



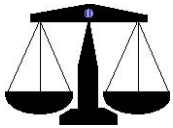
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The Italian Trade Commission

Iran

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Negotiating in Iran A Legal Approach



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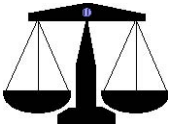


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I. CULTURAL, RELIGIOUS AND HISTORICAL INFLUENCES

- Real impact on the way to conduct talks with Iranians

A- Colonization

- Despite a de facto division of the country into Russian and British zones of influence in early 20th century, Iran has never been colonized.
- Freedom from imperialism has left impact:
- With the exception of Arabic – teaching of which is obligatory in junior high schools and secondary schools by virtue of Art. 16 of the Islamic Republic's Constitution, no second language is recognized as such.
- Difficulties in communication between foreigners and Iranians
- Impact left by the Franco-Belgian judicial system on Iranian Commercial Law. Necessity to rely on lawyers licensed by the Iranian Bar Associations.
- All documents intended to be produced to courts should be translated by sworn translators of the Iranian Justice Administration.



B-Religion

- According to officially released figures, some 97 % of all Iranians are Muslims most of whom belong to the Shiite school of Islam. The remaining 3% are Christians (mainly Gregorian Armenians, Assyrians and Zoroastrians).
 - Avoidance of conflict, non-confrontational attitude
 - Avoidance of eating or drinking in public in the month of Ramadan when Muslims fast from dawn to dusk. A one- hour break at offices for prayers and lunch.

C- Bazaar

- Located in downtown Tehran, the bazaar plays a major part in the economic, social and political life of Iran; a part which is out of proportion with its geographical expanse. Although in recent years, many “modern” import-export and industrial enterprises have tended to relocate and settle further north in commercial neighborhoods of Tehran, its influence and weight have not, at all, suffered or dwindled.



D-“Dubai Factor”

- Because of its large Iranian community, its free trade policies and its proximity to south-eastern Iranian ports, the Emirate of Dubai (in UAE) has become a point of transit and re-exports (sometimes ending up at prices underselling Iran-based importers of the same goods) towards Iran. Many end-user certificates issued to buyers in Dubai are, indeed, intended for consumption in Iran. On the other hand, Dubai foreign exchange dealers proceed to massive purchase (mostly through Central Bank-offered sales) and resale of the rial as well as most major hard currencies, sometimes provoking, thereby, fluctuations in parity rates.

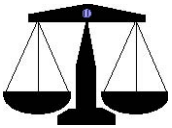
II- Rules --Understanding Iranian rules about social rules of behavior, although not so rigid, will be helpful in conducting successful negotiations: --Farsi is replete with honeyed phrases and the Iranians excel in *ta'arof* (over-complimentary and soft words and ceremonious manners) which, in some cases could take the form of offers which one has difficulty to believe that they are really meant as one may find them empty of meaning!. Similarly, *ta'arof* may lead,

at some points, to



a somewhat peculiar or even embarrassing situation for the foreign visitor who may feel that he/she is the object of too much attentive care, solicitous inquiry about his/her state of health, comfort, interest etc.!

- “*Salam Alaykum*” (literally meaning “peace upon you”) is the traditional Iranian greeting, sometimes replacing handshake.
- Remember that haggling (“*chaneh*” literally meaning “chin” or use of the jaws as power of persuasion!) and wrangling intended to obtain rock bottom prices are quite a culture in which Iranians are well skilled. Therefore, whatever price you state and whatever arguments you present in their defense, your Iranian partner will, undoubtedly, engage in a series of protracted maneuvers and marathon discussions intended to bring you to make maximum concessions on the issue of prices, resorting, sometimes, to such arguments as alleged imports of overstocked goods of the same category by competitors at lower prices!.
- Avoid blowing your nose noisily at business discussions out of respect and esteem for your Iranian counterpart. Patting an Iranian on the head or pointing your foot at or kicking him while conducting negotiations are also to be strictly avoided in order not to lose respect or create undue hostility.
- Shaking hands with Iranian ladies, more particularly at government offices, is to be avoided. Such a gesture may well lead to embarrassment elsewhere and is, therefore, totally discouraged.



- Iranians cultivate easily friendship and try to develop personal relationship with foreigners and are known for their traditional hospitality. Receiving invitation from your Iranian partner to have dinner at his home with his family or giving you a gift when you leave is very frequent. Despite some relaxation of many traditional values,

age hierarchy is still observed between Iranian team members of the same rank.

III- Potential Areas of Contract

A-“No problem” --You may have the impression that no problems are encountered: Do not let yourself be misled by such an impression or appearances.

- To head off problems of this sort:
 - Ask your junior staff whether they share frankly your impression.
 - In the event that you are using an interpreter, ask him/her to render a full account of what is said (hidden problems often revealed by conversations conducted around the room in addition to the main talks)
 - Ask your Iranian partner to express any suppressed reservations, misgivings or second thoughts which he/she may have.



B- Jurisdiction of Contract

- Foreign companies are authorized to get involved in contractual work in Iran such as royalty and technical assistance, supply and supervision contracts
- Most Iranians, especially in the private sector, will insist on subjecting the envisioned contract to the jurisdiction and governing law of Iran. This is, sometimes, motivated less by any fear of a perceived impending conflict than on economic grounds (travel and litigation expenses in hard currency entail heavy expenses for private companies in contrast with easy allocation of assignment per diem ,in hard currency, to civil servants and state functionaries).
- If jurisdiction becomes an intractable issue, obtain arbitration as a

form of alternative dispute resolution (ADR). It is, however, noteworthy that, according to Art. 456 of Iranian Civil Procedure Code,” Regarding transactions and contracts entered into between Iranian and foreign nationals ,the Iranian party may not commit itself, by one way or the other , as long as no dispute has arisen, to refer the dispute, if dispute emerges, to arbitrator(s) having the same nationality as the party to the transaction. Any transaction and/or contract running contrary to this legal prohibition shall be null and void in sections running contrary to these provisions”. It is to be remembered that the Iranian Chamber of Commerce has an arbitral tribunal set up, more or less , along lines drawn up by the ICC.



C- Contracts too long

- Most Iranians are not comfortable with written, especially legalese, English: Necessary to arrange for translation into Farsi (Persian).
- In general, Iranian contracts are brief and deal primarily and rather with the subject matter of the contract than a careful and detailed description of rights and obligations of the contractual parties, remedies available to them in case of breach, termination, frustration etc.
- The legal aspects are, most often, skipped in the belief or on the understanding that the Iranian Civil Code and Commercial Code govern complex, multilateral and novel contracts. The former, although very eloquent in its wording and considered a masterpiece in many aspects, dates back to over seventy years ago, while the latter is, more or less, a modified version of 19th century French *code de commerce*, leaving aside many aspects of modern age business.
- The much-referred to Art. 10 of Iranian Civil Code -which respects private agreements on the proviso that they do not run explicitly contrary to provisions of binding laws , leaves the door open to acceptance and adoption of many modern day transactions not otherwise treated under the heading of (Islamic) nominate contracts in

the Iranian Civil Code.



D-End of negotiations

- Because of the red tape involved and the need to obtain quite a few licenses and authorizations for registration of order (even for imports termed “without transfer of currency in advance”), the negotiator is expected to maintain an ongoing relationship with his/her Iranian counterpart(s).
- Iranians have, more or less, what is commonly described as “Mediterranean temperament” or disposition, and they cultivate friendship relatively easily. However, at the same time every attempt should be made not to offend your Iranian partner as the negotiator is the face and personality of the company.
- Although legal fees are cheaper in Iran than the average in neighboring countries, Iranian courts have an extremely busy docket (calendar or cause list). And, as everywhere else in the world, lawyers are skilled at finding ways to delay entry of judgment and/or its execution. Therefore, the expectation is that negotiations will be reopened, discussions held, solution found without resorting, as much as possible, to any form of hostility or threats of court proceedings (even though, in some other instances specially when there are assets for a pre-judgment attachment or a post-judgment distress/seizure to levy an execution, the defaulting Iranian partner or the Iranian party in breach of contract may be reasoned or intimidated into performing contract, fulfilling obligations or otherwise showing compliance if you have a good case and convincing evidence!.)



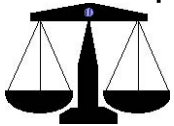
- During the course of negotiations, it is wise to personally introduce colleagues with whom the Iranians will have to work after the deal is concluded.

E- Reaching an Agreement

- Note that for supply of goods, potential flashpoints could be over issues involving: Actual quantity delivered (allegations of short landing, undersupply etc.), genuine origin of goods, challenged eventual inspection report and other commercial documents (insurance cover is always to be taken out in Iran according to Iranian laws).

- Note that in contracts for supply of services, likely contentious area could be over issues involving: Scope of services, service levels/quality control, change control (ownership and management), termination etc.

- Contracts should be as precise as possible-vague standards or obligations invite disputes.
- Note what circumstances will be excuses for not meeting the service levels, etc.
- Any measurements should be objective.
- Address the possibility of dispute and have good dispute resolution mechanisms in the contract. Examples:
 - Bi-partisan or multipartite working committees



- Constant monitoring and reporting
- A cooling off period
- Requirement for good faith negotiation to solve differences
- Make choice of law, forum, contract language, and arbitration (detailed as to organization, rules, and city).
- Example of arbitration clause:
 - “all disputes, controversies, or differences, which may arise between the parties, out of or in connection with this Agreement or the breach hereof, which cannot be satisfactorily resolved by the parties themselves shall be finally settled by arbitration under the auspices of the [organization] under the[organization] rules then in force and in English language. The arbitration shall be held in [city] or any other

location mutually convenient to the parties”.

- Keep adequate records for evidentiary purposes.
- Have contract reviewed by a native speaker of contract language.

IV- Intellectual Property Rights in Iran

A- Importance of IPR

- IP, being products of the human mind or the fruits of human creativity and invention, is always with you. IPR are valuable assets and effective tools for business achievement and IPR is proprietary knowledge for your commercial exploitation in which it plays the influential role. Remember, creativity is the world's greatest natural resource!



B- IPR Protection

- Out of the first category of intellectual property i.e. industrial property, protection is, with the notable exception of industrial design, universal in Iran and relief is available against counterfeits and other types of infringement. This category includes inventions (patents), trademarks, service marks, collective marks and geographical locations.
- The second category, copyright and related rights, including a broad range of literary and artistic works, written, performed and recorded, does not offer protection in Iran to foreign copyright owners as the various enactments of the Iranian parliament (in Jan. 1970, in Jan. 1974 and in Jan. 2001 regarding computer software) extend protection only to Iranian authors and Iran has yet to join the Bern Convention. While this issue is likely to give rise to a heated debate in any serious negotiations leading to Iran's membership (so far blocked because of tough American opposition) at the WTO, it means, for ordinary Iranians, access, inter alia, to copied software at very low cost and not only through downloading from the Internet!. Domain

names may be, however, registered in Iran.



- Iran, which adopted its first Trademarks & Patents Registration Law as early as July 1931 and which joined, in Oct. 2001, the convention establishing World Intellectual Property Organization (WIPO), applies a somewhat modified version of what was originally referred to as the 36-class Nice Classification. Despite addition of new classes, registration under Class 33 remains prohibited because of Islamic precepts banning alcohol.
- Formal registration of IP is centralized in Tehran where, through a single application filed with Iran Registry of Companies & Industrial Property, nationwide protection and obtainment of legal ownership right can be sought. For trademarks, there is no substantive search and examination is conducted exclusively for form at the completion of which and after an initial (commonly referred to as first) notice to appear in the Official Gazette, the final certificate is issued with a 10-year validity. As to patents, no search is done to determine their novelty to allow a claim in Iran and validity of Iranian letters patent is for 20 years except in specific cases.
- Registration through Patent Cooperation Treaty was still not possible at the time we were creating this site (Feb. 2005).
- IP being always with you every day of your life from dawn to dusk, IPR strategic management is necessary for your business growth and wealth. IPR protection must be considered before any negotiation in order to avoid any IPR infringements.



C- How to avoid being an IP infringer?

- IP management is critical in order to avoid any IP infringement. There are many common IP infringements within a company without the company itself being aware of it. Although software piracy is not yet punished in Iran, early contact with an Iranian IP attorney to avoid infringement of other IP rights is strongly recommended.

V- Type of Contracts

A- Generalities

- Art. 183 of the Iranian Civil Code defines a contract as being “an undertaking by one or more persons vis-à-vis one or more others and involving acceptance of the latter.”(i.e. meeting of minds or consensus ad idem) .While the Iranian civil code deals with a number of “nominate contracts” (mainly those treated under the Islamic Shari’ a, its much-applied Art. 10 leaves the door open to giving a binding force, in relation to those that have entered into it, to private agreements provided that they are not explicitly destitute of legal effect. In drawing up a contract with an Iranian party, provisions of applicable laws and notably those of Public Audit Act, Taxation Law, Customs Law, bank rules and regulations, Export-Import Act, regulations dealing with hygiene, the Constitution and other binding laws should be taken into account.



B-Purchase and Sales Agreement

- Key provisions include: INCOTERMS, payment guaranty, ownership retention on goods (Art. 377 of Iranian Civil Code, dealing with consequences of sale including pre-delivery lien, says:” Either the seller or the buyer can retain the goods sold or their consideration until the other party is prepared to deliver its part, unless either the object of sale or the consideration thereof is agreed to be delivered at a subsequent date in which case either the object of sale or

consideration thereof which has fallen due ,should be surrendered”).

- Assignment of rights must be carefully framed in a multipartite transaction.

C-Agency Agreement

- Commission
- How much power is conferred upon the agent to bind the principal?

D-Distribution Agreement

- By virtue of subsection 9 of section R of N. B 19 of the Iranian Solar Year 1382 (corresponding to the period running from 21.03.2003 to 20.03.2004) Budget Act,” All physical persons and legal entities supplying goods and or services shall supply the same within the framework of bylaws and regulations outlined by Ministry of Commerce and through Official Agency and subject to provision of after sales services failing which.....”. So, there is talk of "official agency" which means authorized or registered and official and not, necessarily “sole” or “exclusive” agency. This requirement for prior registration predates the approval of the Council of Ministers (dated Sept. 2, 1992) stipulating that “.....for the purpose of establishing the correct procedure for international trade and development of marketing systems, industrial information and technology and after-sales services , as of Dec. 21, 1992, purchase of goods, machinery and equipment as well as services from foreign companies are allowed, provided that the companies involved have registered official agents” (branches in Iran).



E- License Agreement

- Careful wording of what is licensed out in order in order to clearly define rights and obligations of the licensor and the licensee.
- Registration requirement when IP rights are concerned.



F-Franchise Agreement

- Key provisions about non-competition, fate of IP rights at termination.

G- EPC/EPCM (turnkey) Agreement

- Compliance, more or less, with FIDIC Type Contracts to be sought and recommended.

H- Sub-contract Agreement

- Should match terms with head contract, avoid conflicting provisions.

I- Buy-Back Agreements/BOT Agreement

- During the years 1994-2001 most of the activities in oil and gas used to be run by foreign oil companies through Buy-Back contracts in which use of locally manufactured goods and services up to a 30 % to 40% portion should be observed. In more recent years, there has been a net tendency to offer most of the tenders in oil and gas fields to joint venture of foreign entity and Iranian partner. The opportunities of activity in Energy Sector (power plant) are now through BOT contracts and payments are through Energy Sale Agreement. The contract funds are financed by the foreign contractor and the total cost, including management fees and finance charges, will be reimbursed from the date the project is commissioned and through purchase of the product by the foreign contractor



J-M.O.U. / L.O.U. and Letter of Intent

- Roadmap for transaction
- Can include binding and non-binding terms
- Letter mixing binding/non-binding terms probably best. However, all letters of intent should clearly state which parts are nonbinding and which, if any, are binding.
- Proposed terms (non-binding)
- Price
- Method of payment
- Allocation of board seats
- Employment agreements with key personnel of seller
- Intended date of closing
- Binding terms
- Legal capacity of seller to sell
- Protection of confidential information
- Due diligence-Assured access to books and records



- Break up or walk away fees
- No-shopping/standstill provision
- Good faith deposit-refundable or not?
- No material changes to business operation
- Lock-up provision (buyer may want)
- Sets key terms for definitive documents as condition to continuance
- Conditions to closing
- Expenses of transaction

K-Consortium Agreement

- Each party to carry out well defined tasks
- Indemnification from one to another party due to default

L-Joint Venture Agreement

- Parties share more of the tasks
- No indemnification among the parties (Remark: Joint venture and

consortium agreements are the same vis-à-vis the client)



M-Know-how Transfer Agreements

- Careful wording of commitments made by each party as they will be closely monitored by supervisory bodies/watchdogs (Ministry of Industry, O.I.E.T.A in the event of application filed for advantages granted to foreign investors under FIPPA etc.).
- Technical assistance contracts are subject to a lower tax rate, provided, inter alia, that some of the work is to be performed in Iran.

VI-Conclusion

- Iranians tend to be skilled negotiators, trying to “outwit” and outmaneuver their counterparts: Never lose your temper, deal in a relaxed manner without expecting a quick end.
- Awareness and observance of the customs of the host are greatly appreciated.
- Never make the Iranians feel that they are directly responsible for an unwelcome situation, an error or unfavorable circumstances.
- If you suspect a problem, find alternative ways to raise it.
- Be prepared to compromise.
- Never directly ask if there is a problem (the answer being generally “no problem”).
- Always negotiate directly with the most senior person at a meeting.
- Steadfastness and persistence
- Reasonableness

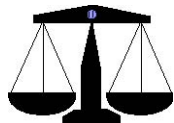


- Analyze your position from the other side’s point of view and from the perspective of an imminent worst case scenario if negotiation leads nowhere.
- A strategy for dealing with IPR whether IPR protection or avoidance

- of IPR infringement is a must before and during negotiation in Iran.
- Seeking professional legal advice is recommended.

VII-Disclaimer

- This guide has been prepared to provide some tips for use of those interested in negotiating business in Iran. It is not intended to cover exhaustively the subjects it highlights or to serve as legal advice but rather to answer some of the important, broad questions that may arise or are commonly encountered in Iran. When specific questions occur in practice, it will be often necessary to refer to the laws, regulations and decisions of the country and to obtain appropriate legal advice. All materials are provided without any warranty, express or implied, as to their legal effect and/or completeness. If you require further information, please do contact us.



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