

The International Comparative Legal Guide to: Litigation & Dispute Resolution 2011

A practical cross-border insight
into litigation & dispute resolution

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I. LITIGATION

1 Preliminaries

1.1 What type of legal system has Iran got? Are there any rules that govern civil procedure in Iran?

The Iranian legal system is a civil law system which is founded on the French law and Islamic jurisprudence. The Iranian Civil Code, which comprises of three volumes and 1335 articles, was enacted between 1928 and 1935 and only minor amendments have since been made to its provisions.

The Iranian courts refer to the Civil Code as the main source of law for determining the legal and commercial rights of natural and legal persons. The awards issued by the Iranian courts are not binding as precedent on other courts residing over cases with similar facts. However, in exceptional cases the decisions of the General Board of the Supreme Court concerning similar cases constitute case precedent to be followed by other courts.

The Civil Procedure Code of the Public and Revolutionary Courts, which was approved in 2000, set forth the rules and procedures governing adjudication of disputes by the courts of law. The Civil Procedure Code envisages the rules and procedures concerning proceedings which must be observed by the courts, including the Public, Revolutionary, Appeal and Supreme Court.

1.2 How is the civil court system in Iran structured? What are the various levels of appeal and are there any specialist courts?

Assessment and adjudication of commercial and legal disputes rests with the Public Courts which have general jurisdiction.

Public Courts are classified into family, civil and criminal courts.

The Public Courts were established under the law concerning Establishment of Public and Revolutionary Courts, which was approved in 2000.

Hearings at the Public Courts are convened with the presence of a chief judge or alternate judge, who conducts the stages of hearings and issues the relating judgment pursuant to the Civil Procedure Code.

Appeals and reviews of judgments made by the Public Court should be submitted to the Court of Appeal.

The Court of Appeal comprises a chief judge and two associate justices. Awards made by the Court of Appeal are final and

enforceable.

In some instances the judgments of the Court of Appeal and Public Courts could be appealed in the Supreme Court.

The Public Court's awards are subject to appeal in the following instances:

- a) Financial disputes with claims which amount to more than three million Rials.
- b) All judgments concerning non-financial claims.

The judgments of the Court of Appeal and in some cases, Public Courts, may be examined and reviewed by the Supreme Court in the following instances:

- a) Awards made by Public Courts which, due to failure of the parties to lodge appeal have become final, and the amount of claim is over twenty million Rials.
- b) Awards relating to consummation of marriage, its annulment and divorce or other matters concerning non-contentious issues.
- c) Awards rendered by the Courts of Appeal concerning marriage, its annulment, divorce, etc.

Any party to the dispute, his lawyer or legal representative has the right to request the Court of Appeal or Supreme Court to review the case.

The Supreme Court will re-examine the case to determine whether the award issued by the lower court complies with the religious and legal principles.

Some branches of the Public Court (the Court of First Instance) have been designated as special branches to deal with the following matters:

- a) Commercial claims.
- b) Claims concerning registration of intellectual property.
- c) International disputes.
- d) Family disputes.

Disputes concerning employment relations are governed by the Iranian labour law. There are special tribunals in the labour department with the power to adjudicate employment disputes. The verdicts delivered by the labour tribunal are subject to appeal.

Appeals to the final verdict of the labour tribunal and generally complaints against administrative decisions made by the government organisations should be submitted to the Courts of Administrative Justice, which has the power to revoke them.

1.3 What are the main stages in civil proceedings in Iran? What is their underlying timeframe?

Proceedings are started with the submission of a petition by the

claimant to the Public Court (the Court of First Instance).

The petition should be made to the courts at the place of domicile of the defendant.

In commercial disputes and claims relating to movable properties under the contracts, it is possible to submit the petition to the courts of the place of performance of the contract.

Once the petition is made, the court's administration office will make a record of the case and set a date for the hearing to be served in person by the court's officer on the parties.

The date of the hearing is usually between one and three months after registration of the case by the court.

The disputing parties or their lawyers will attend the court on the date and time of the hearing and present their defences, including documents and evidence.

In the first hearing the court will make an assessment of the case and if further examination is required for completion of the proceedings, such as expert opinion and cross-examination of witnesses, it will determine whether to convene a second hearing for carrying out the aforesaid tasks.

The proceedings normally last between six months to one year in the preliminary stage with due regard to the nature of the claim.

If the characteristics of the claim is complicated and requires expert determination, cross-examination and a statement by witnesses or other issues, the length of proceedings may exceed one year.

After the completion of the proceedings, the court will issue its judgment within one week of the last hearing.

1.4 What is Iran's local judiciary's approach to exclusive jurisdiction clauses?

The Iranian Civil Procedure Code sets forth the scope of the court's jurisdiction with respect to the type of the claim. The court is obligated to observe the rules and regulations governing its jurisdiction under the aforesaid law.

According to article 968 of the Iranian Civil Code, obligations under contracts are governed by the law of the place of conclusion of the contract, unless the parties to the contract are foreign nationals and have expressly chosen another law.

The Civil Procedure Code stipulates that disputes must be referred to the court of the place of residence of the defendant, and in the absence of place of residence, the dispute should be submitted to the courts, the jurisdiction of which extends over the defendant's immovable property; otherwise the claimant can file a lawsuit in the courts of its place of residence.

In commercial disputes and claims concerning movable property under a contract, the claimant may refer the claim to the courts of the place of conclusion of the contract or the place of performance of the contract.

With respect to the aforesaid provisions of the Civil Code and Civil Procedure Code, Iranian nationals, when concluding private contracts, cannot choose the law of another country as the governing law. Also the parties cannot designate the courts of other countries as the exclusive jurisdiction applicable to the dispute. Iranian courts are the competent authority to decide on disputes between Iranian parties.

1.5 What are the costs of civil court proceedings in Iran? Who bears these costs?

The costs of proceedings in the civil cases cover the court costs (stamp charges), which must be paid once a petition is made to the

court, including a petition to the Public Court (Court of First Instance), the Court of Appeal, a petition for lodging a complaint, joinder of third party to proceedings, summoning a third party to litigation, a petition for re-hearing the case and appeals made to the Supreme Court.

The court costs (stamp charges) in the first instances are equivalent to 2% of the amount which is claimed by the claimant and at the appeal stage are equivalent to 3% of the claim amount.

When issuing the judgment, the court, in addition to the original claim amount, will make an order against the losing party to pay the costs incurred by the claimant concerning the proceedings costs as well as other damages incurred by the claimant such as attorney fees and fees of experts.

The attorney fees are determined on the basis of the tariff set by the Bar Association.

1.6 Are there any particular rules about funding litigation in Iran? Are contingency fee/conditional fee arrangements permissible? What are the rules pertaining to security for costs?

Exemption from payment of costs of proceedings is stipulated in article 504 of the Civil Procedure Code, which makes it a condition that the claimant receives low income or has no access to its personal property.

The claimant must inform and prove to the court the matter on the basis of the petition and, in case it is accepted by the court, an order will be made concerning the exemption of the claimant from payment of the costs of proceedings.

Iranian laws do not envisage "conditional fee arrangements" on the basis of obtaining an award from the court and "contingency fees" are not recognised by Iranian law. However, the by-laws concerning the attorney fees have recognised the attorney fees to be fixed on the basis of the mutual agreement of the attorney and the client.

According to article 144 of the Iranian Civil Procedure Code, in case foreign nationals are the claimants in the dispute, and at the request of the Iranian party, the foreigners must deposit security with the court for the payment of proceedings and attorney fees of the Iranian defendant in the event that a judgment is made against the foreigner claimant by the court.

The requirement for security of costs by the foreign party does not apply where no similar requirement is imposed on Iranian nationals in the country of the foreign person. The following disputes are exempt from payment of security of costs by the foreign party:

- commercial bonds including checks;
- official or notarised documents; and
- counter-claims.

The court determines the amount and deadline for payment of security of costs.

2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

Before submission of the petition to the court, the claimant is allowed to issue a "notice-before-action" which is served on the defendant by the court and requires the other party to comply with its contractual and financial obligations within a set period of time.

If the defendant fails to comply with the "notice-before-action," the

claimant can then file a lawsuit against it in the courts.

The service of “notice-before-action” to the defendant is a requirement in some particular disputes.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

The previous Iranian Civil Procedure Code sets forth a limitation period for different types of legal dispute.

After the Revolution of 1979, the old Civil Procedure Code was amended and the statute of limitation was omitted on the basis of the opinion of the Guardian Council, who declared it incompatible with Islamic law.

The existing Civil Procedure Code does not provide for a limitation period. However, the provisions of the Commercial Code concerning statute of limitation for some of the business and commercial disputes remain in force.

According to article 318 of the Commercial Code, disputes concerning bills of exchange, promissory notes and checks which are issued by traders for commercial transactions, after a lapse of five years from the date of protest or last judicial proceedings, will not be accepted in the court.

Article 319 of the Commercial Code, and in certain cases, the decision of the Supreme Court stipulate that the above-mentioned documentary instruments may be referred to the courts as an ordinary legal document, excluding their commercial characteristics.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in Iran? What various means of service are there? What is the deemed date of service? How is service effected outside Iran? Is there a preferred method of service of foreign proceedings in Iran?

After the registration of the petition and completion of the filing formalities, the court will determine the date of hearing and serve a notice on the disputing parties accompanied by the attachments, including the copy of the petition and supporting documents of the claim.

The period between the service of notice and the actual date of the hearing should not be less than five days.

In case the address of the place of residence of one or both parties is outside the country, the period between service and the date of the hearing should not be less than two months.

The court officer will notify to the defendant the petition and supporting documents of the claim together with the notice of hearing and obtain a receipt from the defendant and record it in the secondary form.

If the defendant refuses to accept the notice of the petition, the officer will record the refusal in the notice form.

In case the court officer cannot deliver the notice of petition to the defendant, it must serve the notice on a family member or employees of the defendant at the same address.

In the event that the above-mentioned persons are not present at the address or refuse to accept the notice, the court officer will record the issue in the secondary form and attach it to the address provided in the notice, and the defendant can refer to the court office and

obtain the related documents of the claim.

Service of the petition outside the country will be carried out by the Consular Officials of the Embassy. The said officials will forward the petition and respective notice to the defendant and confirm the matter to the court through the Ministry of Foreign Affairs.

If the claimant cannot identify the location of the defendant, the claimant can request the court to make an order for publication of a notice once in one of the mass-circulated newspapers containing the contents of the petition and the date of the hearing.

The claimant should bear the costs of publication in newspaper. The period between the date of the publication of the notice and the hearing date should not be less than one month.

In disputes concerning government institutions, the notice, particulars of claims and attachments should be served on the administration officer of the institution and a receipt should be obtained. In disputes concerning legal persons (corporations), the notice and petition must be served on the manager or a person with the authority to sign official documents.

3.2 Are any pre-action interim remedies available in Iran? How do you apply for them? What are the main criteria for obtaining these?

An important step before the commencement of the proceedings is through the court notification of a “notice-before-action” to the other party, which should specify the particulars of claim. The claimant can also take action for preservation of evidence.

For preservation of evidence, it is necessary that the claimant presents a separate petition to the Council of Dispute Settlement and request for it to make an order for confirmation and recording of the available evidence.

The court at the pre-hearing stage can issue an interim security order for attachment of relief at the request of the claimant who must provide reason and evidence that the subject matter of the claim is at the risk of destruction.

3.3 What are the main elements of the claimant's pleadings?

The claimant must provide in the petition a “statement of case”, which must clearly set out the facts, reasons and the basis on which the claim is founded.

The claimant in the petition must make references to any documents and evidence relied by him to justify the claim and disclose the copy of the aforesaid documents to the court by including them in the attachments to the petition.

The claimant may attend the court hearing and present an oral statement to justify his claim and he should provide the original documents and evidence to the court.

The defendant must prepare a “statement of defence” and provide the documents and evidence and present an oral statement to the court to defend itself. The court clerk will record the arguments presented by each side in the minutes of the hearing, which must be signed by both parties.

The parties to the dispute may also prepare a written statement in defence of their claim and present it to the court.

3.4 Can the pleadings be amended? If so, are there any restrictions?

The claimant may reduce the claim amount during all stages of the proceedings.

The increase in the amount of the claim or the change in the nature of the claim is only possible if it relates to the original claim and provided that it is based on the same “cause of action”.

The court must be informed of the change before the end of the first hearing session.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/claim or defence of set-off?

The defendant may defend its rights orally or through a defence brief to be submitted to the court, including written documents and legal evidence or any other document. The defendant's documents must be disclosed to the court in the first session of the court hearing.

The defendant can make a counter-claim against the claimant. The counter-claim must have full connection with the original claim and should be based on the same “cause of action” in order to be decided simultaneously by the court. The counter-claim must be submitted to the court through a separate petition. The defendant as a defence may claim set-off, which does not require submission of a separate petition to the court.

4.2 What is the time limit within which the statement of defence has to be served?

The defendant must present its defence argument orally or through written submission in the first session of the court hearing. The disputing parties in the first hearing should disclose the documents and evidence to the court either in person or through their legal representative.

Where the defendant is unable to provide its documents in the first session due to shortage of time, it may request the court to extend the date of the hearing.

The defendant in the first hearing will make its defensive argument and respond to the allegations made against it by the other side. The defendant may raise the following objections within the scope of the claim:

- a) objection to the jurisdiction of the court;
- b) another court is examining the subject of the claim;
- c) lack of capacity of the plaintiff (legal age, insanity, bankruptcy);
- d) pleading non-attribution of the claim to the defendant;
- e) uncertainty of the position of the attorney, legal representative or guardian;
- f) the claim has been decided in another court and a final judgment has been issued;
- g) the subject of claim is not legitimate;
- h) the claim is not definitive and is speculative;
- i) the plaintiff is not a beneficiary; and
- j) the claim is outside of the scope of the legal term.

The above objections must be raised before the end of the first session of the court hearing.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on liability by bringing an action against a third party?

Any party to the dispute has the right until the end of the first hearing to summon a third party to the litigation as the person

responsible for the claim, by stating the reason and through submission of separate petition to the court within three days.

The right of the litigants to summon third parties to the proceedings applies at the preliminary and appeal stage.

4.4 What happens if the defendant does not defend the claim?

Any party to the dispute can personally attend the hearing, submit a defence brief to the court or send their attorneys or legal representatives to defend them in the court.

In case the judge requires the claimant or defendant to attend the hearing, they are obligated to attend the court session in person, and the failure of any of the parties or their lawyers to attend the hearing will not be an obstacle for the court to assess the issue and render judgment.

In certain circumstances the court may issue a “default judgment” against the defendant.

If the defendant or his lawyer fails to attend the hearing or submit a “statement of defence”, and provided that the claimant presents supporting evidence to the court which are valid and sufficient, then the court will reach a decision.

The failure of a defendant to defend the claim may support the view that the claimant has a good claim and the court, after considering the merits of the case, will issue a “default judgment” against the defendant. Subsequently, if the defendant wishes to defend the case, then within ten days of the court verdict it must appeal to the same court to re-examine the case.

4.5 Can the defendant dispute the court's jurisdiction?

During the first hearing the defendant has the right to make an objection to the jurisdiction of the court, if it believes that the court has no jurisdiction over the dispute. The court, at the pre-hearing stage, will determine whether or not its jurisdiction extends over the case.

If the court cannot exercise its jurisdiction to hear the dispute, then an order will be made stating the lack of jurisdiction as the reason for refusal of the court to decide the case. The claim will be transferred to the court that is competent to examine the claim.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

Where a third party has interest in the claim involving the original parties, it can make an application to join the proceeding by submitting a petition to the same court that is deciding the original claim. The court will simultaneously decide the original claim and the third party claim between the three parties.

Where the court determines that the original claim has no relevance to the claim presented by the third party, it will split the two claims and decide them separately.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

If more than one claim has been submitted to a court branch which

are connected and refer to the same “cause of action”, the court, at the request of any of the disputing parties, may simultaneously examine the aforesaid claims.

5.3 Do you have split trials/bifurcation of proceedings?

Where there are multiple claims in a single case, the court, at the request of any of the parties or on the basis of its own determination that the number of claims have been presented to prolong the proceedings, will split the claims and examine them separately. The court will deliver a verdict for each claim.

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in Iran? How are cases allocated?

The cases are referred to the respective courts depending on the subject matter of the dispute.

6.2 Do the courts in Iran have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

Iranian courts have broad powers concerning the management of the proceedings, setting the date of the hearing, calling witnesses to give testimony and appointing an expert for expressing its opinion in particular cases.

The court, at the pre-hearing stage, can issue an interim security order for attachment of relief at the request of the claimant, who must provide reason and evidence that the subject matter of the claim is at the risk of destruction.

Also the court may order the claimant to provide security for eventual damages so that the defendant can recover its legal cost from the claimant in case the claim is dismissed. The court has exclusive powers to determine conclusion of the proceedings, announcing the adjournment of the hearings and issuing the judgment.

6.3 What sanctions are the courts in Iran empowered to impose on a party that disobeys the court's orders or directions?

The court can issue an order against any party for disrupting the hearing and remove him or her from the trial.

The court also has the power to issue a sanction against someone found guilty of contempt of a court order, such as a prison term of between 1 to 5 days.

If the claimant fails to obey the court order concerning the payment of the proceeding costs, the court will issue an order for the dismissal of the petition.

At the end of the hearing, if there are legal grounds for convening another session, then the court will reconvene the hearing and determine the date of the next session.

6.4 Do the courts in Iran have the power to strike out part of a statement of case? If so, in what circumstances?

If the claimant fails to obey the court order concerning the reimbursement of costs for an expert opinion, security of costs, appointment of witnesses and disclosure of original evidence and

documents, then the court will exclude the aforesaid factors from the claim and if necessary dismiss the claim altogether.

6.5 Can the civil courts in Iran enter summary judgment?

The Iranian Civil Procedure Code does not envisage rules concerning summary judgments.

In cases where the court splits the claim into different parts and provided that the judgment can be issued for a part of the claim, then the court, at the request of the claimant, can issue a verdict concerning that part and continue with the remaining assessment.

6.6 Do the courts in Iran have any powers to discontinue or stay the proceedings? If so, in what circumstances?

In the event of death of the claimant or revocation of the position of the one of the parties to the dispute, the court has the power to stay the proceedings and after the announcement of a replacement of a substitute and at the request of the interested party, the proceedings will be resumed.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in Iran? Are there any classes of documents that do not require disclosure?

The Iranian Civil Procedure Code requires the claimant to disclose evidence, documents and reasons to justify its claim.

If there are specific documents in possession of one party, the existence of which is verified by that party, at the request of the interested party the documents must be disclosed and the failure to disclose them will be regarded by the court as favourable to the assertions made by the interested party.

In commercial disputes, in case one party refers to the official books of accounts of the other party, the latter cannot refuse inspection and disclosure of its commercial books by the former and the refusal to allow inspection will be considered as favoured to the arguments presented by the referring party.

7.2 What are the rules on privilege in civil proceedings in Iran?

The legal professional privilege protects the communication between the attorney and client from being disclosed without the permission of the client.

Any correspondence regarding the claim between the disputing parties can be disclosed to the court and relied upon by the interested party, unless the parties through separate documents assert the invalidity of the aforesaid correspondence.

7.3 What are the rules in Iran with respect to disclosure by third parties?

If any of the parties refer to documents which supports its claim and the aforesaid document is in possession of a third party, the court is not required to compel the third party to produce the document. The court can make enquiries with the third party concerning the document and its contents.

7.4 What is the court's role in disclosure in civil proceedings in Iran?

If documents relating to the claim are in possession of the government institutions, banks or municipalities, at the request of one of disputing parties or the finding of the court that the document is fundamental in resolving the dispute, then the court will make an order requiring the state agency to provide it with a copy of the document, unless disclosure of the document is contrary to the national interest or public policy, in which case the court will accept non-disclosure of the document.

The disclosure of government documents which contain highly classified and secret information require the permission of the head of the judiciary.

7.5 Are there any restrictions on the use of documents obtained by disclosure in Iran?

In case the court order is made for disclosure of documents, there are no restrictions concerning the use of them within the scope of the permission provided by the court order.

8 Evidence

8.1 What are the basic rules of evidence in Iran?

It is a well-established principle of law that the parties to the dispute should disclose to the court evidentiary document to prove or defend their case.

According to article 199 of the Iranian Civil Procedure Code, the court, in addition to verifying the documents and evidence relied upon by the parties, can make any kind of investigation or take action for discovery of facts.

8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?

The plaintiff or defendant may invoke any of the following evidence to prove or defend the claim:

- a) written evidence;
- b) confession of the other party;
- c) oral evidence of witnesses;
- d) direct local inquiry and investigation of the court;
- e) expert opinion; and
- f) an official oath at the court.

Generally, written evidence is admissible in Iranian courts.

In financial claims and disputes arising out of business transactions, oral evidence delivered by two men or one man and two women are admissible in the court of law.

The court, at the request of the interested party or its own determination, will summon witnesses to give oral evidence at the court.

The court, at the request of any party to the dispute, can make an order for inspection of the premises and make local enquiries which are also admissible as evidence in the proceedings.

The court, at the request of disputing parties, can refer the claim subject to the expert to give its opinion which will be admissible as expert evidence. The court can rely upon the expert opinion when reaching a decision.

In financial claims and other matters where no written evidence or

other valid documents exists, a "religious oath" may be admissible in some cases as evidence in the court proceedings.

8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?

Iranian law specifies the rules concerning the obtaining and hearing of witness statements in the courts.

Any party that is referring to a witness statement must call its witness at the date as determined by the court.

The law envisage the qualification of witness which must be adult, sane, faithful, pure and just.

There should not be enmity between the witness and the parties to the dispute and the witness should not have a personal interest in the claim.

The witness must attend the court, swear an oath and state the facts that are known to him or her with regard to the case.

The court will make an assessment of the credibility of the witness statement.

The witness is called by court notice or at the request of the interested party.

8.4 What is the court's role in the parties' provision of evidence in civil proceedings in Iran?

As required by law, the claimant or the defendant must provide the evidentiary documents to prove or defend the claim, therefore, the court does not intervene in the provision of documents and reasons unless the documents are in possession of government agencies, in which case the court will issue an order for provision of the aforesaid documents.

In certain circumstances the court must make decision concerning the provision of documents such as preservation of evidence, conducting local enquiries, appointment of experts and hearing witness statements.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in Iran empowered to issue and in what circumstances?

The court issues two types of judgments:

- a) Orders issued by the court before examining the merit of the claim, such as: a court order for not having jurisdiction over the case at the defendant's objections; decisions concerning annulment of the petition in case of refusal of the applicant party; to pay the fees of the official expert or other reasons; a court order at the claimant's application for the freezing of the subject of the claim; a court order for providing security of costs for Iranian nationals in case the claimant is a foreigner (points cited in sections 1-6); an order for appointment of experts; and an order for the hearing and provision of witness statements and interim measures for important cases.
- b) Judgments issued after the hearing comes to an end. These judgments may compel the defendant to pay compensation, compel him or her to perform its commitments, restrain him from carrying out certain acts in compliance with its contractual obligation and nullification of contract or document. The court during the proceedings may issue interim orders concerning urgent matters such as delivery of

goods, repossession of property, or refusal to sale etc. in respect of which a final verdict must be made at the end of the hearing. For issuance of such interim orders, the court must ascertain the urgency of the issue.

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

The court, at the request of the interested party, will make decision concerning payment of damages, compensation for arrears and costs of proceedings on the basis of the law or agreement of the parties.

9.3 How can a domestic/foreign judgment be enforced?

Final judgments made by domestic courts are enforced through the Department for Execution of Court Judgments, pursuant to the related laws.

The court, at the request of the winning party, executes the judgment against the losing party by attaching its movable and immoveable property and freezing its bank accounts identified by the winning party.

The enforcement of judgments issued by foreign courts are possible in Iran, only if there is a bilateral agreement between the government of Iran and the other country concerning the recognition and enforcement of judgments of the Iranian courts in that country.

In any case, the judgment issued by the foreign court should not be contrary to the public policy, morality and Iranian laws, the Iranian courts have not previously issued a judgment which is contrary to the foreign judgment, and Iranian courts do not have exclusive jurisdiction to decide the case.

The winning party must make an application for the enforcement of a foreign judgment to the courts of the place of residence of the losing party or to the courts in Tehran.

The Iranian court, after assessment and ascertaining the legal grounds, will issue an order for enforcement of the foreign judgment. The Department for Execution of Court Judgment will take an action for execution of the relating judgment pursuant to the rules and procedures laid down by the law for enforcement of court judgments.

9.4 What are the rules of appeal against a judgment of a civil court of Iran?

The judgments of Public Courts (First Instance) concerning civil matters are final unless the law specifies the instances in which appeal are allowed.

The following judgments are subject to appeal:

- a) Financial disputes with amount of claims over 3 million Rials.
- b) All disputes relating to non-financial claims.

The time limit for lodging an appeal is 20 days for persons residing in Iran.

The time limit for persons whose place of domicile is based outside of Iran is 2 months from the date of the service of the judgment.

If the application for appeal is made after the expiry of the deadline, the court that issues the first judgment can decide to reject it.

The following are the grounds for appeal against the judgment of the Court of First Instance:

- a) Claims concerning invalidity of evidentiary documents on the basis of which the court has issued a judgment.

- b) Claims concerning lack of legal qualification of witnesses.
- c) Claims concerning disregarding of the judge of the presented evidence.
- d) Claims concerning incompetence of the judge.
- e) Claims concerning the incompatibility of the judgment with religious values.

In case the Court of Appeal accepts the grounds for appeal as raised by the appellant, it will set aside the first judgment and issue an appropriate judgment. Otherwise the application for appeal will be dismissed and the court will confirm the first judgment.

II. DISPUTE RESOLUTION

1 Preliminaries

1.1 What methods of dispute resolution are available and frequently used in Iran? Arbitration/Mediation/Tribunals/Ombudsman? (Please provide a brief overview of each available method.)

In addition to availability of the courts of law for resolution of disputes by private parties, arbitration is widely used as a method of dispute settlement procedure concerning commercial disputes and other matters involving the legal relationship of Iranian persons and international corporations.

Because of the complex and lengthy formalities required for pursuing claims in the courts, parties, when concluding commercial contracts, prefer to select arbitration as a dispute resolution forum.

The Law of International Commercial Arbitration 1997 (LICA) allows the contracting parties including Iranian and non-Iranians to select an international arbitration institution for resolution of commercial disputes and choose foreign law as the governing law.

The Iranian legal system does not provide for other methods of dispute settlement procedure and therefore it is subject to a parties' mutual agreement.

1.2 What are the laws or rules governing the different methods of dispute resolution?

The Civil Procedure Code 2001 and the LICA 1997, which is based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, lays down the rules and procedures concerning arbitration of commercial disputes.

Under the arbitration provisions of the Civil Procedure Code, the Iranian parties before the occurrence of the dispute cannot appoint an arbitrator or arbitration board which has the same nationality of the foreign party.

Referral of disputes concerning public and state properties to arbitration requires the approval of the parliament and the Cabinet of Ministers.

According to recent judicial practice, state entities and government institutions which are carrying out their responsibilities under a contract can select arbitration as an option for resolution of disputes without the requirement for approval of the Cabinet of Ministers.

1.3 Are there any areas of law in Iran that cannot use arbitration/mediation/tribunals/Ombudsman as a means of dispute resolution?

Arbitration is authorised as a means of resolving disputes arising

out of legal matters and family law disputes.

Iranian laws do not authorise arbitration of disputes arising out of bankruptcy, criminal, employment, validity of the marriage and divorce contracts.

The Iranian courts have the jurisdiction over the above-mentioned category of disputes.

There are also restrictions concerning arbitration of disputes involving state assets as mentioned in section 1-2.

2 Dispute Resolution Institutions

2.1 What are the major dispute resolution institutions in Iran?

There are two major specialist arbitration institutions in Iran.

The Iranian Chamber of Commerce, Industries and Mines established the Arbitration Tribunal pursuant to a law adopted by the parliament in 2000. The Arbitration Tribunal of the Chamber of Commerce is an independent body and has the power to adjudicate commercial disputes including arbitration proceedings concerning domestic as well as international disputes.

The Tehran Regional Arbitration Centre (TRAC), which was established in 2004, has the following functions:

- a) promotion of international commercial arbitration in the region;
- b) coordination of the activities and provision of assistance to existing arbitration institutions in the region;
- c) provision of assistance to *ad hoc* arbitration proceedings pursuant to the Arbitration Rules of UNCITRAL; and
- d) assistance with the enforcement of arbitral awards and conduct of arbitration proceedings.

2.2 Do any of the mentioned dispute resolution mechanisms provide binding and enforceable solutions?

The awards and decisions issued by the Chamber of Commerce Arbitration Tribunal or TRAC tribunal, pursuant to arbitration agreements between parties and arbitration statutes, are binding and enforceable against the parties to the dispute.

In case the losing party does not implement the arbitration award within 20 days, the interested party may request the competent court to issue an order for enforcement of the award.

The arbitration award is not subject to review or appeal.

The losing party may challenge the enforcement of the award in the court by relying on any of the grounds contained in the arbitration act.

These include incapacity of one of the parties, invalidity of arbitration agreement, irregularities in appointment of arbitrators and constitution of the tribunal, denial of due process and arbitrators exceeding their power when issuing the award.

Any application for annulment and setting aside of the award must be made within three months from the date of notification of the award to the competent court.

Since 2001 Iran has been a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, therefore arbitration awards issued by international tribunals situated in any Member State are enforceable in Iran.

3 Trends & Developments

3.1 Are there any trends in the use of the different dispute resolution methods?

The increase in the volume of trade and investment in Iran in recent years, in particular the energy sector, has laid the foundation for the creation of TRAC, which is the first Iranian arbitration institution to provide assistance and support to domestic and international arbitration tribunals.

A growing number of Iranian businesses when concluding contracts with foreign companies refer their commercial disputes to arbitral tribunals constituted in accordance with the arbitration rules of TRAC or other *ad hoc* arbitration rules as agreed between the parties.

Iran is party to more than 50 Bilateral Investment Treaties (BITs), with capital-exporting countries which provide institutional rules of the International Chamber of Commerce (ICC) in Paris or *ad hoc* arbitration rules of UNCITRAL for settlement of disputes arising out of investment between foreign investors and the Iranian government or state entities.

3.2 Please provide, in no more than 300 words, a summary of any current issues or proceedings affecting the use of those dispute resolution methods in Iran?

Positive steps have been taken by the Iranian government to facilitate international arbitration, including ratification of BITs, establishment of an arbitration institution (TRAC) and accession to the New York Convention.

However, there are still many shortcomings concerning dispute resolution proceedings involving the Iranian and foreign parties.

Iran has not ratified the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID), which entered into force in 1966.

This means that awards issued by international tribunals pursuant to the investment contracts or BITs are not automatically enforceable in Iran as required by the ICSID Convention.

Therefore the foreign party must ensure that the arbitral tribunal is located in a country that is a member to the NYC, in order for the award to be recognised by the Iranian courts.

The respondent may raise any of the grounds contained in the NYC for annulment and setting aside of the foreign award, which may delay the enforcement of the award.

ICSID arbitration is insulated from interference by the domestic courts and the creditor can enforce the award against the debtor the same way as enforcing a domestic judgment.

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Ali Akbar Atai was born in Tehran in 1942. He graduated from the University of Tabriz in 1966 (BA English Literature), from the University of Tehran in 1970 (LLB), from Melli University (LLM) and is a member of the Iranian Bar Association.

Mr. Atai is a specialist in commercial and international business and litigation. He qualified to practice in 1973 and has actively practiced in the above fields since that time.

Mr. Atai founded Atai Associates Law Offices in 1975. The firm has more than 10 members specialising in international business and dispute resolution services, including commercial litigation and arbitration.

Mr. Atai has excessive experience in rendering advice and representation of clients in company law, international trade law, employment law, joint ventures, long-term supply contracts, acquisition, civil engineering projects and construction contracts. He represents clients before the Iranian Courts in commercial and company law matters and contract law disputes.

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Ardeshir Atai (LLB, LLM, LPC, PhD) is a partner at Atai & Associates Law Firm. Ardeshir completed his bachelor's law degree from the London Metropolitan University in 2001. Ardeshir continued with postgraduate studies at the University of Hertfordshire and in 2003 obtained a LLM Masters Degree in international trade and maritime law. Ardeshir Atai has a PhD in international investment law from the Institute of Advanced Legal Studies, University of London, which was completed in 2010. His main area of expertise includes investment law, foreign investment, bilateral investment treaties (BITs), investment treaty arbitration, investment contracts, joint venture agreements and share purchase agreements. His area of practice is focused on investor-state dispute resolution, including arbitration under institutional rules of ICSID, ICC, LCIA and *ad hoc* arbitration rules of UNCITRAL. Ardeshir advises multinational companies and international oil companies on their rights and obligations under the BITs including compensation for breach of contract, specific performance and tort. Since 2005 he has headed the arbitration team at Atai & Associates. Ardeshir has published articles in leading legal journals, as follow:

The Comparative Analysis of the Iranian Foreign Investment Law and the World Bank Guidelines on the Treatment of Foreign Direct Investment (2005-06) Volume 12, the Yearbook of Islamic and Middle Eastern Law, pp. 111-128, Investor Protection in Iran: A Bankruptcy Approach in Bankruptcy Law Client Strategies in the Middle East and Africa (Aspatore, New York 2011), Standard of Treatment of Foreign Investments in Iran (2009) volume 30 issue 11, Company Lawyer Overview of Islamic Financial Investment (May 21, 2010), available at [SSRN: http://ssrn.com/abstract=1671584](http://ssrn.com/abstract=1671584), Arbitration of Investment Disputes under Iranian Investment Treaties (2011) Volume 14 Issue 2, and the Journal of Money Laundering Control.



Atai & Associates Law Offices were established in 1975 and are listed in the Legal 500 current edition as one of the reputable International Law Firms in Tehran. The firm provides legal services in order to help clients in resolving their disputes efficiently and effectively, including joint ventures, construction projects, trade, licensing, marine, trademark and copyright, petroleum and other international commercial disputes. The firm offers a full range of dispute resolution services, ranging from litigation in Iranian courts to arbitration both on a domestic and international level.

The firm has highly-trained negotiators and litigators that will attempt to settle the matters of dispute without initiating a costly legal procedure. It has found this method to be highly effective not only in terms of cost and time, but also in terms of preserving positive relationship of its clients with the party in dispute.

When dealing with dispute resolution, atai and associates review the respective contracts relating to the dispute, analyse the rights and obligations of the client under the contract, and evaluate the legal and contractual rights of the client and his chances for winning the case and advises the client accordingly.

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