

Legal Newsletter



June 2010

Volume 9 - No. 1

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Recent Developments in Iran's Capital Market

After undergoing major changes (such as operation of investment banks, launch of over-the-counter markets, and issuance of Islamic bonds – *Sukuk*), Iran's capital market has recently ratified two recent legislations. Namely, i.e. the Law Developing New Financial Instruments and Institutes, and the New Law on Foreign Investment in Exchange and OTC Markets, in a move for further developments.

The Law Developing New Financial Instruments and Institutes

On 16 December 2009, Iran's Parliament approved the Law Developing New Financial Instruments and Institutes ("the Law") to expand the capital market tools. The Law follows three goals namely, developing new financial instruments (such as investment certificate) and institutions (such as investment funds, mutual funds, and etc.), that were previously unavailable to the capital market. Further, new tax provisions tailored for such changes have also been provided for. The Law can be summarized as follows:

1. New Financial Instruments

In addition to previously introduced instruments and transaction (such as *Sukuk*, futures contracts, MBS, and CDs), the Law introduces another new financial instrument referred to as the Investment Certificate. Such instrument is defined by Law as "a uniformed security issued by an investment fund in turn for investment in that fund bearing the particulars of the investor, the fund and the amount of investment". Such Investment Certificates is registered and the liability of the investors in investment funds is limited to the nominal value of their certificates.

2. New Financial Institutions

For the first time the Law recognizes legal personality for investment funds and defines them as "a financial institute investing financial sources acquired from issuance of Investment Certificates in approved areas". Having legal personality, investment funds are now able to open bank

accounts in their own name, being represented, and enjoy bank facilities available for legal persons. Minimum capital requirement for investment funds is IR.Rls 5 billion (roughly US \$ 500,000). However, it may be subject to change by the High Council of Securities and Exchange considering the inflation rate changes.

3. Tax Provisions

One of the obstacles of Iran's capital market was ambiguities and lack of sufficient legislative provisions in terms of taxation. The Law removes those ambiguities by setting certain provisions and tax exemptions as follows:

- All revenues gained from securities (all new financial instruments such as MBS, futures contracts, and CDs) are exempted from income tax and VAT;
- Transfer of stocks and pre-emption rights of Iranian and foreign companies in stock exchange or OTC markets are subject to a 0.5% flat rate tax;
- Intermediary institutions are also exempted from transfer tax. Moreover, their revenues gained from public offering of securities and the transfer of such securities are excluded from taxation; and
- Revenues gained out of sales of assets to the intermediary institute for securitization purposes as well as any transfer thereof are tax exempt;

In addition to above, the Law provides for non-disclosure provision, dispute settlement procedure, and financial penalties for issuers, financial institutes, self-regulatory establishments, and their managers in case of any violations to relevant laws in their practice area.

New Regulation on Foreign Investment in Stock Exchanges and OTC Markets

The new regulation on foreign investment in stock exchanges and OTC market was approved by the Council of Ministers on 18 April 2010 ("Regulation") and

supersedes the previous regulation concerning such investments.

The new regulation removes several restraints from foreign investments, most notably the need for obtaining a Foreign Investment License (FIPPA) from the investment organization prior to investment in the stock exchange. Now, the only requirement for foreign persons investing in the exchange is obtaining a Transaction Authorization from the Securities and Exchange Organization (SEO). However, foreign investors may also obtain an Investment License (FIPPA) as well and benefit from facilities attached thereto.

In addition to foreign nationals, the Regulation considers Iranian nationals with foreign capital as foreign investors, providing the opportunity for them to apply for a Transaction Authorization as well and benefit from facilities of the regulation.

The Regulation divides foreign investors into two categories of non-strategic and strategic investors and set limits for maximum level of investment of a non-strategic investor. Those limitations are as follows:

- Each non-strategic foreign investor (passive investors) can own up to 10% of the stocks of a company listed in stock exchange or OTC market; and
- Overall investment in Stock Exchange and OTC markets by all foreign investors is up to 20%.

Strategic foreign investor (active investors) is defined as “an investor having more than 10 percent stocks of a company listed in stock exchange or OTC market, or after acquiring the stocks becomes member of the board of directors of that company”. Hence, the strategic investor takes an active role in such investments while non strategic ones are passive investors.

Strategic foreign investors shall observe a two-year lockup period for their acquired stocks. Any sales of stocks within this lockup period require SEO's authorization. No such limitation will apply on non-strategic investors.

Foreign investors obtaining Transaction Authorization are able to open bank accounts in foreign currency or Rial, transfer foreign currency into Iran repatriate such funds

abroad subject to currency regulations and other relevant provisions.

Transferable amounts will be calculated by SEO as per request of the foreign investor and will be notified to the Central Bank of Iran. Any currency control provisions do not impair repatriation of transferable amounts calculated and approved by the SEO and the central banks is obliged to provide investors with the foreign currency equivalent to the transferable amounts.

Economic Reform and the Law on Targeted Subsidies

The Iranian legislator and government have embarked on the task of removing the blanket subsidies in place for many years in Iran through the ratification of the Law on Targeting the Subsidies on 5 January 2010, which was later ratified by the Guardian Council on 13 January 2010.

Although government subsidies are common in areas of food and services, the main focus of the Law is pointed on the issue of energy. While the title suggests introducing a system of distribution of subsidies among individuals or relevant industries based on a set of criteria, the Law is focuses on correcting the prices (cutting subsidies) rather than distributing the subsidies in an efficient manner.

Depending on the sector, the Law affects the areas of production and consumption. Overview of the Law is as follow:

1. Energy Sector

The government shall remove most subsidies in the energy sector providing such utilities to customers at non discounted rates.

2. Other products and services

The Law also sets for subsidies targeting of different

sectors including water, food, bread, milk, sugar, airlines, postal services, etc. within the next few years with the requirement to remove subsidies in such sectors. However, the procedure for removal of such subsidies has not been discussed in the Law.

The Law authorizes the government to spend up to 50% of the income generated through removal of subsidies amongst qualifying families and individuals as welfare assistance.

Consumer Protection Law

The Law on Protection of Consumers' Rights

Until recently, very limited consumer protection laws were available in Iran. However, consumers enjoy protection through the ratification of the Law on Protection of Consumers' Rights approved on 7 October 2009 and further ratified by the Guardian Council on 23 October 2009. The law, the concept of which is relatively new in the Iranian legal system, provides for certain legal protections to the consumer.

The law provides for legal definition of consumers and traders, manufacturers, distributors and the like and provides a number of rights and obligations for each.

Products shall also be in conformity with regulations, related contract and customary usage. Otherwise, the consumer has a number of remedies including be entitled to rescind the sale, seek damages, repair or replacement of the product.

Providers of goods and services are also obliged to provide consumers with various documents including warranties, receipts and product information. Retailers are also required to display samples of the goods. Incorrect or false disclosures are also dealt with by the Law.

Finally, the Law provides for a system of conciliation and dispute settlement. Such procedure would make the representative of a foreign company, the branch and parent company individually or jointly liable as well as

attaching liability to distributors.

Executive Bylaws on Protection of the Rights of Automobile Owners

On 18 May 2010, the Government approved the "Bylaw on Protection of the Rights of Automobile Owners". This Bylaw complements the Law on Protection of Automobile Owners, which was ratified earlier in 2007. While concentrating on after-sales services, the Bylaw extends the warranty period for domestic produced automobiles to two years or 40,000 kilometers, whichever comes first; and five years or 150,000 kilometers for imported automobiles, whichever comes first.

Further, automobile providers, are required to fully comply with instructions of the Ministry of Industry and Mines in relevant areas. The Bylaw requires automobile manufacturers to set up an internal complaint system for consumers, in all authorized service centers and outlets. Any decisions pertaining to the complaints shall be made within 20 days of receiving the complaint.

Update on Competition Regulations

On 27 April 2010 the government passed a directive to delineate financial penalties for anti-competitive practices as required by a previously ratified law.

Earlier, the Parliament had articulated competition rules and procedures in the Law Amending Some Provisions of the Fourth Development Plan (referred to as the new privatization law), approved in 2008. Among other things, this law prohibited anticompetitive practices, set up a competition council and provided for penalties in case of anti competitive behavior.

Based on this Directive, financial penalties for anti-competitive measures (such as hoarding, discriminating pricing, aggressive pricing, tie-in agreements, meddling internal affairs or transactions of a competitive enterprise, abuse of a dominant position, etc.), stated in Article 45 of the new privatization law, may result in financial penalty of up to IR.RIs 1 billion (roughly US \$

100,000).

The competent authority to investigate and decide on anti-competitive measures is the Competition Council which shall determine the financial penalty with due regards to importance of the measure in distortion of competition, adverse effects on the market in short and long term, repetition, time and place and duration of distorting action, and being committed individually or collectively.

Financial penalties are in addition to other decisions the Competition Council may take including order to cancel or terminate any contract containing anti-competitive practice, order persons to cease anti-competitive procedures, suspend or cancel any merger inconsistent with provisions of law, imposing minimum supply or price range to entities, and the like.

In case of multiple effects of an anti-competitive measure, the Competition Council may impose multiple penalties.

Recent Conventions and Treaties Between Iran and Other Countries

Double Taxation Treaties (DTTs):

- DTT with Algeria - Apr 2009
- DTT with the Republic of Azerbaijan - Nov 2009

Bilateral and Multilateral Investment Treaties (BITs and MITs):

- BIT with Eritrea - April 2009
- BIT with Cyprus - Nov 2009
- Agreement on Promotion and Protection of Investments Among ECO Member States - December 2009

Other:

- Accession of I.R. Iran to the UN Convention Against Corruption - Nov 2008
- Accession of I.R. Iran to the International

- Agreement on Olive Oils and Table Olives (UNCTAD – 2005) - Nov 2008
- Aerial Services Agreement Between Iran and Algeria - Nov 2008
- Commercial and Maritime Shipping Agreement Between Iran and Libya - Dec 2008
- Agreement on Road Transportation of Goods and Passengers Between Iran and Afghanistan - Dec 2008
- Convention on Protection of Underwater Cultural Heritages - Dec 2008
- Iran's Accession to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation - Jan 2009
- Convention of the Organization of the Islamic Conference on Combating International Terrorism - Jan 2009
- Commercial and Maritime Shipping Agreement Between Iran and Sri Lanka - Feb 2009
- Treaty on Customs Mutual Assistance Between Iran and Nigeria - Oct 2009
- Security Assistance Treaty Between Iran and Bahrain - Jan 2010
- Mutual Assistance Against Drugs, Terrorism and Organized crimes Between Iran and Afghanistan - Jan 2010
- Preserving Plant Breeding Treaty Between Iran and Syria - March 2010
- Agreement on Legal Assistance and Judicial Cooperation on Criminal Matters Between Iran and India - March 2010
- Tourism Mutual Assistance Treaty Between Iran and Lebanon - May 2010

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