# Year Book of Doing Business in Iran

**2017**
**Newsletters**

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سرشناسه: کریمیان، اسماعیل، ۱۳۶۴- Karimian, Esmaeel

عنوان و نام پدیدآور: Year Book of Doing Business in Iran / written by ESK Law Firm & Magnusson Law Firm; authors Esmaeel Karimian, Saleh Jaberi

مشخصات نشر: تهران: تی[illegible]، ۱۳۹۷ = ۲۰۱۸ میلادی

مشخصات ظاهری: ۸۷ ص؛ جدول

شابک: ۱۰۰۰۰۰ ریال: ۹۷۸-۶۰۰-۹۶[illegible]۴۷-۸-۷

وضعیت فهرست‌نویسی: فیپا

یادداشت: انگلیسی

موضوع: کسب‌وکار ـ ایران
Business-Foreign-Iran

موضوع: سرمایه‌گذاری خارجی ـ ایران
Investments, Foreign, Iran

شناسه افزوده: جابری، صالح، ۱۳۶۵- Jaberi, Saleh

شناسه افزوده: دفتر حقوقی بین‌المللی اسماعیل کریمیان و همکاران ESK Law Firm

شناسه افزوده: شرکت حقوقی مانگستون Magnusson

رده‌بندی کنگره: ۱۳۹۷ ۴ ک ۹ الف /۵۳۸۲/۵ HF

رده‌بندی دیویی: ۳۳۱/۷۰۲۰۹۵۵

شماره کتابشناسی ملی: ۵۱۷۳۳۰۶

عنوان: Year Book of Doing Business in Iran. Newsletters-2017

پدیدآورندگان: دفتر حقوقی ESK با همکاری شرکت حقوقی مانگستون

چاپ اول: بهار ۱۳۹۷

شمارگان: ۱۰۰۰ نسخه

قیمت: ۱۰۰۰۰ تومان

شابک: ۹۷۸-۶۰۰-۹۶۷۴۷-۸-۷

حروف‌چینی و ویرایش: خدمات نشر دانش‌گستر



مرکز فروش: تهران، خیابان انقلاب، بازارچه کتاب / ۰۹۳۵-۳۲۸۹۶۷۷

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# Introduction

Investing in a foreign country is always a challenge. "Year Book of Doing Business in Iran" in-tends to reduce the challenges by way of explaining not only the legal system and key legislation but also the differences in culture that exist. Further, it seeks to stress elements that are of particular importance when choosing a local partner so as to ensure that proper agreements are drafted that cover not only the duration of the cooperation, but also any potential exit from the market as well as implementing a procedure for dispute resolution.

As always, operating in a foreign market is not only a matter of translations so as to adequately ensure that the parties' intentions and expectations are vindicated. It requires a genuine under-standing of the cultural differences to ensure a long-standing cooperation for the mutual benefit of both parties. It is crucial to liaise with local advisors who understand the background and expectation of the foreign investor and who can communicate effectively with both parties in order to avoid potential misunderstandings and future conflicts.

There is a well-established legal system in IRAN with judicial courts offering protection as well as the opportunity to appeal court decisions. IRAN has also ratified the NEW

YORK Arbitration Convention and has established several local arbitration tribunals and recognizes international arbitration awards.

Starting a business in IRAN does not require joint ownership with a local partner or a minimum level of local interest in the business. On the other hand, it is recommended always to consider joining forces with a local partner who will be able to facilitate entrance into the Iranian market through a profound understanding of the local marketplace. Like any cooperation in business a joint venture whether as a partnership or in corporate form, requires a well drafted joint venture or shareholders agreement.

IRAN as a main rule recognizes the principle of freedom of contract in commercial matters. Although oral agreements are also legally valid it is advisable always to make written agreements so as to avoid misunderstandings and to secure proof of what has been agreed. That is particularly important where there is a difference in language, culture and religion.

To overcome the uncertainty of the implications of local law and practice, it is possible to agree that a particular law shall apply to a particular contract. However, where one of the parties is domiciled in Iran and the contract is signed in Iran, the Civil Code provides for the application of Iranian law as the applicable law. As an exception the parties may agree that possible conflicts shall be decided by arbitration and that the arbitration shall make its ruling according to a legal system other than Iranian Law. It is important to draft such clauses carefully and to take advice on the execution of the agreement.

Business income generated in Iran is subject to tax in Iran. There are a number of double taxation treaties in force between Iran and OECD countries that mitigate the effect of global taxation in the home country and local taxation of foreign businesses.

Local labor law must always be considered when operating in a foreign jurisdiction and Iran is no exception to this principle.

An important element of doing business in a foreign jurisdiction is the protection of products through proper intellectual property registration, such as trade mark registration. Possible conflicting registrations should be investigated before entering the market. Iran has joined several international conventions for the protection of IP rights.

An important element in the protection of foreign investments in Iran is the Foreign Investment Promotion and Protection Act (FIPPA) 2002 which provides both certain protection and advantages to direct and indirect foreign investments in Iran. Although sometimes licences are required, the FIPPA assists a foreign investor in the process of receiving such licenses.

Investment in Iran cannot be explained without mentioning the international economic sanctions that have been enforced for various reasons over the years. It must be emphasized that there is a difference in the nature and extent of the economic sanctions enforced by the US Office of Foreign Assets Control

(OFAC) under the US Department of Treasury and the UN Security Council economic sanction that are also supported by the European Union through its regulations. Although the economic sanctions were eased through the Joint Comprehensive Plan of Action (JCPOA) effective from 16 January 2016, there are still areas in which companies and persons are subject to either OFAC rules or UN/EU rules – or both – and therefore, in these circumstances, such companies and persons cannot operate with Iran or Iranian partners or alternatively government consent is required in order to do so. It must also be mentioned that financial transactions are in fact impacted by, in particular, the OFAC administration of financial transactions and by the fact that the JCPOA includes a "snap back" clause that allows a party to the JCPOA to terminate its participation with the agreement and reintroduce more stringent economic sanctions. Any foreign party should be prepared for this possibility with adequate contract clauses.

"Year Book of Doing Business in Iran" written by ESK Law Firm and edited by Sam Jalaei, head of Magnusson Law Firm Iranian Desk.

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March, 2018