Foreign investment in IRAN

Anooshiravan Karimi
Managing Partner of
Karimi & Associates Law Firm

For IR Global Mena Group
JUNE 2021

Foreign investment in IRAN

Why Iran: Potentials

With a population of 85 million, half under the age of 30 and highly educated, as well as a strategic location on the Persian Gulf and vast reserves of energy and other natural resources, including wind and solar energy, Iran's economy has incredible potential waiting to be unlocked.

Natural Resources: Oil, Gas, Solar and Wind

Iran's mining, oil and natural gas, and renewable energy industries are widely considered as some of the most attractive sectors to invest in.

While Iran is home to about %1 of the world's population, it holds 9% and 16% of the world's crude oil and natural gas reserves. According to U.S Geological Survey, Iran also has major reserves in other natural resources and minerals including feldspar (second largest in the world), barite (5th largest), gypsum (5th largest, fluorspar (8th largest), and iron ore (10th largest); as well as substantial reserves of other strategic minerals such as manganese, zinc, chromium, copper, and gold.

Renewable energy is another major resource capable of meeting all of Iran's electricity demand. Electricity generation from solar farms and photovoltaic cells is economically most feasible in areas with direct normal irradiation (DNI) above 5 KWh per meter square per day, which is true in more than 75% of the country. Also, Iran is located in a wind belt, where wind speed at the height of 40 meters averages more than 5 meters per second — the speed required for the development of utility-scale wind farms — in at least a quarter of the country.

Large and Young Consumer Market

With a population of around 85 million, Iran has the second-largest population in the MENA region. Half of the population is below the age of 30 and is highly educated, with a literacy rate of 90%. Nearly 70% of the labor force in Iran has a university-level education.

Infrastructure and Geography

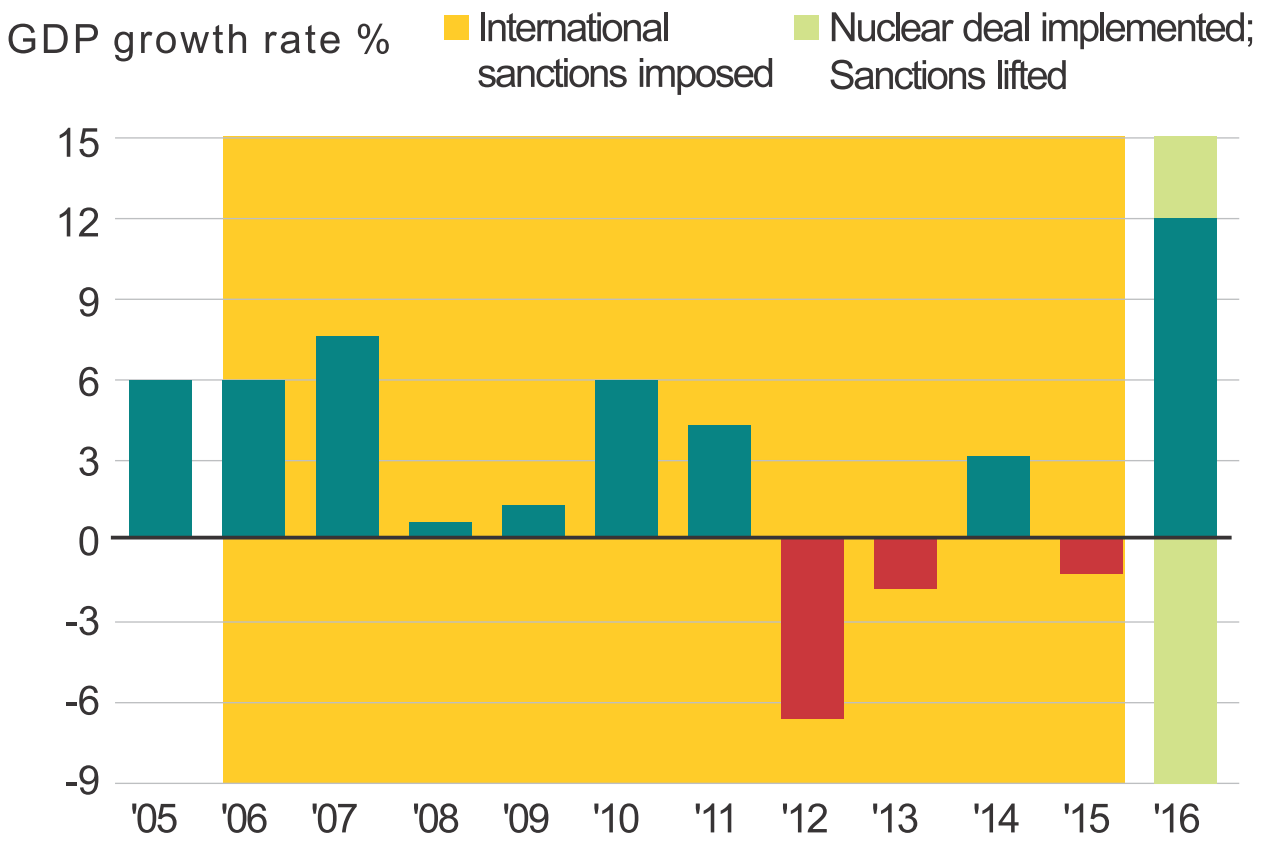
Iran has a %100 electrification rate and a vast network of power plants, electricity grids, natural gas lines, roads, railroads, airports, and ports in both the north and the south of the country. Therefore, it has the necessary infrastructure to support a growing economy. Given access to open waters and its strategic location between the Middle East and Central and Southwest Asia, Iran plays a central role in China's One-Belt-One-Road Initiative.

IRAN: US REJOINING JCPOA AND ECONOMY GROWTH

The removal of nuclear-related sanctions resulted in a GDP growth of 12.5% in Iran in the first year after the implementation of JCPOA. According to IIF, if the United States lifts most of the economic sanctions on Iran by the end of 2021, the economy could expand 4.4% next year. It would then grow by 6.9% in 2022 and 6% in 2023, and if oil exports increase, Iran could see its foreign reserves rise to $109.4 billion by the end of 2023.

According to the IIF's chief economist for the MENA region, foreign direct investment inflows would increase progressively from this year's $890 million to over $6.4 billion in 2025.

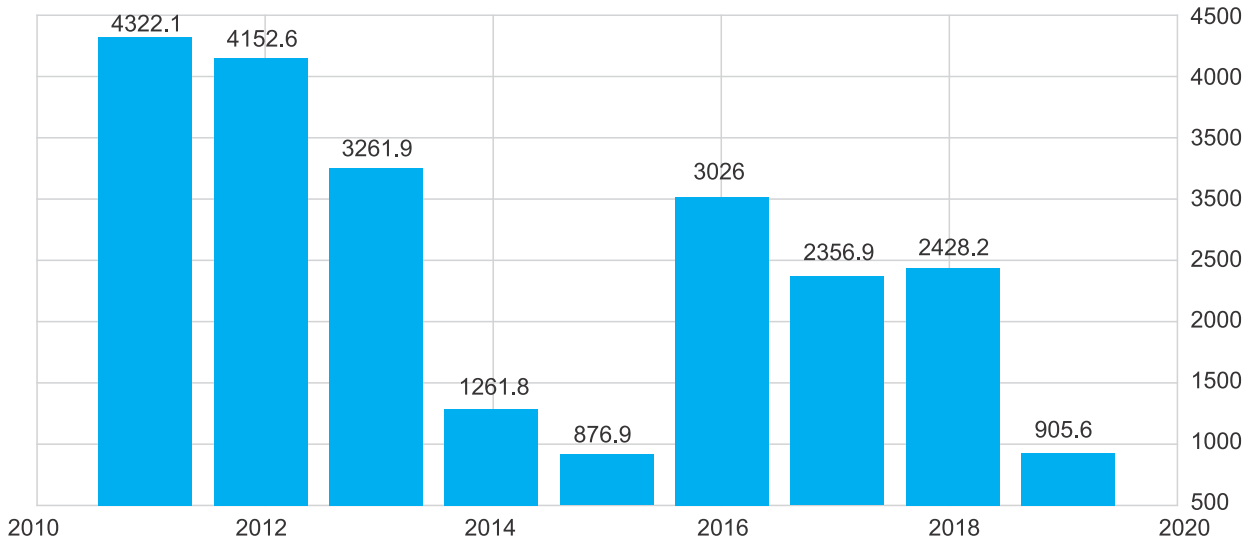
Foreign investment in IRAN



Foreign Direct Investment into Iran: Prospects

Traditionally, major sectors for foreign investment in Iran include the oil and gas industries, vehicle manufacture, copper mining, petrochemicals, foods, and pharmaceuticals.

The growing trend of foreign investment in Iran after the implementation of JCPOA in 2016 speaks to similar prospects possible to emerge again in the event that the United States rejoins the nuclear deal.



Regulatory Framework

- FOREIGN INVESTMENT PROMOTION AND PROTECTION ACT ("FIPPA") 2002
- FIPPA IMPLEMENTING REGULATIONS
- IRAN IS A SIGNATORY TO OVER 60 BILATERAL INVESTMENT TREATIES
- COMMERCIAL CODE OF IRAN (1969)

Fippa: Protections & Risks Covered

In general, all non-commercial risks are covered under FIPPA. Main protections and advantages offered to foreign investors under FIPPA include the following:

- 100% ownership of shares by foreign investors permitted.
- Equal treatment of foreign investors as accorded to domestic investors.
- Protection against expropriation and nationalization: only allowed for public interests, by means of legal process, in a non-discriminatory manner and against payment of compensation on the basis of real value of the investment immediately before the expropriation.
- Guarantee against losses resulting from prohibition or interruption of the financial agreements
- Repatriation of capital: principal and profits of investment is transferable abroad after fulfillment of all obligations and upon the approval of the Board subject to a three-month prior notice.
- Guaranteed purchase of goods and services supplied at subsidized
- price or where the government is the exclusive purchaser
- Issuance of three-year residence permit for all investors, directors, experts, and their immediate family members

Repatriation Of Capital, Profits, And Increase In The Value Of Capital

Repatriation of capital, profits and gains resulted from the increase in the value of the capital is permissible in two forms:

- Foreign Exchange
- Export of authorized goods, upon the application of the investor
- Foreign exchange to transfer capital, profits and gain may be provided out of:
- Foreign exchange earnings from the export of the products
- Foreign exchange earnings from the services rendered by the investment firm
- Foreign exchange earnings by way of the export of other authorized goods

Protections Under Bilateral Investment Treaties

Iran has a network of over 60 bilateral investment treaties with different countries including among others, France, Germany, Switzerland, Austria, Russia, Bahrain, Turkey, South Korea, and China.

Generally speaking, the substantive and procedural protections offered under Iranian BITs are typical of those under the traditional BITS. Main protections include:

Substantive Protections

- Fair and Equitable Treatment (FET): providing legal and business stability, predictability, and transparency in accordance with the legitimate expectations of the investors, prohibiting the host state from taking arbitrary and politically motivated measures
- National Treatment: treatment no less favorable than that accorded to domestic nationals
- Most Favored Nation Treatment (MFN): treatment no less favorable than that accorded to the investors of a third country
- No expropriation (direct, indirect or both, depending on the wording of the BIT) without prompt, adequate and effective compensation

Dispute Settlement Mechanism

• Access to international arbitration, typically arbitration under UNCITRAL rules

• Ran is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

• Two major arbitration institutions in Iran include the Arbitration Center of Iran Chamber of Commerce, Mining and Industry and The Tehran Regional Arbitration Center

Fippa Investment Vs Non-fippa Investment

· What is different:

· Investment through FIPPA mechanism allows foreign investors to benefit from FIPPA and BIT's protections and incentives otherwise

unavailable.

• What is the same:

• In both methods, foreign investors may enter Iranian market by establishment of a new company or through joining local partners.

• In both methods, foreign investors can own 100% shares of a newly

established company.

NOTE: investment in Iran Stock Market does not require a FIPPA license.

Investment Under Fippa Framework

- INVESTMENT IN PRIVATE SECTORS: No specific contractual arrangement is required. Investment is allowed in all areas open to the Iranian private sector without any limitation on the percentage of shareholding by foreign investors.
- INVESTMENT IN PUBLIC SECTOR: Contractual arrangements required.

Contracrual Arrangement

Arrangement	*Features*
BUYBAC	· The return of capital and profit accrued is solely emanated from the economic performance of the investment project itself.

Arrangement	*Features*
BUILD, OPERATE AND TRANSFER	· Return of capital is not dependent upon a guaranty by the government or government company and/or banks. · Repatriation of Capital: in the event of any export constraint, based on the opinion of the Foreign Investment Board repatriation of capital is possible through foreign exchange available through the banking system
CIVIL PARTICIPATION/PARTNERSHIP	

Iran Petroleum Contracts

Iran has recently implemented a new model for oil and gas contracts. The new Iran Petroleum Contract ("IPC") replaces the buyback agreements which prevented foreign investors from holding shares and from booking reserves.

The IPC is, in general, more attractive to international oil companies as it offers more flexible terms with respect to price fluctuations and investment risks and allows foreign investors to take equity stakes in joint venture companies, though the Iranian partner must hold the majority of the shares.

The old buyback agreements covered only the exploration and development phases of a project and the fields were taken over by the National Iranian Oil Company once those phases were completed. In contrast, the IPC allows contract terms of up to twenty-five (25) years.

Procedure For Foreign Investment: The Big Picture

IDENTIFICATION AND SELECTION OF THE INVESTMENT PROJECT

OBTAINING THE PRELIMINARY PERMITS FROM THE ORGANIZATION INVOVLED

APPLICATION FOR AND ISSUANCE OF FIPPA LICENSE

IMPLEMENTATION OF THE PROJECT

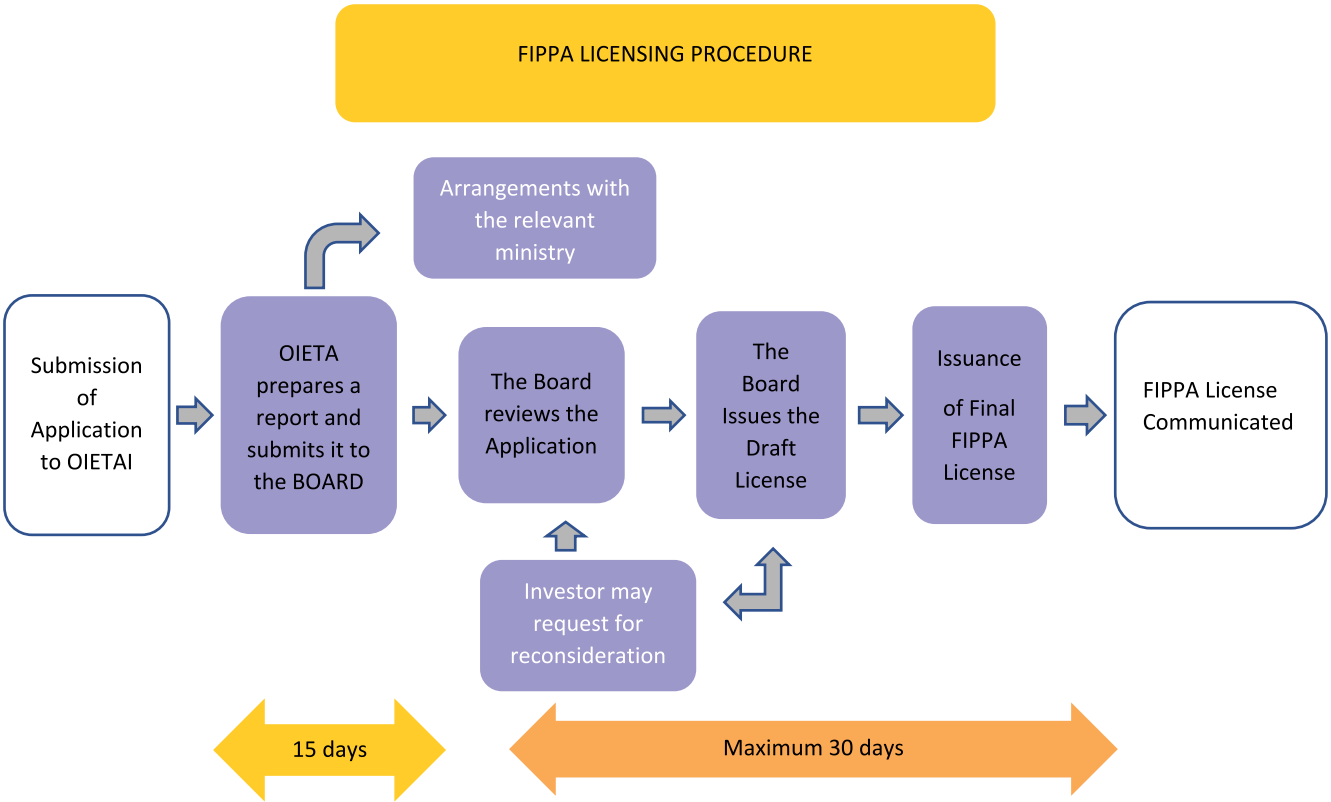
Fippa License: Steps

As the organization, responsible for promoting, financing, and regulating foreign investment, OIETA is in charge of the issuance of the FIPPA license. OIETA functions under the auspice of the Ministry of Economic Affairs and Finance. OIETA reviews the applications for FIPPA license in cooperation with the Foreign Investment Board ("the Board") and issues the license.

The procedure of FIPPA license issuance is simplified and quick, not to take more than 45 days in total. In order to apply for a FIPPA license, the following information shall be provided to OIETA:

- The business plan: including the project's characteristics, the timeframe of the project, the amount of money to be invested, methods of sale and marketing, and the targeted market.
- Personal information and identification of the investor.

The chart below indicates the steps throughout the FIPPA licensing procedure.



Taxation System

Iran has a simple tax system with a flat rate of 25% for Iranian corporate income tax. All foreign investors doing business in Iran or deriving income from sources in Iran are subject to taxation. Under the Direct Taxation Law (1987), as amended, there is no discrimination with regards to taxation of domestic and foreign investors or the granting of tax exemptions and discounts.

TAXABLE INCOME

- Iranian resident companies are taxed on their income derived inside and outside the country.
- Non-resident companies are taxed in Iran on their income derived from Iran.
- Branches registered in Iran by foreign companies are taxed in Iran only on the profits derived from the work carried out inside the country.

Corporate Income Tax Rate

As stipulated in Article 105 of the Direct Taxation Act, foreign legal entities must pay taxes at the flat rate of 25% on all taxable income earned through investments in Iran. Companies quoted on the Stock Exchange and Commodity Exchange, however, are eligible to discounts , such as a reduced corporate income tax rate of 22.5% or a 10% discount.

To avoid double taxation, shareholders are exempted from payment of tax on dividends. In addition, Legal or real persons will not be taxable for the stocks or the dividends of their shares in other companies.

Value-added Tax Rate

In Iran, Value-Added Tax ("VAT") is levied on the supply, provision and importation of all goods and services bar those listed in Article 12 of the Value-Added Tax Act ("VATA") which are exempt from this tax. As stipulated in Article 13 of the VATA, VAT is not levied on the exports of goods and services through official customs gates. Taxes paid on such items are refunded upon the provision of a bill of export (for goods) and proving documents and certificates. The VAT rate in Iran currently stands at 9%.

Agreements To Avoid Double Taxation

The Government of the Islamic Republic of Iran has signed mutual agreements to avoid double taxation with the following states: Armenia, Austria, Bahrain, Belarus, Bosnia & Herzegovina, Bulgaria, China, Croatia, Cyprus, France, Georgia, Germany, Indonesia, Jordan, Kazakhstan, Kyrgyzstan, Lebanon, Malaysia, Pakistan, Poland, Qatar, Romania, Russia, South Africa, Spain, Sri Lanka, Switzerland, Syria, Tajikistan, Tunisia, Turkey, Turkmenistan, Ukraine, Uzbekistan, and Venezuela.

Tax Holidays And Incentives Available To Foreign Investors

By making the right choice in terms of the location and the type of business, foreign investors may benefit from a variety of tax incentives and exemptions, some capable of lasting for even decades.

Below is a brief outline of certain tax incentives available to foreign investors.

Free Trade Zones, Special And Economic Zones

Iran has over 35 free trade zones and special economic zones. Free zones are located in the Persian Gulf, Oman Sea, and the Caspian Sea in the north and the north-east of the country. Some of the advantages of the free trade zones include:

20-year tax exemption for all economic activities

- Custom exemptions for raw materials and industrial machinery
- Possibility of exporting goods to the mainland
- Simplified procedure for re-export and transit of goods
- No visa required for foreigners to enter the free zones

Highlights of Tax Holidays

Income Tax with Rate of 0.0%	Duration of Exemption
Industry, Mining & Services (Hospitals & Hotels)	5 Years
Industry, Mining & Services (Hospitals & Hotels) in Industrial Parks and Special Economic Zones	7 Years
Industry, Mining & Services (Hospitals & Hotels) in Less Developed Areas	10 Years
Industry, Mining & Services (Hospitals & Hotels) in Less Developed Areas Located at Industrial Parks & Special Economic Zones	13 Years
100% of Income derived from Agricultural Activities	Perpetual
100% of Income Derived from Export of Services, Non-Oil Goods, Agricultural Products	Perpetual
Perpetual20% of Income Derived from Export of Non-Processed Goods	Perpetual

Forms Of Business Organizations Available To Foreign Investors

To carry out their business in Iran, foreign investors may choose to either buy shares or stocks in an existing company or set up a new company in the form of a branch or a subsidiary. A company in Iran can be fully owned by foreign shareholders.

While under the Commercial Code of Iran, there exist 8 different types of companies, the two most commonly used forms among foreign investors are Joint Stock Company ("JSC") and Limited Liability Company ("LLC"). The reason for the wider use of these entities as compared to other forms is the limited liability of shareholders of both company types, as well as having more comprehensive and straightforward rules.

The table below outlines some of the key characteristics of both legal forms as compared to one another.

Company Type	Initial Capital &	Minimum Number of Shareholders	Shareholder Liability	Transfer of Shares	Auditors & Board of Directors	Registration Process
LLC	No statutory minimum	2	Limited to the amount of contribution	**1.** subject to the consent of the majority of shareholders possessing 2/3 of shares **2.** effective by official deed only	Optional, only one managing director required	Up to 1 month
Private Joint Stock Company	IRRS 1,000,000	3	Limited to the value of shares	No limitation, unless provided otherwise in	Mandatory, directors must be	Up to 1 month

Protection Of Intellectual Property

Since 2001, Iran has been a member of the World Intellectual Property Organization ("WIPO"). In addition, Iran is a member of multiple WIPO intellectual property treaties such as the Convention for the Protection of Industrial Property ("Paris Convention"), the Patent Cooperation Treaty, the Madrid Agreement, and the Madrid Protocol for the International Registration of Marks and the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

Copyright and Related Rights

- The Law for Protection of Authors, Composers and Artists Rights (1970)
- The Law of Translation and Reproduction of Books, Periodicals and Audio Works (1973).
- Electronic Commerce Act (2003): providing protection to works published online

Protection of Industrial Property

- Paris Convention for the protection of Industrial Party: Article 2(2) offers protections for patents, utility models, industrial designs, trademarks, service marks, trade names, an indication of source or appellations of origin, and provides for the repression of unfair competition.

Thank you

Contact Detail
Anooshiravan Karimi (Managing Partner of Karimi & Associates Law Firm)
Email: a.karimi@karimilawfirm.com
Office: +98 21 888 20 999
Direct: +98 912 154 14 21