



Arbitration of investment disputes under Iranian investment treaties

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Abstract

Purpose – The purpose of this paper is to examine the remedies available under Iranian investment treaties for settlement of investment disputes. This includes the obligation of the Iranian Government to provide foreign investors access to international arbitration. The sensitivity of the controversial Iranian nuclear program and the imposition of economic and financial sanctions on Iran will lead to the termination of many contracts between companies from Europe and the West and Iran, therefore, a viable solution must exist to address the rights and remedies of foreign investors. This article aims to provide an insight into Iranian treaties.

Design/methodology/approach – The main method was a survey of different treaties signed by Iran.

Findings – The discussion revealed that there are currently more than 50 treaties signed and ratified by Iran which provide arbitration as a dispute resolution forum. There are many treaties between the member countries of the European Union which make it important for the research. Iranian treaties guarantee international law remedies to foreign companies with investment in Iran by allowing them to seek redress in an international forum.

Practical implications – Iran has not signed the ICSID Convention, meaning that the arbitration proceedings will be subject to *ad hoc* arbitration rules of UNCITRAL. Furthermore, ICSID rules on enforcement of the award do not apply. Therefore, the winning party must go through the Iranian courts to enforce its awards.

Originality/value – The value of the paper is to government organization, international institutions and multinational companies with substantial economic interest in Iranian energy and natural resources. For the first time, the topic has been covered in a research paper. There are no articles in Iranian bilateral investment treaties (BITs) addressing dispute resolution through arbitration. This is the first piece of work that actually conducted a thorough analysis of Iranian BITs.

Keywords Arbitration, International investments, Iran

Paper type Research paper

Introduction

The imposition of economic sanctions by the United Nations[1], the USA[2] and European Union[3] on Iran for pursuing nuclear programme has prevented international oil companies active in the Iranian energy sector to complete their projects. The restrictions on the US, European and Asian companies to perform their obligations under the investment contracts may give rise to disputes with the Iranian counterparty. Iran is party to more than 50 bilateral investment treaties (BITs) concluded with capital exporting countries and developing countries to attract foreign investment. This article highlights the remedies that are available to foreign investors under the provisions of the BITs to defend their rights against the host state of investment. Iranian BITs offer foreign investors the option to refer



their disputes with the Iranian Government to international arbitration. The purpose of this research is to provide foreign investors involved in disputes with state entities with the solution to protect their interest in Iran under international law.

Investor-state arbitration

BITs offer ICSID arbitration as an option for settlement of disputes between the foreign investor and the host government, provided that both the home state of investor and the host state of investment have ratified the ICSID Convention and consented to arbitration of disputes under the ICSID arbitration rules[4]. Iran has not acceded to the ICSID Convention therefore arbitration of investment disputes between foreign investors and the Iranian Government/state entities are subject to the dispute resolution clause contained in the bilateral investment protection treaties ratified by Iran[5].

Notwithstanding, the non-adoption of ICSID Convention by Iran, some treaties signed by Iran provide ICSID arbitration as an option for resolution of investment disputes, subject to ratification of the Convention by both contracting state parties. In case, Iran accedes to the Washington Convention, investors should meet the jurisdictional requirements (personal and subject matter) in both the ICSID Convention and provisions of an investment treaty. Iran adopted its first model BIT in 2001 (UNCTAD, 2001, p. 479). The Iranian model BIT set forth the substantive investment protection standards including the rules and procedures for resolution of investment disputes. Article 12 is titled “Settlement of disputes between a contracting party and investor(s) of the other contracting party”[6]. Iranian BITs guarantee various methods/procedures for the settlement of investment disputes including international arbitration (institutional and *ad hoc*) and municipal courts. The first two provisions set forth the procedure and conditions for parties to prosecute their claim. The next sections will analyse the content of dispute resolution provision in Iranian BITs.

Scope of application

The substantive investment protection standards including access to international arbitration contained in investment treaties are offered to investments that are covered under the treaty provisions. Once a dispute arises out of an investment between a foreign investor and the Iranian Government, the first step for the investor is identifying an investment treaty in force between its home government and Iran containing the rights and obligations of the parties to the dispute[7].

In the context of Iranian BITs, the foreign investors must meet the criteria for approval and registration of the investment by the Organisation for Investment, Economic and Technical Assistance of Iran (OIETAI) in order to enjoy the benefit of BIT protection[8]. Scope of agreement provision in the Iranian Model BIT stipulates that:

[...] this Agreement shall apply to investments approved by competent authority of the host Contracting Party. The competent authority in the Islamic Republic of Iran is “Organisation for Investment, Economic and Technical Assistance of Iran (O.I.E.T.A.I)” or any other authority which will succeed it[9].

The Foreign Investment Promotion and Protection Act (FIPPA) 2002 and its Implementing Regulations lay down the conditions and procedure for admission and approval of foreign investments in Iran (Atai, 2005-2006, p. 115, 2009). Therefore, in order to qualify for protection under an applicable investment treaty, foreign investors must

satisfy the criteria for admission under the FIPPA provisions (Atai, 2005-2006, pp. 115-118). The investment license or admission certificate issued by the OIETAI specify the terms under which the investment is admitted into Iran[10]. Treaties signed by Iran with other countries expressly provide for the registration and authorisation of investment by the OIETAI[11]. The Iran-Malaysia investment agreement contains a detailed application provision entitled “scope of the agreement”:

- (1) This Agreement shall apply to investments made prior as well as after entry into force by investors of one Contracting Party in the territory of the other Contracting Party, in accordance with the laws, regulations or national policies of the latter. This Agreement shall only apply to investments that have been approved, if so required by the relevant laws and regulations of the host Contracting Party, by the competent authorities of that Contracting Party.
- (2) This Agreement shall not apply to disputes which arose before its entry into force.
- (3) The competent authority in the Islamic Republic of Iran, is the Organisation for Investment, Economic and Technical Assistance of Iran (O.I.E.A.I) or any agency which may succeed it[12].

The temporal application of the treaty provisions is set to cover investments that are made after the entry into force of the BIT in the contracting host party. Some Iranian BITs apply to investments that are made before or after the treaty comes into force in accordance with the national laws and regulations and subject to approval of competent authority[13]. The treaty between Iran and China provides that:

[...] this agreement shall apply to investments, which are made prior to or after its entry into force by investors of either Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter[14].

In a number of Iranian BITs, the provisions of the treaty applies to investments made before or after of entry into force of the treaty but excludes claims or disputes which occurred or settled before entry into force of the treaty[15]. The treaty between Iran and Finland stipulates that:

[...] this Agreement shall apply to investments made by investors of either Contracting Party in the territory of the other Contracting Party, whether made before or after the entry into force of this Agreement, but shall not apply to any dispute concerning an investment which arose or any claim, which was settled before its entry into force[16].

Consent to arbitration

Compliance by the investor with the national investment legislation of the host state (FIPPA 2002) is not an automatic qualification for access to international arbitration[17]. The parties' consent to arbitration is a fundamental requirement for establishing jurisdiction of international arbitration tribunal (Dugan *et al.*, 2008, pp. 219-45; Dolzer and Schreuer, 2008, pp. 238-53; Dolzer and Stevens, 1995; Schreuer, 2009, pp. 830-67, 2008, pp. 830-67). The arbitration agreement is perfected when the investor accepts the offer of consent granted by the host contracting state party in the BIT by submitting a request to arbitrate to the respondent state party pursuant with the treaty dispute resolution clause[18].

The lack of jurisdiction by the tribunal to decide the case may be a ground for annulment of the award. Dispute settlement provision contains consent clause which set forth the conditions for granting consent to jurisdiction of international tribunal

to which parties wish to refer their disputes (Douglas, 2009)[19]. Dispute settlement provision in investment protection treaties is classified into two categories:

- (1) one containing the state parties' advance consent to arbitration; and
- (2) the state party expressly or impliedly reserves its consent therefore arbitration require consent of both parties after the dispute has arisen[20].

Contracting state parties consent to a range of dispute settlement options, including competent courts of the host state of investment, procedures agreed by the parties, ICSID arbitration, ICC arbitration and *ad hoc* arbitration pursuant to UNCITRAL rules (Dolzer and Schreuer, 2008, p. 242; Schreuer, 2008, p. 836, 2009, p. 441)[21]. A number of Iranian BITs grant advance consent to different forms of arbitration procedures to be selected at the choice of investor[22]. Iran-Croatia investment agreement stipulates that, if these disputes cannot be settled the dispute shall be submitted, at the "choice" of the investor to:

- ICC Court of Arbitration in Paris;
- the *ad hoc* court of arbitration established under UNCITRAL;
- competent court of the Contracting Party in whose territory the investment is made; and
- ICSID set up by the ICSID Convention, in case both Contracting Parties have become signatories of this Convention[23].

Unconditional consent is explicit and unequivocal promise by the state parties to allow investors of one contracting party to have access to international arbitration[24]. The consent clause in a number of Iranian BITs grants investors an unequivocal and unconditional consent to arbitrate disputes[25]. The Iran-Korea investment agreement stipulate that, "both Contracting Parties give their unconditional consent to submit a dispute, with due regard to their laws and regulations, to international Arbitration"[26]. A group of Iranian BITs does not contain advance consent to arbitrate and both parties must agree to submit disputes to international arbitration[27]. The Iranian Model BIT stipulates that:

[...] in the event that the host Contracting Party and the investor(s) cannot agree within six months from the date of notification of the claim by one party to the other, either of them may refer the dispute to the competent courts of the host Contracting Party or with due regard to their own laws and regulations to an arbitral tribunal[28].

A number of Iranian BITs refer to international arbitration tribunal without alternative settlement procedure therefore both parties must consent to arbitrate disputes[29]. Dispute settlement provision in Iran-Kazakhstan investment agreement states that, the dispute shall, upon the request of the either contracting party or the investor be submitted to an arbitral tribunal of three members[30]. The second type of consent is conditional consent which requires the parties to meet the local law requirements for referring disputes to arbitration.

Some Iranian BIT provides that state-contracting parties must comply with the municipal law in granting consent to investors for arbitration of investment disputes. The treaty between Iran and Oman stipulates that, submission of disputes to arbitration by one contracting party must be in accordance with the laws and regulations of that contracting party[31]. Where the dispute settlement clause in investment treaties is silent

on the consent agreement reference should be made to other provisions of the treaty concerning admission of investment to the host contracting state party[32]. There are methods ways for the host state to offer consent to arbitration:

- a direct agreement (*compromise*) with the investor;
- provision in national legislation (national investment code); and
- treaty between the host state and the state of nationality of the investor (Schreuer, 2009, pp. 192-214)[33].

Constitutional requirement for consent

Article 139 of the Iranian Constitution provide that:

The settlement, of claims relating to public and state property or the referral thereof to arbitration is in every case dependent on the approval of the Council of Ministers, and the Assembly must be informed of these matters. In cases where one party to the dispute is a foreigner, as well as in important cases that are purely domestic, the approval of the Assembly must also be obtained. Law will specify the important cases intended here.

The above implies that, in two instances the consent of parliament is required for referring disputes to arbitration:

- (1) claims relating to public and state property; and
- (2) a party to the dispute is a foreign national.

Therefore, the Iranian Government or state entity must obtain the parliamentary approval for instituting arbitration against the foreign investor. In case, the foreign investor initiates arbitration, the Iranian party cannot contest the jurisdiction of the tribunal to hear the dispute on the basis of its failure to obtain the parliamentary approval as required by article 139 of the Constitution[34]. The arbitral tribunal will determine its jurisdiction on the basis of the jurisdiction clause contained in an applicable investment protection treaty in force between the investor home state and the Iranian Government.

However, the withholding of consent by the Iranian parliament to arbitrate disputes involving a foreign party may affect the decision of the Iranian courts to recognise and enforce of the award pursuant with the reservation made in the Law Ratifying the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (NYC)[35]. Therefore, the arbitration agreement between the foreign investor and the Iranian party must specify that, as a condition for referring disputes to arbitration the state entity should comply with the Constitutional requirements[36].

Where an investment treaty provides an unconditional offer of consent to the foreign investor and the Iranian parliament ratifies the treaty without making any reservations, then the application of article 139 of the Constitutional will not pose as an obstacle for institution of arbitration proceedings by the foreign investor. However, the government may withdraw its consent by changing the domestic law or terminating the investment treaty according to the Vienna Convention on the Law of the Treaty (VCLT). Therefore, the investor should submit a written confirmation to the host contracting party as soon as it has made the investment, stating that it accepts the offer to arbitrate disputes contained in the BIT dispute settlement clause.

Consent to arbitration in FIPPA

Article 19 of FIPPA is titled “settlement of disputes.” It states that:

[...] disputes arising between the Government and Foreign Investors with regard to investments under FIPPA, if not settled through negotiations, shall be referred 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[37].

Therefore, the government offers investors advance consent to resolve investment disputes through: negotiations, domestic courts and dispute settlement procedure as specified in the BIT. The dispute settlement provision in FIPPA is rather vague. It fails to provide an effective remedy for resolution of investment disputes between the foreign investor and the Iranian Government. First, the dispute settlement provision in FIPPA does not expressly refer to arbitration as a method for resolving disputes. Second, as a condition for resorting to municipal courts, the parties are required to settle the dispute through negotiation without specifying the procedure or waiting period. Third, only where there is an applicable BIT in force between the home state of the investor and Iran, investor can access international dispute settlement procedure. Therefore, FIPPA indirectly grant investors consent to arbitrate investment disputes, subject to existence of BIT (Atai, 2005-2006, p. 127). This may encourage investors to structure their investment through a country that has concluded an investment treaty with Iranian Government in order to cover its investment with substantive protection including access to international arbitration.

Procedural conditions to consent

Consent clause in investment treaties requires parties to adhere to a set of procedural conditions:

- requirement for negotiation and conciliation;
- notification of existence of claim;
- waiting period and time limitation;
- fork in the road; and
- waiver of domestic remedies (Dolzer and Schreuer, 2008, pp. 247-50)[38].

Waiting period for amicable settlement

As a condition for consent to arbitration investment parties are required to first attempt to resolve their dispute amicably through negotiation and consultation, “before arbitration proceedings are instituted at the election of the claimant investor” (Douglas, 2009, p. 332). The first clause in the treaty dispute settlement provision is the negotiation and consultation provision. Almost all Iranian BITs contain negotiation and consultation clause[39]. The Iranian prototype BIT stipulates that:

[...] if any dispute arises between the host Contracting Party and investor(s) of the other Contracting Party with respect to an investment, the Host Contracting Party and the investor(s) shall primarily endeavour to settle the dispute in an amicable manner through negotiation and consultation[40].

Consent clause set a time limit for undertaking amicable settlement by the parties after the expiry of which parties are authorised to institute arbitration proceedings. The waiting period ranges from three to six months depending on the wording of the

applicable treaty provision. The Iranian BITs envisage a cooling-off period of three[41], four[42] and six[43] months, respectively. The Iran Model BIT stipulates that:

[...] in the event that the host Contracting Party and the investor(s) cannot agree within six months from the date of notification of the claim by one party to the other, either of them may refer the dispute to [...] arbitral tribunal [...][28].

Consent clause may also require the investor to initiate legal proceedings within certain period of time after the lapse of which, it will no longer be able to pursue its claim against the host contracting state party in courts or arbitral tribunals. This is similar to a statute of limitation. The Iran-Austria investment agreement states that:

A dispute may be submitted for resolution [...] after four months from the date of the written notice of the investor to the Contracting Party [...] but no later than five years from date the investor first acquired or should have acquired knowledge of the events which gave rise to the dispute[44].

Notification of claim

Dispute settlement provision in investment treaties may require the investor to submit a written notification on host contracting party attaching the particulars of the claim. In the formal letter, the claimant investor informs the respondent host state party that dispute has occurred regarding an investment and set a deadline for rectifying the default. The notice of claim serves as evidence that the party alleging violation of BIT protection standards took steps to bring to defaulting party's attention the existence of the dispute accompanied by a request for negotiation and consultation to resolve the issue.

A letter-before-action sent by the investor to the state entity suffices for purpose of satisfying the requirement for submission of written notification of claim. The first and second clauses of the dispute settlement provision, the negotiation and consultation clause and arbitration clause, respectively, set out the requirement for service of notice of claim by the parties. In a number of Iranian BIT, the negotiation and consultation provision stipulate the requirement for submission of written notification of claim by the parties[45]. The treaty between Iran and Spain stipulates that:

Disputes that may arise between the one Contracting Party and an investor of the other Contracting Party with regard to an investment within the framework of the present Agreement, shall be notified in writing including a detailed information, by the investor to the former Contracting Party. As Far as possible, the parties concerned shall endeavour to settle these disputes amicably[44].

A number of Iranian BIT stipulate in arbitration clause the requirement for submission of notice of claim by parties[46].

Fork in the road clause

Investment treaties may provide the investor the choice between domestic court and international arbitration. A number of Iranian BITs contain a forum election provision[47]. The Iran-China investment agreement provides that:

[...] the host Contracting Party and the investor(s) may refer the dispute to the competent court of the host Contracting Party or with due respect to its own laws and regulations to an arbitral tribunal of three members[48].

Fork in the road provision is attached to the consent clause and offers the investor the choice between the host state courts and international arbitration, once made the choice is final (Schreuer, 2009, p. 365). “If the investor’s election is not in favour of arbitration before an international tribunal, then it precludes the tribunal’s jurisdiction over the same dispute”[49]. A number of Iranian BITs contain fork in the road provision[50]. The Iran-Malaysia BIT states that, “once the investor has submitted the dispute to the competent tribunal or court of the host Contracting Party or to international arbitration, the election shall be final”[51]. The fork in the road clause in investment treaties prevents the investor from instituting multiple proceedings in multiple forums in relation to the same investment dispute (Douglas, 2009, p. 321). Where the investor commences court action it will lose the right to institute arbitration proceedings and vice versa. The investment treaty dispute settlement provision initially offers the investor with multiple dispute settlement procedures to choose from to redress its claim against the host state party.

Requirement for waiver of local remedies

As a requirement for consent to arbitration, investment treaties may require waiver of legal proceedings commenced by the investor in the domestic courts against the state or state entity[52]. The Iranian Model BIT states that:

[...] a dispute primarily referred to the competent courts of the Host Contracting Party, as long as it is pending, cannot be referred to arbitration save with the parties agreement; and in the event that a final judgment is rendered, it cannot be referred to arbitration[53].

A number of Iranian BITs contain a waiver clause[54]. The treaty between Iran and Germany stipulates that:

In the event an investor of a contracting party has submitted a dispute to the local competent court the dispute may be referred to international arbitration provided the party submitting the dispute to arbitration bears the costs of the proceedings so far incurred and the court has not yet rendered a judgment in substance, if so required[55].

Unlike fork in the road clause which shields the host state from multiple lawsuits brought against it by the investor in different forums, the waiver clause protects both parties against frivolous claims by ensuring that only cases with merits are referred to domestic courts. The waiver clause allows the investor to initially file a lawsuit against the state/state entity in the local courts and subsequently submit the case to arbitration proceedings provided that it forgoes the right to invoke the local remedies. Further, fork in the road clause prevents parties from referring disputes to arbitration once court proceedings are started, whereas waiver clause allows the parties to opt for arbitration during the court proceedings.

Jurisdiction (subject matter and personal)

The scope of consent to arbitration by the contracting state parties varies in each treaty and depends on whether the wording of the dispute resolution clause adopts a broad or restrictive definition of disputes that the investor can refer to arbitration. The scope of dispute resolution clause may cover:

- “all” or “any” disputes;
- restricts the *ratione materiae* jurisdiction over disputes arising out of investment authorisation, investment agreement or violation of rights under the treaty;

- restricts the subject matter of investor-state arbitration exclusively to alleged violation of substantive treaty provisions; and
- the fourth limit the *ratione materiae* jurisdiction of a tribunal to disputes concerning the amount of compensation for unlawful expropriation (Douglas, 2009, pp. 234-5).

The question is raised as to:

- (1) What types of disputes can be submitted to dispute resolution (subject matter jurisdiction)?
- (2) Who is eligible to make a claim under the treaty terms (personal jurisdiction).

These two questions are answered in the provisions of the treaty dealing with definition of subject matter investment and investor including individual and corporate.

The Iranian Model BIT permits the investor to submit “any disputes” with respect to an investment to arbitration[40]. The first question for the tribunal is the admissibility of the claim referred to it by the claimant pursuant with the terms of the dispute resolution clause in the investment treaty. The next two subsections outlines the subject matter and personal jurisdiction of the tribunal constituted pursuant with Iranian BITs.

Subject matter jurisdiction

Subject matter jurisdiction or jurisdiction *ratione materiae* refers to “the jurisdictional requirements as to the nature of the dispute” (Williams, 2008, p. 872). One of the prerequisites for jurisdiction of an arbitral tribunal is determining whether a particular economic activity constitutes investment under the definition of investment protection instruments (Dugan *et al.*, 2008, p. 247)[56]. The claimant must first establish that, “the transaction underlying the parties’ dispute falls within the scope of the consent to arbitration, whether contained in a contract, national investment law, or international investment treaty” (Rubins, 2004, p. 290). ICSID Convention does not define the term investment[57]. The international tribunal must determine whether the investor posse’s property rights in the investment according to the Iranian laws including provisions of FIPPA[58]. As to the question whether the scope of property rights acquired by the investor is protected investment under the international law, reference should be made by the tribunal to the definition of in the investment treaty[59]. The first article in bilateral investment protection treaties set forth a general and broad definition of investment as “every kind of asset.” The Iranian Model BIT investment is defined as:

[...] the term “investment” refers to every kind of property or asset, including the following, invested by the investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the other Contracting Party (hereinafter referred to as the host Contracting Party)[60].

It then provides a list of assets that could qualify as investment:

- movable and immovable property as well as rights related thereto;
- shares or any kind of participation in companies;
- money and/or receivables;

- industrial and intellectual property rights such as patent, utility models, industrial designs or models, trade marks and names, know-how and good will; and
- rights to search for, extract or exploit natural resources.

Investments that fall under any of above categories are protected investments under the treaty terms and the parties can refer disputes relating to them to arbitration[61]. Majority of Iranian BITs set forth an open-ended the non-exhaustive list of asset categories that fall within the definition of investment[62]. Investment treaties including Iranian BITs require the investment to be “in accordance with the host state law.” Sometimes host states argue that, “this means that the concept of ‘investment,’ and hence the reach of the protection under the treaty, had to be determined by reference to their own domestic law” (Schreuer, 2009, p. 200). Tribunals have consistently held that, “the reference to the host State’s domestic law concerned not the definition of the term ‘investment’ but solely the legality of the investment” (Schreuer, 2009, p. 201)[63]. Clearly, “these provisions, effectively, establish a screening right for the host state to exclude non-conforming investments” (Schreuer, 2009, pp. 192-214; Dugan *et al.*, 2008, p. 253)[33].

A typical form of investment is acquisition of controlling shares of a company incorporated under the laws of the host state. The direct investment in the corporate entity may entail exercise of management and control in the company by the investor. The local company may be used as a vehicle for the purpose of undertaking the proposed investment project. The status of the locally incorporated company is considered as an investment and not as foreign investor (Schreuer, 2009, p. 150).

Meaning of investment in FIPPA

FIPPA set forth the definition of the term investment. FIPPA defines investment as, “utilisation of foreign capital in new or existing economic enterprise after obtaining the investment license”[64]. Foreign capital is defined as various types of capital including cash or non-cash, which are imported into Iran by the foreign investor[64]. The illustrative list of capital transactions is as follows:

- cash funds in the form of convertible currency;
- machinery and equipments;
- tools and spares, complete knock-down parts and raw, addable and auxiliary materials;
- patent rights, technical know-how, trade marks and names, and specialised services;
- transferable dividends of foreign investors, and;
- other permissible items approved by the Council of Ministers.

There are major flaws in the definition of investment. First, the definition of investment is limited to capital transaction by the foreign investor. FIPPA fails to provide asset-based definition of the investment such as rights and interests that can be owned and controlled by the foreign investor under the law or contract. Second, FIPPA excludes from the ambit of protection equitable interest held by investor in contractual arrangements such as turnkey, construction, management, production, concession, revenue sharing and other similar contracts.

Personal jurisdiction (natural and legal person)

The second jurisdictional requirement is the *ratione personae* or personal jurisdiction.

An important question for the tribunal is whether it has jurisdiction extends over a claimant investor, both natural and legal person.

Natural person

Sinclair noted that, “nationality of an investment treaty Contracting State is a threshold requirement for an investor to access the treaty’s procedural and substantive protection” (Sinclair, 2005, p. 358). Iranian Model BIT defines individual and corporate investor, respectively, as:

- Natural persons who, according to the laws of either Contracting Party, are considered to be its nationals and have not the nationality of the host Contracting Party.
- 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[65].

Tribunals will employ the following criteria to determine the nationality test:

[...] the natural person nationality requirement has two temporal aspects: the investor must be a national of the relevant state, first, at the time the dispute was consensually submitted to arbitration and secondly, at the time the request for arbitration is registered. The definition expressly excludes any person who on either of those dates was also a national of the contracting state party to the dispute; that is the host state (Williams, 2008, p. 885)[66].

In particular cases where the claimant’s nationality is contested by the respondent state on the grounds of having dual nationality, the tribunal will independently examine the nationality of the investor[67]. This means that investors with dual nationality cannot prosecute a claim against the host contracting party. As noted above, the nationality test contained in the Article 2(2) Iranian Model BIT requires the tribunal to determine the nationality of the individual investor according to the law of the contracting state party. Further, the nationality provision in Iranian Model BIT excludes investors with dual nationality to invoke dispute resolution clause.

In a number of Iranian BITs, the nationality provision stipulates that the test for nationality must be determined according to laws of contracting party and exclude dual nationals from the substantive treaty protection standards[68]. Some Iranian BITs while stating that the nationality test is subject to the contracting state law, does not explicitly preclude claims by investor who also hold the nationality of the host contracting state[69]. Therefore, in case of objection by the Iranian Government that claimant investor holds dual nationality, the tribunal must apply to the laws of the contracting state parties to determine the effective and dominant nationality of the investor.

The tribunal may exercise jurisdiction *ratione personae* over claimant with dual nationality provided the investor can satisfy the test for effective and dominant nationality (Gallagher, 2007, pp. 36-8). However, some commentators argue that, “customary international law principles would preclude such claims” (Luzi and Love, 2009, p. 197).

Corporate investor

Just as the individual investor is required to have nationality of a contracting party, corporate investor must also satisfy the nationality test under the treaty terms[70].

There are two categories of juridical person:

- (1) corporation of a nationality distinct from that of the contracting state party to the dispute; and
- (2) corporation which has the nationality of the contracting state party but is under foreign control (Williams, 2008, p. 889).

The host state law may require the foreign investment to be undertaken through a locally incorporated company such a branch or by entering into a joint venture (contractual and equitable) with a local partner. Under the municipal law such a company is deemed as having the nationality of the host state of the investment. The question arises as to whether such a company has legal standing in arbitration proceeding against the host state.

The ICSID Convention has resolved the issue by authorising legal person with nationality of the host state to have legal standing provided it is controlled by a foreign shareholder and subject to the agreement of the parties in dispute (Dugan *et al.*, 2008, p. 313)[71]. However, natural or legal persons cannot purchase the shares of the local company after dispute has arisen to acquire legal standing to present a case by asserting that it qualifies for foreign control[72]. The connecting factor between investor and state deal with:

- the place of incorporation or legal establishment;
- the place of the seat (*siege sociale*) or central corporate administration; and
- the nationality of the controlling shareholders (Dugan *et al.*, 2008, p. 306).

The traditional test of incorporation or effective seat and the control is accepted as the criteria for determining the nationality of the juridical person under the customary international law (Williams, 2008, p. 890)[73]. The Iranian Model BIT defines corporate investor as:

[...] 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[74].

In a number of Iranian BITs, the nationality of the corporate investor is determined according to the law of the state of incorporation whose seat and real economic activities are located in the contracting party[75].

The definition of corporate investor only refers to legal entities incorporated according to the laws of the home state of the investor[76]. A number of Iranian BITs in addition to covering legal entities established under laws of contracting party extends the jurisdiction *ratione personae* to locally registered companies provided that the project company is controlled by the natural or legal investor of the home state nationality[77]. The Iran and Switzerland BIT defines investor as:

- Natural persons who, according to the law of that Contracting Party, are considered to be its nationals.
- Legal entities established under the laws of that Contracting Party and have their seat, together with real economic activities, in the territory of that same Contracting Party.
- Legal entities not established under the laws of that Contracting Party but effectively controlled by natural persons and legal entities as defined above[78].

This means that a Swiss parent company through its subsidiary based in a third country can make investment in Iran and enjoy the protection of the BIT. An investor may structure its investment by incorporating a company in a country which has an investment treaty with the host state. While this is accepted in the context of promotion of the flow of foreign capital, in reality such practice by an investor is deemed invalid. According to commentators:

[...] there cannot, however, be a restructuring of the investment in order to resort to the dispute resolution provision of an investment treaty once a dispute has arisen. Treaty shopping is acceptable; forum shopping is not (Douglas, 2009, p. 542).

Definition of foreign investor in FIPPA

Where the investor consent is based on FIPPA, its provision contains definition of foreign investor. Article 1 of FIPPA defines foreign investor as, non-Iranian natural or juridical persons and/or Iranians using capital with foreign origin, who have obtained the investment license from the OIETAI. The above definition does not qualify the nationality of the corporate investor on the basis of the place of registration, seat of management and foreign control. Neither does it define natural persons as those who hold foreign nationality other than the Iranian nationality.

FIPPA qualifies investors (natural and legal) on the basis of the nationality of the capital funds which has to originate from a foreign source. Therefore, anyone including Iranian expatriates can cover their investments with FIPPA protections including access to dispute resolution procedure provided that they meet the conditions for admission of investment under the act. Furthermore, investors can register a company in any jurisdiction which enjoys friendly business relations or concluded BIT with the Iranian Government. In reality, FIPPA qualifies investments rather than investors for protection under its substantive provisions including protection against political and legal risks of expropriation and inconvertibility. This is in conformity with the object and purpose of BITs that seek to accord international law protection to the property of foreigners against encroachment by the host government. FIPPA relaxes the requirements for real place of business or economic activity or foreign nationality of shareholders or investor. Corporate and individual investors who wish to enjoy the benefits of an investment treaty signed between their home state and Iran must ensure that they also meet the nationality test contained in the treaty.

Arbitration procedure

A number of Iranian BITs specifies different types of arbitration proceedings (*ad hoc* and institutional). Some Iranian BITs provide the investor access to international arbitration under the *ad hoc* Arbitration Rules of UNCITRAL or any other arbitration procedure agreed by the parties, ICSID and ICC arbitration rules[79]. The Iran-Austria investment agreement provides that, the investor has the choice to submit the dispute for settlement to:

- competent court of the host state;
- *ad hoc* arbitral tribunal in accordance with UNCITRAL arbitration rules;
- ICC rules of arbitration;
- ICSID arbitration rules under the ICSID Convention, if or as soon as both contracting parties acceded to it; and
- any other settlement procedure agreed upon by the parties to the dispute[80].

A number of Iranian BITs provide investors access to *ad hoc* arbitration under Arbitration Rules of UNCITRAL or other international arbitration as agreed between the parties and/or institutional rules of ICSID[81]. The Iran-Malaysia BIT states that, where the dispute is referred to international arbitration, the investor concerned may submit the dispute to:

- ICSID established under the ICSID Convention, if or as soon as both contracting parties have acceded to the convention, each contracting party hereby declares its acceptance of such an arbitral procedures;
- an *ad hoc* arbitral tribunal to be established under the arbitration rules of UNCITRAL; or
- any other international arbitration or *ad hoc* arbitration tribunal agreed upon between the parties to the disputes[82].

A number of Iranian BITs specify *ad hoc* arbitral tribunal and ICSID tribunal to be established under the UNCITRAL Arbitration Rules[83]. In some Iranian BITs, dispute settlement clause specifies only two types of arbitration proceedings:

- (1) *ad hoc* arbitration under UNCITRAL Arbitration Rules; and
- (2) institutional arbitration under ICSID Arbitration Rules[84].

A number of Iranian BITs provide *ad hoc* arbitration pursuant with Arbitration Rules of UNCITRAL[85]. The Iranian Model BIT states that the arbitration proceedings shall be conducted according to UNCITRAL Arbitration Rules[86]. The Iran-Switzerland investment agreement stipulates that:

[...] either party may submit the case to an arbitral tribunal which shall be constituted for each individual (ad hoc tribunal) [...] The Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) shall serve as default rules[87].

Some Iranian BITs authorise the parties to change the rule of procedures. Treaty between Iran and Ukraine states that:

[...] any party has the right to submit the case to an international *ad hoc* arbitral tribunal established under the rules of UNCITRAL. The parties to the disputes can agree in writing to change these rules[88].

In some Iranian BITs, no reference is made to the rules of procedure applicable to the proceedings[89].

The Iran-China investment agreement states that:

[...] either of contracting state parties may refer their dispute to the competent courts of the host state contracting party or with due respect to its own law and regulations to an arbitral tribunal comprised of three members[90].

Where the dispute settlement clause does not specify the rules of procedure, the arbitral tribunal has the power to determine the procedure. In a number of Iranian BITs, the arbitration clause requires the tribunal to determine the arbitration procedures[91]. Iran-China BIT stipulates that, the *ad hoc* arbitral tribunal shall determine its own procedure and the place of arbitration[92]. Iran-Qatar BIT stipulates that, the tribunal shall determine its own arbitration procedure[93].

Applicable substantive law

Generally, investment treaty arbitration involves the application of three districts system of laws including:

- (1) procedural law;
- (2) substantive law; and
- (3) law of the country of the seat of arbitration in case of non-ICSID arbitration proceedings.

The procedural law as mentioned in the previous section is UNCITRAL Arbitration Rules.

The substantive law set forth the rights and obligations of the parties as contained in the administrative contracts, municipal laws and/or international treaties ratified by the host state government[94]. The substantive law governing the dispute between the foreign investor and the Iranian Government is the investment protection standards of:

- fair and equitable treatment;
- full security and protection;
- non-discrimination;
- national treatment;
- most favoured nation treatment; and
- non-expropriation and nationalisation[95].

The above are the international minimum standards of protection to be accorded by the host state party to foreign investors. The local courts of the host state will interpret and apply the provisions of the bilateral investment protection treaty according to the national laws[96]. In the context of Iranian law, “the provisions of treaties that are signed between the Iranian Government and other governments in accordance with the Constitution shall have the force of law”[97]. Therefore, upon ratification by the Iranian parliament, the international investment agreements become fully operational the provisions of which can be invoked by claimant investors when filing a lawsuit against the state entity/agency in the Iranian courts[98].

The Iranian courts will apply and interpret the standards of substantive investment protection contained in the international investment treaty according to the FIPPA provisions (Atai, 2009). The arbitral tribunal will apply the principles of public international law to determine the liabilities of the host state party towards the aggrieved investor. The applicable rules of international law are the customary international law of treaty interpretation as encapsulated by the 1969 VCLTs. Article 31(1) provides that:

[...] a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.

Dispute settlement provisions in international investment agreements may stipulate the applicable substantive rules of law governing the rights and obligation of the contracting parties. A number of Iranian BITs contain choice of law clause[99]. The Iranian Model BIT states that, the arbitration award shall be based on:

- the provisions of this agreement; and
- the national law of the Contracting Party in whose territory the investment is made[100].

Therefore, investment tribunal should apply the substantive treaty provisions and the FIPPA provisions when determining the rights and obligations of the disputing parties. The treaty between Iran and Korea stipulates that, the tribunal shall take its decision in conformity with the provisions of the BIT, the laws of the contracting party to the dispute and the principles of international law[101].

This means that the Korean investor can make a claim against the Iranian Government for violation of international treaty obligations which are governed by the international law and claim against the state entity for breach of contract provisions which are governed by the Iranian laws (FIPPA). The Iran-Syria investment agreement provides that, “the applicable law shall be the host Contracting Party’s law. However, the arbitrators may in any event take into consideration the general principles of international law”[102]. Therefore, the arbitral tribunal should apply the FIPPA in determining the rights and obligations of the parties and refer to international customary law when there is a loophole in interpretation and application of the substantive investment protection standards.

Place of arbitration proceedings

Generally, the parties to the dispute are free to choose the place of the arbitration proceedings. The challenging of the award is normally governed by the national arbitration law of the place of arbitration, therefore, the losing party may apply to the national courts of the country in which the award was made to set aside the award on the basis of the grounds set in out in the arbitration statute. In such a case, the Iranian court may refuse recognition and enforcement of an award that has been annulled in country of origin pursuant with Article V(1)(e) of the NYC. Therefore, it is best advised to choose a country whose arbitration legislation contains limited grounds for annulment and setting aside such as those that have adopted the UNCITRAL Model Law or some variant of it (i.e. procedural irregularities and public policy). In the context of foreign companies operating in Iran, it has been the practice to choose Geneva or Paris as the place of arbitration proceedings.

Dispute settlement provisions in BITs may stipulate the place of arbitration. Some Iranian BITs stipulate Paris as the place of arbitration[103]. A number of Iranian BITs stipulate Paris as the default place of arbitration[104]. The treaty between Iran and Georgia states that:

[...] the place of arbitration shall be determined by the Contracting Parties. If the parties don’t reach agreement about the place within one month from the appointment of the chairman, then Paris will be the final place of arbitration[104].

Some Iranian BITs stipulate that the place of arbitration shall be agreed by the parties to the dispute[105]. A number of Iranian BITs provide that the place of arbitration shall be determined by the arbitral tribunal[106]. Some Iranian BITs stipulate Hague as the place of arbitration[107].

Recognition and enforcement of international arbitral award

An important feature of international arbitration is that:

- the award is final and binding on the parties to the dispute; and
- it cannot be appealed or reviewed by the domestic courts[108].

The dispute settlement provisions in the investment protection treaties may stipulate that the award is binding and final on the parties to the dispute in order to prevent it from being appealed or reviewed by the local courts[109]. The enforcement of arbitral awards in Iran is subject to the Law Ratifying the New York Convention on the Recognition and Enforcement of Foreign Awards (NYC) 2002[110]. Under the above law, the provisions of the NYC will be implemented in Iran on the following conditions:

- The legal contractual relationship of the parties should be considered commercial under the laws of the Islamic Republic of Iran.
- The provisions of Convention shall be implemented on the basis of reciprocal relationships and the awards which are issued in the jurisdiction of the contracting states can be recognised and enforced.
- Article 139 of the Islamic Republic of Iran Constitution concerning arbitration of government disputes must be complied with.

Once the claimant investor obtains a favourable award from the international tribunal, it must submit the documents required under Article IV to the Iranian courts together with request for recognition and enforcement of the arbitration award[111]. The Iranian court will establish whether or not:

- the arbitration award under the Iranian law governs commercial relationship; and
- the issuing tribunal is situated in a country which is contracting party to the NYC.

After assessing and making sure the award meets the above requirements, the court will issue an enforcement order and the arbitration award will be enforced under the same rules of procedures required for enforcement of the judgments rendered by Iranian courts. However, the losing party can challenge the enforcement of the award on the basis of any of the grounds for annulment contained in Article 5 NYC[112]. The court can refuse recognition and enforcement if there had been any procedural irregularities in the arbitration proceedings[113].

Furthermore, the court also has to determine whether under Article 5(2) NYC; first, the subject matter in dispute can be settled through arbitration, and second, the recognition and enforcement of arbitration award is not contrary to public policy[114]. Dispute settlement provisions in investment protection treaties may impose an obligation on the host contracting state party to take necessary measures for enforcement of the award in accordance with its laws and regulations. Some Iranian BITs contain an enforcement clause[115]. A number of Iranian BITs state that the decision of the tribunal shall be binding and final on the contracting state parties[116]. Some Iranian BITs provide for finality and binding decision by arbitrators and enforcement of award by the contracting state parties in accordance with their laws and regulations[117]. The Iran-South Africa investment agreement stipulates that:

[...] the arbitration award shall be final and binding on the parties to the dispute. Each Contracting Party shall give effect to the award rendered in accordance with its laws and regulations[118].

A number of Iranian BITs specify that the award should be made by a majority vote of arbitrators, be final and binding on parties, and enforced by the contracting state parties[119]. The Iran-China investment agreement states that:

[...] the tribunal shall reach its decision by a majority of votes. Such award shall be final and binding upon both parties to the dispute. Both Contracting Parties shall commit themselves to the enforcement of the award[120].

Conclusion

Iran has taken positive steps in recent years to promote and protect foreign investment by signing more than 50 BITs with capital exporting as well as developing countries. Iranian BITs provide foreign investors with effective and enforceable remedy to pursue their claims against the state/state entity in an independent, neutral and third-party forum. The ratification and approval of bilateral investment protection treaties by the parliament and the Guardian Council, respectively, is an indication of Iran's willingness to create a favourable and stable climate for foreign investment. However, in the absence of ICSID protection, investors should rely on domestic laws to enforce the investment award issued by international tribunals in Iran which may be subject to challenge by the losing party. Accession to the ICSID Convention, not only benefits foreign investors by providing them with institutional support and assistance, but also protects the Iranian Government against claims by investors which are baseless and premature. In conclusion, Iranian BITs guarantee foreign investors remedies under international law including the option to resolve their disputes with Iranian Government/state entities pursuant with the Arbitration Rules of UNCITRAL.

Notes

1. United Nations Security Council passed resolution 1929 on 9 June 2010. Member States are prohibited from providing financial and insurance services to Iranian banks and companies that are engaged in nuclear proliferation activities.
2. USA enacted the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISAD) on 1 July 2010. The US Government gives non-US companies the option to trade with Iran and loose the US capital market, or sever ties with Iran and avoid US sanctions.
3. The European Union adopted restrictive measure against Iran on 29 July 2010. The EU sanctions restrict European companies from investing in the development of the Iranian oil and gas fields and liquefied natural gas.
4. The Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington Convention) establishing the International Centre for Settlement of Investment Disputes (ICSID or the Centre) was adopted on 14 October 1966.
5. Dispute settlement options include; *ad hoc* arbitration pursuant with the UNCITRAL arbitration rules, ICC arbitration, and any other settlement procedure previously agreed by the parties.
6. Dispute settlement provision in investment protection treaties lays down the rules and procedures for institution of arbitration proceedings, appointment of arbitrators, constitution of the arbitral tribunal and recognition and enforcement of the arbitration award.
7. Admission provision in majority of investment treaties makes admission of foreign investment subject to the laws and regulations of the host state party. Therefore, the application of relevant investment treaty is conditional on satisfaction of domestic laws requirements for admission and entry of foreign investment. In addition, investment treaties may require the approval of the specific investment project by the competent authority of the host state. Scope of agreement provision in investment treaties set forth

the conditions for qualification of investment for protection under the substantive provisions of investment treaty including access to dispute resolution procedure.

8. International investment agreements will not apply to the investment until its ratification by the competent authority of the signatory state, i.e. the legislative body. As to the question of validity, investment treaties remain in force for a period of ten years, and continue to stay in force unless a contracting party give notice of termination. However, after the expiration or termination of the treaty, its provisions will apply to covered investments for a period of ten years.
9. Iranian Model BIT Art 11.
10. In the Iranian BITs, the requirement for approval of investments by the OIETAI may be contained in the provisions dealing with (a) definition of investment and investor, (b) admission of investment and investor, (c) scope of agreement/application, (d) duration, validity and termination and (e) protocol attached to the treaty. The protocol attached to the treaty between Iran and Croatia states that, this agreement shall only apply to investments approved by the OIETAI.
11. Iran-Armenia BIT protocol, Iran-Austria BIT art 10, Iran-Azerbaijan BIT art 9, Iran-Bahrain BIT art 10, Iran-Bangladesh BIT art 11, Iran-Belarus BIT protocol, Iran-Bosnia Herzegovina BIT art 14, Iran-Bulgaria BIT art 12, Iran-China BIT art 11, Iran-Croatia BIT protocol, Iran-Finland BIT art 11, Iran-France BIT art 10, Iran-Georgia BIT protocol, Iran-Germany BIT art 9, Iran-Greece BIT art 11, Iran-Kirgizstan BIT art 1(3)-(4), Iran-Kazakhstan BIT protocol, Iran-Lebanon BIT art 12, Iran-Macedonia BIT art 9, Iran-Malaysia BIT art 10, Iran-Morocco BIT art 11, Iran-North Korea BIT art 11, Iran-Oman BIT art 11, Iran-Pakistan BIT protocol, Iran-Poland BIT protocol, Iran-Qatar BIT 11, Iran-Romania BIT art 9, Iran-South Africa BIT art 11, Iran-South Korea BIT art 11, Iran-Spain BIT art 10, Iran-Sri Lanka art 10, Iran-Sudan BIT art 11, Iran-Switzerland BIT art 2, Iran-Syria BIT art 1(3)-(4), Iran-Tajikistan BIT art 1(3)-(4), Iran-Thailand BIT art 10, Iran-Tunisia BIT art 11, Iran-Turkey BIT art 2, Iran-Ukraine BIT protocol, Iran-Uzbekistan BIT art 11, Iran-Yemen BIT art 1(4).
12. Iran-Malaysia BIT art 10.
13. Iran-Armenia BIT protocol, Iran-Bulgaria BIT art 12, Iran-China BIT art 11, Iran-France BIT art 10, Iran-Morocco BIT art 11, Iran-Sri Lanka art 10.
14. Iran-China BIT art 11.
15. Iran-Austria BIT art 10, Iran-Bahrain BIT art 10, Iran-Finland BIT art 11, Iran-Germany BIT art 9, Iran-Greece BIT art 11, Iran-Macedonia BIT art 9, Iran-Malaysia BIT art 10, Iran-Romania BIT art 9, Iran-Spain BIT art 10, Iran-South Africa BIT art 11, Iran-Switzerland BIT art 2, Iran-Thailand BIT art 10.
16. Iran-Finland BIT art 11.
17. The mere existence of a dispute settlement clause in international investment protection treaties does not confer on the parties the right to submit disputes to arbitration. Dispute resolution clause in investment treaties lays down the procedure for institution of arbitration proceedings by the disputing parties. The investor must satisfy the condition precedent required for activation of dispute settlement provision.
18. Article 25(1) of ICSID Convention state that, "the jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the Parties have given their consent, no party may withdraw its consent unilaterally." Article II(1) of the New York Convention stipulate that, "each Contracting State shall recognize an agreement in writing under which the parties undertake

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- to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship [...]”.
19. “[...] consent of the respondent host state to investor/state arbitration in the investment treaty is the most important condition for the vesting of adjudicative power in the tribunal [317]”.
 20. “In the former, investor can institute arbitration against state by submitting a request for arbitration which will perfect the arbitration agreement. In the latter, the investor does not have access to arbitration unless both parties to the dispute make an agreement to submit their dispute to arbitration (Cremades and Cairns, 2004)”.
 21. [...] while some of these composite settlement clauses contemplate a subsequent agreement of the parties to select one of these procedures, others contain the state’ advance consent to all of them, thereby leaving the choice with the party instituting the proceedings (Schreuer, 2009, p. 441).
 22. Iran-Austria BIT art 11(2), Iran-Bulgaria BIT art 10(2), Iran-Croatia BIT art 11(2), Iran-Finland BIT art 12(2), Iran-France BIT art 8(2), Iran-Greece BIT art 12(2), Iran-Italy BIT art 8(2), Iran-Malaysia BIT art 12(4), Iran-Oman BIT art 12(2), Iran-Poland BIT art 11(2), Iran-Romania BIT art 10(2), Iran-South Korea BIT art 12(2), Iran-Spain BIT art 11(2), Iran-Tunisia BIT art 12(2), Iran-Turkey BIT art 11(2), Iran-Yemen BIT art 11(2).
 23. Iran-Croatia BIT art 11(2).
 24. “Consent will be valid according to its own terms; that is, to the extent that disputes are covered by its scope” (Schreuer, 2009, p. 378).
 25. Iran-Austria BIT art 11(2), Iran-South Korea BIT art 13(7), Iran-Swiss BIT art 9(3), Iran-Austria BIT art 11(2).
 26. Iran-South Korea BIT art 13(7).
 27. Iran-Azerbaijan BIT art 10(2), Iran-Bahrain BIT art 11(2), Iran-Bangladesh BIT art 12(2), Iran-Belarus BIT art 11(2), Iran-Bosnia Herzegovina BIT art 11(2), Iran-China BIT art 12(2), Iran-Germany BIT art 11(2), Iran-Lebanon BIT art 13(2), Iran-Macedonia BIT art 10(2), Iran-Morocco BIT art 12(2), Iran-North Korea BIT art 12(2), Iran-Qatar BIT art 12(2), Iran-Sri Lanka BIT art 10(2), Iran-Sudan BIT 12(2), Iran-Syria BIT art 11(2), Iran-Tajikistan BIT art 11(2), Iran-Thailand BIT art 11(2), Iran-Uzbekistan BIT art 12(2).
 28. Iran Model BIT art 12(2).
 29. Iran-Armenia BIT art 11(2), Iran-Georgia art 11(2), Iran-Kazakhstan BIT art 11(2), Iran-Kirgizstan art 11(2), Iran-Pakistan BIT art 11(2), Iran-Ukraine BIT art 8(2), Iran-South Africa BIT art 12(2), Iran-Switzerland BIT art 9(2).
 30. Iran-Kazakhstan BIT art 11(2).
 31. Iran-Oman BIT art 12(3).
 32. This implies that the investment must be admitted in the host state in compliance with the municipal laws as outlined in previous section.
 33. “Arbitration is consensual, in that it requires the parties to consent to arbitration either through, a) arbitration clause in the contract providing for arbitration of future disputes, or b) direct agreement (*compromise*) between the parties for arbitrating existing disputes” (Born, 2009).
 34. International tribunals have consistently held that the constitutional requirement for consent to arbitrate disputes applies solely to the state/state entity and not the foreign investor; therefore, the state/state entity cannot invoke domestic law to justify its international treaty obligation to provide foreign investor access to arbitration.

35. The law ratifying the New York Convention has made observance of Article 139 of the Iranian Constitution mandatory.
36. The foreign investor may also request the state entity to provide a letter of undertaking or a side-letter confirming that it has the authority to arbitrate disputes with foreign investor under its articles of association or the legislation under which the agency is established.
37. FIPPA art 19.
38. "Rule 21 of International Law of Investment Claim (ILIC) state that, in addition to the acquisition of the investment in the host contracting state party pursuant to Rule 22 and Rule 23, the claimant must have satisfied any conditions precedent to the consent of the host contracting party to the arbitration of investment disputes as stipulated in the investment treaty (Douglas, 2009, pp. 152-60; Schreuer, 2008, pp. 843-9; Schreuer, 2009, pp. 237-40)."
39. Iran-Armenia BIT art 11(1), Iran-Austria BIT art 11(1), Iran-Azerbaijan BIT art 10(1), Iran-Bahrain BIT art 11(1), Iran-Bangladesh BIT art 12(1), Iran-Belarus BIT art 11(1), Iran-Bosnia Herzegovina BIT art 11(1), Iran-Bulgaria BIT art 10(1), Iran-China BIT art 12(1), Iran-Croatia BIT art 11(1), Iran-Finland BIT art 12(1), Iran-France BIT art 8(1), Iran-Georgia BIT art 11(1), Iran-Germany BIT art 11(1), Iran-Greece BIT art 12(1), Iran-Kazakhstan BIT art 11(1), Iran-Kirgizstan BIT art 11(1), Iran-Lebanon BIT art 13(1), Iran-Macedonia BIT art 10(1), Iran-Malaysia BIT art 12(1), Iran-Morocco BIT art 12(1), Iran-North Korea BIT art 12(1), Iran-Oman BIT art 12(1), Iran-Poland BIT art 11(1), Iran-Pakistan BIT art 11(1), Iran-Qatar BIT art 12(1), Iran-Romania BIT art 10(1), Iran-South Africa BIT art 12(1), Iran-South Korea BIT art 12(1), Iran-Sri Lanka BIT art 11(1), Iran-Sudan BIT art 12(1), Iran-Switzerland BIT art 9(1), Iran-Syria BIT art 11(1), Iran-Tajikistan art 11(1), Iran-Thailand BIT art 11(1), Iran-Tunisia BIT art 12(1), Iran-Turkey BIT art 11(1), Iran-Ukraine BIT art 8(1), Iran-Uzbekistan BIT art 12(1), Iran-Yemen BIT art 11(1).
40. Iran Model BIT art 12(1).
41. Iran-Finish BIT art 12(2).
42. Iran-Austria BIT art 11(3), Iran-Bahrain BIT art 11(2).
43. Iran-Armenia BIT art 11(2), Iran-Azerbaijan BIT art 10(2), Iran-Bangladesh BIT art 12(2), Iran-Belarus BIT art 11(2), Iran-Bosnia Herzegovina BIT art 11(2), Iran-Bulgaria BIT art 10(2), Iran-China BIT art 12(2), Iran-Croatia BIT art 11(2), Iran-France BIT art 8(2), Iran-Germany BIT art 11(2), Iran-Georgia BIT art 11(2), Iran-Greece BIT art 12(2), Iran-Italy BIT art 8(2), Iran-Kazakhstan BIT art 11(2), Iran-Kirgizstan BIT art 11(2), Iran-Lebanon BIT art 13(2), Iran-Macedonia BIT art 10(2), Iran-Malaysia BIT art 12(2), Iran-Morocco BIT art 12(2), Iran-North Korea BIT art 12(2), Iran-Oman BIT art 12(2), Iran-Pakistan BIT art 11(2), Iran-Poland BIT art 11(2), Iran-Qatar BIT art 12(2), Iran-Romania BIT art 10(2), Iran-Sri Lanka BIT art 11(2), Iran-Spain BIT art 11(2), Iran-South Africa BIT art 12(2), Iran-South Korea BIT art 12(2), Iran-Sudan BIT art 12(2), Iran-Syria BIT art 11(2), Iran-Switzerland BIT art 9(2), Iran-Tajikistan BIT art 11(2), Iran-Thailand BIT art 11(2), Iran-Tunisia BIT art 12(2), Iran-Turkey BIT art 11(2), Iran-Ukraine BIT art 8(2), Iran-Uzbekistan BIT art 12(2), Iran-Yemen BIT art 11(2).
44. Iran-Austria BIT art 11(3).
45. Iran-Spain art 11(1).
46. Iran-Austria BIT art 11(3), Iran-Azerbaijan BIT art 10(2), Iran-Bahrain BIT art 11(2), Iran-Bangladesh BIT art 12(2), Iran-Belarus BIT art 11(2), Iran-Bulgaria BIT art 10(2), Iran-China BIT art 12(2), Iran-Croatia BIT art 11(2), Iran-Finland BIT art 11(2), Iran-Germany BIT art 11(2), Iran-Greece BIT art 12(2), Iran-Italy BIT art 8(2), Iran-Kazakhstan BIT art 11(2), Iran-Macedonia BIT art 10(2), Iran-Malaysia BIT art 13(2),

- Iran-Malaysia BIT art 12(2), Iran-Morocco BIT art 12(2), Iran-North Korea BIT art 12(2), Iran-Oman BIT art 12(2), Iran-Poland BIT art 11(2), Iran-Qatar BIT art 12(2), Iran-Romania BIT art 10(2), Iran-South Africa BIT art 12(2), Iran-South Korea BIT art 12(2), Iran-Sri Lanka BIT art 11(2), Iran-Sudan BIT art 12(2), Iran-Switzerland BIT art 9(2), Iran-Syria BIT art 11(2), Iran-Thailand BIT art 11(2), Iran-Tunisia BIT art 12(2), Iran-Turkey BIT art 11(2), Iran-Uzbekistan BIT art 12(2), Iran-Yemen BIT art 11(2).
47. Iran-Austria BIT art 11(2), Iran-Azerbaijan BIT 10(2), Iran-Bahrain BIT art 11(2), Iran-Bangladesh BIT art 12(2), Iran-Belarus BIT art 11(2), Iran-Bulgaria BIT art 10(2), Iran-China BIT art 12(2), Iran-Croatia BIT art 11(2), Iran-Finland BIT art 12(2), Iran-France BIT art 8(2), Iran-Greece BIT art 12(2), Iran-Germany BIT art 11(2), Iran-Italy BIT art 8(2), Iran-Lebanon BIT art 13(2), Iran-Macedonia BIT art 10(2), Iran-Malaysia BIT art 12(2), Iran-Morocco BIT art 12(2), Iran-North Korea BIT art 12(2), Iran-Oman BIT art 12(2), Iran-Poland BIT art 11(2), Iran-Qatar BIT art 12(2), Iran-Romania BIT art 10(2), Iran-Romania BIT art 10(2), Iran-South Korea BIT art 12(2), Iran-Spain BIT art 11(2), Iran-Sri Lanka BIT art 11(2), Iran-Sudan BIT art 12(2), Iran-Syria BIT art 11(2), Iran-Thailand BIT art 11(2), Iran-Tunisia BIT art 12(2), Iran-Turkey BIT art 11(2), Iran-Uzbekistan BIT art 12(2), Iran-Yemen BIT art 11(2).
 48. Iran-China BIT art 12(2).
 49. An election in favour of the international tribunal, is therefore, a “condition precedent to the consent of the host contracting state party to the arbitration of investment disputes” for the purpose of Rule 21 (Douglas, 2009, p. 319).
 50. Iran-Greece BIT art 12(2), Iran-Malaysia BIT art 12(3).
 51. Iran-Malaysia BIT art 12(3).
 52. Article 26 ICSID provides that, “consent of the parties to arbitration under this Convention shall, unless otherwise stated, be deemed consent to such arbitration to the exclusion of any other remedy. A Contracting State may require the exhaustion of local administrative or judicial remedies as a condition of its consent to arbitration under this Convention.”
 53. Iranian Model BIT art 12(3).
 54. Iran-Austria BIT art 11(5), Iran-Azerbaijan BIT art 10(3), Iran-Bahrain BIT art 11(3), Iran-Bangladesh BIT art 12(3), Iran-China BIT art 12(3), Iran-Lebanon BIT art 13(3), Iran-Morocco BIT art 12(3), Iran-North Korea BIT art 12(3), Iran-Poland BIT art 11(4), Iran-Qatar BIT art 12(3), Iran-Romania BIT art 10(3), Iran-South Korea BIT art 12(3), Iran-Sri Lanka BIT art 11(2), Iran-Sudan BIT art 12(3), Iran-Thailand BIT art 11(3), Iran-Tunisia BIT art 12(3), Iran-Turkey BIT art 11(4), Iran-Uzbekistan BIT art 12(3).
 55. Iran-Germany BIT art 11(3).
 56. “In recent years, the question of what constitutes an investment has become increasingly important as a threshold jurisdictional question in treaty arbitration (McLachlan *et al.*, 2007, p. 6.01)”.
 57. Article 25(1) ICSID Convention dealing with *ratione materiae* provides that, “the jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment [...]”.
 58. Rule 4 of ILC state that, “the law applicable to an issue relating to existence or scope of property rights comprising the investment is the municipal law of the host state, including its rules of private international law” (Douglas, 2009, p. 52).
 59. Rule 5 of ILC provide that, “the law applicable to the issue of whether the claimant’s property rights constitute a protected investment is the investment treaty” (Douglas, 2009, p. 72).
 60. Iranian Model BIT art 1.

61. “[...]such a list would seem somewhat redundant where the treaty definition is ‘every kind of asset,’ but disputes could theoretically arise as to the meaning of ‘asset’” (Dugan *et al.*, 2008, p. 251) (see [12]); “If the investment is covered by one of the illustrative categories, no special problem will arise” (Dolzer and Schreuer, 2008, p. 63); since the host state did not specifically consider any particular foreign economic activity when drafting the unilateral offer of consent in its national investment laws or investment treaties, the tribunal “must make a case-by-case determination whether the relevant definition of ‘investment’ is broad enough to capture the transaction at hand” (Rubins, 2004, 291); “an investment operation typically involves a number of ancillary transactions. They may include financing, the acquisition of property, purchase of various goods, marketing of produced goods and tax liabilities. In economic terms, these transactions and contracts are all more or less linked to the investment” (Schreuer, 2009, p. 93); foreign “direct investment involves (a) the transfer of funds, (b) a long-term project, (c) the purpose of regular income, (d) the participation of the person transferring the funds, at least to extent, in the management of the project, and (e) a business risk” (Dolzer and Schreuer, 2008, p. 60).
62. Iran-Armenia BIT art 1(1), Iran-Austria BIT art 1(1), Iran-Azerbaijan BIT art 1(1), Iran-Belarus BIT art 1(1), Iran-Bahrain BIT art 1(1), Iran-Bangladesh BIT art 1(1), Iran-Bosnia Herzegovina BIT art 1(1), Iran-Bulgaria BIT art 1(1), Iran-China BIT art 1(1), Iran-Croatia BIT art 1(1), Iran-Finland BIT art 1(1), Iran-France BIT art 1(1), Iran-Georgia BIT art 1(1), Iran-Germany BIT art 1(1), Iran-Greece BIT art 1(1), Iran-Italy BIT art 1(1), Iran-Kazakhstan BIT art 1(1), Iran-Kirgizstan BIT art 1(1), Iran-Lebanon BIT art 1(1), Iran-Macedonia BIT art 1(1), Iran-Malaysia BIT art 1(1)(a), Iran-Morocco BIT art 1(1), Iran-North Korea BIT art 1(1), Iran-Oman BIT art 1(1), Iran-Pakistan BIT art 1(1), Iran-Poland BIT art 1(1), Iran-Qatar BIT art 1(1), Iran-Romania BIT art 1(1), Iran-South Africa BIT art 1(1), Iran-Sudan BIT art 1(1), Iran-Korea BIT art 1(1), Iran-Spain BIT art 1(1), Iran-Sri Lanka BIT art 1(1), Iran-Syria BIT art 1(1), Iran-Switzerland BIT art 1(2), Iran-Tajikistan BIT art 1(1), Iran-Thailand BIT art 1(1), Iran-Tunisia BIT art 1(1), Iran-Turkey BIT art 1(1), Iran-Ukraine BIT art 1(1), Iran-Uzbekistan BIT art 1(1), Iran-Yemen BIT art 1(1).
63. [...] the plain meaning of this phrase [in accordance with the host state law] is that investment which would be illegal upon the territory of the host State are disqualified from protection of the BIT” (McLachlan *et al.*, 2007, p. 6.63).
64. FIPPA 2002 art 1.
65. Iranian Model BIT art 2.
66. “Article 25(2)(a) ICSID states that, any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such disputes to conciliation or arbitration as well as on the date on which the request was registered [...] but does not include any person who on either date also had the nationality of the Contracting State party to the dispute” (Schreuer, 2009, p. 71); “whether a person is a national of a particular State is determined, in the first place, by the law of the State whose nationality is claimed. Indeed, in determining whether the individual holds a particular nationality, tribunals are entitled, and may be required, to apply that law” (Schreuer, 2009, p. 642); “there is no need for further proof that nationality was effective, dominant, master or any such theories. All the individual has to prove is that he or she holds the fact of that nationality. That’s all that is required for this BIT and the claim should proceed” (Krishan, 2007, p. 65); “Notwithstanding, satisfaction of nationality test by the investor, the tribunal is empowered to carry out an independent examination to ascertain the nationality of the investor at the international level with little or without deference to the host state law” (Dugan *et al.*, 2008, pp. 296-300).

67. "Rule 37 of ILIC stipulate that, where an individual claimant with the nationality of one contracting state also has the nationality of the host contracting state, the tribunal's jurisdiction *ratione personae* extends to such an individual only if the former nationality is the dominant of the two, subject to a contrary provision of an investment treaty or the application of Article 25 of the ICSID Convention" (Douglas, 2009, p. 321).
68. Iran-Bangladesh BIT art 1(2)(a), Iran-China BIT art 1(2)(a), Iran-Lebanon BIT art 1(2)(a), Iran-Macedonia BIT art 1(2)(a), Iran-Morocco BIT art 1(2)(a), Iran-North Korea BIT art 1(2)(a), Iran-Oman BIT art 1(2)(a), Iran-Poland BIT art 1(2)(a), Iran-Qatar BIT art 1(2)(a), Iran-South Africa BIT art 1(2)(a), Iran-Sudan BIT art 1(2)(a), Iran-Korea BIT art 1(2)(a), Iran-Sri Lanka BIT art 1(2)(a), Iran-Thailand BIT art 1(2)(a), Iran-Uzbekistan BIT art 1(2)(a).
69. Iran-Armenia BIT art 1(2)(a), Iran-Austria BIT art 1(2)(a), Iran-Azerbaijan BIT art 1(2)(a), Iran-Bahrain BIT art 1(2)(a), Iran-Belarus BIT art 1(2)(a), Iran-Bosnia Herzegovina BIT art 1(2)(a), Iran-Bulgaria BIT art 1(2)(a), Iran-Croatia BIT art 1(2)(a), Iran-Finland BIT art 1(2)(a), Iran-France BIT art 1(2)(a), Iran-Georgia BIT art 1(2)(a), Iran-Germany BIT art 1(2)(a), Iran-Greece BIT art 1(2)(a), Iran-Italy BIT art 1(2)(a), Iran-Kazakhstan BIT art 1(2)(a), Iran-Kirgizstan BIT art 1(2)(a), Iran-Malaysia BIT art 1(1)(c), Iran-Pakistan BIT art 1(2)(a), Iran-Romania BIT art 1(2)(a), Iran-Spain BIT art 1(2)(a), Iran-Syria BIT art 1(2)(a), Iran-Switzerland BIT art 1(1)(a), Iran-Tajikistan BIT art 1(2)(a), Iran-Tunisia BIT art 1(2)(a), Iran-Turkey BIT art 1(2)(a), Iran-Ukraine BIT art 1(2)(a), Iran-Yemen BIT art 1(2)(a).
70. Article 25(2)(b) ICSID provides that, any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purpose of this Convention.
71. "Rule 32 of ILIC provides that, the claimant must have had control over the investment in the host contracting state party at the time of the alleged breach of the obligation forming the basis of the claim. there is no requirement of continuous control over the investment until the time that arbitration proceedings are commenced or thereafter" (Douglas, 2009, p. 297).
72. In determining the control test, the tribunal will examine to see whether the foreign investors who had been in control of the corporation before the date of dispute. This also clarifies the issue on ability of investor to structure its investment in a country that has investment treaty with the host state to benefit under its provisions. There are various ways to determine the nationality of the legal person and investment treaties adopt varying language.
73. "According to the traditional international law, the criteria for determining the juridical person's nationality is the place or incorporation or registered office or alternatively the central administration or effective seat (siege social)" (Schreuer, 2009, p. 694).
74. Iranian Model BIT art 2(a).
75. Iran-Armenia BIT art 1(2)(b), Iran-Austria BIT art 1(2)(b), Iran-Azerbaijan BIT art 1(2)(b), Iran-Bahrain BIT art 1(2)(b), Iran-Bangladesh BIT art 1(2)(b), Iran-Belarus BIT art 1(2)(b), Iran-Bosnia Herzegovina BIT art 1(2)(b), Iran-Bulgaria BIT art 1(2)(b), Iran-China BIT art 1(2)(b), Iran-Croatia BIT art 1(2)(b), Iran-Finland BIT art 1(2)(b), Iran-France BIT art 1(2)(b), Iran-Georgia BIT art 1(2)(b), Iran-Germany BIT art 1(2)(b), Iran-Greece BIT art 1(2)(b), Iran-Italy BIT art 1(2)(b), Iran-Kazakhstan BIT art 1(2)(b), Iran-Kirgizstan BIT art 1(2)(b), Iran-Macedonia BIT art 1(2)(b), Iran-Malaysia BIT art 1(1)(c), Iran-Morocco BIT art 1(2)(b), Iran-North Korea BIT art 1(2)(b), Iran-Oman BIT art 1(2)(b), Iran-Pakistan BIT art 1(2)(b), Iran-Poland BIT art 1(2)(b), Iran-Qatar BIT art 1(2)(b), Iran-Romania BIT art 1(2)(b),

Iran-South Africa BIT art 1(2)(b), Iran-South Korea BIT art 1(2)(b), Iran-Spain BIT art 1(2)(b), Iran-Sri Lanka BIT art 1(2)(b), Iran-Sudan BIT art 1(2)(b), Iran-Syria BIT art 1(2)(b), Iran-Tajikistan BIT art 1(2)(b), Iran-Thailand BIT art 1(2)(b), Iran-Tunisia BIT art 1(2)(b), Iran-Turkey BIT art 1(2)(b), Iran-Ukraine BIT art 1(2)(b), Iran-Uzbekistan BIT art 1(2)(b), Iran-Yemen BIT art 1(2)(b).

76. The alleged offence may have been committed against the local project company or joint venture company. This means that the local company or joint venture that is registered in the host state cannot be claimant in the proceedings and therefore be a party in the proceedings unless stated otherwise in the nationality provision that locally registered company is to be treated as foreign investor.
77. Iran-Switzerland BIT art (1)(1)(c).
78. Iran-Switzerland BIT art 1(1).
79. Iran-Austria BIT art 11(2), Iran-Croatia BIT art 11(2), Iran-Spain BIT art 11(2).
80. Iran-Austria BIT art 11(2).
81. Iran-Greece BIT art 12(3), Iran-Malaysia BIT art 12(4).
82. Iran-Malaysia BIT art 12(4).
83. Iran-South Korea BIT art 12(2).
84. Iran-Finland BIT art 12(2), Iran-France BIT art 8(2), Iran-Italy BIT art 8(2).
85. Iran-Armenia BIT art 11(6), Iran-Bangladesh BIT art 12(8), Iran-Bosnia Herzegovina BIT art 11(6), Iran-Lebanon BIT art 13(8), Iran-Belarus BIT art 11(3), Iran-Georgia BIT art 11(6), Iran-Tajikistan BIT art 11(6), Iran-Tunisia BIT art 12(5), Iran-Kazakhstan BIT art 11(6), Iran-Macedonia BIT art 10(2), Iran-Pakistan BIT art 11(6), Iran-Poland BIT art 11(3), Iran-Kirgizstan BIT art 11(3), Iran-Oman BIT art 12(2), Iran-South Korea art 12(5)(d), Iran-Syria BIT art 11(2)(b)(V), Iran-Switzerland BIT art 9(2), Iran-Thailand art 11(6), Iran-Tunisia BIT art 12(5), Iran-Turkey BIT art 11(3), Iran-Ukraine BIT art 8(2).
86. Iranian Model BIT art 12(6).
87. Iran-Switzerland BIT art 9(2).
88. Iran-Ukraine BIT art 8(2).
89. Iran-Azerbaijan BIT art 10(2), Iran-China BIT art 12(2), Iran-Lebanon BIT art 13(2), Iran-Qatar BIT art 12(2), Iran-Sri Lanka BIT art 11(2), Iran-Uzbekistan BIT 12(2), Iran-Morocco BIT art 12(2), Iran-North Korea BIT art 13(1), Iran-South Africa BIT art 12(2), Iran-Sudan BIT art 12(2).
90. Iran-China BIT art 12 paragraphs 1 and 2.
91. Iran-China BIT art 12(6), Iran-Qatar BIT art 12(6).
92. Iran-China BIT art 12(6).
93. Iran-Qatar BIT art 12(6).
94. Article 42(1) of ICSID provides that, “the Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable.” Rule 10 of ILIC provides that, “the law applicable to the issue of liability for a claim founded upon an investment treaty obligation is the investment treaty as supplemented by general international law” (Douglas, 2009, p. 81).

95. The substantive investment protection standards contained in international treaties form an independent body of law according to which the conduct of the host contracting party towards the private investor will be measured.
96. Generally, concession agreements signed between foreign investor and host state/state entity stipulate host state law as governing law. In the absence of the “choice of law clause” in the contract, the arbitral tribunal will determine the applicable substantive law in accordance with conflict of law rules. The applicable law of the contract is the law of the country with the closest connection to the place of performance of the contract in which case it will be the national laws of the host state in whose territory the investment is undertaken.
97. Iranian Civil Code art 9.
98. According to article 77 of the Iranian Constitution 1979, international treaties signed by the government must be approved by the Iranian parliament.
99. Iran-Croatia BIT art 11(3), Iran-South Korea BIT art 12(5)(c), Iran-Syria BIT art 11(2)(b)(VII).
100. Iran Model BIT art 11(3).
101. Iran-South Korea BIT art 12(5)(c).
102. Iran-Syria BIT art 11(2)(b)(VII).
103. Iran-Armenia BIT art 11(7), Iran-Kazakhstan BIT art 11(7), Iran-Pakistan BIT art 11(7), Iran-Syria BIT art 11(2)(b)(VI), Iran-Tajikistan BIT art 11(7).
104. Iran-Georgia BIT art 11(7).
105. Iran-Belarus BIT art 11(6), Iran-Kirgizstan BIT art 11(4).
106. Iran-Bangladesh BIT 12(9), Iran-Lebanon BIT art 13(9), Iran-Sudan BIT art 13(3), Iran-Tunisia BIT art 13(3), Iran-Uzbekistan BIT 13(3).
107. Iran-Bosnia Herzegovina BIT art 11(7), Iran-Qatar BIT art 12(7).
108. In the context of international investment arbitration, the respondent can make an application to the local courts for annulment and setting aside of the award provided its case has merits.
109. It may even require the arbitrators to reach their decision by a majority vote and the parties to comply with the terms of the award with due effect.
110. The Islamic Republic of Iran ratified the New York Convention on Enforcement and Recognition of Foreign Arbitral Award (NYC) pursuant to the law enacted on 21/01/1380 (10 April, 2001) which was approved by the Guardian Council on 29/01/1380 (18 April, 2001).
111. The applicant should make an application to the Iranian court for recognition and enforcement accompanied by the original award and the arbitration agreement (Article IV NYC).
112. (a) The parties were under an incapacity or the arbitration agreement is invalid; (b) the losing party was not given proper notice of the appointment of arbitrator(s) or the arbitration process or was otherwise unable to present his case; (c) the award deals with a dispute not falling within the agreement to submit to arbitration; (d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or the laws of the country in which arbitration was conducted; or (e) the award has not yet become binding on the parties or has been set aside or suspended by the law or a competent authority of the country in which the award was made.
113. Including failure by the parties to properly follow the rules of procedures on institution of arbitration, the appointment of arbitrators or constitution of tribunal as laid down

in the dispute settlement provision in the investment treaty. Or where it can be shown that, the decision of the investment tribunal has exceeded the subject matter and personal jurisdiction (*ratione materiae* and *ratione personae*) that was granted to it by the treaty dispute settlement provision.

114. The local courts should not re-examine the substance of the case in respect of which a decision has already been made by the international tribunal. Nor can the local court review the content of the award on the point of law. It can only consider application by the respondent to review the award on the points of facts.
115. Iran-Bulgaria BIT art 10(3), Iran-China BIT art 12(7), Iran-Croatia BIT art 11(4), Iran-France BIT art 11(5), Iran-Morocco BIT art 12(7), Iran-Qatar BIT art 12(6), Iran-Spain BIT art 11(3), Iran-South Africa BIT art 12(5), Iran-South Korea BIT art 12(6).
116. Iran-Armenia BIT art 11(8), Iran-Austria BIT art 11(6), Iran-Belarus art 11(7), Iran-Bangladesh BIT art 12(10), Iran-Bosnia Herzegovina BIT art 11(8), Iran-Georgia BIT art 11(8), Iran-Greece BIT art 12(4), Iran-Kazakhstan BIT art 11(8), Iran-Kirgizstan BIT art 11(5), Iran-Lebanon BIT art 13(1), Iran-Macedonia BIT art 10(3), Iran-Malaysia BIT art 12(5), Iran-Pakistan BIT art 11(8), Iran-Poland BIT art 11(6), Iran-Romania BIT art 10(5), Iran-Syria BIT art 11(2)(VIII), Iran-Tajikistan BIT art 11(8), Iran-Ukraine BIT art 8(4), Iran-Yemen BIT art 11(3)(f).
117. Iran-Bulgaria BIT art 10(3), Iran-Croatia BIT art 11(4), Iran-Spain BIT art 11(3), Iran-South Africa BIT art 12(5).
118. Iran-South Africa BIT art 12(5).
119. Iran-China BIT art 12(7), Iran-France BIT art 11(5), Iran-Morocco BIT art 12(7), Iran-Qatar BIT art 12(6), Iran-South Korea BIT art 12(5)(c).
120. Iran-China BIT art 12(7).

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