

**ELITE PARS**

LAW FIRM

*At a Glance Series*

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# IRANIAN CAPITAL MARKET

VITAL LEGAL ASPECTS

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## Intro



Investment in Iranian capital market requires a thorough understanding of its legal structure. In this edition of our 'At a Glance Series' we aim at defining key concepts necessary for persons wishing to invest in Iran's capital market. As of July 2018, the value of Iran's capital market exceeds more than \$1 trillion.

Primary laws and regulations regarding foreign investment in securities and exchange market of Iran are Foreign Investment Promotion and Protection Act, 2002 (FIPPA) and the Regulations Governing the Foreign Investment in the Exchanges and Farabourse Securities Markets, 2010. By ratification of Securities Market Law in November 2005, new institutions were introduced to securities and exchange market. These institutions include:

- **The High Council for Securities and Exchanges (Council):** The Council is the highest authority in securities market and is in charge of adopting policies to promote development securities and to control and supervise implementation of laws and regulations. The Council issues licenses for foreign investors to trade in Iran's capital market. The Council is also in charge of admitting foreign securities in Iran's securities market. The Council appoints the members of the board of directors of the Securities and Exchange Organization.
- **Securities and Exchange Organization (SEO)** is a non-governmental entity issuing regulations necessary to implement Securities Market Law and functions as a supervisory authority. SEO issues licenses for brokers, investment advisors, rating agencies, mutual funds, investment companies, investment banks and pension funds. It also supervises foreign investors' investment. SEO also registers and issues the permission for public offering in the securities market and shall supervise the whole process. SEO supervises activities of all players in capital market of Iran.

SEO supervises the following markets:

- Tehran Stock Exchange (Primary equity market)
- Farabourse Securities Market (market for bonds for SMEs)
- Iran Mercantile Exchange (commodity market)
- Iran Energy Exchange (petroleum, LNG and electricity)

In addition to the above mentioned laws and regulations, Laws for Development of New Financial Instruments and Institutions to Facilitate Implantation of General Policies of Principle 44 of Iran's Constitution (2009), Law Pertinent to Principle 44 of Iran's

Constitution (2008), Anti money laundering law (2008), the Law on Administration of Free Industrial and Trade Zones (1993, revised in 2010) and the Law on Issuance of Participation Certificate (1997) regulate the capital market in Iran (mainland and free trade zones).

## *Foreign Investors: Definition and Types*

According to the laws and regulations governing the Iranian capital market, a 'foreign' investor will include:

- Non-Iranian individuals;
- Legal entities incorporated abroad;
- Legal entities incorporated in Iran in which non-Iranian individuals and/or foreign legal entities constitute majority shareholder;
- Mutual funds with more than 40 percent non-Iranian unite-holders.

## *Who can invest in Iran's Capital Market?*

Any non-Iranian natural persons and legal entity or Iranian national using capital with foreign origin can invest in Iran's capital market. Non-Iranian natural persons and legal entities in some circumstances can acquire more than 50% of stocks or shares of an Iranian entity. In such case, such company can be considered as foreign investor as well. The regulation also allows establishment of foreign mutual funds.

Furthermore, Iranian individuals and entities using foreign-originated capital might be deemed foreign investors.

Current regulations categorize two types of ‘strategic’ and ‘non-strategic’ foreign investors. Foreign strategic investors are those investors who would like to **own more than 10 percent of shares** of a company or after purchasing the shares will have **a seat in the board** of the company.

## Trading License

Investment in capital market requires specific trading license from SEO. Trading license shall be issued by the SEO. The trading license allows foreign investors to sell, buy or trade securities in every exchange or OTC market. Trading license issued by SEO is different from licenses issued by the Organization for Investment, Economic and Technical Assistance of Iran (OIETA). All transactions of securities shall be exclusively conducted through registered brokers and nationality of brokers shall be Iranian. The license is issued within seven working days which is a much shorter duration than the time period required for issuance of a FIPPA license. The license shall be delivered to one of registered brokers and SEO ultimately issues the trading license.

There are other benefits associated with obtaining an SEO Trading License:

- Opening local or foreign currency bank accounts;
- Foreign currency transfers to/from Iran as well as exchanging them to IRR;
- The Central Bank of Iran is committed to provide currency for the foreign investors to repatriate the original investment, capital proceeds and cash profits with the market exchange rate.

## Repatriation of Investment

Another important benefit of a FIPPA License is a **guarantee** to the investor with regards to repatriation of the original investment, capital proceeds and cash profits.

SEO regulations subject the foreign investor to CBI exchange regulations and the CBI might restrict transfer of funds in foreign currencies.

*In addition to limitations of foreign investors in banking and insurance or other sensitive sectors, FIPPA imposes certain restrictions for foreign investors. Article 2 (d) of the Act provides that foreign investors' share at the time of issuance of license cannot not exceed 25 percent in each economic sector and 35 percent in each field (sub-sector).*

Moreover, these regulations provide for “*special circumstances*” where the CBI can require the amounts to be repatriated in installments (one year in three installments).

## *Tax Regime*

As per currently in force laws and regulations, transfer of listed shares or pre-emptive rights are subject to 0.5 % transaction value while the tax rate for non-listed shares is 4% nominal value.

There are important tax exemptions applicable to transactions in the Iranian capital market. They include:

- Transactions of other listed securities such as SUKUK
- Dividends and interest relating to listed securities
- Market makers’ transactions
- All incomes of the mutual funds and ETFs and transactions of their units

In addition, transaction services & settlement of securities in TSE are exempt from value-added tax. Furthermore, listed companies in TSE shall benefit, with the approval of SEO, from 10% CIT exemption (5% for listed companies in Iran Farabourse). Finally, listed companies shall enjoy a tax exemption in double amounts provided that they have at least 20% free-floating shares at the end of their fiscal year.

## *Anti-money Laundering Regulations*

Iran enacted in 2008 the Anti-Money Laundering Act. In accordance with this Act, the High Council of Anti-Money Laundering was established. The High Council approved six different instructions in 2011. Pursuant to these instructions, an anti-money laundry officer is appointed in the SEO and is the contact person in the capital markets in order to supervise the implementation of applicable laws and regulations and investigate possible violations thereof.

Moreover, all exchanges and financial institutions have to appoint an officer in charge of implementing anti-money laundering laws and regulations. These officers are obliged to regularly report to the SEO and notify any instances of violations to the SEO officer. Upon the receipt of the reports from its officer in the SEO, the High Council will take necessary actions in order to remedy the violations

## *Disclosure of Information*

Issuers subject to Iranian capital markets regulations must disclose the following information:

- Audited Annual Financial Statements and annual reports;
- mid-year financial statements;
- board of directors' and auditor's report to the general meetings; and
- any information having a material effect on the securities price & the investors' decision-making (together “**Material Information**”).

Material information are:

### **1 Events affecting activities, financial status and outcomes of issuer's performance:**

- Suspension or cessation of issuer's activity in whole or in part;
- Change in issuer's main type of activity;
- Acquisition or disposal of other companies shares directly or indirectly;
- Lack of ability to fulfill issuer's obligations and contracts;
- Specifications of investment project; and
- Approval, suspension or revocation of the permit or concession for business activities.

### **2 Decisions / circumstances affecting issuer's capital structure and funding resources**

- Increase or decrease in issuer's capital or controlled companies;
- Issuance of new securities;
- Change in the issuer's policy of profit distribution;
- Factors affecting other constituents of capital structure; and
- Borrowing or repayment of large amounts compared to issuer's financial operations turnover.

### **3 Change in issuer's ownership structure**

- Material changes in issuer's ownership structure or change of control in the company; and
- Major change in issuer's structure like merger, acquisition and composition.

#### 4 Other material information affecting the issuer's securities and investors' decisions:

- Transfer or conveyance of machinery and equipment so as to change issuer's structure;
- Material sale or purchase of issuer's assets;
- Collateralization or redemption of collateral of a considerable portion of issuer's assets,
- Creation or nullification of material contingent debts; and
- Material increase or decrease in the issuer's costs and incomes in a foreseeable future;
- Entry of material damage arising out of natural disasters.

Report	Deadline
Annual individual and consolidated financial statements (Audited)	10 days before the general assembly and up to 4 months after the end of the fiscal year
Unaudited Interim Financial statements	30 days after the end of each quarter
Semiannual unaudited financial statements	Within 60 days after the end of the period of 6 months
Semiannual audited financial statements	Within 75 days after the end of 6 months
Annual unaudited financial statements	Within 60 days after the end of the fiscal year
Annual Management Description and analysis Report, Reviewed by Auditor	10 days before the general assembly and up to 4 months after the end of the fiscal year
Interim Management Description and analysis Report	Within 30 days after the end of each quarter
semiannual Management Description and analysis Report, Reviewed by Auditor	Within 60 days after the end of the period of 6 months

## *Dispute Settlement in Capital Market*

There are alternative dispute settlement mechanisms such as mediation in Association of Brokers, market makers and etc. If investors cannot resolve their disputes with their opponent, they can raise their dispute with the Board of Arbitration. The Board of Arbitration is composed of three members one of which is appointed by the Judiciary Head from among experienced judges and two other members shall be appointed by the High Council from among the financial and economic professionals as recommended by the SEO so as to rule on disputes.

Any disputes between investors and brokers, market-makers, broker/dealers, investment advisors, issuers and other concerned parties arising out of their professional activities can be raised before the Board of Arbitrators and awards issued by the Board shall be final and enforceable.

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!