

ELITE PARS

Law Firm

At a Glance Series

A GUIDE TO LITIGATION IN IRAN

Chapter [1]

Elite Pars Law Firm

Second Floor, 42 Soltani St. Valiasr Ave.
Tehran.

+98 21 22 01 6586
elitepars.com

Foreword

On May 8, 2018, the President of the United States of America announced the withdrawal of the U.S. from the Joint Comprehensive Plan of Action (JCPOA), re-imposing, following a wind-down period, the U.S. nuclear-related sanctions that were lifted to effectuate the JCPOA sanctions relief. Subsequently, OFAC published a new set of FAQs that details which sanctions will be re-imposed, the timeline for a full reinstatement of sanctions and how parties will be permitted to wind down existing operations inconsistent with the reinstated sanctions.

Thus, any person, including non-US Persons, who may have business activity—or customers or counterparts who have business activity—involving Iran should promptly conduct a risk assessment and, where wind-down of such activity is warranted, begin that process.

In this context, especially given the newfound necessity for foreign investors in Iran to terminate some of their engagements with Iranian counter-parties, litigation is becoming increasingly more relevant. Building up on the experience and knowledge of its partners and associates, Elite Pars law firm is prepared to represent its clients before Iranian courts.

Authors



Navid Rahbar-Sato

Managing Partner

+98 912 803 3030

n.sato@elitepars.com



Nima Nasrollahi

Partner

+98 912 043 3746

n.nasrollahi@elitepars.com



Mohammad-Reza Narimani

Senior Associate

+98 912 931 4031

m.narimani@elitepars.com

Table of Content

Foreword	2
Authors.....	2
Section 1: Court system	4
1.1 General courts	4
1.2 Special Courts	5
1.3 Administrative Tribunals	5
1.4 Appellate Bodies	6
Section 2: Adjudication.....	8
2.1 Initiation of Claims	8
2.2 Adjudication Process	9
2.3 Review and Appeal	9
2.4 Contingencies	11
2.5 Expedited Proceedings	11
2.6 Compromise.....	12
Your Dedicated Team.....	13

Section 1: Court system

Rooted both in the Roman-German legal tradition and in Islamic law, the Iranian legal system stands out as presenting a generally successful combination of Western and Islamic legal theories. The court system, however, is comparable to and to a great extent inspired by that of the French system, given that Islamic jurisprudence is much less developed in procedure than in content. Hence, the structure of the court system in Iran bears resemblance to the European systems of justice and as such, it should be familiar to a European audience.

There are various courts and tribunals in Iran, which have jurisdiction to hear different types and categories of cases and claims. Organization of courts is regulated by a legislation called the 'Act on the Establishment of General and Revolution Courts' of 1994. According to this Act, general courts and a special court (the so-called Revolution court) shall constitute the core of the court system. Nevertheless, there are other legislations by virtue of which a number of other courts have been established to hear certain types of disputes. In addition to the judicial courts, several administrative courts and tribunals exist most of which have exclusive competence and function primarily as semi-judicial bodies.

This Section 1 examines the types and hierarchy of courts and administrative tribunals. Further, it addresses the main rules and principles of procedure, which are to be complied with by the whole system when adjudicating cases and claims.

1.1 General courts

General courts, as the name suggest, are of the most extended jurisdiction to hear a wide range of claims. Accordingly, all sorts of civil, criminal and commercial disputes should be brought before general courts unless the law requires certain claims to be adjudicated by special tribunals. An important qualification, however, is that general courts are divided into civil and criminal branches, each having exclusive competence. Therefore, herein each type is dealt with separately.

1.1.1 Civil courts

Offices of civil courts cover the entire territory of the Islamic Republic of Iran, and they are established in most of the cities all around the country. In major cities like Tehran, the capital, civil courts are centralized in several judicial complexes located in different districts of the city.

Civil courts are competent to hear most cases concerning civil matters, including real estate, contracts and tort. A remarkable feature of these courts is that they also have jurisdiction to adjudicate commercial disputes concerning corporate matters, negotiable instruments and bankruptcy. Although civil courts jurisdiction covers a vast array of issues, in larger cities, disputes involving specific matters, which require more expertise, are allotted to specialized branches. Currently, disputes involving intellectual property, banking, and insurance matters and those related to judicial review of arbitral awards are adjudicated by specialized branches of civil courts. It is to be noted that these branches maintain their general jurisdiction and are competent to hear other cases, if necessary.

It is Important to note that for disputes to qualify for adjudication before civil courts, they must be appraised at the minimum value of 200,000,000 IRR. Disputes below that must be brought before Dispute Resolution Committees (DRC), a type of magistrate court for small claims. Further, certain disputes concerning partition of real property which are to be resolved by the Property Registration General Office (PRGO) and lease disputes, which lie within the jurisdiction of DRC, are excluded from the jurisdiction of civil courts.).

In courts of first instance, civil courts go into session with a single judge. Most of orders and judgments rendered by civil courts in the first instance can be appealed before appellate courts as further elaborated in Section 2.

1.1.2 Criminal courts

There are two branches of criminal courts, namely Criminal Court No. 1 and 2. In principle, all types of criminal wrongdoings come under jurisdiction of these criminal branches, unless the law requires otherwise. The distinction between criminal courts is based on the severity of the punishment to be inflicted.

Accordingly, minor crimes most of which normally lead to fines and short prison terms fall within the jurisdiction of Criminal Court No. 1. Like civil courts of first instance, they are able to hear cases with one sitting judge. Major crimes to be punished by capital punishment, long prison terms and other harsh penalties are to be brought before Criminal Court No. 2, which goes into session with the presence of at least two sitting judges.

Similar to civil courts, a number of criminal courts are designated for prosecution of certain crimes. For instance, crimes involving computer and online

networks are currently prosecuted by specialized branches of criminal courts.

Another component in the criminal justice system, which functions alongside with the courts, is Prosecutor's Office. In larger cities there is, at least, one office established for the prosecutor. Prosecutors, all of whom are under the supervision of the Attorney General's office in the Supreme Court, are mainly tasked with conduct of investigations, and preparation of indictments.

Most of judgments rendered by criminal courts are subject to judicial review of higher courts.

1.2 Special Courts

There are a number of judicial authorities in the Iranian court system whose jurisdictions are confined to adjudication of specific disputes. The basis for distinguishing between special and general courts is difference in their subject matter jurisdiction. This means that disputes that fall within the competence of special courts cannot be brought before general courts and vice versa, otherwise the action will be dismissed. Special courts, therefore, are different from specialized branches of general courts.

There are multiple special courts in Iran, including family, revolution, military, children and juvenile courts.

1.2.1 Family courts

All disputes concerning family issues, including the marriage agreement, divorce and custody are to be exclusively adjudicated by family courts. Further to purely family matters, family courts have jurisdiction over issues relating to incapacity, guardianship and embryo donation.

Compulsory presence of a female judge in branches of family courts is a unique feature, which makes them distinctive. Accordingly, the female judge opines on the case, and the principal judge is required to take her opinion into account in rendering the final judgment. The principal judge is allowed to deviate from that opinion only if he specifies in writing the reasons for his dissent.

Judgments and awards rendered by family courts might be appealed before higher judicial bodies.

1.2.2 Revolution court

Revolution courts were constituted after the 1979 Islamic Revolution, under extraordinary circumstances and were endowed with an expanded authority and competence to prosecute irregularities peculiar to such

circumstances. Nevertheless, this category of courts has continued to maintain its position in the Iranian court system, despite the fact that the rationale for its establishments arguably no longer exists.

The crimes falling under the jurisdiction of Revolution court are primarily those committed against the State. As such, crimes against domestic and foreign security, armed insurgence and other illegal riots against the government are to be exclusively prosecuted by the Revolution court.

The jurisdiction of the Revolution court extends also to civil matters, particularly those relating to confiscation of private property by the government and infliction of restrictions on private transactions of individuals and legal entities.

Most of the prosecutions of the Revolution court are conducted by two sitting judges. Their judgments and convictions are also mostly appealable before higher courts.

1.3 Administrative Tribunals

Administrative Tribunals are quasi-judicial bodies, meaning that their members and adjudicators are appointed by the Government, rather than the Judiciary. They are established mainly for the purpose of keeping the government accountable.

Administrative tribunals are indeed specialized commissions with limited competence to hear disputes between private persons and state agencies. Under Iranian system, there are numerous administrative commissions and committees tasked with resolving such disputes. Nonetheless, we have confined our review here to certain administrative bodies

An important note here is that claims made by or against State-owned companies fall, in principle, within the jurisdiction of civil courts, particularly those arising out of their commercial operations.

1.3.1 Labor Dispute Resolution Bodies (DRB)

Employer-employee disputes have broad impacts both on industry sectors and on productivity of enterprises. This is why the law requires such disputes to be resolved by specialized bodies consisting of representatives of both employers and employees.

There are two bodies, which have exclusive jurisdiction over disputes arising out of labour relations. These bodies are structured in a hierarchy, meaning that one functions as the first instance and the other is an appellate tribunal.

The so-called Determination Committee is the first instance forum to hear labour disputes. It consists of

three members; representatives of workers, employers and the Ministry of Labour (MoL).

A higher forum is the Dispute Resolution Committee where the awards rendered by the Determination Committee are to be appealed. It has nine members, consisting of representatives of workers, employers and the Government (the MoL, the Judiciary and local governor).

The judgments and awards rendered by the Dispute Resolution Committee are binding and final. However, they may be subject to procedural review of the Court of Administrative Justice.

1.3.2 Customs DRB

Numerous disputes are annually filed with customs DRBs, which mostly involve claims challenging tariffs determination, value of the imported goods etc.

Similar to labour disputes, customs claims are heard by a forum of first instance, and an appellate commission.

All awards and decisions of the customs appellate commission can be brought before the Court of Administrative Justice for its procedural review.

1.3.3 Tax DRB

Adjudication of tax disputes in Iran is one of the most complex forms of litigation in the country and involves multi-fold procedures before a set of first instance and appellate bodies. These authorities have exclusive jurisdiction to hear tax disputes.

Tax Dispute Resolution Board (TDRB), consisting of three members and formed on an ad hoc basis, functions both as the first instance and as appellate body for adjudication of tax disputes. The members OF TDRB include a current or former judge, a representative of Iran National Tax Administration Organization (INTA) and a representative from the Chamber of Commerce or National Association of Official Accountants (NAOA). A feature worth mentioning here is that in the composition of TDRB, representative of the Chamber of Commerce or NAOA is, in principle, chosen by the private party to the dispute.

If unsatisfied with the award taken by the TDRB, the contesting party is able to bring an appeal before TDRB appellate panels, which are formed, under the auspices of the Ministry of Finance and Economic Affairs through the INTA. The review conducted by appellate panels of TDRB concerns merits of cases.

For TDRB to go into session, all three members must be present. The decisions are adopted by simple

majority, provided that the minority opinion is indicated in the award concerned.

The Tax High Council is the body in charge of reviewing the awards and decisions made by TDRB. It has 25 members divided into eight branches, each consisting of three members. All members are suggested by the INTA and appointed by the Minister of Finance and Economic Affairs.

The Tax High Council runs a procedural review. As such, in case it finds an award or judgement rendered against what the law requires, it will refer the case to another TDRB panel.

The Court of Administrative Justice is the highest forum, which hears appeals from the awards rendered either by TDRB panels or by the Tax High Council.

1.4 Appellate Bodies

As indicated above, judgments, awards and orders rendered by civil and criminal courts can be appealed. There are two forums in charge of reviewing these judicial decisions, namely, the Appellate Court and the Supreme Court.

Further, most of decisions made by administrative tribunals are subject to a final, yet procedural review by the Court of Administrative Justice.

These three bodies are introduced below.

1.4.1 The Appellate Court

Appellate courts run a substantive test on judicial decisions of civil, criminal, family and Revolution courts.

Iranian political system, as opposed to federal schemes, follows a monist approach. However, the country is divided into 31 provinces, which are given limited administrative authority. An appellate court is established in each of these provinces, having jurisdiction over all civil, criminal, family and Revolution courts located within their province.

Each branches of appellate court consists of three experienced judges. The decisions of the appellate court, which are made by simple majority, are final and binding upon the parties. Nonetheless, some of the decisions rendered by the appellate court are subject to procedural review of the Supreme Court.

1.4.2 The Supreme Court

The Supreme Court is the highest judicial forum in Iranian judiciary system. The Supreme Court carries

out various functions. It is the highest appellate body, which ensures that the lower courts observe applicable rules of procedure when they render a judgement or otherwise make a judicial decision. It is also the highest authority supervising prosecutors' offices. Further, it is the judicial authority for prosecution of high-ranking government politicians, including the President.

The Supreme Court has three constitutive organs. Branches, General Assemblies and the office of the Attorney General.

Generally speaking, judgments and decisions rendered by appellate courts are subject to a Supreme Court procedural review. In every instance that the Supreme Court overturns a judgment, it refers the case to another court having the same level in the hierarchy.

The Supreme Court is also tasked with judicial assessments of requests for retrial. Further, it is usually the deciding body where there is a conflict of jurisdiction between lower courts.

An important duty of the Supreme Court is to unify differing jurisprudence among the lower courts. In certain instances, where conflicting judgments are issued with regards to similar cases, a General Assembly of the judges of the Supreme Court gather and render an opinion which is obligatory for lower courts to adopt in cases covered by the opinion.

The judges of the Supreme Court are appointed by the Head of the Judiciary who maintains an administrative supervision over the Supreme Court.

1.4.3 The Court of Administrative Justice (CAJ)

The CAJ is the highest public law forum within the hierarchy of administrative tribunals. Indeed, it is a general court, which supervises both decisions of administrative tribunals, and the executive orders of state entities.

Accordingly, the CAJ performs dual functions. First, it is the forum before which all administrative ordinances, executive orders and regulations taken by the Government (i.e. the Executive) can be challenged. This includes decisions of various state organizations, for example, the Council of Ministers, ministries, etc. In this role, the CAJ ensures that these administrative entities have not override their legal authorities in taking such ordinances and regulations. Any individual or private entity might file a petition against the covered regulations and ask for their revocation. In case the CAJ finds an administrative order against the law, it will repeal it. This role derives from the division of powers among the Judiciary, Executive and

Legislative under Iranian public law. Therefore, the decisions of the CAJ in this sense are mandatory for the targeted administrative body, obliging them to cease taking actions in accordance with the challenged regulation.

Second, the CAJ functions as the highest court before which the decisions of various administrative (semi-judicial) bodies might be challenged. In cases where the CAJ finds a decision rendered against the law, it overrules the decision, and either refers the case to the issuing body for a retrial, or it renders a decision in merits itself.



Section 2: Adjudication

Iranian judicial system appears to have been in relatively good conditions in terms of transparency and efficiency especially at higher levels of the court system hierarchy. Iranian courts may still reserve unpleasant surprises at the first instance, but are relatively more reliable at appellate level. In addition, courts are normally under supervision of higher authorities and instances of corruption can be reported and investigated. Adjudication in Iran begins with filing a petition with and bringing the action before competent court. Once the claim is defined and the competent court determined, claimant may file its petition with the office of the court and pursue its claims until a final judgment is rendered and enforced. This Section 2 describes the procedure through which a claim will be adjudicated along with prominent features of Iranian adjudication process.

2.1 Initiation of Claims

2.1.1 Relief and court fees

Statement of the relief sought is one of the essential parts of the petition. It serves three primary functions. First, it determines the competent court to hear the dispute. As stated earlier, there are different courts in Iran, some of which have special jurisdiction to hear a certain set of claims. Further, the value of the relief, as explained below, might be of relevance in determination of the competent forum (e.g. civil claims falling below 200,000,000 IRR are to be dealt with by DRC, and those above this threshold are to be adjudicated by general civil courts).

Second, a court is always bound to what the claimant files with it. This means that if the claimant has not introduced a certain issue in its petition, the court will refrain from addressing it; however, that issue might be of relevance to the dispute. Likewise, the court is obliged to address all reliefs contained in the petition.

Third, the court fees and costs are, in principle, calculated based on the amount and value of relief(s). Therefore, another important function of determining the relief is to show how much, in court fees, the claimant needs to pay for its claim to initiate. In general, there are two types of civil disputes, namely financial and non-financial claims. Financial claims include all disputes that have or could have a monetary value, unless otherwise deemed by the law. As such, a relief for performance of contractual obligations, payment of debt and claims concerning damages are considered financial disputes. Court fees for financial claims are usually a percentage of the value of the relief as stated in the petition, a spectrum ranging from 3 to 5 percent. For non-financial disputes (which

sometimes include claims involving financial aspects, e.g. evacuation of leased estates), a nominal court fee is payable.

2.1.2 Competent court

In addition to subject matter of a given dispute and the value of relief, a court will assess certain rules of jurisdiction, which relate to their territorial (i.e. local) competence for it to assert jurisdiction. The three primary rules are that, in principle, a claimant should bring its dispute before a court where the defendant has its domicile; claims relating to real estate must be raised before a forum where the property is located; and finally, a court located where the crime is (or is supposed to be) committed is competent to prosecute.

The above-mentioned three building-block rules have various and different exceptions especially in the context of family and commercial disputes. In particular, parties to a contract are allowed to choose a 'contractual domicile', which in effect functions as choice of forum clause. This means that disputes arising out of contracts might be adjudicated by a court previously chosen by the parties by virtue of a choice of domicile clause. Further, such disputes might also be raised before a court where the contract either is concluded or is to be performed. These rules often interplay in most of cases, which require a delicate consideration by the court.

2.1.3 Petition

For initiation of any claims (we confine this topic to civil disputes), it is necessary to file a petition with the court. Petitions are to be written in Farsi (the official language of Iran), and in the printed forms provided by the Judiciary.

Without submission of a petition, a court cannot begin the proceedings. This is because the petition must contain a set of vital information concerning claimant and respondent. This information includes the date, name and identity information of the claimant, its address, name and identity information of the respondent, the relief and its value, legal grounds entitling the claimant to a favourable ruling, evidence and claimant's requests for relief. With a few exceptions, if the petition lacks some of this information, it may be rejected at its face, or at least face a deficiency letter. In the latter case, the claimant is required to complete its petition within 10 days after the date of the notice.

Petitions must be signed by claimant. Therefore, legal entities who want to file a petition must have their authorized representative(s) sign it. However, if an attorney files the petition, his or her signature will suffice, provided that the power of attorney is attached to the petition.

In general terms, there are four different categories of petitions, depending on the type of claim and stage of proceedings. The first is petitions filed for initiation of a dispute before a court of first instance. In addition, taking any challenge against appealable decisions requires submission of a petition. Further, third parties interested to get involved in an ongoing dispute need to file a petition with the relevant court.

In addition to petition, there are several other types of requests, which might be asked from a court during the course of proceedings. A number of these requests, which include change of security, production of evidence, provisional measure for preservation/detention of relief etc. might be orally submitted to the court (although provided that a dispute is being already adjudicated). Nevertheless, petitions for initiation of claims, challenging decisions and third-party intervention shall always be in writing and in special forms provided by the Judiciary.

2.2 Adjudication Process

2.2.1 Hearing Sessions

Upon filing a petition with Iranian courts, the petition will be referred to the competent court's office. The court office shall conduct a preliminary examination to make sure the petition is validly submitted before the case is forwarded to the court. The court will review the petition and enclosures and will set the hearing session through issuing an appointment order. The parties to a dispute may appear at the hearing session or send memorandums. However, the judge has the discretion to instruct either of the parties or both to personally appear at the hearing session. If, upon such instruction and inviting the parties to attend the hearing session, the parties refuse to appear at the hearing session and the judge is in a position that is unable to rule on the merits of the case as a result of the parties' absence, the claim(s) shall be dismissed. In addition, the judge may also dismiss the claim(s) in the event that the claimant refuses to attend the hearing session and the judge is not able to rule on the merits by mere presence of the respondent.

2.2.2 Court Decisions

After the hearing session(s) are convened and during the closure of the proceedings, the courts shall issue a decision. If possible, the decision shall be rendered and notified to the parties at the same session upon which the closure of proceedings is announced. Otherwise, the decision shall be rendered and notified within a week upon closure of the proceedings. A decision shall be reflected in a verdict and be officially notified to both parties. Otherwise, the decision is not

enforceable. Iranian court decisions are divided into two sub categories: (i) court judgments; and (ii) court orders. Judgments are those court decisions, which rule on and resolve the merits of the case either fully or partially. Other types of court decisions shall be categorized as orders.

Iran is a civil law country. As a result, judges shall conduct the proceedings and issue their judgments in accordance with the provisions of Iranian law. As a general rule, a judge cannot refuse to issue its judgment relying on a gap or silence in the relevant laws and regulations. In such a case, the judge shall resolve the case and issue its judgment in accordance with Sharia law (i.e. Islamic principles). The judges shall not issue a general judgment and the judgment shall deal specifically with the subject matter of the dispute and resolve the claims thereof. Court judgments are final and may only be reviewed, appealed, or if necessary overturned in instances provided for in the laws and regulations including the Iranian Civil Procedure Code (hereinafter referred to as the "CPC") itself.

2.3 Review and Appeal

Several stages have been envisaged under CPC for substantive and procedural review of awards and judgments. These mechanisms have been classified as (a) Motion for new Trial (with respect to awards issued in absentia); (b) Appeal to the court of appeals (c) Appeal to the Supreme Court; (d) Retrial; and (e) Third Party Objection.

These mechanisms will be briefly reviewed hereunder.

2.3.1 Motion for new Trial

Motion for New Trial is an available remedy when the judgment has been issued in absentia and in the absence of actual notification to the absent party. A motion leads to reinvestigation of the claims by the same court that has issued a judgment. This remedy is to protect the rights of a party that was unaware of the time of proceedings and could not as a result, participate in court sessions and defend its case. The time period available for application for this motion is 20 days post issuance of an award for residents of Iran and two months for individuals residing abroad. However, filing a request for appeal during this period amounts to waiver of the right to recourse to Motion for New Trial. The time period for filing an appeal, in case the award in absentia has been issued by a court of first instance, and in case a request for Motion is not submitted, begins after the expiry of this time period.

A request for Motion should be submitted to the court that has issued the award in absentia, which could be a court of first instance or a court of appeal.

As long as the time limit for motion has not expired, an award in absentia cannot be enforced. The respondent in a motion does not have the right to file a counter-claim.

2.3.2 Appeal

Appeal is a substantive review of an award issued by the court of first instance. The authority for investigating a request for appeal is the court of appeal based in the center of province.

Appeal is not an available remedy for all issued judgments and orders. A request for appeal could be filed only for certain types of awards and orders including:

- Awards in financial claims where the relief sought exceeds IRR 3,000,000;
- All awards in non-financial claims;
- Awards relating to subsidiary claims as long as the main claim is appealable; and
- All court orders putting an end to a dispute.

Some awards cannot be appealed including:

- Awards issued based on a confession of the losing party;
- Awards issued based on the opinion of an official expert;
- Awards where the parties had waived their right of appeal; and
- Awards pertaining to cases when the law has excluded the possibility of appeal.

The base for submitting a request for appeal could be any of the below:

- A claim regarding non-validity of grounds invoked by the court;
- A claim regarding lack of legal grounds for witnesses;
- A claim that the judge did not take all or part of evidence into account;
- A claim regarding lack of judge's or court's competence;
- A claim regarding non-compliance of award with law or Sharia.

An appeal is a substantive review of the case by a higher authority. Once an appeal proceeding begins, the court of first instance ceases to have any authority.

In addition, enforcement of an award to which a request for appeal has been filed is suspended. No new claims can be added at the stage of appeal and the review is limited only to the award and initial claims of the parties.

The time period for an appeal request is 20 days for residents of Iran and two months for parties residing abroad upon issuance of an award in court of first instance. A request for appeal could be filed either to the issuing court or to the court of appeal. In either case, if the request is rejected, objection to such a decision is submitted to the court of appeal.

2.3.3 Appeal to the Supreme Court

The Supreme Court is the highest judicial authority within the Iranian legal system. According to Iranian constitution, it is the authority competent to supervise rule of law in the judiciary. An appeal could be filed to the Supreme Court with respect to a final judgment, be that issued by a court of first instance or the court of appeal.

As far as decisions of the court of appeal are concerned, only orders ending the proceeding and awards of non-financial claims can be appealed in the Supreme Court.

However, as far as final awards issued by court of first instance are concerned, in financial disputes whose relief exceeds IRR 20,000,000 as well as all orders ending the proceedings can be appealed in the Supreme Court.

The Supreme Court does not conduct a comprehensive review of the merits; rather its mandate is limited to ensuring compliance of the issued award with Iranian laws and Sharia. The Supreme Court is not competent to issue an award on the substance and if it decides to overrule the award, it returns the case to the court of first instance for repeat of proceedings.

The Supreme Court will overrule the award in case it ascertains the existence of any of the following grounds.

- Non-competence of the issuing court;
- Non-compliance with mandatory laws;
- Contradictory awards;
- Conflict between evidence and award;
- Misinterpretation of contract; and
- Non-accuracy of contents of award.

If the Supreme Court does not find any of the grounds mentioned above applicable, it confirms the decision, making it final.

2.3.4 Retrial

Retrial is an exceptional method of judicial review and a request for retrial can only be filed with respect to final awards to the authority that has issued the award. The time limit for filing a request for retrial is 20 days and 2 months for Iranian residents and individuals residing abroad respectively. If a request for retrial is accepted, the dispute will be heard again in the same court that has issued the award.

A request for retrial is accepted in case any of the below is ascertained.

- The award is issued with respect to a subject not claimed by claimant;
- The relief granted exceeds the relief sought;
- Contradictions in the award;
- Contradictory awards;
- Deception and fraud;
- Proof of validity of a document;
- Proof of forgery of documents; and
- Manifest contradiction to Sharia.

2.3.5 Third Party Objection

Third party objection is also an exceptional means of judicial review. No time limit has been set for third party objection, but such objection is accepted only before the enforcement of award.

The third party must be a beneficiary in the case.

2.4 Contingencies

Contingencies under Iranian law include additional claims that might be brought during a proceeding. The most important contingencies are enumerated and briefly explained below.

- **Additional Claim (a demande additionnelle):** this is a claim brought by claimant in addition to the main claim. In order for the additional claim to be brought simultaneously with the main claim, it must share its origin with the main claim.
- **Counterclaim:** A counter claim is a claim initiated by the defendant against claimant. A counter claim could be brought against counter- respondent until the end of proceedings and before a final award is issued.
- **Third Party Intervention/ Impleader:** Third parties may initiate a claim against one of the two parties to the dispute in which case, the claim will be decided by the same court as long as such a claim shares the same origin

with the main claim between claimant and respondent. It is also possible for any of the two parties to implead a third party into the proceedings.

2.5 Expedited Proceedings

Expedited proceedings under Iranian law include injunctive relief and provisional measure for preservation or detention of relief.

2.5.1 Injunctive Relief

An injunctive relief could be requested from the court competent to hear a dispute prior to, at the same time as or after filing a petition to the court for the main claim. Several principles govern issuance of provisional measures by the court including:

- Interim measure in an ancillary issue: in case an injunctive relief is filed before filing a petition, the lawsuit must be initiated no later than 20 days after filing injunctive relief.
- The requested measure must be different from the main claim: the injunctive relief cannot be completely the same as the main claim or otherwise the court would be issuing a premature judgment. In many cases, an injunctive
- Interim measures are subject to provision of adequate security by the applicant:
- It can only be issued in urgent situations: It is the applicant that must prove the urgency of the matter and the court should decide whether the requirement of urgency is met or not.
- It is not annulled after issuance of a decision by court of first instance: According to CPC, the injunctive relief will be automatically annulled after issuance of a final award ruling in favor of the applicant.

2.5.2 Provisional measures for detention and preservation of relief

Under Iranian law, another category of expedited proceedings is provisional measures for preservation and detention of relief. Such provisional measures are sought to preserve the relief and not to allow the respondent to destroy, transfer or hide the relief. In some instances, ordering provisional measures require provision of security by applicant and in some cases, such security is not required.

In case, the request is based on an official deed; the request is based on negotiable instruments; and when the relief is prone to damage or destruction, the courts

do not order the applicant to provide security. In other situations, the courts may order provisional measures subject to receipt of adequate security from applicant.

The main effect of receiving an order of preservation or detention of claim for the applicant is that it creates a priority right for applicant over other creditors. This is particularly important because if respondent becomes insolvent at the time when the final award is issued, the applicant will have priority over the preserved belonging.

2.5.3 Preservation of evidence

A request for preservation of evidence could be made orally or in written format. Such request could be made before initiation of court proceedings or after a petition is filed with court. Such request must be sought from the court in whose jurisdiction the evidence in danger of elimination exists. In case a request for preservation of evidence is sought before a claim is brought against the court, a formal petition must be submitted, whereas in case a dispute is being processed and the evidence exists within the same judicial jurisdiction, it suffices to hand a written request to the court.

2.6 Compromise

The parties to a dispute can always reach a compromise, which could happen before a petition is filed with the court or afterwards.

2.6.1 Compromise before initiating litigation

Anybody can ask the court of first instance to invite its counter-party to court for compromise.

Once the application for compromise is received by the court, it invites the other party, through an official court notification, to participate in a meeting to reach a compromise. The application fee to be paid for a request of compromise is equal to an application for a non-financial petition.

2.6.2 Compromise after initiation of litigation

A compromise can be reached at any stage of proceeding before a final award is issued in the court of first instance or in an appellate body.

A compromise could also be reached by the parties in a notary public, in which case an official compromise deed is executed. Such compromise deed could be invoked before the court. In case the parties reach a compromise during proceedings, an award embodying the parties' compromise is issued. No appeal can be filed in any authority once an award is issued based on a compromise. A compromise award needs to undergo the same procedure for enforcement as ordinary awards if either of the parties do not voluntarily comply with it.



Your Dedicated Team



Navid Rahbar-Sato

Managing Partner

+98 912 803 3030

n.sato@elitepars.com



Nima Nasrollahi

Partner

+98 912 043 3746

n.nasrollahi@elitepars.com



Mina Sarang

Counsel

+98 912 205 9144

m.sarang@elitepars.com



Mohammad-Reza Narimani

Senior Associate

+98 912 931 4031

m.narimani@elitepars.com

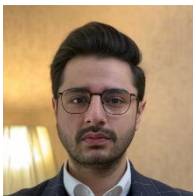


Arash Shahrokhy

Senior Associate

+98 912 518 7554

a.shahrokhy@elitepars.com



Hesam Saeedi

Associate

+98 901 324 5923

h.saeedi@elitepars.com

Elite Pars has a simple, yet profound purpose: to be the place where trust, creativity, enthusiasm and hard work unite. We strive to bring truly elite legal services through care, passion and dedication. We listen carefully to our clients and draw on our broad practice capabilities to transform their challenging difficulties to success stories. We are committed to improve the well-being of the people around us and nurture the lives we touch. For the past several years, our team has had a leading role in navigating various industry participants into the Iranian market.

Contact Your Dedicated Team!