Comparative Analysis of the Iranian Foreign Investment Law and the World Bank Guidelines on Treatment of Foreign Direct Investment

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1 INTRODUCTION

Foreign direct investment (FDI) is viewed by most countries as an important source of capital and technology required for economic development.1 The increase in flow of foreign investment in the past few years has improved confidence in developing countries where foreign investment flows can improve the shortages in resources, technology and foreign exchange which in the past constrained their economic development.2 The increase in foreign investment flows is triggered by the lifting of restrictions on foreign direct investment by the developing countries to liberalise their economies together with the shift by multinational corporations towards more integrated global investment and production strategies.3 Foreign direct investment is defined as the acquisition of ownership in the host state either through the formation of a new branch or subsidiary, acquisition of a controlling share in an existing domestic entity or participation in a joint venture.4 The promotion and encouragement of FDI flows are achieved through the investment laws of

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the host countries. The FDI laws of the host state contain the legal framework governing the admission, post-admission treatment of foreign investment, protection against expropriation and payment of compensation, and dispute settlement procedure.

The Iranian economy has been crippled by problems such as rising population, declining oil revenues, increasing costs of urbanisation and an ageing petroleum production infrastructure. The destruction of the infrastructure caused by the war and the restrictions imposed by the economic sanctions on Iran greatly diminished economic growth by declining foreign investment and decreasing petroleum production. Also the Iranian Constitution placed all major large-scale and mother industries such as the natural resources under the state monopoly and foreigners were prevented from acquiring ownership of the mineral wealth on the basis of concessionary rights. To repair the damage done to the economic sectors, Iran started an extensive reconstruction of its infrastructure through privatisation and promoting foreign direct investment to provide the needed funds, technological expertise and management skills. This comparative analysis of the Iranian FDI laws with the Work Bank Guidelines on Treatment of Foreign Direct Investment (the Guidelines) is to outline the strength and weaknesses of the Iranian investment laws with a view towards using the Guidelines as a model for a new Iranian law. The evaluation of the two sets of norms is to assess whether the Iranian FDI legal system affords adequate guarantees and protection to foreign investors against non-commercial risks. This will be achieved by establishing the efficiency and effective-

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9 UN Security Council has adopted three resolutions (Resolution 1696 of 31 July 2006, Resolution 1737 of 23 December 2006, and Resolution 1747 of 24 March 2007) against Iran as a result of their nuclear programme. The United States enacted the Iran Sanctions Act of 1996 (originally it was Iran–Libya Sanction Act 1996) restricting any investments of over $20 million a year in the Iranian oil industry.
11 Iranian Constitution 1979, Article 44 defines: “government sector as large-scale and mother industries, foreign trade, major minerals, banking, insurance, power generation, dams and large-scale irrigation networks, radio and television, post, telegraph and telephone services, aviation, shipping roads, railroads and the like, which are publicly owned and controlled by the state…”
12 Iranian Constitution 1979, Article 81, states: “that the granting of concessions to foreigners for the formation of companies or institutions dealing with commerce, industry, agriculture, services or mineral extraction is absolutely forbidden.”