Restrictions and Legal Challenges for Foreign Investment in the Media Market in Iran

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Abstract As economic sanctions against Iran started lifting up or easing, several major international investors moved to Iran, and others may follow. After lifting up the economic sanctions, Swedish and Russian businessmen team up to invest in Iranian digital markets. In recent years, some companies in Iran, like Café Bazaar, Iran's main Android marketplace, and Digikala, could increase their assets from $150 million to $4 billion in just about 4 years. How this would happen in Iran? What has been changed in recent years in Iran? What would the 'open for investment' policy means in the context of the Iran media market? The methodology of this paper is based on the relevant Global Competitiveness Index (GCI)'s pillars (The 12 pillars of competitiveness are institutions, infrastructure, macroeconomic environment, health and primary education, higher education and training, goods market efficiency, labor market efficiency, financial market development, technological readiness, market size, business sophistication, and innovation. World Economic Forum, The Global Competitiveness Report, 2016–2017, Geneva, 2016, ISBN-13: 978-1-944835-04-0.) of competitiveness (2015–2016), taking into account recent economic developments in Iran (up until 2017) especially as a result of the lifting up of the sanctions against Iran, including legal reforms to facilitate foreign investment, creating businesses, a digital platform and an organization for import and export procedures, structural changes to improve and development of private sector, and great amendments to taxation legislation for foreign investment.

In this paper we will illuminate some basic facts and features of the Iran's economy and opportunities which have been ignored by some reports. We will discover that foreign investors in Iran enjoy the same supports and privileges that are offered to the Iranian investors. In this connection, the Direct Taxation Law rules that no discrimination must be applied in terms of taxation as regards foreign and domestic investors. In this regard, similar to Iranian investors foreign investors pay the equal amount of taxes. In the same way, tax exemptions and discounts have, further, been established equally for both foreign and domestic investors. Also we

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ascertain that there are four basic freedoms including assets and many other privileges and methods to invest in Iran especially in social media. By means of giving some examples of recent developments we show that the situation is very perfect, especially in terms of market size, to invest in social media in Iran. However, it should be kept in mind that, similar to many countries, a variety of legal arrangements govern different business activities in Iran, some of them are specifically related to media and some of the are general, and indirectly are concerned with this area of activity.

1 Introduction: Real Market Potential

The Islamic Republic of Iran, as a strategic country, is certainly a unique market in the Middle East. Iran's economy has undergone numerous upturns and downturns since the victory of the Islamic Revolution in 1979. In the face of important events such as the Iraqi-imposed war, international sanctions, freezing of its foreign assets, and similar reasons, Iran has, for a long time, been to formulate a planned and long-term economic and trade policy.[1] They have been developed gradually and steadily. After such a long time, Iran's economy could now be regarded as self-reliance and tenacious. Economically, although oil and gas remains the largest sector, Iran has diversified its economy through decades of self-reliance.

Shortly after sanctions were lifted, the Joint Comprehensive Plan of Action motivated foreign investors and absorbed their attention regarding the huge potentials that are available in Iran. "With a young and urbanized population of 80 million. . ., Iran is the second-largest economy in the Middle East, with a GDP of $393.7 billion in 2015".[2]

The 10th pillar of the competitiveness is market size and one of the sub-indexes is real market potential. Size of domestic and foreign markets measured as an expenditure-weighted average of market access including own domestic demand. World Economic Forum's calculations are estimated based on the results of a gravity equation. The calculations are based on the United Nations Commodity Trade Statistics Database (UN COMTRADE) and CEEPI gravity dataset, 2015. In terms of market size, Iran's rank is 19. It is populous, rich in natural resources and apt to technological progress and international developments. The country's natural resources create a significant wealth.

In terms of recent economic trend, Financial Tribune describes the after lifting-up sanction situation, as "no "big bang" has happened here, but incremental developments are encouraging". These include the reestablishment of the commercial relationships between Iran and British, Italian, and French companies.[3]

[1] See www.irantradelaw.com

[2] https://financialtribune.com/articles/domestic-economy/57594/iranian-economy-a-year-after-sanctions

[3] ibid.

In light of the anticipated lifting of most international sanctions in 2016, foreign investment, especially foreign direct investment (FDI), soars in Islamic Republic of Iran. According to fDi Markets, before the lifting of sanctions, Iran was ranked 12th out of the 14 Middle East nations for FDI, between 2003 and 2015, equating to a market share of 1.62%. In the Post Sanction Era, economic has rebound as country climbs regional FDI rankings. Since sanctions were lifted in 2016, Iran has mounted to number three in the rankings, with a market share of 11.11%.[4] The major countries investing in different sectors in Iran during the period were South Korea and Germany, which together committed to capital expenditure of $2.15 billion, and Russia in the Iranian Internet companies. The upward trend is set to continue.

2 Capacity to Commercialize New Ideas in Social Media

Social media can be a useful source of market information and customer's voice. The social media are inexpensive sources of market intelligence which can be used by marketers to track problems and market opportunities.[5]

The 2002 FIPPA has a vital role to play for providing the important facilities and protections available for media-related services and activities. FIPPA establishes substantive protections for foreign investors, including protection against expropriation in Iran. A number of facilities will be provided for licensed investors, which will be elaborated in details in the following sections.

Recently, under the existing national protections and facilities, Russian businessmen[6] invested in DigiKala, the Iran's largest e-commerce company, as well as leading classifieds sites Divar and Sheypoor. They invested in Iran via Pomegranate Investment, a Swedish company founded in 2014. Owning 9.6% of Pomegranate, Sarava is the main holding of Pomegranate Investment. Sarava is one of the investment companies in the Internet sector with a 51% stake in Digikala as well as stakes in Divar and Sheypoor, and a shareholder of Café Bazaar, Iran's main Android marketplace. Pomegranate owns directly stakes in Carvanro, Iran's first online ride-sharing service, and in Griffon Capital, a newly formed Iran-focused investment and advisory boutique.[7]

This upward trend in foreign investment, on the one hand, will create bigger competition for Iranian startups, such as DigiKala or Café Bazaar, Iran's main Android marketplace, and on the other hand, gives foreign investors the

[4] www.fdimarkets.com

[5] Constantinides E., Lorenzo C., Gómez M.A., 'Social Media: A New Frontier for Retailers?', *European Retail Research* 22, (2008), pp. 1–28.

[6] The former Qiwi shareholder and Parus Capital President Andrey Muravyev and Parus Capital Managing Partner Boris Sinegubko.

[7] East-West Digital News, March 21, 2016, available at http://www.ewdn.com

opportunities to invest and be aware of the challenges available in this emerging market. Iran, like every country, has its own challenges. However, in order to deal with such challenges, as said above, several investment laws and regulations have been established in recent years. Social media industry is covered by the 2002 FIPPA and more than sixty bilateral and multilateral investment treaties offering a high level of protection of foreign investments to be made in Iran.

3 Institutions and Government Regulations

One of the Global Competitiveness pillars is institutions and one of the indexes and sub-indexes is burden of Government regulation, which refers to question how burdensome it is for companies to comply with public administration's requirements (e.g., permits, regulations, reporting).

Over the last few years, especially after lifting up the economic sanctions against Iran, the policy and laws on foreign investment in Iran have moved towards an 'open for investment' approach. The current legal system provides great and continuous protection for foreign investors. This includes specific sectors of media market. Despite this, in terms of mass media, there still exist specific restrictions and legal challenges for foreign investment in Iran. It is worth mentioning that statistics show that, in general, a high degree of foreign investment restrictiveness exists in one of the primary economic sectors, that is, mass media, in many countries, including in Iran, some OECD and G-20 countries. It has also been shown that restrictions in some primary sectors, such as media, may be more extensive than others in some countries, due to their respective policies and legal challenges.

Admission of foreign investment in Iran is made with due observance of the prevailing investment laws and regulations adopted.[8] With certain limited exceptions established by the 1979 Constitution of the Islamic Republic of Iran, foreign investors are allowed to invest, under the requirements of existing laws and regulations, in all primary sectors and subsectors, e.g., mining, agriculture and manufacturing, as well as in providing services, such as insurance and media services.

In addition to the Constitution, there are two types of laws and regulations regarding foreign investment and companies. The first group deals with such issues directly, e.g., Foreign Investment Promotion and Protection Act (FIPPA), and the second group contains specific provisions, which indirectly concern the topic, such as the Law on the Administration of Free-Trade Industrial Zones, Direct Taxes Act and Labor Law.

In Iran investment laws and regulations are a core policy tool to promote and regulate investment. Together with international investment agreements (IIAs), that

[8]Chapter Two, Article 2 of the 2002 Foreign Investment Promotion and Protection Act ("FIPPA").

is, bilateral and multilateral investment treaties and treaties with investment provisions, they constitute the basic legal framework for cross-border investment in Iran. Despite the fact that these laws and IIAs contain similar provisions, IIAs have some specific and different provisions, especially in terms of the challenge of the dispute settlements, which will be discussed further in this paper.

With an overarching goal of promoting economic development in line with the globalization's necessities and for the purposes of securing protection, as well as increasing, foreign investments in Iran, a number of investment laws and regulations have recently been adopted, the most important of which is "Foreign Investment Promotion and Protection Act" (FIPPA). It was adopted by the Parliament in 2002.[9] It replaced the "Law for the Attraction and Protection of Foreign Investment" (LAPFI). By means of replacement of the law, Iran enhanced the legal framework and operational environment for foreign investors.[10]

Iran has also concluded more than 60 bilateral and multilateral[11] investment treaties,[12] of which more than 50 are currently in force.[13] One of the features of the treaties and similar agreements is incorporating regulations to avoid double taxation.[14] This would simplify cooperation between businessmen from contracting parties, and also increase economic exchanges with other countries. Additionally, bilateral investment treaties offer the highest level of protection of foreign investments to be made in Iran. Countries that have an in force bilateral investment treaty with Iran include Austria, Germany, China, France, Italy, Switzerland, South Korea, and Spain.

[9]The Act comprising of 25 Articles and 11 Notes is enacted by the Islamic Consultative Assembly in its session of Sunday, 10 March 2002. The initial part of Articles (1) and (2), Para (c) and (d) of Article (2), Para (b) of Article (3), and Note (2) of Article (17) have been approved by the Expediency Council in its meeting on Saturday, May 25, 2002.

[10]The Preambular part of Foreign Investment Promotion and Protection Act.

[11]See for example, Agreement between the Federal Republic of Germany and the Islamic Republic of Iran on Reciprocal Promotion and Protection of Investments, date of signature 17/08/2002, and date of entry into force 23/06/2005; and Agreement between the Swiss Confederation and the Islamic Republic of Iran on the Promotion and Reciprocal Protection of Investments, date of signature 08/03/1998, and date of entry into force 01/11/2001.

[12]International investment agreements (IIAs) are divided into two types: (1) bilateral and multilateral investment treaties and (2) treaties with investment provisions.

[13]For a list of bilateral investment treaties between Iran and other countries, see UNCTAD website, available at http://investmentpolicyhub.unctad.org/IIA/CountryBits/98 (Last visited on the 5th August 2016). Note that the 2016 treaties are not included in the list.

[14]See for example, Double Taxation Treaty between Iran and China; see also similar treaties between the Islamic Republic of Iran and other countries, available at rc.majlis.ir; For further studies, see "Addressing Tax Evasion and Tax Avoidance in Developing Countries", available at: http://www.taxcompact.net/documents/2011-09-09_GTZ_Addressing-tax-evasion-and-avoidance.pdf (retrieved at 9th Sep. 2017).

Finally, several steps have been taken to develop the existing legal system in Iran for private-owned sector including social media. Such legal measures include, in addition to 2002 FIPPA,[15] the Fifth Five Year Economic, Social & Cultural Development Plan of the Islamic Republic of Iran,[16] the Direct Taxes Act,[17] and Labor Law deal with issues such as criteria for admission of foreign investments, guarantees and transfer of foreign capital, litigation, tax exemptions for foreign persons, and the employment of foreigners.

4 Burden of Government Regulation

One of the Global Competitiveness pillars is institutions and one of the indexes and sub-indexes is burden of Government regulation, which refers to question how burdensome it is for companies to comply with public administration's requirements (e.g., permits, regulations, reporting). In this respect we need to refer to the following major problems:

1. Lack of Transparency on the Legal Investment Framework: It would seem to be a lack of transparency in terms of legal investment framework due to the existence of several laws and regulations, directly and indirectly related to the foreign investment, such as the 2002 FIPPA, labor law, tax law, employment law and commercial law. This paper makes it clear what are the basic legal requirements, methods and restrictions to invest in the Iran media market, distinguishing between social media and mass media.
2. Time-consuming process of obtaining permits and lengthy bureaucracy. In order to find out what would be the easiest and quickest way to invest in media market in Iran, we explain the procedure and the organizations involved in this procedure.
3. FDI and Technology Transfer

   One of the main concerns which has been reemphasized in the Report by World Economic Forum is to what extent foreign direct investment (FDI) bring new technology into your country. In this respect, many policies and laws have accentuated that this question, as well as the question of technological readiness and availability of latest technologies should not be ignored in any FDI. Currently Iran is ranked 104 with the score of 3.9. Which must be improved through following years.

[15]The 2002 Foreign Investment Promotion and Protection Act.

[16]January 15, 2011.

[17]The Law of Direct Taxations, adopted by Islamic Consultative Assembly on 1987.

5 ICT Use for Business to-Business and to-Consumer Transactions

In Iran, the clear answer to the question as to what extent businesses use ICTs for transactions with other businesses and to-consumer transactions for selling their goods and services to consumers depend on the lifting up sanctions completely. Many our problems stem from the imposed sanctions. One of the main goals of the Government is to develop and promote the quality of communication services. Of course, there are some difficulties as well, especially for commercial companies as regards making commercial relations with their customers abroad, which would be improved after lifting up the whole sanctions.

Limited Online Payment Options: Due to sanctions, especially in terms of banking systems, lack of a system providing credit cards, the online shopping and internet-based services have problems. There is a need to develop and promote the related services in Iran. As a result of such problems, in some cases, collect on delivery has become a popular transaction method between sellers and buyers inside Iran. However, after lifting up sanctions, especially in relation to SWIFT, there is a hope to improve the online banking system and to establish new ways of online payments supported and secured by the Government and international monitory systems.

6 One-Stop Shop: No Time-Consuming Process

As mentioned above, one of the main challenges for the investment in media market is the issue of time-consuming process of obtaining permits and lengthy bureaucracy. In order to solve such problems, the 2002 FIPPA has taken great steps. For the purpose of facilitating and accelerating the fulfillment of the Organization's legal duties in the areas of promotion, admission and protection of foreign investment in the country, a one-stop shop has been created by FIPPA and the Implementing Regulations of FIPPA. Applications of foreign investors as regards issues relating, for example, admission, importation and repatriation of capital must be submitted to the Organization for Investment, Economic and Technical Assistance of Iran (OIETAI).[18] In this regard, at the premises of the OIETAI, the "Center for Foreign Investment Services" has been founded where the representatives of the relevant agencies are stationed. This Center is the focal point for all referrals by foreign investment applicants to the relevant organizations. It has been established for focused and efficient support for foreign investment undertakings in Iran.

[18]Organization for Investment, Economic and Technical Assistance of Iran (OIETAI), Tax Exemptions For Legal Persons In Iran, available at http://www.investiniran.ir/OIETA_content/media/image/2012/10/2441_orig.pdf

All investment licenses must be issued after confirmation and signature by the Minister of Economic Affairs and Finance. Before this confirmation, the investment license must be approved by a Board working on the applications for admissions.[19] Investment licensing procedure takes at most 45 days and it is a great step towards resolving the challenge of time-consuming process of obtaining permits and lengthy bureaucracy. In point of fact, within a maximum period of 15 days, the investment applications must be submitted by the Organization, after a preliminary review, to the Board, and then, within a maximum period of 30 days, the Board reviews the applications from the date of submission, and at the end, notifies its final decision.[20]

Under the provisions of FIPPA, the benefits of coverage of FIPPA are available for foreign investors who have already invested in Iran. FIPPA's coverage for the principal investment already made is subject to some conditions.[21]

7 Legal Methods to Invest in Social Media Market in Iran

The first question for many foreign private persons is whether they could invest in social media market or not. One of the features of FIPPA is giving a broader definition[22] to foreign investment, according to which all types of investments are covered. This includes the investment in social media. With the intention of stimulating and benefiting both foreign and local investments, FIPPA introduced a number of enhancements for foreign investments in Iran. It is an important complement to a whole host of reforms taking place in Iran's general macroeconomic framework and structural mechanisms.[23]

Under article 3 of the FIPPA, methods of foreign investment in social media in Iran can be divided into two categories as follows:

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[19] Article 5 of FIPPA.

[20] For the purpose of investigation and making decision on applications referred to in FIPPA and its Implementing Regulations, a board under the name of the "Foreign Investment Board" shall be established under the chairmanship of the Vice Minister of Economic Affairs and Finance who is ex-officio the President of the Organization, comprising of Vice Minister of Foreign Affairs, Vice President of the State Management and Planning Organization, Vice Governor of the Central Bank of the Islamic Republic of Iran and vice ministers of relevant ministries, as the case requires.

[21] Article 6 of FIPPA.

[22] Article 2 and 6 of the Implementing Regulations of Foreign Investment Promotion and Protection Act.

[23] Other developments include: broader fields for involvement by foreign investors including in major infrastructure; streamlined and fast-track investment licensing application and approval process; creation of a one-stop shop called the "Center for Foreign Investment Services" at the Organization for Investment, Economic and Technical Assistance of Iran (OIETAI) for focused and efficient support for foreign investment undertakings in Iran; more flexibility and facilitated regulatory practices for the access of foreign investors to foreign exchange for capital transfer purposes; introduction of new legal options governing the government investor(s) relations.

First: "Foreign Direct Investment" (FDI), in areas where the activity of the private sector is permitted. The investment can be made through the use of foreign investment in a new Iranian company or by the purchase of an already-established company's shares by the foreign investor. FDI "occurs when an investor based in one country (the home country) acquires an asset in another country (the host country) with the intent to manage that asset. The management dimension is what distinguishes FDI from portfolio investment in foreign stocks, bonds and other financial instruments. In most instances, both the investor and the asset it manages abroad are business firms".[24] Under FDI, the foreign investor controls the asset in the host country by presentation at location and admitting responsibilities. FDI aims the cooperation of one or several foreign companies in a country where they have legal rights for investing. FDI involves possibilities as possession or buying, making a company substitution, cooperative investment, cooperation at producing, cooperation at profit and partly cooperation.[25]

In relation to FDI, there are two important points to make, as follow:

1. Investment may be made in all areas where the private sector activity is permitted. A major step that has been taken in recent years in Iran is to adopt several laws relating to the Principle 44 of the Constitution which facilitate and encourage the real competitiveness in Iran. This has happened as a result of fact that monetary stimulus is not enough to reignite growth if economies are not competitive.[26] It should be kept in mind that monetary policy is not enough. Insufficient competitiveness would be a constraint for reigniting growth worldwide. On the other hand, as a country becomes more competitive, productivity will increase and wages will rise with advancing development.[27]
2. There is no restriction on the percentage of foreign shareholding.[28]

[24]The Preambular part of Foreign Investment Promotion and Protection Act.

[25]Blackhurst, R., & Otten, A., World Trade Organization Report "Trade and foreign direct investment", World Trade Organization, 1996, available at: https://www.wto.org/english/news_e/pres96_e/pr057_e.htm. Accessed 23 Jan. 2017; see also Moran, Theodore H., "Foreign Direct Investment", *The Wiley-Blackwell Encyclopedia of Globalization* (2012); Moran, Theodore, *Foreign direct investment*, John Wiley & Sons, Ltd, 2001.

[26]It should be mentioned that (1) monetary stimulus is not enough to reignite growth if economies are not competitive, (2) an increasingly important element of competitiveness is creating an enabling environment for innovation, and (3) innovation in turn goes hand in hand with openness and economic integration. For such purposes, World Bank/International Finance Corporation, Doing Business 2016: Measuring Regulatory Quality and Efficiency, http://www.doingbusiness.org/

[27]World Trade Organization (WTO), *World Trade Organization Annual Report 1996*, World Trade Organization, Geneva, (1997). See also Moran, Theodore H., "Foreign Direct Investment", *The Wiley-Blackwell Encyclopedia of Globalization* (2012); Moran, Theodore, *Foreign direct investment*, John Wiley & Sons, Ltd, 2001; Larraín, Felipe, Luis F. Lopez-Calva, and Andres Rodriguez-Clare. "Intel: a case study of foreign direct investment in Central America." *Center for International Development Working Paper* 58 (2000); Hatzius, Jan. *Foreign direct investment*. Centre for Economic Performance, London School of Economics and Political Science, 1997.

[28]Article 4(b)(1) of the Implementing Regulations of Foreign Investment Promotion and Protection Act.

Second: another way is contractual framework for investment,[29] i.e., contractual arrangements between the parties with or without formation of company, which are based on conditions. In accordance with the Foreign Investment Promotion and Protection Act, Ch. Two, Article 3(b), contractual framework for investment is permitted "where the return of capital and profits accrued is solely emanated from the economic performance of the project in which the investment is made". This Article continues to regulate that the Government or government companies and/or banks must not guarantee the return of capital and profit.[30] The conditions articulated in this Article of FIPPA, indeed, are certain criteria in the economic system for foreign investment in the public and private sectors and must be observed by both groups.

Different types of project financing methods including "Civil Participation", "Buy-Back" arrangements, "Counter trade", and various "Build-Operate- Transfer" (BOT) schemes.[31] The difference between FDI and foreign indirect investment is that the latter one occurs when the foreign investor has not got any share of fund and/or cooperative investment, then being situated on the level of foreign indirect investment subject. It does not have supervision or legal responsibility, and just receives profit depending on its share.

Subparagraph (2.1) of Article 4 of the Implementing Regulations of FIPPA in terms of investment within the framework of contractual arrangements, provides that compensation of a loss sustained by the foreign investor is guaranteed by the Government, where the losses are come from "prohibition and/or interruption in the execution of financial agreements caused by enactment of law and/or Cabinet decrees".[32] The Article in the subparagraph b(2) deals with the guarantees where a government agency is a party to the contract in "B.O.T." and "Civil Participation" schemes.[33]

[29]Salacuse, Jeswald W. *The three laws of international investment: national, contractual, and international frameworks for foreign capital*. Oxford University Press, 2013; Esmaeil Karimian, *Investment in Iran*, Wiesbaden, Springer Fachmedien Wiesbaden, Germany, 2016.

[30]Foreign Investment Promotion and Protection Act, Ch. Two, Article 3 (b) provides that contractual arrangements between the parties will only be permitted "where the return of capital and profits accrued is solely emanated from the economic performance of the project in which the investment is made, and such return of capital and profit does not dependent upon a guarantee by the Government or government companies and/or banks".

[31]Chapter Two, Article 3 of Foreign Investment Promotion and Protection Act.

[32]Subparagraph 4b2.1 regulates that "Compensation for losses sustained by the Foreign Investment resulting from prohibition and/or interruption in the execution of financial agreements caused by enactment of law and/or Cabinet decrees, up to a maximum of matured installments, shall be guaranteed by the Government".

[33]Article 4(b)(2.2) of the Implementing Regulations of Foreign Investment Promotion and Protection Act provides that "In "B.O.T." and "Civil Participation" schemes where a government agency is the sole purchaser and/or supplier of goods and services at subsidized prices, the purchase of produced goods and services resulting from an investment project by the government agency as a party to the contract, shall be guaranteed in accordance with the relevant regulations".

A variety of features and advantages of the above mentioned methods of investment are incorporated in the provisions of FIPPA and its Implementing Agreements, the most important and common of which are "the volume of foreign investment" in each case is not bound by any limitation; and also, foreign investors enjoy the identical treatment as bestowed to domestic investors.[34]

8 Guarantees and Transfer of Foreign Capital

In the long run, the four freedoms have been guaranteed by Iran, i.e., the free movement of people, goods, services, and capital. One of the main questions for foreign investors is how a national law protects the investment against the host States actions. In this respect, it should be pointed out that under the national Iran laws and regulations, as well as bilateral or multilateral agreements, investments of investors will not be nationalized, confiscated, expropriated, "unless for public interests, by means of legal process, in a non-discriminatory manner, and against payment of appropriate compensation".[35] It should be noted that application for compensation must be referred to the Foreign Investment Board[36] within 1 year from the date of expropriation or nationalization. Moreover, it should be mentioned that disputes arising from expropriation or nationalization must be settled in accordance with the provisions of FIPPA and the bilateral agreements with the respective government of the foreign investors.[37]

Bilateral agreements concluded by Iran on the protection of foreign investment grant foreign investors common investment treaty protections, for instance, most-favored-nation treatment, national treatment, the right to fair and equitable treatment, protection against expropriation, and a guarantee of free transfer of capital. For example, it has been articulated in many bilateral agreements that investments

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[34]Article 4(a) of the Implementing Regulations of Foreign Investment Promotion and Protection Act.

[35]According to the provisions of FIPPA (Article 9), foreign investments shall not be subjected to expropriation or nationalization, unless for public interests, by means of legal process, in a non-discriminatory manner, and against payment of appropriate compensation on the basis of the real value of the investment immediately before the expropriation.

[36]In accordance with Article 6 of the 2002 FIPPA, for the purpose of investigation and making decision on applications referred to in Article (5), a board under the name of the "Foreign Investment Board" shall be established under the chairmanship of the Vice Minister of Economic Affairs and Finance who is ex-officio the President of the Organization, comprising of Vice Minister of Foreign Affairs, Vice President of the State Management and Planning Organization, Vice Governor of the Central Bank of the Islamic Republic of Iran and vice ministers of relevant ministries, as the case requires.

[37]Chapter Four, Article 9 of Foreign Investment Promotion and Protection Act.

must "receive the host contracting party's full legal protection and fair treatment not less favourable than that accorded to its own investors or of any third State whichever is more favourable to the investor concerned".[38]

As regards investment projects where a government agency is a contracting party, the government guarantee the purchase of the goods and services produced at the price and quantity determined in the relevant contract.[39, 40]

9 Taxation Legislation: Incentives to Foreign Investment

The sixth pillar of the Global Competitiveness Index is goods market efficiency which includes competition divided into two groups, (a) domestic competition variable; and (b) foreign competition variable. Among different factors which have been considered in the Global Competitiveness Report 2016–2017, the following issues are very important to note: "effect of taxation on incentives to invest; total tax rate; number of procedures required to start a business; time required to start a business; prevalence of trade barriers; trade tariffs; and prevalence of foreign ownership".[41] Here, we are intended to describe the taxation legislation in Iran and the incentives of legislation to foreign invest. For this purpose, the focus of this paper is on the main features of taxation and some of the tax exemptions established by laws as follow:

The 1987 Direct Taxation Act, as amended in 2001, is in tandem with the ongoing economic conditions in Iran, as well as investment protection and promotion in line with the economic developments.[42]

In recent years, several laws and regulations have been adopted to encourage foreign investment in Iran. The same protection and privileges have been provided for both foreign and national investors. One of the most important of this is

[38]To avoid double taxation more than 30 agreements have been signed between Iran and other countries, such as Spain, China, Germany, South Africa, Switzerland, Ukraine, Poland, Indonesia, Austria, and Turkey. Apart from such treaties, there a number of agreements on reciprocal promotion and protection of investments that contain provisions on double taxation. See, for example, Agreement on reciprocal promotion and protection of investments between the Government of the Republic of Cyprus and the Government of the Islamic Republic of Iran. Tehran, 2 March 2009, Article 4. See also, investmentpolicyhub.unctad.org.

[39]Article 11 of the Implementing Regulations of Foreign Investment Promotion and Protection Act.

[40]List of Countries Signing the Agreement to Avoid Double Taxation with Iran (November 2011): Azerbaijan Republic; Algiers; Turkmenistan; France; South Africa; Indonesia; Turkey; Kyrgyzstan; Germany; Ukraine; Tunisia; Kazakhstan; Austria; Bahrain; China; Qatar; Jordan; Belorussia; Russia; Georgia; Armenia; Bulgaria; Sri Lanka; Lebanon; Uzbekistan; Venezuela; Switzerland; Poland; Spain; Pakistan; Syria; and Kuwait.

[41]World Economic Forum, The Global Competitiveness Report, 2016–2017, Geneva, 2016, ISBN-13: 978-1-944835-04-0.

[42]Article 138 of the Act support investment promotion.

concerned with taxation included in the Direct Taxation Act; there is no discrimination in terms of the payment of taxes. The same amount of taxes must be paid by foreign investors. Stimulatingly, all licensed publishing, press, cultural and artistic activities are exempted from income tax.[43]

Tax exemptions and discounts are equally applied for both groups of investors for both nationals and foreigners. All licensed travelling and tourism institutions enjoy fifty percent tax exemption every year. Tax exemption, to a great extent, has been applied as regards industrial and mining activities, which in terms of the free trade and industrial zones is one hundred percent exemption for a period of 20 years. For the same period of time, in the free zone, any type of economic activities is exempt from property tax and payment of income.

In any region, interestingly, the payment of income is free of taxes, under certain conditions, for "the branches and agencies of foreign banks and companies conducting marketing and market research".[44] Transferring assets between merged companies is, conditionally, free of taxes.[45] With some exceptions, value-added tax is levied, under the Value-Added Tax Act, on the sale of all "services and their imports".[46] The law was readopted in 2017 for 5 years more and also value-added tax is not applied in the free zones for economic activities.

Finally, to avoid double taxation more than 30 agreements have been signed between Iran and other countries, such as Spain, China, Germany, South Africa, Switzerland, Ukraine, Poland, Indonesia, Austria, and Turkey. Apart from such treaties, there a number of agreements on reciprocal promotion and protection of investments that contain provisions on double taxation.[47]

10 Persons Protected by Laws and Agreements

For a foreign investor to be protected under an Iranian bilateral agreement, it must qualify as a protected investor and its admission must be made in accordance with the provisions of FIPPA and with due observance of other prevailing laws and regulations of the Country. Under the provisions of Article 6 of the FIPPA, the benefits of coverage of FIPPA are still available for foreign investors who have already invested in Iran. FIPPA's coverage for the principal investment already

[43] Article 139 of the Direct Taxes Act.

[44] The Direct Taxes Act (Article 107).

[45] The Direct Taxes Act (Article 111).

[46] For further, see the Value-Added Tax Act (Articles 12 and 13).

[47] See the Agreement to Avoid Double Taxation, as well as, for example, Agreement on reciprocal promotion and protection of investments between the Government of the Republic of Cyprus and the Government of the Islamic Republic of Iran. Tehran, 2 March 2009, Article 4. See also, investmentpolicyhub.unctad.org.

made, however, is conditional and subsequent to the issuance of the investment license under the provisions of the Act.[48]

It addition to FIPPA which protect broadly a wide range of natural and legal persons qualified as protected investors, bilateral agreements on the protection of foreign investment concluded by Iran, also, offer a high level of protection of foreign investments in Iran. Some of countries that have a bilateral agreement with Iran in force include Austria, Belarus, Bosnia and Herzegovina, France, Germany, Italy, Switzerland, Finland, China, Austria, Turkey, Cyprus, South Korea, and Spain.[49]

A large variety of assets invested in Iran, including movable and immovable property, shares or any kind of participation in Iranian companies such as securities, debentures, equity holdings and credits, are generally protected by bilateral agreements concluded by Iran.

Within the framework of these agreements, the notion of investor refers to the persons of either contracting party who invest in the territory of the other contracting party within the framework of the agreements. They include natural persons who, according to the laws of either contracting party, are considered to be its national and have not the nationality of the host contracting party.

In terms of legal persons, the situation and conditions are different in bilateral agreements. Some of bilateral agreements, including the bilateral agreements concluded with, for example, agreement between Iran and Switzerland, Turkey, Spain and Cyprus, only protect companies that are incorporated and have their seat, i.e., are managed from, and have "real economic activities" in the other contracting State.[50] Such requirements make it likely that persons providing special purpose media services would qualify as protected investors.

Several other bilateral agreements, including the bilateral agreements concluded with Sweden, Malaysia, Qatar, South Korea, and Italy, have qualified their protection exactly under the following conditions: "legal persons of either contracting party which are established under the laws of that Contracting Party and their 'headquarters' *or* their 'real economic activities' are located in the territory of that Contracting Party".[51] Under

[48]Article 6 of FIPPA provides that "Foreign Investors who have already invested in Iran without the benefit of coverage of FIPPA may, upon completion of the admission procedure, benefit from FIPPA's coverage for the principal investment already made. Subsequent to the issuance of the Investment License, the investor shall be entitled to benefit from all privileges of FIPPA including, interalia, the right to transfer profit. This type of investments shall be generally considered as existing investments to which the general criteria for admission of Foreign Capital is applicable".

[49]A list of Bilateral Agreements on the protection of foreign investment concluded by Iran is available at: http://investmentpolicyhub.unctad.org/IIA/CountryBits/98#iiaInnerMenu

[50]Such Agreements regulates that "legal persons constituted or incorporated in compliance with the law of that Contracting Party and having their 'seat' together with 'real economic activities' in the territory of the same Contracting Party". For further, see, e.g., Bilateral Agreements concluded between Iran and Cyprus (Article 1(2)(b)); Iran and Switzerland (Article 1(1)(b)); Iran and Turkey (Article 1(2)(b)); and Iran and Spain (Article 1(2)(b)).

[51]See, e.g., Bilateral Agreements concluded between Iran and Sweden, Article 1(2)(b); Iran and Malaysia, Article 1(2)(b); Iran and Qatar, Article 1(2)(b); Iran and South Korea , Article 1(2)(b); Iran and Italy, Article 1(2)(b); Iran and South Africa, Article 1(2)(b).

the provisions of such bilateral agreements, special purpose media services will be protected as long as they maintain their headquarters in their State of incorporation.

Few bilateral agreements, e.g., the bilateral agreement concluded with Austria do not include the requirement of their 'seat' and qualified their protections for legal persons which are founded in accordance with the laws and regulations of a State party *and* "*their 'real economic activities'* are located in the territory of that Contracting Party".[52]

Lastly, some bilateral agreements, e.g., the bilateral agreements concluded with Finland, Armenia, France, Germany, and China protect entities constituted or incorporated under the laws of a State party having their 'seat' in the territory of that contracting party.[53] It could be said that the last type of bilateral agreements offer the most comprehensive coverage, notably for special purpose media services managed from their State of incorporation.

11 Investment in Media Market and Dispute Settlement

Almost all of bilateral agreements articulate two types of different dispute settlements, i.e., settlement of disputes between the contracting parties and settlement of disputes between a contracting party and an investor of the other contracting party.

In terms of settlement of disputes between the contracting parties, the disputes which are related to the application of the agreement and its interpretation should as far as possible be settled by the governments themselves. Otherwise, it could be referred to an ad hoc arbitration tribunal consisting of three members, two members from each State party, and one member from a third country.[54]

As regards settlement of disputes between a State and an investor of the other State party, should be settled between them through negotiations and amicably. Otherwise, it must be referred to the competent court of the host State, if not, to international arbitration. As regards such disputes, also, the provisions of FIPPA regulates that if they are not settled through negotiations, they must be referred to national courts. It should be noted that in some cases, bilateral agreements incor-

[52] See, e.g., Bilateral Agreements concluded between Iran and Sweden, Article 1(2)(b); Iran and Malaysia, Article 1(2)(b); Iran and Qatar, Article 1(2)(b); Iran and South Korea , Article 1(2)(b); Iran and Italy, Article 1(2)(b); Iran and South Africa, Article 1(2)(b).

[53] See, e.g., Bilateral Agreements concluded between Iran and Finland, Article 1(2)(b); Iran and Armenia, Article 1(2)(b); Iran and France, Article 1(2)(ii); Iran and Germany, Article 1(2)(b); Iran and China, Article 1(2)(b).

[54] See, e.g., Bilateral Agreements concluded between Iran and Germany, (Article 10); Iran and Switzerland (Article 9); Iran and Malaysia, (Article 13); Iran and Austria (Article 12); Iran and South Africa (Article 12).

porate some other methods for dispute settlements.[55] It should also be mentioned that the most bilateral agreements concluded between Iran and other countries provide for ad hoc arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) and some of them provide for international arbitration under the Rules of the International Chamber of Commerce (ICC).[56] Note that Iran is not a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention).

12 The Constitutional Framework of Mass Media

As regards mass media, under Principle 44 of the Constitution, radio and television, post, telegraph and telephone services are considered as examples of the state-owned sectors of the economy in Iran. The economy of the Islamic Republic of Iran consists of three sectors: state, cooperative and private. The state sector includes all large-scale and mother industries, radio and television, post, telegraph and telephone services, foreign trade, major minerals, banking, insurance, power generation, dams, and large-scale irrigation networks, aviation, shipping, roads, railroads and the like; all these will be publicly owned and administered by the State.[57] The three types of ownership are protected by laws in so far as they are in agreement with the other laws and regulations and cause no harm to the society.[58] In terms of media, the preamble of the Constitution provides that they will be utilized "as a forum for healthy encounter of different ideas", however, they "must strictly refrain from diffusion and propagation of destructive and anti-Islamic practices. It is incumbent on all to adhere to the principles of this Constitution, for it regards as its highest aim the freedom and dignity of the human race and provides for the growth and development of the human being".[59]

However, in terms of activities which are categorized under the head of State-sector activities (under Principle 44 of the Constitution of Iran), the entrance of foreigners is very restricted. May be they could work as operators in this sector or they could sign a cooperation agreement with the relevant governmental agencies. But, they are not allowed to invest in mass media.

[55]See, e.g., Bilateral Agreements concluded between Iran and Austria (Article 11); Iran and Germany, (Article 11); Iran and South Africa (Article 13); Iran and Switzerland (Article 10); Iran and Malaysia, (Article 12).

[56]See, e.g., Bilateral Agreements concluded between Iran and Austria (Article 11(2)) referring to UNCITRAL and ICC; Iran and South Africa (Article 12(4)) referring to ICC; Iran and Switzerland (Article 9(2)) referring to UNCITRAL.

[57]The 1979 Constitution of the Islamic Republic of Iran, Principle 44, paragraphs 1 and 2, adopted on: 24 Oct 1979, effective since: 3 Dec 1979, amended on: 28 July 1989.

[58]*Ibid*, paras. 5 and 6.

[59]*Ibid*, Preamble, Mass-Communication Media section.

13 FDI Regulatory Restrictiveness on Mass Media

It has been stated in Organisation for Economic Development (OECD) studies that foreign direct investment flows would help, under the right policy environment, contribute positively to incomes and job generation in the host country.[60] Moreover, FDI ‘encourages the transfer of technology and know-how between countries’,[61] and ‘triggers technology spillovers, assists human capital formation, contributes to international trade integration, helps create a more competitive business environment and enhances enterprise development’.[62] In this regard, compared with other developing countries or transition economies, China is a striking example of success. Among other aspects, China is mainly characterized by its ability to attract foreign technology and capital by means of incentive policies.[63] However, an important point to make is that according to the OECD FDI Restrictiveness Index, China scores higher than other countries in terms of FDI regulatory restrictiveness. The highest score for any regulatory measure in any sector is 1 consisting of the measure completely “restricts foreign investment in the sector” and the lowest is 0 covering situations where there are “no regulatory impediments to FDI in the sector”. It is worth mentioning that the FDI Restrictiveness Index includes four kinds of measures: (first) “foreign equity restrictions”, (second) “screening and prior approval requirements”, (third) “rules for key personnel”, and (four) “other restrictions on the operation of foreign enterprises”.[64]

The FDI Index does not provide a full measure for the evaluation of a country’s investment climate, as no attempt is made to appraise the overall restrictiveness of the regulatory regime as it is actually implemented, and it does not take into consideration other aspects of the investment regulatory framework, for example, “the extent of State ownership, and other institutional and informal restrictions which may impinge on the FDI climate”.[65]

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[60]Organisation for Economic Development (OECD), Foreign Direct investment for Development: Overview (2002), www.oecd.org/investment/investmentfordevelopment/1959815.pdf

[61]OECD Factbook, Economic, Environmental And Social Statistics (2014), p. 88. See also Luke Malpass and Bryce Wilkinson, Verboten! Kiwi hostility to foreign investment, Research Note No. 1, 29 August 2012.

[62]OECD, Foreign Direct investment for Development: Overview (2002), *supra*, p. 5.

[63]Jean-Claude Berthélemy and Sylvie Démurger, ‘Foreign Direct Investment and Economic Growth: Theory and Application to China’, Review of Development Economics, 4(2), 140–155, 2000, p. 1.

[64]See further, Kalinova, B., A. Palerm and S. Thomsen (2010), “OECD’s FDI Restrictiveness Index: 2010 Update”, OECD Working Papers on International Investment, 2010/03, OECD Publishing. https://doi.org/10.1787/5km91p02zj7g-en

[65]ibid.

14 Foreign Investment and Its Regulatory Restrictiveness in Iran

According to Foreign Investment Promotion and Protection Act (FIPPA), foreign investments will only be allowed in accordance with the procedures prescribed by the Act. Then the admitted investment in accordance with the provisions of the Act will enjoy the facilities and protections available under the FIPPA. FDI in areas where the activity of the private sector is permitted is allowed.[66] Under the provisions of FIPPA and its Implementing Regulations, electrical and electronic machinery and equipments, including radio and television and other communication devices and apparatus are considered as some examples of sectors and sub-sectors referred to in para. (d) of Article 2. This Article states that admission of foreign investment will be made under the provisions of FIPPA and with due observance of other prevailing Iran's laws and regulations, for the purposes of development and promotion, and producing activities, including industry and services based on certain criteria.[67]

It should be noted that like the OECD FDI Regulatory Restrictiveness Index, especially in relation to China's Media restrictiveness as shown above, in Iran there exists statutory restrictions on foreign direct investment in this sector, due to the fact that the ownership, management and control of radio and television are considered as a State Sector under the Constitution.[68] In FDI, usually, the control

[66]OECD (2016), FDI restrictiveness (indicator). doi: 10.1787/c176b7fa-en (Accessed on 04 August 2016).

[67]One of the criteria is contained in Paragraph (d) of Article 2 (FIPPA), according to which the ratio of the value of the goods and services produced by the foreign investments, contemplated in FIPPA, to the value of the goods and services supplied to the local market, at the time of issuance of the Investment License, shall not exceed 25% in each economic sector and 35% in each sub-sector (field). The sub-sectors and scope of investment in each sub-sector shall be determined in the by-law to be approved by the Council of Ministers. Foreign Investment for the production of goods and services for export purposes, other than crude oil, shall be exempted from the aforementioned ratios.

[68]See Foreign Investment Promotion and Protection Act, Chapter Two, Article 3 (a). Under Principle 44 of the Constitution of Iran, the economic system of the Country is established 'based on three sectors: State, cooperative, and private, based on systematic and sound planning'. The State sector includes all large-scale and mother industries, foreign trade, major mines, banking, insurance, power generation, dams, and large-scale irrigation networks, radio and television, post, telegraph and telephone, aviation, shipping, roads, railroads and the like; all these will be publicly owned and administered by the State. The cooperative sector includes cooperative companies and enterprises dealing with production and distribution, in urban and rural areas, established in accordance with Islamic criteria. And finally, the private sector consists of activities dealing with agriculture, animal husbandry, industry, trade, and services that are complementary to the economic activities of the State and cooperative sectors. The ownership in each of these three sectors is protected by the laws of the Islamic Republic, in so far as this ownership is in conformity with the other Principles of the Constitution, does not surpass the limits set by Islamic law, contributes to the economic growth and progress of the Country and does not harm to society. The details of the requirements, scope and conditions of each of these three sectors have been determined by specific laws.

and management of the company as a whole or in part often is in the hands of foreign investor. This seems to be in contrary with the above laws and regulations. However, if a foreign investor is intended to contribute to the development of know-how or new technologies or services related to media controlled and managed by private sector, it would not be in controversy with the aforementioned provisions.[69]

15 Conclusion

In recent years, several laws and regulations have been adopted to encourage foreign investment in Iran. The same protection and privileges have been provided for both foreign and national investors. One of the most important of this protection environment is related to taxation included in the Direct Taxation Act; there is no discrimination in terms of the payment of taxes. The same amount of taxes must be paid by foreign investors. Equally, there are tax exemptions and discounts for both groups of investors.

The four freedoms have been guaranteed by Iran, i.e., the free movement of people, goods, services, and capital. One of the main questions for foreign investors is how a national law protects the investment against the host States actions. In this respect, it should be pointed out that under the laws and regulations, investments of investors will not be nationalized, confiscated, expropriated, "unless for public interests, by means of legal process, in a non-discriminatory manner, and against payment of appropriate compensation".[70]

In relation to one of the main challenges, that is, permissions, procedures and time-consuming process of obtaining permits and lengthy bureaucracy, according to the current regulations, FIPPA, investment licensing procedure takes almost 45 days and it is a great step towards resolving the challenge. An assortment of legal rules and arrangements may be applied to businesses and commercial activities, some of which are limited liability companies, partnerships, corporations, and co-ownerships.

As we discussed in this paper, as regards social media industry, it is covered by the 2002 FIPPA and its Implementing Regulations, which are considered as a core policy tool to promote and regulate investment, as well as by international investment agreements (IIAs), i.e., bilateral and multilateral investment treaties and treaties with investment provisions, which are altogether regarded as the basic legal framework for cross-border investment in Iran. Although in many countries, most investment laws have investment promotion as their main objective, the 2002 FIPPA deals also with investment facilitation. This means certain protection and facilities will be provided for licensed investors. The 2002 FIPPA and IIAs have

[69] The 1979 Constitution of the Islamic Republic of Iran, Principle 44.

[70] According to the provisions of FIPPA (Article 9).

vital roles to play for providing the significant facilities and protections available for media-related services and activities.

As regards, legal methods to invest in social media market in Iran, two different methods have been described: "Foreign Direct Investment" (FDI) and contractual framework for investment, i.e., contractual arrangements between the parties with or without formation of company. Also different types of project financing methods including "Civil Participation", "Buy-Back" arrangements, "Counter trade", and various "Build-Operate- Transfer" (BOT) schemes, with the following features, under the provisions of the laws, have been defined: first, foreign investors have "the same treatment as accorded to domestic investors"[71]; second, "import of foreign capital" is only conditional on the "investment license and does not require any other license"[72]; third, the "volume of foreign investment in each individual case" are not conditional on "any limitation"[73]; fourth, compensation of a loss sustained by the foreign investor is guaranteed by the Government, where the losses are come from "prohibition and/or interruption in the execution of financial agreements caused by enactment of law and/or Cabinet decrees"[74]; fifth, under subparagraph (2.2) of Article 4 of the Implementing Regulations of FIPPA, guarantees are provided where a government agency is a party to the contract in "B.O.T." and "Civil Participation" schemes.[75]

Another worry of foreign investors is concerned with guarantees and transfer of foreign capital and the qualified persons protected by laws and agreements. In this respect, within the framework of IIAs, the investor refers to the persons of either Contracting Party who invest in the territory of the other Contracting Party within the framework of these agreements. They include natural persons who, according to the laws of either Contracting Party, are considered to be its national and have not the nationality of the host Contracting Party. In terms of legal persons, the situation and conditions are different in the 2002 FIPPA and bilateral agreements.

Another important challenge for investment in the medial market is related with Dispute Settlement. FIPPA and almost all of bilateral agreements articulate two types of different dispute settlements, i.e., settlement of disputes between the contracting parties and settlement of disputes between a contracting party and an investor of the other contracting party. They refer to arbitration tribunal which will be constituted ad hoc.

In terms of mass media, which is considered as one of the examples of the primary sectors and subsectors, for which the requirements of existing laws and regulations provide that with certain limited exceptions established by the

[71]Article 4(a)(1) of the Implementing Regulations of Foreign Investment Promotion and Protection Act.

[72]Subparagraph (a)(2) of Article 4.

[73]Subparagraph (a)(3) of Article 4.

[74]Article 4(b)(2.1) of the Implementing Regulations of Foreign Investment Promotion and Protection Act.

[75]Subparagraph (b)(2.2) of Article 4.

Constitution of the Islamic Republic of Iran, foreign investors are allowed to invest. Activities that are categorized under the head of State-sector activities (under Principle 44 of the Constitution of Iran), the entrance of foreigners are difficult. As evidenced on the news, this country enjoys a high level of security in the region, though there would be restrictiveness similar to China under OECD FDI Regulatory Restrictiveness Index. It should be mentioned that although there are still some conditions, restrictions and limitations as regards the investment in the Iran mass-communication media, radio and television, it could be possible to make contracts as mentioned above as the available contractual methods.

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