

ELITE PARS

Law Firm

At a Glance Series

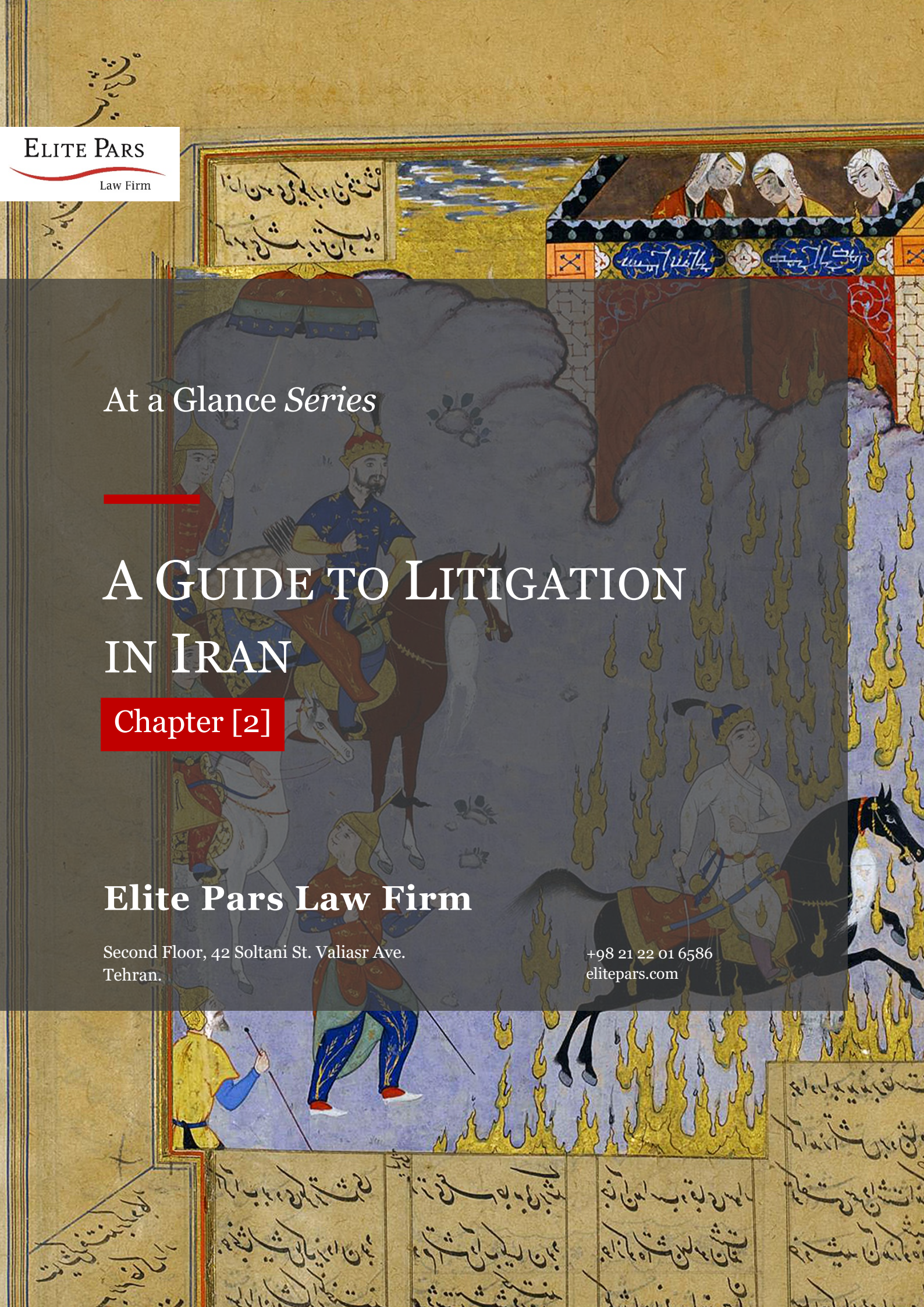
A GUIDE TO LITIGATION IN IRAN

Chapter [2]

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.

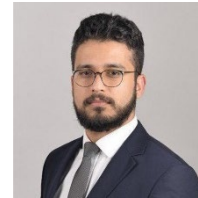
Authors



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: Procedural matters.....	4
1.1 Challenges.....	4
1.2 Limitation periods.....	4
1.3 Notifications	7
Section 2: Evidence	9
2.1 Types of evidence.....	9
Section 3: Enforcement.....	11
3.1 General Conditions for Enforcement of Awards.....	11
3.2 Steps for enforcement of award.....	11
3.3 Enforceability of judgments rendered by foreign courts.....	11
Your Dedicated Team	12

1.1 Procedural matters

1.2 Challenges

Under Iranian law, several procedural challenges could be made on the part of respondent in defence, which, if accepted, could result in court orders temporarily or permanently ceasing the proceedings or change of competent court. The most significant challenges are listed below followed by a summarized description.

1.2.1 Jurisdiction challenge

This challenge is based on Claimant's objection to the jurisdiction of the courts (see Section 1) and must be made until the end of the first hearing session. Successful challenge of court jurisdiction could result in referral of the case to the competent authority. This challenge does not result in cessation of the case. Rather, it prolongs the proceedings.

1.2.2 Existence of a parallel proceeding

This challenge can be made if a similar case between the same parties is simultaneously being decided in another court. Successful challenge would result in unitization of proceedings.

1.2.3 Capacity or title of Claimant

This challenge can be made if the Claimant does not have the required capacity to initiate the claim or if the person initiating the claim does not represent the claimant i.e. lacks title. The latter challenge could only be made if the person initiating the claim is not a principal. Successful challenge of capacity and title could result in a court order rejecting the lawsuit.

1.2.4 Res judicata challenge

The challenge could be made if an award between the parties on the same subject matter has been issued by the same court or a different court in the past, which has led to the issuance of a final award.

1.2.5 Challenging claimant's interest and benefit

This challenge can be made if respondent alleges that claimant is not a beneficiary i.e. it would not benefit from a final award if its requested relief were granted.

1.2.6 Challenging the competence of judge

The judge could be challenged in case of existence of circumstances leading to his lack of impartiality and independence. Instances include situations where the judge has an interest in the case through having some links with one of the parties to the dispute.

1.2.7 Challenge of security for unmeritorious claim

This challenge could be made to deter claimants from initiating unsubstantiated claims in the court. Once the required security is determined by the court based on an estimation of the costs that respondent may incur, a time limit is provided for claimant to provide the security. In case claimant refrains from providing security, the court will reject the claim. Challenge of security for unsubstantiated claims cannot be made if the basis of the claim is an official deed or a negotiable instrument.

1.2.8 Challenge of Security for costs of foreigners

This challenge can be made if the claimant is a foreigner at the request of respondent. Foreign claimants will be required, upon request of the Iranian respondent, to post security up to 100% of the amount in dispute for potential costs of the Iranian respondent. The judge has full discretion to decide upon such security.

1.3 Limitation periods

Limitation periods are an important aspect of litigating in Iran. Very occasionally, parties to a dispute waste their time and money when they fail to comply with time limits stipulated in the CPC. While the first sub-section deals with general rules of the CPC with respect to time limits, the second sub-section summarizes specific time limits stipulated in the CPC.

1.3.1 General rules applicable to limitation periods under the CPC:

The general rules of limitation periods provide guidance on how these time limits shall be calculated. As a general principle when such period commences from the date of a notification, the day on which the notice is served and the day on which the party acts to stop the limitation period from running shall not be counted toward the calculation of the limitation period. The general rules foreseen under the CPC are as follows:

- Necessary time limits not provided for in the CPC shall be stipulated by the court with due consideration of the facts and circumstances of the case at hand and the criteria of reasonableness;
- In case the latest day of the limitation period coincides with an official holiday, the time limit will not expire until the first business day after the holidays;

- When several persons are required to comply with a limitation period, the longest time limit shall apply to every party involved; and
- The court may only extend a limitation period once, provided that the limitation period is not of a statutory nature and is set by the court itself. This provision shall not apply in the event of a force majeure.

important issue to note is that failure to comply with statutory limitation periods in Iran will bar neither the claim nor the remedy. Thus, the party who failed to comply may reinitiate another court proceeding.

1.3.2 Specific limitation periods:

The most significant limitation periods in the Iranian CPC are summarized in tabular format as follows. An

Subject	Limitation Period	Triggering event	Description	Effect of non-compliance
Remedying defects of a petition	Ten (10) days	Serving a notification from the court office identifying the flaws.	A petition shall fulfil certain criteria to be valid. These criteria defer depending on the stage of the court proceedings. In cases when the respective petition fees and stamp duties are not paid or the petition does not contain details required by the CPC, claimant or his attorney shall furnish the missing information and remedy the inadequacies.	The petition will be rejected pursuant to an abatement of action order.
Filing an entangled claim	one (1) month	Filing the initial claim	In case, deciding upon the merits of a case is subjected to and conditional upon resolving another claim, which falls within the jurisdiction of another court, claimant shall initiate the respective court proceedings of such other claim before the court decides upon the initial claim	The initial claim will be dismissed
Time frame between the hearing session and the date on which the notification informing the parties of the hearing session is served	The time shall not be less than five (5) days. This time frame shall be extended to two (2) months in the event that either of the parties is residing outside of Iran.	N/A	N/A	N/A
making challenges and/ or objections	The end of the first hearing session.	N/A	The court will not decide on the merits of the case until the challenges or objections are dealt with. This limitation period shall not apply in cases	The court will rule on the merits of the case and ignore such challenges and/ or objections.

Subject	Limitation Period	Triggering event	Description	Effect of non-compliance
			where the ground for such challenge or objection is raised afterwards.	However, the court shall, as a side matter, state its opinion with respect to such delayed challenges and/ or objections.
initiating court proceedings when provisional measures are granted	(i) ten (10) days for an interim measure for preservation or detention of the relief or (ii) twenty (20) days for an injunctive relief.	The date on which such provisional measure is granted	When a claimant has asked the court, through expedited proceedings, to grant a provisional measure prior to bringing its main claim, there are certain time limits within which the claimant shall initiate the court proceedings.	The court will revoke the pertaining provisional measure if so requested by the opposing party.
Objecting a provisional measure	ten (10) days	Serving the notice to the respondent	Respondent shall be notified of the grant of an interim measure for preservation or detention of the relief.	The provisional measure shall remain in force until the final judgment is rendered.
claiming damages incurred as a result of the interim measure for preservation or detention of the relief	twenty (20) days	the final judgment is notified	If, pursuant to a final judgment claimant's claims are rejected for any reason, respondent shall be allowed to claim damages.	In order to obtain an interim measure for preservation or detention of the relief, claimant shall provide security for potential damages. Respondent's failure to claim damages will release the security.
Defending a claim for damages incurred as a result of the interim measure for preservation or detention of the relief	ten (10) days	The claim is notified	N/A	The court will decide on the claim without taking claimant's defences into consideration
Impleader	until the end of the first hearing session	N/A	N/A	The impleading party is bared from bringing the third party into the action
Filing petition for impleader	three (3) days	the end of the first hearing	N/A	The impleading party is bared from bringing the third party into the

Subject	Limitation Period	Triggering event	Description	Effect of non-compliance
		session		action
Submitting the original document in case of a falsification claim	ten (10) days	Serving a notification informing the falsification claim	If either of the parties claim a document to be falsified, the opposing party shall submit the original document to the court to be examined	the document will be declared inadmissible
Filing a motion for new trial in case of an award in absentia	(i) twenty (20) days if the requesting party is domiciled in Iran; and (ii) two (2) months in the event that the requesting party is domiciled outside of Iran	being notified from the award	In case an award is rendered in absentia, the respondent may file a motion for new trial. The absent party may file its motion for new trial notwithstanding the limitation periods if it can establish that its failure to meet the deadlines has been due to a justifiable excuse.	The absent party will be deprived from its right for a motion for new trial. He will still be entitled to appeal.
Appeal (either in appellate court or the Supreme Court)	(i) twenty (20) days if the appellant is domiciled in Iran; and (ii) two (2) months in the event that the appellant is domiciled outside of Iran	The appellant has been notified from the judgment.	In cases when the judgment has been rendered in absentia, the respective limitation period for appeal will be triggered only after the respective time limits for a motion for new trial has lapsed.	In case the appeal is in the appellate court stage, the appellant may still appeal to the Supreme Court. In case the appeal is in the Supreme Court stage, the judgment will be final and binding.
appellee's statement of defense	ten (10) days	the respective notice is served	N/A	The appellate court will rule on the merits of the case

1.4 Notifications

Notices and serving notifications is an integral element of a fair proceeding without which parties' right to present their cases will be endangered. Notifications are in essence an inevitable part of litigating in Iran and the pertaining mandatory provisions shall be complied with at all stages. Almost every court decision shall be notified to the parties and as discussed above, a major bulk of limitation periods will be triggered as of the date of notification. In addition, no court decision may be enforced unless it is properly notified to the parties. The CPC provides for two types of notifications: (i) actual notification; and (ii) legal notification. Actual notification occurs when the notification is physically served to the actual recipient.

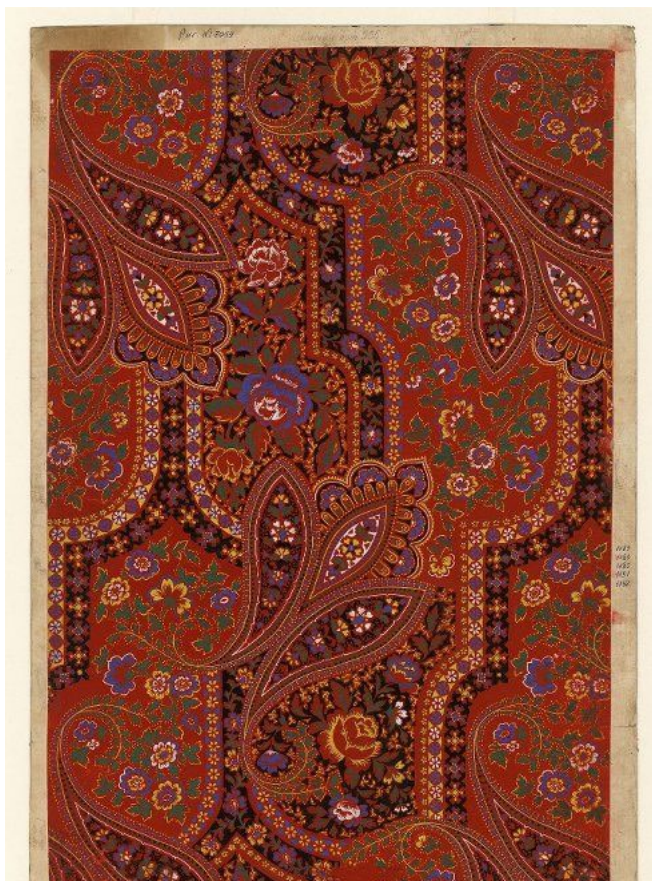
In case the recipient is a legal entity, the criterion for actual notification will be satisfied upon serving the notice to the managing director or the signing authority of the entity. The CPC requires the notification official to serve the notices within two days upon issuance of the notification by the court's office. Any other method of notifying a party other than the actual notification, shall be considered deemed notification or legal notification. Legal notification occurs when the party is not available or cannot be accessed. Currently, judicial notifications are being served both electronically via official notifications website and in hard copies by notification officials. To be able to receive electronic notices, individuals and

legal entities can register in the official notifications website.

Instances of legal notification to individuals include:

- Recipient's refusal from taking delivery of the notice;
- Actual notification to relatives who are mature enough and have the legal capacity to understand the content and take delivery of the notices; and
- Publishing a notice in widely circulated newspapers for recipients with unknown domicile;

Legal notification to legal entities will take place when the notification is served at the registered address of such entity regardless of actual presence at the registered address.



Section 2: Evidence

A very significant aspect of litigation in every legal system is how it treats evidence to be submitted to a court of law. After all, the court needs to assess what is produced by the parties to a dispute according to certain principles and rules. The outcome of every litigation, therefore, depends to a great extent on what the rules of evidence are and how the parties maneuver through them. It is true that even meritorious claims might fail to succeed absent adequate and admissible evidence.

As a fundamental and common rule, Iranian law requires claimant to bear the burden of proof. This means that from the existence of contractual obligations to making payments must be proved. Similarly, criminal law presumes everyone accused of committing a crime to be innocent until his or her guilt is proven.

Iranian law recognizes a set of proofs to be eligible for submission to court. Yet there is another set of events, situations and legal rules, which have evidentiary value in certain cases and have relevance to proof of the claim. The latter group mostly consists of different legal assumptions.

2.1 Types of evidence

The laws of Iran take a dualist approach as to the types of evidence; i.e. as to what constitutes admissible proof on which the court should rely in rendering its decision. In civil cases, in principle, the court should be confined to those means of proof as provided for in the law. By contrast, in criminal cases a judge may go beyond these evidences to take into account whatever that might be of evidentiary value (e.g. recorded phone calls).

The types of evidence, which is explicitly accepted by the law, are admission, deeds, expert opinions, testimony and oath.

It is worth mentioning that content recorded or otherwise stored on electronic media might also have evidentiary value provided that they meet the requirements of the law.

2.1.1 Admission

Admission is one individual's statement against him or herself for the benefit of another person. Such statements might be oral or written. In any event, the crucial element for an admission is to contain an adverse statement against the person making it. Further, an admission is admissible only where the individual has legal capacity and the intention to make the admission. Statements, which are simultaneously against the individual making it and another person,

do not qualify as admission (e.g. a bankrupt's statement which are prejudicial to his or her creditors' rights and benefits).

2.1.2 Deeds

Deed is considered every piece of writing, which can be used to raise or defend a case. As such, for any deed to be admissible, it must be signed to satisfy the attribution requirement.

The law defines two different categories of deeds, namely unofficial documents and official deeds. Official deeds, which by and large have the highest evidentiary value, are those documents executed by or before public officials, provided that the official acts lie within the competence conferred to him or her by the law. Further, certain procedural requirements must be observed for a document to be admissible as an official deed.

In principle, no other proofs can challenge official deeds, as they cannot be ruled out unless they are proved to be forged.

2.1.3 Testimony

Testimony is a very common proof used in Iranian courts. The Sharia law gives a significant weight to testimonies and as such, the courts are often inclined to take a flexible approach in their treatment.

Under Iranian law, verbal testimonies must be given only before a court of law in presence of a sitting judge. This is because both the witness and his or her claims must meet various conditions for a testimony to be qualified as admissible testimony. Inter alia, the witness must have directly seen or heard the event he or she intends to give a testimony about; the witness must have legal capacity and must not have any conflict of interests with parties to the dispute etc. Further, even if an individual qualifies as a witness, his or her contentions need investigation in terms of authenticity and reliability. These all are judicial matters, which need to be examined and established by a judge.

Evidentiary value of testimony significantly varies in different cases. Accordingly, there is a spectrum of cases in which the claimant could make its case with a simple testimony of a single man, and some in which testimony is not admissible.

There are also various rules applicable to witnesses. In any event, whenever each of the parties to a dispute rely on testimony to make their case, they shall introduce their witnesses to and have them appearing before the court. This way, the court should assess the qualifications required for giving testimony. Further, there are many provisions of law allowing the party against whom a witness has given testimony to challenge the witness.

An important point is that written testimonies are not be considered deeds, and only have the authenticity of verbal testimonies. Therefore, a testimony being written still needs to meet the requirement for admissibility of verbal testimonies.



Section 3: Enforcement

The final and arguably the most important stage upon issuance of an award is enforcement. The procedure for enforcement of civil awards as defined in the Act Regarding Enforcement of Civil Awards is different from that followed for criminal awards. This guide only briefly explains the former. Several classifications can be made as far as enforcement of award is made. First, enforcement of award can be classified into enforcement of final awards and temporary enforcement of non-final awards. Second, enforcement can be classified taking into account the place of issuance of award. In particular, enforcement of awards issued in Iran is different from enforcement of awards issued by foreign courts. Finally, distinction can be made between enforcement of awards issued by different judicial authorities.

3.1 General Conditions for Enforcement of Awards

Several prerequisites must be established for an award to be enforceable.

- Finality of award: generally, in order to enforce an award, it must have become final and binding or an order for its temporary enforcement must have been issued.
- Notification to losing party: the award must have been notified to the losing party or his/her counsel before it can be enforced. As a general rule, an award is notified to both parties upon issuance.
- Specificity of the subject of the award: in order for an award to be enforceable, the subject matter must enjoy a certain degree of specificity.

3.2 Steps for enforcement of award

A request for enforcement of award is submitted to the court office, where the award was issued. The office ascertains the existence of the prerequisites. Upon verification, the office sends the order to the court where an enforcement order is issued. The losing party has 10 days to voluntarily comply with the award and attachment of his/her property can occur only after expiry of this ten-day time limit.

Once an enforcement award is issued, properties of the losing party can be attached to cover the award as well as costs incurred during enforcement. If the losing party is a government employee, it is possible.

3.3 Enforceability of judgments rendered by foreign courts

Foreign judgments are not recognized as if they were automatically enforceable in Iran. On the contrary, it is necessary to go through a specific procedure for the recognition of judgments issued by foreign courts in Iran. This is possible, provided that the foreign judgment meets the following criteria:

- The subject matter does not fall within the exclusive jurisdiction of Iranian courts;
- There is a reciprocity treatment between Iran and the country which courts issued the ruling;
- The judgment issued by the foreign court is not contrary to the public policy, morality and mandatory Iranian laws; and
- Iranian courts have not ruled on the same subject matter in a different way than the foreign judgment does prior to the foreign judgment.

As to the procedure of enforcement, which should be sought simultaneously with the recognition, please note that:

- The winning party must make an application for the recognition and enforcement of a foreign judgment to the courts of the place of residence of the losing party or to the courts in Tehran;
- The Iranian court, after assessing and ascertaining the legal grounds, will issue an order for enforcement of the foreign judgment;
- The Department for Execution of Court Judgment will take an action for execution of the relating judgment pursuant to the rules and procedures laid down by the law for enforcement of court judgments; and
- The procedure for recognition and enforcement of foreign judgments are shorter than normal civil procedures. Recent experience shows that this procedure may last between 150 and 250 business days.

However, if there is an international agreement (Legal, Commercial and Judicial Cooperation Agreement) between Iran and the country where the award is issued, there might be an expedited route or a procedure whereby foreign judgments are treated similarly as judgments issued in Iran.

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!