information or documents it may require. Otherwise, their license may be suspended or revoked, and the investor may only dispose of its securities thereafter.

Foreign investment licenses

Foreign investors often obtain a foreign investment license (called a **FIPPA license**) under the Foreign Investment Promotion and Protection Act (**FIPPA**), which offers a number of protections and incentives. The principal benefits are protection against nationalisation and expropriation, national treatment, guaranteed repatriation of investment proceeds and a simplified visa procedure. There have been no publicly reported expropriations since FIPPA was enacted in 2002. However, amidst the foreign exchange volatility of recent years, the repatriation of investment proceeds has required going through a challenging administrative process with the Central Bank of Iran.

Though usually obtained, a FIPPA license is required only in specific sectors. The requirement may derive from sector-specific laws (for example in power/renewables), or be expected in practice (for example in automotive, telecommunications and aviation).

There is no uniform practice as to when a FIPPA license should be obtained, although it is often a contractual condition precedent to completing an investment. In renewables, it may be obtained post-investment (although the guaranteed power purchase agreement between a foreign investor and the government may not become effective without the license). In contrast, at least in one case of foreign investment in mining, the foreign investor was required to obtain a FIPPA license before issuance of an exploration license.

Where a FIPPA License is required, consequences of failure to obtain it depend on laws or prevailing practices in the relevant sector. In renewables, for instance, obtaining the license is usually a condition precedent to effectiveness of any guaranteed power purchase agreement between the investor and the government.

A FIPPA license is obtained from the Organisation for Investment, Economic and Technical Assistance (**OIETA**), part of the Ministry of Economic Affairs and Finance. The specified eligibility criteria are that the foreign investment must not result in foreign monopoly, must not damage the environment or disrupt domestic manufacturing, and must not undermine national security, the national economy or public interest. Any license or permit otherwise required to conduct the intended business must also be obtained prior to requesting a FIPPA license. OIETA considers the economic growth potential of a proposed investment, and retains discretion over licensing.

Procedure for obtaining a FIPPA license

To obtain a FIPPA license, a foreign investor must submit an electronic application to OIETA providing, among other things, information about the proposed investment. The initial review must be completed within 15 working days. If initially acceptable, the application is sent to OIETA's Investment Board, which will review the application within 30 working days (sometimes with the investor invited to attend) and upon final approval determine the license's terms and conditions (some examples of which appear in Section 2.3). The investor

may object to these terms and conditions, for example on the grounds that they are commercially disadvantageous, and the objection will be reviewed by the same Investment Board.

The application by the foreign investor may be rejected at the stage of initial review by the OIETA, before it reaches the Investment Board. At this stage, the investor will be informed of the reasons for rejection and may rectify the defects and re-submit its application.

After the application reaches the Investment Board, if the Investment Board does not authorise an investment, the investor would have no external appeal available from the Board's final decisions to other administrative bodies or the courts. However, rejection of a FIPPA license application by the Investment Board does not prevent the foreign investor from filing another application for the same investment project, or for a different project at a later time.

The license will only be issued, with the signature of the Minister of Economic Affairs and Finance, if the investor agrees to the terms and conditions.

Commitments Required from FIPPA license holders

Each FIPPA license contains specific terms and conditions including a time period (usually six months) within which at least some of the investment funds must be transferred to Iran. For example, in connection with export industries, the license may require the license holder to meet specific export levels; or it may specify equity and shareholder loan levels; or it may require the investor to repay its foreign currency loans from export earnings. There is an internal appeal process through OIETA's Investment Board with respect to terms and conditions attached to a FIPPA license by that Board.

Failure to comply with terms and conditions of a FIPPA license may result in revocation or non-renewal of the license (this is rare), or may impede obtaining permission for repatriations, although these are at the discretion of OIETA's Investment Board. The licenseholder is also obliged to inform the OIETA of certain changes in information, for example change of more than 30 per cent of ownership, nationality or address; or of any intention to transfer the investment to another foreign investor.

3. CORPORATE VEHICLES

Introduction of different types of companies in Iran

The Commercial Code recognises the following types of corporations:

(a) Joint stock company (*sherkat-e sahami*) (**JSC**), which is one of the two corporate forms commonly used by foreign investors and which can be either private or public. The liability of shareholders is limited to their capital contribution, and capital is represented by share certificates.

(b) Limited liability company (*sherkat ba mas'ooliat-e mahdood*) (**LLC**), which is the other commonly used corporate form by foreign investors, is sometimes preferred due to its lesser administrative burden. Liability of stockholders is limited to their capital contribution, and capital is uncertificated.

(c) Incorporated limited partnership (*sherkat-e nesbi*), where members' liability is limited to their partnership interest (rather than their capital contribution).

(d) Incorporated unlimited liability partnership (*sherkat-e tazamoni*), where all members have unlimited liability. This is usually used for foreign exchange houses, per regulatory requirement.

(e) Incorporated mixed partnership (*sherkat-e mokhtalet-e sahami*), where limited members have liability limited to their capital contribution (represented by share certificates) and unlimited members have unlimited liability.

(f) Incorporated mixed partnership (*sherkat-e mokhtalet-e gheyr-e sahami*), where limited members have liability limited to their capital contribution (which is uncertificated) and unlimited members have unlimited liability. This type together with its twin above are similar to general partner-limited partner structures; they are rarely used and are not well-suited for most commercial activities.

(g) Cooperative company (*sherkat-e ta'avoni*), usually used for consumer or producer cooperatives. Liability of shareholder is limited to their capital contribution (represented by share certificates). This type is heavily regulated, involves cumbersome regulatory procedures, has restrictions on share ownership and is unsuitable for foreign investors.

Specific corporate types may be required by law for certain types of activities. For instance, a bank or a listed company must be in the form of a public JSC.

LLCs and private JSCs can be used to undertake most commercial activities such as trade, import and export, manufacturing and services. Aside from foreign ownership caps in certain industries, there is no restriction on foreign stockholding or shareholding in LLCs and private JSCs per se.

<u>Private JSC.</u> Private JSCs are better suited for larger enterprises, joint ventures, holding companies and entities which may in future become listed. A private JSC must have at least three shareholders (whose liability is limited to the nominal price of their shares), at least two board of directors members (who must be shareholders), and a managing director (who may or may not be a board member/shareholder). Board members may be corporate entities, in which case they must appoint an individual as their representative. Minimum capital is de minimis at IRR 1 million (approximately €2), and while all the share capital must be subscribed for by the founders initially, only 35% must be paid up (in cash or otherwise) at incorporation. Private JSCs must hold annual general meetings of shareholders, where an operational report and financial statements prepared by the board of directors are considered for approval.

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LLC. Compared to private JSCs, maintenance of LLCs is easier, and they are frequently used for small- and medium-sized enterprises and family-owned businesses. An LLC must have at least two members (whose liability is limited to the amount of their capital contribution), may optionally have a board of directors (which can include corporate entities) and must have a managing director (who may or may not be a member). LLCs with more than 12 members must have a supervisory board of at least three persons (who are not members of the LLC), functioning as inspectors. The Corporate Registration Office (**CRO**) demands the same minimum capital of IRR 1 million for LLCs although this is not required by law. The capital must be fully paid (whether in cash or otherwise) at the time of establishment. LLCs with more than 12 members must hold annual general meetings of members, where an operational report and financial statements prepared by the supervisory board are considered for approval.

Branches and representatives**.** Foreign companies wishing to have a local presence sometimes set up a branch or appoint a representative instead of incorporating an entity. A branch is the local office of a foreign parent company and has no separate legal personality or separate liability. A representative is a natural or legal person contractually appointed as such by a foreign principal and can be held liable for acts or omissions on behalf of its principal. A branch or a representative may only be established for specified types of activities, including providing the foreign company's after-sale services, implementing its contracts with Iranian counterparties and activities licensed by regulators (e.g., transportation, insurance or banking). Branches are exempt from corporate income tax as long as they do not conduct any revenue-generating activity, and are liable to income tax if they do.

Incorporation process

The incorporation process begins with submitting an electronic application (including the proposed company name) to the CRO along with submission of hard copies of incorporation documents through the post, principally the draft articles of association and minutes of the founders meeting. Once the CRO approves the company name, signed originals of all incorporation documents (plus other documents the CRO may request including incorporation documents of corporate shareholders) must be submitted to the CRO. If it approves the application, the CRO publishes a notice of establishment in the Official Gazette, concluding the incorporation process.

The process usually takes between one to three weeks, but can take longer if the company is in a regulated sector (such as banking, insurance, aviation or telecommunication) and hence requires specific establishment licenses or permits issued by the relevant regulator.

A number of important administrative steps are usually taken soon after incorporation: obtaining sealed financial ledgers; opening tax, VAT and social security files with the social security and tax authorities, and obtaining a workplace code and economic code from them; and opening a corporate bank account.

Management structures

Private JSC. Private JSCs are managed by a board of directors elected by a general meeting of shareholders for a period not exceeding two years. The board must have at least two directors, who must at least own (and deposit with the company as security) the number of qualifying shares specified in the company's articles of association.

The board by default has all the powers and authorities to operate the company, except for matters that fall under the exclusive authority of a meeting of shareholders (such as amendment of the articles, change in capital, election of board members and winding up). The default powers of the board of directors may be modified in the articles.

The managing director is appointed, and granted the necessary authorities, by the board of directors for daily operation of the company. The powers of a managing director are enumerated in the articles and/or the board of directors resolution appointing the managing director. If these documents are silent, the managing director will not have authority to contractually bind the company.

LLC. The management structure of LLCs is more flexible. Members may at their option elect a board of directors (including from among non-members) and through it engage a managing director. Board members may be elected for indefinite periods. If permitted under the articles, members may also directly hire a managing director without forming a board of directors.

In practice, foreign investors with local partners often enter into shareholder agreements to make tailored arrangements for management of the company, specifying, for example, matters reserved for a special voting regime or provisions to deal with a deadlock.

Branch or representative office. A branch or a representative office is usually run by one or more managers selected by the foreign parent or principal.

Liability of directors and shareholder

Equity holders. Shareholders of JSCs and members of LLCs are generally shielded from liabilities arising from corporate acts or omissions. However, a nascent concept of piercing the corporate veil is emerging through a number of progressive court rulings in response to abuse of corporate form and intentional schemes to evade the law.

Directors. Directors (including individuals representing legal-entity board members) may be held liable for certain corporate acts or omissions. For instance, under certain circumstances directors and the company are jointly liable for unpaid corporate taxes of the company. Moreover, directors may be prohibited from leaving the country, and their property may be attached, in the event of (usually significant) corporate tax delinquency. Directors may also face an exit ban if delinquent unsecured bank debts of the company exceed IRR 5 billion (approximately EUR 25,000).

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Directors of JSCs and members and directors of LLCs also have certain specific liabilities under the Commercial Code:

- **JSC.** Directors and the managing director may be held liable vis-à-vis the company and third parties for violations of law, the articles of association or other corporate governance documents. In particular, they are jointly liable (among themselves) for any company debt that is delinquent because of such violation.

  They may also be criminally liable for failures to fulfil their fiduciary duties to the company, make required disclosures or properly invite shareholders to general meetings; knowingly preparing false financial statements; or unlawfully approving dividend distributions. These crimes are punishable by up to three years of imprisonment, fines or both.

- **LLC.** If an LLC is administratively dissolved due to irregularities in its incorporation process, any member or director whose acts or omissions have caused such irregularities may be liable to other members and third parties for damages arising from the dissolution.

  Members and directors may also be criminally liable for knowingly submitting false registration information as to paid-up capital of the company or valuation of in-kind capital contribution, or for unlawfully distributing dividends.

Ongoing reporting and disclosure obligations

Reporting to CRO. Private JSCs and LLCs must provide the CRO with the following information, and any changes thereto: articles of association; names of shareholders or members (the CRO does not inquire as to ultimate ownership); board of directors (or supervisory board) names and positions; name of managing director; names of authorised signatories; names of inspectors/auditors; and the designated newspaper for publication of announcements. The CRO must also be notified upon approval of a private JSC's financial statements at its annual general meeting (to be held within four months of the company's financial year end), and upon a decision to wind up a company or a branch.

Reporting to tax and social security authorities. Private JSCs and LLCs must submit certain tax information to the tax authorities, usually annual tax returns (within four months of the company's financial year end), quarterly VAT reports, monthly employee income tax withholding reports, and any tax withholding information including sale and purchase quarterly reports. They must also submit monthly payroll lists to the Social Security Organisation.

A branch or a representative is required to submit an annual operational report and audited financial statements of its foreign parent or principal to the tax authorities, as well as its own annual operational report and audited financial statements.

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4. EMPLOYMENT LAW

Overview of applicable regulations

Employment relations are mostly governed by laws and regulations, with employment contracts playing only a supplementary role.

The following statutes and regulations form the main framework of labour law in Iran:

- The Labour Law 1990 (as amended, the **Labour Law**) sets out the mandatory terms applicable to all employment relationships (other than those subject to special laws, for instance, public servants). These mandatory terms include employees' basic rights, wages and benefits, working hours and working conditions (including required health and safety measures), and dispute resolution mechanisms. The Labour Law also covers matters such as collective agreements, guilds and employment of foreign nationals.

- The Social Security Law 1975 and its implementing regulations establish a national social security system offering health, disability and life insurance as well as pension plans. The system is partly funded through required payments by employers and mandatory deductions from employees' salaries, both paid to the Social Security Organisation. This law applies to all employees covered by the Labour Law, except for military staff.

- The Unemployment Insurance Law 1990 added unemployment insurance to the national social security system.

- The Civil Servants Employment Law 1964 and the Public Service Management Law 2007 govern employment of public servants.

- The Law on Formation of Islamic Labour Councils 1985 established these councils to enhance employer-employee collaboration in labour-related matters and to ensure proper implementation of labour laws.

- Directives of the Ministry of Cooperatives, Labour and Social Welfare (the **Ministry of Labour**) deal with various labour matters such as workers' safety or interpretation of labour laws. Occasionally, the Ministry of Labour makes announcements (usually in the form of questions and answers) on the practices it has adopted in enforcement of labour laws. In addition, each year the Ministry of Labour announces the minimum wage and benefits for that year. The current monthly minimum wages and benefits are about IRR 58 million (approximately EUR 90). For the year beginning in March 2024, an increase of approximately 20% has been proposed.

- The Regulations on Employment, Insurance and Social Security in the Free Trade and Industrial Zones regulate employment in the free trade and industrial zones (**Free Zones**).

Labour disputes are resolved in specialised dispute settlement bodies (which do not publish judgments) and the Administrative Justice Tribunal, which publishes unifying judgments on questions where its appellate division has come to conflicting decisions; these unifying judgments are binding on its lower divisions.

Employee representations

There is no mandatory employee representation at the management level, nor a requirement to inform or consult with employees by management. However, employees subject to the Labour Law are entitled to appoint representatives to do or cause to do the following:

- educate employees on their statutory rights and responsibilities;
- work with the employer and employees to resolve work-related disputes;
- increase employees' welfare; and
- represent employees in the provincial Employee Representatives Assembly.

Form of employment contract

On the mainland, employment contracts do not need to be in writing, although the Ministry of Labour has developed standard forms that are frequently used, sometimes along with other supplementary agreements. Employment contracts in the Free Zones must be in writing and have termination provisions. Similar forms are developed for the Free Zones by the Free Trade Zones Organisation.

Deviation from the published standard forms is permitted provided that: (i) the mandatory rights and benefits set out in the Labour Law (or other applicable special laws) are not violated; (ii) the employment contract bears a date; and (iii) the contract stipulates certain details such as subject matter of employment, job description, wages and benefits, working hours, holidays and leave, place of work and duration (for temporary employment). The term of temporary employment contracts cannot exceed four years. Any probation period must be specified in the contract but must not exceed one month (for unskilled and semi-skilled workers) or three months (for skilled workers).

Working hours and over time

Working hours must not exceed 44 hours per week for ordinary jobs and 36 hours per week for hardship and hazardous jobs. The daily limits are eight hours of normal working time and four hours of overtime (although under exceptional circumstances such as following a natural disaster or accident, overtime can be as high as eight hours per day with mutual agreement). An employer and an employee may also agree to exceed the daily limit for a few days as long as total working hours in a week do not exceed the weekly limits.

Overtime must be paid for work exceeding eight hours per day. Overtime hours require the employee's consent, and the employee must be paid 40% more than his or her normal hourly wages for overtime.

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Termination of employment contracts

Iran is not an "employment at will" jurisdiction. Terminating employment arrangements can be difficult, and it is not uncommon for employees to bring labour law claims against employers.

An employment relationship can be terminated due to death, retirement, total disability, resignation, expiry of employment term, completion of work, or other termination circumstances agreed in an employment contract.

Under the Labour Law, an employer may be able to terminate an employee who fails to perform his or her duties, or violates disciplinary rules, but only after the employer has given the employee a written warning, and the labour office has approved the termination.

Upon termination, the employer must pay a terminated employee any unpaid wages up to the date of dismissal plus a severance payment equal to one month's (or, in the Free Zones, 15 days') wage for each year of service, calculated using the employee's last monthly wage. In practice some employers pay this severance payment at the end of each year based on the employee's wage for that year, and in effect avoid having to make a payment upon actual severance which has been enlarged because it is based on the higher final monthly wage.

Because of the difficulty and risks of terminating employment contracts, employers generally opt for sequential temporary employment contracts rather than a permanent contract. The maximum length of a temporary employment contract is four years under the Labour Law, however, in practice, employers usually choose shorter durations from three months to a year. There is no difference between permanent and temporary employment contracts in terms of tax and social security liabilities.

Redundancy is not a recognised basis for termination. However, subject to approval of the labour office, an employer may declare an employee redundant for 6 to 12 months during a business restructuring triggered by exceptional circumstances such as socioeconomic hardship. During this period, the employee will receive unemployment insurance. Once the exceptional circumstances pass, the employer has the option to reinstate the employee, or terminate him or her provided it makes a severance payment equal to two months' wages plus benefits for each year of service calculated using the employee's last monthly wage.

Remedies for wrongful dismissal are reinstatement and payment of remuneration from the date of wrongful dismissal.

Social security

Employers are also required to insure their employees through the Social Security Organisation (**SSO**) for basic health, unemployment, retirement, disability and life coverage. The premium is 30% of each insured employee's salary, of which 7% is deducted by the employer from the employee's salary and 23% is the employer's contribution. Therefore, employers must remit an amount equal to 30% of each employee's salary to the SSO on a

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monthly basis (though the contribution is capped at about IRR 40 million monthly, approximately €65). For foreign nationals, the premium is 27% (as they are not charged a portion relating to unemployment insurance).

Social security deductions for foreign nationals employed in Iran may be reduced or eliminated if:

- they are from a member country of the Equality of Treatment (Accident Compensation) Convention;
- they can establish existence of similar coverage obtained outside Iran and effective for the duration of their employment in Iran; or
- they are otherwise benefiting from a relevant treaty or arrangement between Iran and their country of nationality.

5. TAX LAW

Employment income tax

Employment income derived in or from Iran is subject to personal income taxation at marginal rates. For each Iranian calendar year (which begins around March 20), tax brackets and their marginal rates are determined in that year's Budget Law. Currently, rates step up to 30% and the same rates have been proposed for the year commencing March 2024. For foreign nationals employed in Iran, taxable employment income is calculated on a deemed income basis according to tables published by the tax office, unless either (i) the tax office establishes (based on corporate books and records) that a foreign employee has received a higher income, in which case the higher income is used as the basis for taxation, or (ii) a foreign employee's employment contract is approved by the Iranian embassy in his or her country of origin, in which case the salary specified in the contract is used as the basis for taxation.

Employers are required to withhold from salaries, and remit to tax authorities, the income tax obligations of their employees.

Taxes applicable to businesses

Corporate income tax. Corporations incorporated in Iran are resident for tax purposes. A resident company is subject to 25% tax on its worldwide taxable income. Dividends, capital gains and interest received on bank deposits are not subject to tax.

A non-resident company is taxed on its gross income derived from Iran (including through a branch or representative) at the effective rate of 2.5% to 10% depending on the type of business activities it conducts in Iran. Note however that, unless it has a registered Iranian branch, a non-resident company cannot open a tax file or make tax payments in Iran. Therefore, taxes liabilities of non-resident companies are generally collected at source through withholding on payments made to them by resident taxpayers. Where a foreign company has a branch in Iran, the branch will be responsible for withholding and remitting

taxes. However, the foreign company will not be taxed on any income the branch may derive from taxable activities of the branch.

Branches have a limited scope of permitted activities and as long as they only engage in those activities, they are not subject to taxation. If, however, a branch performs income generating activities outside this tax-exempt scope and earns income as a result, the income will be taxed at the rate of 25%.

It is not unusual for authorities to reject the books of a corporate taxpayer, and assess a tax based on their own estimate of income.

Double taxation treaties. Iran has entered into bilateral treaties with 41 countries (including Austria, China, France, Germany, India, Italy, Qatar, Russia, South Korea, Spain, Switzerland and Turkey) for avoidance of double taxation. These treaties also provide for the exchange of tax information between the parties.

Value added tax. Most goods or services supplied in or imported to Iran are subject to value added tax (**VAT**) on the invoice price (or, if unavailable, the market value as determined by tax authorities). The VAT rate for most goods and services is currently 10%, although higher rates apply to some products including tobacco, diesel and jet fuel.

Withholdings. Resident companies and branches of non-resident companies must withhold and remit tax at prescribed rates on certain payments that they make, including rental payments (where the landlord is an entity); payments to advisory, training or research service providers; and payments to non-resident companies.

Real estate transfers. Official transfers of real estate (that is, transfers via a notary, as opposed to via an ordinary contract) are subject to 5% tax on the "regional transaction value", which is usually a small percentage of market price. Transfer of commercial-use rights in real estate (*sarghofli*) is subject to 2% tax on actual transaction value. Both taxes are payable by the transferor.

Stamp tax. De minimis stamp taxes apply to documents such as negotiable instruments, loans, bank guarantees and shares of Iranian companies.

Tax incentives

Some of the more important current tax incentive programs are listed below. If two or more incentives overlap, generally the larger one applies. These tax incentives may be reduced or eliminated in future Five-Year Development Plans or Budget Laws.

Socioeconomic development incentives. A zero tax rate applies to income from:

- mining and manufacturing outside larger cities:
    - during the first five years of operation;
    - in free trade and industrial zones and parks, during the first seven years of operation;
    - in designated "less-developed" regions during the first ten years of operation;

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    - in designated “less-developed” regions located within free trade and industrial zones and parks during the first 13 years of operation; and
- business in free trade and industrial zones during the first 20 years of activity.

These benefits can be extended in certain areas and in case of increased hiring. In case of foreign investment in the above, the benefits are increased in a manned linked to paid-up capital. A zero tax rate also applies to a foreign investor’s income from domestic manufacture of recognised branded products during the years of operation stated above, provided at least 20% of the products are exported. A 50% tax credit applies following the zero-tax period.

<u>Export development incentives.</u> Provided an exporter fulfils its foreign currency repatriation obligations under the law, a zero tax rate applies to:

- the exporter’s income from export of goods (other than certain oil and natural gas derivatives and agricultural products) and services; and
- 20% of the exporter’s income from export of raw material and semi-raw intermediate materials.

<u>VAT exemptions.</u> A number of goods and services are exempted from VAT including staple food items, unprocessed agricultural products, medicine, medical and banking services, as well as goods exported via the country’s official customs posts. .

Anti-evasion rules

While there is no statutory general anti-avoidance rule allowing tax authorities to set aside arrangements entered into for the purpose of tax avoidance, in practice the tax authorities have wide (and regularly exercised) latitude to disregard arrangements which they are not persuaded are bona fide arrangements, or which they find have even slight evidentiary problems. The burden is entirely on the taxpayer to convince the tax authorities of the bona fides of any arrangement.

6. ANTITRUST AND COMPETITION

Overview of competition law and merger control

Competition law is a developing area in Iran, propelled to significance by the government’s ambitious privatisation efforts beginning more than twenty years ago. These resulted in a major privatisation law, the Law Implementing the General Policies of Article 44 of the Constitution 2008 (the **Privatisation Law**), which also includes competition provisions. The Privatisation Law prohibits M&A transactions that do or would result in formation of a “controlling enterprise” (controlling the economic operation of other enterprises in a market), “intensified concentration” (having more than 40% of the relevant market and a Herfindahl-Hirschman Index exceeding 4,000) or non-conventional price increases, or would otherwise distort competition (e.g., through monopoly). This law also established the Competition Council, charged with enforcing competition laws and regulations. Because the Competition Council has the authority to prevent an ongoing M&A transaction or even nullify a concluded

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one, parties to major M&A transactions should consider obtaining its acquiescence first – a step that is recommended in light of the more assertive approach the Council has taken in recent years towards implementing its mandate.

Where parties decide to voluntarily approach the Competition Council on a proposed M&A transaction, they must provide supporting documents such as their latest audited financial statements. If within one month of the inquiry the Council clears the transaction or does not respond to the inquiry, the proposed transaction may proceed as far as competition law is concerned.

Listed companies. Acquisition of a listed company resulting in monopoly (as determined by the Competition Council) is prohibited. Apart from the competition considerations, M&A transactions involving listed companies are subject to Securities and Exchange Organisation (**SEO**) regulations. Listed companies must inform the SEO and publicly disclose material changes, which would include an M&A transaction. Also, in case of unofficially-released news indicating material price-sensitive information (such as an M&A transaction), the company must, immediately after becoming aware or upon SEO request, issue clarifications to the SEO and public. Disclosures by listed companies must be made through a regulatory news site (www.codal.ir) immediately after the transaction is concluded.

Specific sectors. A number of sector-specific disclosure requirements are imposed by industry regulators, separate from competition considerations. For instance, insurance companies must publicly disclose an imminent merger or transfer of their portfolio to another insurer. Other consumer-facing companies may also encounter similar requirements in connection with cessation of their activities. As an illustrative example, in case of a merger of insurance companies, the Central Insurance of Iran will publish two public notices ten days apart, and three months after the last notice it will approve the merger if it determines that the merger will not prejudice the rights of the insured or insurers.

Post-M&A changes to the equity structure of a company must be registered with the Corporate Registration Office. There is no timing requirement but this is usually done within a month.

Prohibition of anti-competitive agreements and practices

The Privatisation Law prohibits any act of collusion that could have the effect of distorting market competition. An agreement or arrangement to achieve the following is deemed to be an act of collusion. The law does not contemplate reaching extra-territorial behaviour.

- setting prices;
- manipulating production levels, or volume of sales or purchases;
- discriminating against counterparties in similar transactions;
- requiring counterparties to contract specific third parties, or requiring them to include certain terms in their contracts with third parties;
- imposing on counterparties obligations outside commercial norms; and
- sharing or dividing the market for specific goods or services, or otherwise limiting third parties' market access.

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Remedies. The Competition Council determines whether an agreement or arrangement constitutes a prohibited act of collusion, upon which it can take necessary measures to protect market competition. These include ordering a suspension, termination or nullification of anti-competitive agreements or arrangements (including M&A); requiring split-off or demerger of merged or acquired companies; limiting a company's permitted activities or its geographical scope; imposing minimum supply levels or price ranges for products of merged or acquired companies; and imposing fines.

Listed companies. If a listed company is to enter a "major transaction" (whereby at least 1% or 5% - depending on company size - of its shares are to be transferred), the bidder must make a representation that the proposed share acquisition would not result in monopoly. A major transaction cannot be completed if the Competition Council has officially barred it.

Specific sectors. Sector-specific ownership caps - for example in banking, insurance and telecommunication - are intended to prevent concentration and control, among other things. In banking, more than 33% ownership of a bank or credit institution by a single owner (including related parties) is prohibited. In insurance, direct and indirect ownership of an insurance company by any single individual or non-governmental legal entity must not exceed 20%.

Abuse of Dominant Position

Dominant market position is defined as a market position enabling one or more entities to set prices, set levels of supply or demand for goods or services, or dictate contract terms.

The Privatisation Law prohibits abuse of dominant market position through setting, maintain or changing prices of goods or services in a non-conventional way; imposing unfair contractual terms; limiting supply or demand in order to manipulate market price; impeding competitors from market entry or eliminating competitors; conditioning contracts on non-customary or unrelated terms; and acquiring shares of companies in a way that distorts market competition.

The Competition Council determines whether an abuse of dominant market position has occurred, upon which it can impose the remedies mentioned in Section 6.3. A recent example arose when an online food delivery company with dominant market position imposed contract terms on restaurants prohibiting them from contracting with its smaller competitor. The Competition Council ordered it to remove these terms and fined it for unfair contractual terms which distorted competition.

7. INTELLECTUAL PROPERTY

Patents

The Patents, Industrial Designs and Trade Marks Registration Law 2007 (as amended, the **IP Law**) and its implementing regulations govern patents. Iran is a member of the World

Intellectual Property Organisation (**WIPO**), and a signatory to both Patent Cooperation Treaty and Paris Convention for the Protection of Industrial Property.

Patent refers to temporary, exclusive rights granted by the government to a patentholder in relation to an invention that is patentable, novel and of commercial use. Non-patentable subjects include discoveries, scientific theories, artworks, mathematical methods, business methods, disease diagnosis and treatment methods, and genetic resources. An invention whose commercial exploitation would be contrary to Sharia, public order or public morals may not be patented. An invention is novel if it differs from what is already existing in the world, and is not obvious to or known by a person of ordinary skills in the relevant industry.

Exclusive rights under a patent include the right to make, export, import, offer for sale, sell and use a patented product or products produced using a patented process. Patent exclusivity does not apply to the government if it invokes national security, public health or similar grounds to use a patent.

An applicant must submit its patent application (including a description of the invention) to the IPO and, within six months, provide the IPO with supporting documents such as specifications, plans, drawings, and any other documents the IPO may request. If approved, the IPO publishes a notice of registration in the Official Gazette and issues a patent certificate.

A patent is valid for 20 years from the date of application, provided that the patentholder pays an annual fee to the Industrial Property Office (**IPO**).

Third parties may challenge patents only after issuance and through courts. Patent enforcement is also through courts, where a patentholder can bring a claim for infringement of any of its exclusive patent rights and may, at any stage, seek an injunction to prohibit the alleged infringement or an order to seize products produced due to the alleged infringement. The court may require the patentholder to provide security if such interim measures are to be granted.

Damages may be awarded as a civil remedy for patent infringement, but intentionally and knowingly infringing a patent could also result in a criminal conviction punishable by fine, imprisonment or both.

Trademarks

The IP Law and its implementing regulations govern trade marks in Iran. Iran is a WIPO member and signatory to the Paris Convention for the Protection of Industrial Property, Madrid Agreement Concerning the International Registration of Marks, the Protocol Relating to the Madrid Agreement and subsequent amendments.

A trade mark is any registerable, visible sign that distinguishes goods or services offered by a legal or natural person. Categories that cannot be registered include: (i) signs that are identical, or confusingly similar, to a registered mark, or a trade name well known in Iran for similar goods or services; (ii) signs that are identical, or confusingly similar, to a registered

mark for dissimilar goods or services, whose registration would nevertheless be detrimental to the interest of the registered mark owner; (iii) signs whose registration would otherwise be deceptive or confusing as to geographical origin or other features of goods or services; (iv) signs that are contrary to Sharia, public order or public morals; and (v) military or official insignia, flags and other national emblems, unless authorised.

The owner of a registered trade mark has the exclusive right to use it in relation to the goods or services for which the mark is registered.

An applicant must submit its application (including a specimen mark and list of goods or services) to the IPO. The application will be published in the Official Gazette. If approved (after considering any third-party objection), the IPO publishes a notice of registration in the Official Gazette and issues a trade mark registration certificate.

A registration is valid for ten years from the application date, and may be renewed for consecutive ten-year periods by payment of renewal fees.

Third parties may challenge an application through the IPO's objection process within 30 days (for Iranian residents) or 60 days (for non-residents) of its publication date.

Once a registration notice is published, third parties may apply to courts for cancellation of registration if, among other things, the registered mark is identical to another registered mark or it is identical or confusingly similar to another mark which is famous in Iran, priority is claimed in registering the mark or the mark has not been used for three years.

Trade mark enforcement is through the courts. The owner of a registered mark can bring a court claim for unauthorised use of the mark, or for use of another, confusingly similar mark. The same remedies available for patent infringement are available for trade mark infringement.

Industrial designs

The IP Law and its implementing regulations also govern industrial designs in Iran.

An industrial design is any composition of lines or colours, or any three-dimensional shape with or without lines and colours, which changes the composition, shape or appearance of an industrial product or handicraft. An industrial design can only be registered if it is new or original. A design is deemed new if it has not been disclosed to the public anywhere in the world. A design is considered original if it is created independently by the designer and is not a copy of existing designs. Designs whose commercial exploitation would be contrary to Sharia, public order or public morals may not be registered.

The owner of a registered industrial design has the exclusive right to make or use the design.

An applicant must submit its application - including a description of the design supported by blueprints, photos or other illustrations, as well as the products for which the design would

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be used - to the IPO. The IPO may ask for a sample of three-dimensional designs, and must make a decision within 60 days of the application.

If approved, the IPO publishes a notice of registration in the Official Gazette and issues an industrial design registration certificate. The applicant may ask the IPO to delay publication of the notice for up to 12 months from the application date (e.g., if the applicant simultaneously seeks to register the design in another country), although the design is registered upon approval.

A registration is valid for five years from the application date, and may be renewed for two consecutive five-year periods by payment of renewal fees.

Third parties may challenge an application through the IPO's objection process. Once a registration notice is published, third parties may apply to courts for removal of registration if (i) the registered design does not meet the conditions in the IP Law or (ii) the registrant is not the actual maker (or successor thereto) of the design.

Industrial design enforcement is through the courts. The same remedies available for patent or trade mark infringement are available for industrial design infringement.

Copyright

The Law Protecting the Rights of Authors, Composers and Artists 1970 and the Law on Translation and Reproduction of Books, Periodicals and Audio Work 1973 are the principal laws governing copyright in Iran.

Copyright refers to temporary, exclusive rights acquired by authors, composers or other artists (each referred to in the law as an "author") upon creation of original literary or artistic works. These rights consist of economic rights as well as moral rights of the author in a copyrighted work including the right to publish, broadcast, perform or publicise the work. Unlike economic rights, moral rights (i.e., the right of attribution, the right against false attribution and the right to the integrity of the work) cannot be transferred.

Forms of literary or artistic expression that can enjoy copyright protection include books, pamphlets, plays, scientific writings, poems and songs, audio-visual works, musical works, paintings and drawings, designs (including carpet designs), decorative writings, maps, sculptures, architectural works, photographs, handicrafts and industrial artwork.

Quoting copyrighted work for literary, scientific, technical or educational purposes or in a critique is permitted but generally requires citation. Non-commercial entities such as public libraries and scientific institutions may reproduce copyrighted work in the course of their activities.

Copyright protection begins with authorship, and no registration is required. Moral rights are protected during the author's lifetime. Economic rights are protected until 50 years after the author's death, except for photographic or cinematographic work, and copyrighted work belonging to a legal entity, for which the economic rights last for 30 years after the date of

first publication or public presentation. Economic rights related to work products which are produced on commission can be protected for a maximum of 30 years from the date of creation, unless a shorter period is agreed.

Authors may register their work with the Ministry of Culture and Islamic Guidance although registration is not required to benefit from copyright protection.

Enforcement of copyright is through the courts, where an author can also seek an injunction prohibiting alleged infringement.

Copyright infringement includes the following (if not authorised by the author or permitted by law):

- printing, publishing or distributing someone else's protected work under one's own name, or intentionally and knowingly under a third party's name, or under the author's name but without consent;
- reproducing or using work without required citation; or
- altering or misquoting a work.

In addition to any damages, copyright infringement may result in imprisonment and fines.

Software

Economic and moral rights of software developers are protected under the Law Protecting the Rights of Computer Software Developers 2000, which grants developers the exclusive right to publish, present, execute and use their software for 30 years from creation. Moral rights are protected for an unlimited period. Unauthorised use of protected software may, in addition to damages, result in imprisonment and fines.

Trade secrets

Iranian law only defines "electronic trade secrets", meaning data messages consisting of information, formulae, patterns, software, programs, business and transaction methods and procedures, strategies, plans, financial information, customer lists and the like which have an intrinsic economic value, are not publicly available, and reasonable efforts have been made to protect them. Unauthorised access to or electronic disclosure of trade secrets may result in imprisonment and fines under Article 64 of the Electronic Commerce Law. In addition, unauthorised disclosure of confidential information by those who become aware of such information through their job or profession can also lead to imprisonment and a fine under Article 648 of the Criminal Code.

8. DATA PROTECTION

Main applicable regulations

The developing legal framework of data privacy in Iran is derived from a patchwork of enactments, chiefly Articles 22 and 25 of the Constitution (which protect privacy of personal

information), the Law on Publication of and Access to Data 2009 (the **Data Law**), the Electronic Commerce Law 2004 and the Cybercrime Law 2009. There are also a number of sector-specific data protection rules applicable, for example, to banks and credit institutions, insurers, credit rating agencies and internet service providers.

The Data Law constitutes the principal framework for access to information and applies to public and private entities. It includes privacy rules for its required disclosures. In particular, personal private data can only be disclosed to the data subject or their legal representatives. Personal private data is defined broadly and includes name, place and date of birth, place of work and residence, family information (including marital status), personal lifestyle choices and beliefs, bank account numbers and passwords, e-mails, photos, audio and video recordings, physical and mental health information, and personal information relating to business, financial, educational, administrative, medical and legal affairs.

The Electronic Commerce Law applies to data generated, sent, received, stored or processed through electronic, optical or other information technology, and requires express consent of the data subject for electronic storage, processing or distribution of personal data, including data on ethnicity, race, ideological or religious views, and physical or mental state. Even with consent, storage, processing or distribution of personal data must only take place for identified purposes; stored, processed and distributed personal data must be correct and up-to-date; and data owners must be able to correct inaccuracy or incompleteness.

The Law on Management of National Data and Information 2022 which is applicable to public and governmental entities also sets out certain requirements in relation to cybersecurity. According to this law, all data producers, processors and controllers subject to this law must comply with the directions of the High Council of Cyberspace and must ensure the security and confidentiality of the data and information that they produce, retain or process. (The High Council of Cyberspace was established in 2012 by a decree from the Supreme Leader. This Council is the main cyberspace regulator and performs its regulatory functions mostly through a division, namely the High Commission of Regulating Cyberspace.)

A recent regulation by the High Commission of Regulating Cyberspace also sets out some important regulations on data protection. This regulation applies to all service provides who use virtual systems and platforms for providing services, including public and private companies and executive authorities. The new regulation is generally aimed at securing privacy of users and obliges service providers to take certain measures for this purpose, including to clearly state their data collection, processing and retention policies and seek explicit consent of users to these policies. The data policies must set out, *inter alia*, what sort of data is being collected and for what purpose, what data is mandatory to provide and what is optional; and what is the method of communicating any change to the policies to users. Service providers are also required to store any identity-related data in an encrypted format and promptly delete a user account and associated data upon request of the user (subject to any applicable legal data retention requirements).

The Cybercrime Law criminalises unauthorised access to or disclosure of protected electronic data, unauthorised deletion or distortion of third-party data stored in computer or

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telecommunication systems, and acts or omissions rendering third-party data un-processable.

Other laws include data protection provisions. The Privatisation Law imposes a general prohibition against unauthorised collection or use of commercial, financial or technical data of competitors. The growing body of AML and CFT laws contain specific rules regarding data protection, retention and disclosure, and unlawful disclosure of information collected under AML laws could result in imprisonment.

There is also the Charter of Citizens' Rights, which is a declaration issued by the President in 2016. This Charter does not have the force of law, but it can be viewed as guidance for government authorities. According to this Charter, unlawful search, collection, processing, use and disclosure of personal information and personal communication are prohibited. The Charter also requires informed consent of citizens before collection and publication of private information.

A draft Personal Data Protection and Privacy bill (the **Bill**) currently before Parliament reflects a legislative attempt to establish uniform personal data protection rules for all service providers. It includes consolidated provisions regarding collection, management and processing of data.

Most data protection laws discussed in above apply expressly to Iranian entities. Current data protection rules do not purport to cover foreign entities targeting Iranian customers.

However, the Bill would extend data protection to Iranians whose personal data is processed outside Iran, and to foreign persons whose personal data is processed in Iran. It would require personal data of Iranian nationals to be stored only in Iran or approved foreign data centres, and foreign data controllers and processors of such personal data to be approved. It also contemplates further regulation of personal data processing by foreign data controllers or processors, or in foreign data centres.

Data protection regulators and enforcement authorities

No single agency is now responsible for enforcement of data protection rules. The Commission for Publication and Access to Data, established under the Data Law and including ministers and representatives of Parliament and the judiciary, is charged with general oversight of the enforcement of data protection rules. The Bill would establish a supervisory committee in charge of enforcing data protection provisions.

Sector-specific data protection rules are enforced by the relevant regulator, for example the Central Bank of Iran, the Central Insurance of Iran and the Securities and Exchange Organisation, or the High Council of Cyberspace which is the main cyberspace regulator.

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