



Submission No 12

Inquiry into Australia's trade and investment relationship with the economies of the Gulf States

Organisation: Embassy of the Islamic Republic of Iran

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Martin, Emma (REPS)

From: Huetter, Pierre (REPS)
Sent: Wednesday, 31 March 2004 8:09 AM
To: Martin, Emma (REPS)
Subject: FW: Iran's Constitution

-----Original Message-----

From: iran embassy [mailto:embassyeco@yahoo.com]
Sent: Friday, 26 March 2004 3:39 PM
To: Huetter, Pierre (REPS)
Subject: Iran's Constitution

Mr. Pierre Hutter
Trade Sub-Committee
Parliament of Australia

Dear Sir,

In reference to Submission No 9, page 15 of the current inquiry into Australia's trade and investment relationship with the economies of the Persian Gulf States, quote, "Iran has a constitutional prohibition on foreign investment", unquote, I would like to draw to the attention of the distinguished members of the Committee the fact that such an assertion is not correct and that, to the contrary, Iran encourages, welcomes, and protects foreign investments under its "Foreign Investment Promotion & Protection Act (FIPPA)" approved on May 25, 2002.

The original foreign investment law in Iran was approved in 1955 and this law, and its "Implementating Regulations", remained in force until after the 1979 Islamic Revolution. It seems that the misinterpretation of Article 81 of the Constitution led to the erroneous conclusion that, "Iran has a constitutional prohibition on foreign investment", as it prohibits granting concessions to foreigners in the area of trade, etc. (Concession means special rights, which place the foreign investors in a monopolistic position.) Therefore, the article should be viewed in its own context, that, in fact, it is for fair and balanced competition in the area of foreign investment in Iran.

Economic Section
Embassy of the Islamic Republic of Iran

FOREIGN INVESTMENT
PROMOTION AND PROTECTION ACT
(FIPPA)

Chapter One:

Definitions

Article 1.

The terms and expressions used in this Act shall have the following meanings:

Act: The Foreign Investment Promotion and Protection Act.

Foreign Investor: Non-Iranian natural and/or juridical persons or Iranians using capital with foreign origin, who have obtained the Investment License, referred to in Article (6).

Foreign Capital: Various types of capital, whether in cash and/or in kind, imported into the country by Foreign Investor, and comprising the following:

- a) Cash funds in the form of convertible currency, imported into the country through the banking system or other methods of transfer acceptable to the Central Bank of the Islamic Republic of Iran;
- b) Machinery and equipment;
- c) Tools and spares, CKD parts and raw, addable and auxiliary materials;
- d) Patent rights, technical know-how, trademarks and names, and specialized services;
- e) Transferable dividends of foreign investors;
- f) Other permissible items approved by the Council of Ministers.

Foreign Investment: Employment of Foreign Capital in a new or existing economic enterprise after obtaining the Investment License.

Investment License: The license issued for each Foreign Investment in accordance with Article 6 of this Act.

Organization: The Organization for Investment, Economic and Technical Assistance of Iran, referred to in Article (5) of the law establishing the Ministry of Economic Affairs and Finance, enacted on July 15, 1974.

Board: The Foreign Investment Board, referred to in Article (6) of this Act.

Chapter Two:

General Conditions for
Admission of Foreign Investments

Article 2.

Admission of Foreign Investment shall be made, in accordance with the provisions of this Act and with due observance of other prevailing laws and regulations of the country, for the purpose of development and promotion of producing activities in industry, mining, agriculture and services, and based on the following criteria:

- a) Bring about economic growth, upgrade technology, enhance the quality of products, and increase employment opportunities and exports;
- b) Does not pose any threat to the national security and public interests, and cause damage to the environment; does not disrupt the country's economy and jeopardize the production by local investments;
- c) Does not entail the grant of concessions by the Government to Foreign Investors. Concession means special rights, which place the Foreign Investors in a monopolistic position.
- d) The ratio of the value of the goods and services produced by the Foreign Investments, contemplated in this Act, 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 percent in each economic sector and 35 percent in each field (sub-sector). The fields and extent of investment in each field 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.

Note. The Law for the Ownership of Immovable Property by Foreign Nationals enacted on June 6, 1921 shall remain in effect. Ownership of land of any type and to any extent in the name of Foreign Investors is not permissible within the framework of this Act.

Article 3.

Foreign Investments admitted in accordance with the provisions of this Act shall enjoy the incentives and protections available under this Act. Such investments may be admitted under the following two categories:

- a) Foreign direct investment (FDI) in fields where the activity of the private sector is permissible;
- b) Foreign Investments in all sectors within the framework of "Civil Partnership", "Buy-Back" and "Build-Operate-Transfer" (BOT) schemes 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 shall not be dependent upon a guarantee by the Government or government companies and/or banks.

Note: So long as the investment in "Build-Operate-Transfer" (BOT) schemes referred to in Para (b) of this Article, and its accrued profits are not amortized, the exercise of ownership right by the Foreign Investor over the remaining capital in the recipient economic enterprise is permitted.

Article 4.

The investment by a foreign government or foreign governments in the Islamic Republic of Iran shall be dependent upon the approval of the Islamic Consultative Assembly, on a case by case basis. Investments by foreign government companies are deemed private.

Chapter Three:

Competent Authorities

Article 5.

The Organization is the sole official authority for the promotion of Foreign Investments in the country, and for investigation of all issues pertaining to Foreign Investments. Applications of Foreign Investors in respect of issues such as admission, importation, employment and repatriation of capital shall be submitted to the Organization.

Article 6.

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.

In relation to applications for admission, the Investment License shall, after the approval of the Board, be issued upon confirmation and signature by the Minister of Economic Affairs and Finance.

At the time of admission of Foreign Investments, the Board is required to observe the criteria referred to in Article (2) of this Act.

Note: The Organization, after preliminary review, shall submit the investment applications, along with its own recommendation, to the Board within a maximum period of 15 days as from the date of the receipt of the applications. The Board must review the applications within a maximum period of one month from the date of submission, and notify its final decision in writing.

Article 7.

In order to facilitate and expedite issues related to the admission and activity of Foreign Investments in the country, all relevant agencies including the Ministry of Economic Affairs and Finance, the Ministry of Foreign Affairs, the Ministry of Commerce, the Ministry of Labor and Social Affairs, the Central Bank of the Islamic Republic of Iran, the Customs Administration of the Islamic Republic of Iran, General Directorate for Registration of Companies and Industrial Property, and the Organization for Protection of the Environment are required to designate a fully authorized representative to the Organization by the highest authority of the agency.

These representatives shall act as the liaison and coordinator for all issues related to their respective agency vis-à-vis the Organization.

Chapter Four:

Guarantee and Transfer of Foreign Capital

Article 8.

Foreign Investments under this Act shall equally enjoy all rights, protections, and facilities available to local investments.

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.

Note 1: Application for compensation shall be submitted to the Board within one year from the date of expropriation or nationalization.

Note 2: Disputes arising from expropriation or nationalization shall be settled in accordance with the provisions of Article (19) of this Act.

Article 10.

Assignment of the whole or a part of the Foreign Capital to a local investor and/or, upon approval of the Board and confirmation by the Minister of Economic Affairs and Finance, to another Foreign Investor is permissible. In case of assignment to another Foreign Investor the assignee who shall have, at least, the same qualifications as the initial investor, shall replace and/or become a partner to the former investor from the standpoint of this Act.

Chapter Five:

Provisions for Admission, Importation
and Repatriation of Foreign Capital

Article 11.

Foreign Capital may be imported into the country by way of one or a combination of the following manners, to be covered under this Act:

- a) Cash funds to be converted into Rials;
- b) Cash funds not to be converted into Rials but to be used directly for the purchases and orders related to Foreign Investment;
- c) Items in kind, after evaluation by the competent authorities.

Note: Arrangements related to the manner of evaluation, and registration of Foreign Capital shall be determined in the Implementing Regulations of this Act.

Article 12.

The rate of conversion of foreign exchange

applicable at the time of importation or repatriation of Foreign Capital as well as the exchange rate for all foreign exchange transfers, in case of applicability of a unified exchange rate, shall be the same rate prevailing in the country's official network; otherwise, the applicable exchange rate shall be the free market rate as acknowledged by the Central Bank of the Islamic Republic of Iran.

Article 13.

The principal of the Foreign Capital and profits there from, or the balance of capital remaining in the country, after fulfillment of all obligations and payment of legal deductions, and upon approval of the Board and confirmation by the Minister of Economic Affairs and Finance, shall be transferable abroad subject to a three month prior notice submitted to the Board.

Article 14.

The profit derived from Foreign Investment after deduction of taxes, dues and statutory reserves, upon the approval of the Board and confirmation by the Minister of Economic Affairs and Finance, shall be transferable abroad.

Article 15.

Payments related to the installments of the principal of the financial facilities of Foreign Investors and their associated expenses, agreements for patent rights, technical know-how, technical and engineering assistance, trade marks and names, management as well as similar agreements within the framework of the relevant Foreign Investment, upon approval of the Board and confirmation by the Minister of Economic Affairs and Finance, are transferable abroad.

Article 16.

Transfers referred to in Articles (13), (14) and (15), shall be made in compliance with the provisions of Para (b) of Article (3) of this Act.

Article 17.

The foreign exchange required for the transfers referred to in Article (14), (15) and (16) of this Act may be secured in the following manners:

- a) Purchase of foreign currency from the banking system;
- b) Out of the foreign exchange earned from the export of the products and/or the foreign exchange earned from the service activities of the economic enterprise in which the Foreign Capital is employed;
- c) Export of authorized goods specified in the list approved by the Council of Ministers for implementation of this paragraph in compliance with the relevant laws and regulations.

Note 1. Application of one or a combination of the above manners shall be specified in the Investment License.

Note 2. With respect to investments referred to in Para (b) of this Article, if, as a result of promulgation of legislation or Government decrees, the execution of the financial agreements approved within the framework of this Act is prohibited or interrupted, the resulting losses, upto a maximum of installments at maturity, shall be provided and paid by the Government. The extent of acceptable commitments within the framework of this Act, shall be approved by the Council of Ministers.

Note 3. The Central Bank of the Islamic Republic of Iran must secure and make available to the Foreign Investor the equivalent foreign currency for the transferable amounts referred to in Para (a), upon the agreement of the Organization and confirmation by the Minister of Economic Affairs and Finance.

Note 4. In case the Investment License expressly refers to Para (b) and/or (c) of this Article, this License shall be deemed as the export license.

Article 18.

Transfer abroad of the portion of the Foreign Capital imported into the country within the framework of the Investment License but remained unused, is exempted from all foreign exchange, and export and import laws and regulations.

Chapter Six:

Settlement of Disputes

Article 19.

Disputes arising between the Government and the Foreign Investors with regard to their respective mutual obligations within the context of investments under this Act, if not settled through negotiations, shall be referred to domestic courts, unless the Law ratifying the Bilateral Investment

Agreement with the respective Government of the Foreign Investor provides for another method for settlement of disputes.

Chapter Seven:

Final Provisions

Article 20.

The relevant executive agencies are required to take measures, upon the request of the Organization, for the issuance of entry visa, residence permit, work and employment permit, as the case may be, for Foreign Investors, managers and experts of the private sector linked to Foreign Investments under this Act, as well as their immediate relatives.

Note: Differences of opinion between the Organization and executive agencies shall be settled upon the opinion of the Minister of Economic Affairs and Finance.

Article 21.

The Organization is required to ensure the access of the general public to all information related to investment, foreign investors, investment opportunities, Iranian partners, fields of activity and other information available to the Organization.

Article 22.

All ministries, government companies and organizations as well as public institutions to whom the applicability of law is required to be stipulated by name, are under obligation to provide the Organization with reports on foreign investments implemented as well as the information required for foreign investors so that the Organization can proceed in accordance with the preceding Article.

Article 23.

The Minister of Economic Affairs and Finance is required to provide, every six months, the relevant commissions of the Islamic Consultative Assembly with a report reflecting the performance of the Organization with respect to Foreign Investments under this Act.

Article 24.

As from the date of the enactment of this Act and its Implementing Regulations, the Law for the Attraction and Protection of Foreign Investments - enacted on November 28, 1955 - as well as its Implementing Regulations, are repealed. Foreign capital previously admitted under the said Law shall be covered by this Act. The provisions of this Act shall be repealed or altered by subsequent laws and regulations provided that the repeal or alteration of this Act is expressly stipulated in such laws and regulations.

Article 25.

The Implementing Regulations of this Act shall be prepared by the Ministry of Economic Affairs and Finance and subsequently approved by the Council of Ministers within two months.

The above 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) were approved by the Expediency Council in its meeting of Saturday, 25 May 2002.

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