

## **Law on Encouragement and Protection of Foreign Investment**

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**Summary:** The State Expediency Council has approved the new foreign investment law.

The new law is regarded as a stride towards increasing employment opportunities and improving the production system.

According to this report, the State Expediency Council instructed the cabinet ministers to approve the limits of acceptable obligations for each sector within the framework of this law. By approving this note, the State Expediency Council met the demands of both the Guardian Council and the Islamic Consultative Assembly (parliament).

Under the new law, foreign investment must lead to economic growth, technological development, improvement in the quality of goods, boost in employment opportunities, increase in exports and the country's entry into the world markets. Of course, the law has stipulated that foreign investments must not entail any undertaking for the government to grant concessions to investors. According to Mohsen Rezaei, secretary of the Expediency Council, as soon as this approval is communicated to the government, foreign investments shall begin in the country under the new law.

The following is the full text of the law on encouragement and protection of foreign investments.

### **Text:**

Law on Encouragement and Protection of Foreign Investment

Chapter I: Definitions

Article One: The terms and words used in this law have the following meanings:

Law: The law on encouragement and protection of foreign investments

Foreign investor: Real and corporate persons, either Iranian or non-Iranian who have received an investment permit as stipulated in the Article 6, using capitals of foreign

origin.

Foreign Capital: All types of capitals, either in cash or in good, which are brought to the country by the foreign investor. They include:

A: Cash in the form of hard currencies convertible through the banking system or through other methods of cash transfer confirmed by the Central Bank of Iran, which is brought into the country.

B: Machinery and equipment

C: Spare parts and tools, components, raw materials and additives

D: Patent, technological know-how, trade marks and specialized services

E: The foreign investor's transferable dividend

F: Other permissible cases upon the approval of the government

Foreign investment: Employing capital in a new or existing economic institution after receiving investment permit

Investment permit: A permit issued for each case of foreign investment according to the Article 6 of this law

Organization: The Investment and Economic-Technical Assistance Organization of Iran, as stipulated in Article 5 of the law on establishment of ministry of economic and financial affairs approved on July 15, 1975

High Council: High Council on Investment, as stipulated in the Article 7 of the law on the articles of association of the Investment and Economic-Technical Assistance Organization of Iran approved on June 2, 1975

Board: The Foreign Investment Board as stipulated in Article 6 of this law

## Chapter II: General Conditions for Acceptance of Foreign Investment

Article 2: According to this law, acceptance of foreign investment while observing other laws and regulations of the country for purpose of development, manufacturing activities in either industrial, mining, agricultural and services fields, should be based on the following principles:

A: It should lead to economic growth, technological development, improvement in the quality of goods, increase in employment opportunities, boost in exports and the country's entry into the world markets.

B: It should not result in any threat to the national security, degradation of the environment, disturbance of the national economy or hampering production based on domestic investments.

C: It should not entail any undertaking for the government to grant a concession to foreign investors. What are meant by concession are special rights that may place foreign investors in a monopolistic position.

D: The ratio of the value of goods and services resulting from foreign investments as stipulated in this law to the value of goods and services offered on domestic markets at the time of permit issuance should not exceed 25 percent in each economic sector and 35 percent in each field. These fields and amount of investments in each of them shall be determined according to the bylaws to be approved by the cabinet ministers. These ratios do not apply to foreign investments aimed at producing and exporting goods excluding crude oil.

Note: The law of June 6, 1931 on possession of immovable property by foreign nationals is still valid. Possession of any sort of land in whatever sizes by a foreign investor is not permissible under this law.

Article 3: Foreign investments accepted in accordance with the provisions of this law enjoy legal facilities and protection. Such investments are acceptable in the following two ways:

A: Direct foreign investments in the fields in which the private sector is authorized to be active

B: Foreign investments in all fields within the framework of such schemes as civil partnership, buy-back, construction, production and transfer under which the capital turnover and the profits made result solely from the economic performance of the project absorbing foreign capital, and do not depend on a guarantee by the government, state-owned companies or banks.

Note 1: As long as foreign investments under construction, production and transfer scheme as stipulated in Note B of this article and its associated profits are not amortized, the foreign investor is authorized to claim ownership over the remaining capitals in the economic institution absorbing foreign investments.

Note 2: As for investments stipulated in Note B of the Article 3 of this law, if the legislation of law or the government's approvals lead to a ban on or halt to the implementation of financial agreements made under this law, the ensuing losses equivalent to at most the ceiling of overdue installments shall be provided and paid by the government. The limits of acceptable obligations within the framework of this law shall be approved by the cabinet ministers.

Article 4: The investments made by the Iranian and foreign governments in the Islamic Republic of Iran shall depend on the approval of the Islamic Consultative Assembly. Investments by foreign state-owned companies are regarded as private investments.

Chapter III: Authorized References

Article 5: The Organization (Investment and Economic/Technical Organization of

Iran) is the sole official organ in charge of encouraging foreign investments in the country and handling all affairs related to foreign investments. The requests made by foreign investors concerning admission, inflow, use and outflow of capitals must be submitted to the Organization.

Article 6: In order to examine and make decision on the requests mentioned in the Article 5, a board called 'Foreign Investment Board' consisting of the deputy minister of finance and economic affairs as the chief of the Organization, and deputy minister of foreign affairs, deputy chief of the Management and Planning Organization, deputy governor of the Central Bank of Iran and if necessary deputies to other relevant ministries as members shall be established. As for admission requests, the investment permit shall be issued after it is approved by the Board and confirmed and inked by the minister of finance and economic affairs.

Upon accepting foreign investment, the Board is obliged to observe the principles mentioned in the Article 2 of this law.

Note: The Organization is obliged to set forth investment applications along with its own views in the Board within at most 15 days of the date of their receipt, after making preliminary examinations. The Board is duty-bound to see to the issue and announce its final decision on the said investment applications within a maximum of one month.

Article 7: In order to facilitate and speed up the affairs pertaining to acceptance of foreign investments in the country, all relevant apparatuses including the Ministry of Finance and Economic Affairs, Ministry of Foreign Affairs, Commerce Ministry, Ministry of Labor and Social Affairs, the Central Bank of Iran, the Customs Administration of the Islamic Republic of Iran, the General Office for Registration of Companies and Industrial Ownership and the Department of Environment are obliged to introduce a plenipotentiary representative each to the Organization upon the approval of the highest ranking officials of those apparatuses. The introduced representatives are recognized as coordinator liaisons between the Organization and their respective apparatuses or organizations.

#### Chapter IV: Guaranteeing and Transfer of Foreign Capital

Article 8: Foreign investment subject to this law shall enjoy all rights, support and facilities provided for domestic investors on an equal footing.

Article 9: Foreign investment shall not be exposed to dispossession of property or nationalization except for cases involving national interests and according to legal process and through non-discriminatory methods in return for paying compensations in proportion to the real value of the investment immediately before dispossession of property.

Note 1: Any application for compensation must be submitted to the Board within at least one year of the date of dispossession or nationalization.

Note 2: Any dispute resulting from dispossession of property or nationalization shall be settled based on the Article 19 of this law.

Article 10: Transfer of the whole or parts of foreign capital to a domestic investor or to another foreign investor shall be possible only through the approval of the Board or the confirmation of the minister of finance and economic affairs. In case foreign capital is transferred to another foreign investor, the latter must have the least qualifications of the former and according to the provisions of this law shall be considered a substitute or partner of the former investor.

#### Chapter V: Regulations on Acceptance, Inflow and Outflow of Foreign Capitals

Article 11: Foreign capital can be brought into the country and be protected by this law through one or a combination of the following methods:

- A: Cash that is converted to rial (local currency)
- B: Cash that is not converted to rial and used directly for purchases and orders associated with foreign investment in the country.
- C: Non-cash items after undergoing assessment stages by relevant authorities

Note: Arrangements relevant to registration of foreign capital shall be determined by the bylaws of this law.

Article 12: The rate of the hard currency in use upon the entry and exit of foreign capital as well as all foreign exchange movement under a single parity rate, shall be the same as the rate common in the country's official network or in the form of free rate as determined by the Central Bank of Iran.

Article 13: The principle of foreign capital and the interests associated with it or what has remained of the principle of the capital in the country can be transferred abroad by giving a three-month advance notification to the Board and after fulfilling all obligations and paying the legal duties upon the approval of the Board and confirmation of the minister of finance and economic affair.

Article 14: The interests associated with foreign investment can be transferred abroad after all legal taxes and duties are deducted upon the approval of the Board and confirmation of the minister of finance and economic affairs.

Article 15: Payment of installments concerning the principle of financial facilities provided by foreign investors and their associated expenses, agreements on patent,

technological know-how, technical and engineering assistance, trade marks, management and similar contracts within the framework of foreign investment can be transferred abroad upon the approval of the Board and confirmation of the minister of finance and economic affairs.

Article 16: All transfers stipulated in the Articles 13, 14 and 15 can be carried out by observing the provisions of Note 2 of Article 3 of this law.

Article 17: Providing foreign exchange for such transfers stipulated in the Articles 13, 14 and 15 is possible through the following methods:

- A: Purchasing hard currency from the country's banking system
- B: From the hard currency obtained from export of manufactured products or from foreign exchange gained from rendering services by the economic institution in which foreign capital has been invested.
- C: Export of authorized goods by observing the relevant laws and regulations

Note 1: Employing one or a combination of the above-mentioned methods is registered in the investment permit.

Note 2: The Central Bank of Iran is obliged to put an equivalent in foreign exchange of the moveable cash stipulated in the Note 1 of this article at the disposal of the foreign investor upon the approval of the Organization and confirmation of the minister of finance and economic affairs.

Note 3: If the investment permit happens to be based on the Note B or Note C of this Article, the said permit shall be regarded as export permit.

Article 18: The exit of those parts of foreign capital brought into the country within the framework of investment permit, which have not been used, is not subject to either of foreign exchange or import/export laws and regulations.

## Chapter VI: Settlement of Disputes

Article 19: If disputes between the government and foreign investors over reciprocal obligations within the framework of investments stipulated in this law are not solved through negotiations, they should be referred to domestic courts unless under a contract, the government and the respective government of the foreign investor have already agreed upon another method for settlement of disputes.

## Chapter VII: Final Regulations

Article 20: Relevant executive apparatuses are obliged to take necessary measures upon the request of the Organization to issue visa, residence permit, working permit and employment of foreign experts for the private sector associated with foreign investments, and for their immediate relatives.

Note: Disputes between the Organization and executive apparatuses are settled under supervision of the minister of finance and economic affairs.

Article 21: The Organization is obliged to make all information on foreign investments and investors, investment opportunities, Iran's partners, their activities and other data available to the public.

Article 22: All ministries, state-owned organizations and companies as well as public institutes whose names must be mentioned according to the law, are obliged to put all information needed for foreign investment and the report on foreign investments already made (in the country) at the disposal of the Organization so that the Organization can act upon the aforesaid article.

Article 23: The minister of finance and economic affairs is obliged to send every six months a report on the performance of the Organization pertaining to foreign investments as stipulated in this law, to the relevant commissions of the Islamic Consultative Assembly.

Article 24: From the date of this law and its procedural bylaws, the law of October 29, 1955 on attraction and protection of foreign capitals is abolished. The foreign capitals already accepted under the aforementioned law shall be covered by the new law. The provisions of this law can be revoked or modified by future laws and regulations only if their modification or abolishment is stipulated in the said laws and regulations.

Article 25: The procedural bylaw of this law shall be drawn up by the Ministry of Finance and Economic Affairs and approved by the cabinet ministers within two months.