

Joint Ventures in Iran

A point-by-point discussion with special attention to public and private sectors and historical background.

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This paper covers the subject in general, of "Joint Ventures in Iran" and, in particular, covers both public and private sectors. The public sector means those government agencies, which have been entrusted by law with the responsibility to promote and develop certain key aspects of the economy in Iran, dealing with natural resources such as oil, gas, petrochemicals, copper and steel. For this purpose, wholly-owned state corporations were established. National Iranian Oil Company, National Petrochemical Company, National Copper Industries, and the Organization for Industrial Development and Renovation are examples of such state-owned corporations.



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It may be worthwhile mentioning here that Iran with a population of 35 million has proven reserves of some 63 billion barrels or 9 billion tons of crude oil. This is 10.5% of the total proven oil reserves of the entire world including the Soviet Union and China, or 12.5% excluding those two countries.

According to some conservative estimates, Iran's gas reserves amount to some 390 trillion cubic feet or, from the viewpoint of heating value, equal to 9.7 billion tons of crude oil.

Iran's annual revenue from the sale of oil, gas and petrochemical products on exports markets presently amounts to approximately \$23 billion. This amount easily can be absorbed by the country's future development plans, thus opening opportunities for establishing joint ventures by both domestic and foreign participants.

The benefits expected to accrue to Iran from joint ventures are:

- Acquisition of latest technology and know-how.
- Creation of an adequate number of technicians by way of on-the-job training.
- Providing employment at all levels of the population.
- Developing the natural resources of the country.
- Creating a wide industrial base.
- Sharing the burden of highly capital-intensive

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projects.

- Permitting access to the markets of the foreign partner.
- Conservation of foreign exchange.

In any event, the history of the joint venture in Iran in its new context is not very old. It goes back to the late fifties and early sixties, when the multinational corporations began entering Iran's domestic market to establish joint-venture companies for manufacturing a variety of products. According to an official statistic issued by the Centre for Attraction and Protection of Foreign Investment (to its function I will revert later), from July 1959 through July 1977 or in 18 years, 193 joint venture companies were registered, with American participation in 47 companies or 24%, Federal Republic of Germany in 31 companies or 16%, United Kingdom in 24 companies or 12%, France in 18 companies or 9%, and other western European countries in 73 companies or 38%. The total capital employed in these 193 joint ventures amounts to \$7 billion of which some \$800 million enjoy the legal protection afforded by the aforementioned Centre.

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LEGAL FORM OF JOINT VENTURES

Focusing our attention only on the statistics mentioned earlier, except for three limited liability companies, the equivalent of *Gesellschaft mit beschränkter Haftung* in German, the remaining 190 companies were registered in the form of a Joint-Stock Company or *Aktiengesellschaft*.

The classic reasons for choosing this form of incorporation, particularly the limitation of liability of the shareholders to their equity contributions, are known to you. In addition, I must mention, that the more this form of partnership was employed, the more practicing lawyers, clients, investors and authorities became familiar with it, enabling them to draft, workout and deal with more sophisticated articles of association and bylaws so that one could assume that "Joint-Stock Company" and "doing business in Iran" have become somewhat synonymous. The same applies to locally owned corporations as well.

Iran's Commercial Code was enacted in 1932 and is almost an exact translation of the Belgian Commercial Code which in turn was based on French Commercial Code originating from the Napoleonic era. Section 3, Chapter One of the code comprising Articles 20 through 194 deals with the different types of corporations and actually corresponds to the corporation law known to you.

There are seven different types of business associations known to the Iranian Commercial Code, of which Joint-Stock Company, Limited-Liability Company and

General Partnership are the principal ones that are more commonly used. However, in view of the ever-increasing business relations of Iran with the western European Countries and the United States, it was felt an absolute necessity to amend the Code of 1932 to be more responsive to the needs of sophisticated business relations in a rapidly-changing world.

Although the amendment, after lengthy discussions and review by different government departments involved, was presented to the Parliament, so far the bill has not received the necessary legislative ratification.

However, to develop the stable capital market necessary for the industrialization of the country and to accommodate the inflow of the foreign capital, that section of the code which specifically dealt with Joint-Stock Companies was singled out, reviewed by the Parliament and ratified in March 1969. This section, comprised of 300 articles, replaced the corresponding chapter of 1932 Code containing 72 articles. Main features of 1969 Act can be summarized as follows:

1. The influence of the Belgian and French Codes in some areas has diminished and has been replaced by additional security regulations, shareholder protection and other concepts known to the common law practitioners.

2. Contrary to the 1932 Code, which recognized only one type of Joint-Stock Company, the 1969 Act following English pattern (I believe) contemplates "Private Joint-Stock Companies" as distinguished from "Public Joint-Stock Companies." Basic differences of these two types of Joint-Stock Companies can be summarized as: (a) minimum capital requirements which in the case of a public company are five times higher than that of a private company (\$13,333); (b) minimum subscription and payment of initial capital requirements; (c) method of raising initial capital exclusively by the shareholder (private company) or by offering stock and debentures to the public, and (d) the greater extent of flexibility afforded to the private company as against somewhat lengthy and formal procedures required in respect of the public company.

3. Rather heavy penalty provisions including imprisonment of directors for certain cases of mismanagement in both types of Joint-Stock Companies which again is a mixed influence of French and English legislation. In this connection, I would like to mention that according to Article 51 of the 1932 Code "the responsibility of the director toward the shareholder was that of attorney toward client." With the exception of fines, imprisonment was contemplated for certain cases such as distribution of unearned dividend, which was punished as larceny. In the 1969 Act, about 40 different penal cases were introduced into the law. For example, the giving of false information or testifying to false information by the directors to the shareholders with the intention of depriving such shareholders from exercising their preemptive rights for subscription to new shares, carries a prison sentence of up to three years.

Article 284 of the 1969 Act required all the then-existing Joint-Stock Companies to amend their statutes and bylaws within three years from the date of ratification of the Act (March 15, 1969) to accommodate the requirements of the 1969 Act or alternatively to be converted into one of the types of the companies

contemplated in the 1932 Code, namely, limited liability, general partnership and so on, failing which they will be deemed to have been dissolved. The time limit of three years, I believe, was extended by one further year and therefore except for those Joint-Stock Companies which had been established pursuant to special enactments, as of 15 March, 1973, there were no Joint-Stock Companies existing pursuant to the 1932 Code.

Those Joint-Stock Companies which were established pursuant to special enactments and are still existing, are governed by their statutes and their respective special enactments and are otherwise subject to the March 1969 Act.

LAWS AND REGULATIONS AFFECTING OPERATION OF JOINT-VENTURE COMPANIES

This part of the discussion will be devoted to the basic legislation affecting Joint-Venture Companies from the time they are registered and thereafter during the phase of operation without addressing oneself to certain ramifications such as labor law, social insurance act, customs regulations and could possibly include the following headings:

- a) Law concerning Attraction and Protection of Foreign Investment of November 1955 and Implementing Regulations thereof dated October 1956.
- b) Financing of Joint Ventures — Plan and Budget Act dated March 1973.
- c) Direct Taxation Act of March 1967 with subsequent amendments, rate of taxation, distribution and repatriation of dividends.
- d) Law for the Expansion of Public Ownership of Producing Units, known as "Share Participation" and
- e) Arbitration and Execution of Foreign Awards.

As you will note the listing is somewhat lengthy and therefore I will try to confine myself to the main features of each of these areas to the extent which I thought might be of interest.

The Law Concerning "Attraction and Protection Of Foreign Investments"

As part of the efforts to ensure development of a stable capital market and to afford the foreign investors adequate protection of their investments, free repatriation of profits generated therefrom, free convertibility of currency and security against future expropriation of the investment, the act concerning "Attraction and Protection of Foreign Investments" was passed in November 1955. Following ratification of the law, a center was originally established as part of the Central Bank of Iran to implement the law. This center, called CAPFI, however, is now a department of the Iranian Ministry for Economic Affairs and Finance.

As mentioned before, up to July 1977, 193 foreign investors have applied to CAPFI and are currently enjoying legal protection on some \$800,000,000 investments in joint-venture projects with a total capital investment of \$7 billion.

These figures definitely exclude those joint ventures which do not involve importation of capital in cash or kind and probably exclude most of those which are

with the participation of the host country's government. I have been unable to verify the number of these types of joint ventures because of their diversity in nature, but I would assume they are quite sizable in number.

Anyhow, Article 1 of the law contemplates that persons, corporations and private enterprises of foreign nationality who, with the permission of the government and in compliance with the provisions of Article 2 of the law import their capital into Iran either in cash or in the form of complete plants, machinery and equipment, patents, specialized services and the like for the purpose of developing, rehabilitating or promoting productive, industrial, mining, agricultural and transportation activities, will enjoy the facilities and privileges contemplated by this law. Article 2 goes on to prescribe the procedural aspects of filing application, composition of the committee reviewing such application and finally approval of the application by the Council of Ministers.

Articles 3-5

Articles 3, 4 and 5 of the law are also of utmost significance insofar as they:

- (a) Grant the same rights, exemptions and facilities to the foreign investors as those enjoyed by the local enterprises.
- (b) Guarantee fair compensation of foreign investment in cases of future enactments resulting in expropriation. Article 14 of the Implementing Regulations of the Law contemplates that the "fair compensation shall be paid on the basis of the value prevailing in normal time immediately prior to expropriation."
- (c) Guarantee availability of funds for repatriation of profits and of the original investment if necessary, in the same currency as imported; in case of capital goods, the currency in which they were accounted for.

The law further provides that permission for repatriation of profits or original investment, if required, shall be issued by the appropriate authorities no later than three months following written notice given by the applicants. I was unable to ascertain a time limit for the repatriation of investment in case of expropriation due to the fact that fortunately there have been no precedents in this respect; however, by application of analogy it could be assumed that in such case the compensation would be repatriable within a short time or at least not later than three months after expropriation. In this connection, I would like to call to your attention that the Law for Attraction and Protection of Foreign Investments and the Implementing Regulations thereof embrace the three fundamental principles of international law regarding expropriation, namely:

- Adequacy of Composition: (prevailing price in normal time immediately prior to expropriation).
- Effectiveness of Composition: (availability of funds in the same currency imported into the country).
- Promptness of Composition: (no later than three months following expropriation).

To conclude this section, CAPFI is the competent authority to receive application for importation of capital

in cash or in kind, to review and recommend to the Council of Ministers approval of the project, whereupon a decree will be issued by the Council of Ministers granting the privileges and protections discussed before.

Financing a Joint Venture — Plan and Budget Act of March 1973

Assuming that 30 to 40% of the costs for implementing a joint venture project would be contributed by the shareholders, whereby the foreign investor obtains government protection on its contribution as discussed before, the remaining 60 to 70% of the cost has to be financed through some local or outside sources in the form of commercial loans, suppliers' credit or similar arrangements. In case of one major Iranian petrochemical project involving some \$2 billion investment, a combination of cash contribution by shareholders, government-to-government loan, commercial loans with the fixed rates of interest, shareholders loans and suppliers' credit were employed to cover the costs of the project. This financing requirement varies from one sector to the other. While the public sector is governed by a certain set of rules and regulations, the private sector is afforded more flexibility. Therefore, this part of our discussion will have to be divided into two sections, first covering the public sector and then dealing with the private sector.

With respect to government agencies and state-owned corporations, I will review section 25 of the Iranian Constitution and Plan and Budget Act of March 1973.

Section 25 of the Constitution has an old history, going back to the first decade of the Twentieth Century emanating from the circumstances prevailing in those days, which are no longer applicable to the situation as it exists today. However, being part of the Constitution, this section requires that "Government borrowing under any circumstances, be it from local or foreign sources must be obtained with the knowledge and approval of the Parliament." As you will notice, this section requires (a) "knowledge" and (b) "approval" of the Parliament. To alleviate these requirements of the Constitution and at the same time to permit more flexibility necessary for financing of the government projects and to avail the country of the benefit of some cheaper money on the market or even currency requirements of projects in the form of supplier's or buyer's credit. Article 25 of the Plan and Budget Act was introduced. This article of the act contemplates that a ceiling of borrowing for each fiscal year must be worked out by the government and included in the Etat for the coming year to be approved by the Parliament, within which ceiling government can make the necessary borrowing. Loans and credits directly obtained by the public sector under a government guarantee are also included in the aforementioned ceiling. To satisfy the other requirement, namely "the knowledge" of Parliament, the same Article 25 of the Plan and Budget Act requires the Ministry of Economic Affairs and Finance, which is delegated with the responsibility to administer the financing programs of the public sector, to report within one month from the signing of any loan agreement to the Houses of Parliament.

With respect to joint ventures in the private sector, one can utilize either the services of four major Iranian Banks which are established to assist development of almost all branches of industry with some soft loans against adequate security or to do the foreign borrowing in one of the most suitable forms available on the market. In the latter case, approval of a committee consisting of representatives of the Ministry of Economic Affairs and Finance, Plan and Budget Organization and the Central Bank of Iran must be obtained. The role of this committee is that of coordinating the loans sought by the private sector in order not to upset the currency market and to regulate the external borrowings of the country as a whole and also to ascertain that funds would be available for repayment of the principal and payment of interest as they become due.

Direct Taxation Act of March 1967 as Amended — Rate of Taxation Distribution and Repatriation of Dividends

The present Iranian Tax Law, which replaced the 1965 Tax Law is another typical attempt on part of the government to become more responsive to the needs of the ever-changing world of business, to provide for more fair and equitable basis of tax collection, to avoid possible tax evasion and to create incentives for the development of the country. However, the law is still in the process of evolution, has experienced a sizable number of amendments and is still being amended. As a result, in some instances it has become and is becoming extremely complicated to permit a clear-cut interpretation and ruling.

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Section 97 of the law grants tax exemptions ranging from five to ten years and from 20 to 100% of the taxable income to producing units depending on type of industry and the locality of operation. Needless to mention, the lawmakers have attempted hereby to promote certain branches of industry and faster development of certain localities.

A list of industrial activities and locations of operation qualifying for tax exemption was prepared by the Ministry of Economic Affairs and Finance for the approval of the Parliament and is being revised according to the needs of the industrial sectors every three years.

As an incentive for reinvestment, Section 99 of the law grants a further tax exemption on the undistributed dividends which are utilized under certain conditions for the expansion of the existing facilities or establishment of new producing units. According to Section 80 of the law the following taxes are generally assessed and collected:

- 1) A corporate tax equal to 10% of the taxable income.
- 2) 3.35% of such taxable income on account of the municipality and Chamber of Commerce Tax.
- 3) 15% on that portion of the income, which has been allocated for distribution among the holder of registered shares, increasing to 25% on the dividends undistributed or paid to the holders of bearer shares for the first Rls. 20,000,000 (\$280,000) and further increasing up to 55%.

Tax on dividends declared for distribution among the holders of registered shares belonging to foreign nationals will be assessed according to an escalating

scale contained in section 134 of the law, which starts with 15% and escalating to 60%. However, according to Articles 10 of both treaties with the Federal Republic of Germany and France dated January 1970 and November 1973, respectively, regarding avoidance of double taxation, taxes on dividends for payment to the nationals of either of these two countries under certain conditions are limited to 16% to 20%.

According to Article 90 of the March 1969 amendment to the Commercial Code, at least 10% of the net earnings must be distributed each year. There is no longer any exchange control in Iran. Therefore, the foreign investor presently is not faced with the immediate problem of repatriation of dividends generated from the investment. However, as mentioned before, Articles 3 and 5 of the law concerning Attraction and Protection of Foreign Investments provide for the transfer of dividends generated from those investments which are registered with CAPFI.

According to my experience, there has been no difficulty in repatriation of dividends other than the formalities to be complied with.

Law For The Expansion of Public Ownership of Producing Units Known as "Share Participation"

In recognition of the necessity for a more equitable distribution of income, the so-called "Share Participation" Law was enacted in July 1975. As far as our discussion here is concerned there are two main features of this law and the implementing regulations thereof which are of significance. Article 1 contemplates that producing units existing on April 24, 1975, which shall be transformed in Public Joint-Stock Companies pursuant to the provisions of the law, are obliged to offer their shares to their workers, staff employees, and the public, so that by October 1978, 99% of the shares of state-owned units and 49% of the shares of units owned by the private sector are sold and held by the public. Prior to the sale, these units shall have to undergo detailed valuation of their shares by accounting firms recognized by the government. Conditions necessary to fall under purview of the law are set forth in the implementing regulations of the law and require at least five years of operation plus either a paid-in capital in excess of 100 million Rials or value of fixed assets in excess of 200 million Rials or a net sales value in one of the past years of at least 250 million Rials. Value of the shares will be assessed based on (i) trend of the loss and profit, (ii) average ratio of net profits to the capital employed, (iii) value of the shares on the stock market and (iv) average ratio of gross profit to the net sales all in respect of the last three to five years of operation.

Following this law by January 1978, 168 producing units with a registered capital of some Rls. 98 billions (\$ Over One billion) have offered their shares for sale, 222,367 workers and farmers have applied for purchase of such shares, and with 202,467 of these the transactions have been concluded.

"Mother Industries"

With respect to the sale of 99% of state-owned units, the law excluded "the mother industry and certain other industries as determined by the government."

Under "mother industries" so far, oil, steel and copper industries are believed to be excluded. Petrochemical industries, although it could have been considered as "mother industry" for a variety of downstream projects, nonetheless, is in the process of selling up to 99% of the shares amounting to \$4 billion to the public though not exactly patterned after the law. Here, a few words may be devoted to the fast-growing petrochemical industry of Iran.

The National Petrochemical Company of Iran which was established in 1965 as a holding company, presently controls and operates two wholly-owned subsidiaries and six affiliated companies with equity participation in such affiliates ranging from 20 to 74%. The total investment at the end of 1977 in the aforementioned two subsidiaries and six affiliate amounted to \$2,136MM of which \$562MM was foreign investment and the remaining \$1,574MM represents National Petrochemical investment. Total 1976 production in two subsidiaries and six affiliate companies amounted to 1,800,000 tons of chemical and petrochemical products, of which 62% was consumed in local markets and the remaining for export. It is expected that total capital investment in petrochemical industries will rise to \$4 billion by 1980 and it is strongly hoped that these industries will, in the not-too-remote future, substitute for the eventually declining oil revenue of the country. I would like to add that the 99% shares of National Petrochemical Company intended to be held by the public are non-voting shares. They are only entitled to dividends generated from the operations of the aforementioned subsidiaries and affiliates possibly with a minimum percentage of dividend guaranteed by the government for each year and otherwise have no right to the management of the companies. The one percent of the shares remaining with the government is retained for management and control purposes and represents the entire shareholding carrying voting rights.

The implementing regulations of the law has, as of November 1, 1976, set an upper limit of foreign participation in different branches of industry, which ranges from 15 to 25%. In certain exceptional cases, where highly-sophisticated technology is involved, such as in chemical and petrochemical industries, up to 35% foreign participation may be authorized.

Arbitration and Execution of the Award Under Iranian Civil Procedure Law

The Iranian Civil Procedure Code of 1939 which embodies arbitration provisions is one of the most comprehensive, progressive and continental-European-oriented laws ever enacted in our country. As in the case of Direct Taxation Law, the code has been in the process of evolution over the years. It appears that the attention of the legislative authorities was more or less directed toward local arbitration rather than the international arbitration. At least, they did not make any distinction between local and international arbitration. This prima facie might sound inconsistent with or at least an obstacle to Iran's endeavors to establish a stable capital market or to attract adequate foreign investments to implement its projects. However, as we shall see, due to the unrestrictive nature of this chapter of the code, this fortunately is not the case.

Article 632 contemplates that persons who have the capacity to institute a lawsuit may refer their disputes, whether or not their suits were instituted in a court of justice, and in case of having been instituted at any stage it may be, to arbitration of one or more persons by mutual consent. The generality of Article 632 is further reflected in the first part of Article 633, where it permits that the "transacting parties" irrespective of nationality may either in the transaction itself or by virtue of an independent agreement obligate themselves to resolve their disputes by way of arbitration. Accordingly, the arbitration (local or foreign) as a means to resolve the disputes is generally accepted by the code. The only restriction we can find is in the second part of Article 633, where it prohibits Iranian transacting party to submit to the arbitration by one or more arbitrators of a foreign nationality having the same nationality as his opponent. With respect to the execution of awards, I shall review:

1. Some of the pertinent articles of the 1939 Code and their applications to the international arbitration.
2. The law concerning Execution of Civil Verdicts of 1977, respective parts thereof relating to the international arbitration.
3. The bilateral agreements between Iran and United States of America of 1957 and with the Federal Republic of Germany of November 1965.

I would like to note that Iran has not yet joined either the Geneva Convention of September 1927 or the New York Convention of 1958 regarding recognition and enforcement of arbitration awards.

Article 662 of the code contemplates that in cases where the losing party does not willingly abide by the award within 10 days after service of the award, the court referring the case to arbitration or the court having jurisdiction over the case, is required on the request of the interested party to issue the order of execution in accordance with the award. Accordingly, so long as the award is not in conflict with provisions of the second part of Article 633, Article 658 and 665 of the Civil Procedure Code and Article 1295 of the Civil Code, any award local or international may be enforced without problem.

The second part of Article 633 as mentioned before prohibits the Iranian transacting party to submit to the arbitration by one or more arbitrators of a foreign nationality having the same nationality as his opponent. However, this applies only to the cases where the dispute has not occurred, which by reverse implication, it would be permissible to do so if the dispute has occurred. Article 658 requires that the award must be justified and supportable and not be inconsistent with the creative laws. Article 665 contemplates that an award is null and void and unenforceable if it:

- Is inconsistent with the creative laws, which is actually a repetition of the second part of Article 658.
- Was rendered either not within the subject matter for arbitration or beyond the time limit prescribed for arbitration.
- Is inconsistent with what is registered in the Land Register or a document issued by a notary public.

Article 1295 of the Civil Code, does make awards unenforceable when rendered contrary to public welfare and good morals, which is commonly accepted as

good ground for unenforceability of award. However, in all of the foregoing events, like New York Convention, the *onus probandi* rests with the losing party.

Chapter 9 of the law enforcing Execution of Civil Verdicts deals with verdicts and other foreign enforceable documents. This chapter is essentially a recodification of generally-accepted principles which had been scattered parts of the laws of the country.

Article 177, pertinent to our discussions regarding enforcement of foreign awards reads:

"Enforceable documents drawn up in foreign countries will be enforceable in Iran in the same manner and under the same conditions as contemplated for the enforcement of the verdict issued by foreign courts. In addition, the diplomatic or consulate representative of Iran in the country, where the document is drawn up must confirm that such document has been drawn up in conformity with the laws of the country, where it was drawn up."

In order to determine the requirements for the enforceability of foreign awards, Articles 169 and 171 of the law must be reviewed.

Article 169 contemplates that:

Civil Verdicts issued by foreign courts will be enforceable in Iran provided they meet the following conditions or as otherwise prescribed by the Law:

1. The country in which the verdict is issued, will according to its laws or existing agreement or conventions, (with Iran) enforce the verdicts issued by Iranian courts or will apply reciprocity;
2. Contents of the verdict is not contradictory to the public policy or good moral;
3. Enforcement of the verdict is not in contradiction with the conventions Iran has joined or with the special enactments;
4. The verdict is enforceable, in the country where it is issued and is not revoked due to legal reasons;
5. Iranian courts have not issued a verdict inconsistent therewith;
6. According to the laws of Iran, handling the case is not within the specific competence of Iranian courts;
7. The verdict does not relate to the immovable properties located in Iran; and
8. Competent authorities of the issuing country have issued the order of enforcement.

As mentioned before, the requirements of Article 169 are not new. We can find almost the same or similar provisions in the Iranian Civil Code or other legislation.

Article 171 requires compliance with special provisions contained in any existing conventions or treaties between Iran and the issuing country.

This brings me to the last item on my list, Iran's bilateral treaties with the United States and the Federal Republic of Germany. However, before going into some details of these treaties, I would like to point out that according to Article 9 of Iranian Civil Code and Section 24 of the Constitution, treaties signed by the Government of Iran with other countries with the approval of Parliament, will have the effect of law. And inasmuch as these two treaties which we are reviewing have received such approval and have become part of the law of the country in case of conflict with other laws, provision contained in those treaties will prevail. The 1957

treaty with the United States of America in its paragraph 3 of Clause 3 has the following provisions:

"The private settlement of disputes of a civil nature, involving nationals and companies of either High Contracting Party, shall not be discouraged within the territories of the other High Contracting Party; and, in case of such settlement by arbitration, neither the alienage of the arbitrators nor the foreign situs of the arbitration proceedings shall of themselves by a bar to the enforceability of awards duly resulting therefrom."

As you will note, this provision does not help too much except that non-Iranian nationality of arbitrators, which otherwise would have been in conflict with Article 633 of the Civil Procedure Code, is no longer a problem. And location of arbitration outside Iran is also no longer a problem. The more critical problem in this area which has been left unmentioned, as you know, is the choice of proper law, which may cause unenforceability of the award.

Now let us focus on the provisions of the protocol attached to the 1965 treaty with the Federal Republic of Germany.

In so doing and lacking the English version of this treaty I have made an attempt to translate for you clauses 4 and 6 of such treaty into English and would like to refer you to the original Farsi or German Text for accuracy purposes.

Clause 4

In the absence of the parties having agreed otherwise, the board of arbitration shall consist of three members, two of which will be appointed by the parties. Should one of the parties fail to so appoint, the other party (in case of failing of the German party) may request the President of Federal Supreme Court and in case of failing of the Iranian party the President of the High Supreme Court of Iran to make the appointment. Same procedure applies to cases, where an arbitrator is prevented or has resigned and the appointing party fails to make new appointment.

Two arbitrators will elect an umpire. Should the arbitrators fail to agree on the umpire, each one of the parties or each one of the arbitrators may request the President of International Chamber of Commerce in Paris to appoint the umpire. In the event that the President has the same nationality as one of the parties or he is unable to make the appointment, the Vice-President shall discharge the duty and in case such Vice-President is unable for the same reasons as the President, this duty will be discharged by the most senior officer of the Chamber following Vice-President. The umpire shall be of a nationality other than that of either of the parties and shall have no direct economic interest in the dispute. The court of arbitration decides upon its own procedure, unless otherwise agreed by the parties.

Clause 6

The parties shall permit enforcement of the award in their respective territories, which are rendered unanimously or by majority irrespective of the fact that such award has been rendered in one of the high contracting territories or in the territory of a third country. Execution of the award is subject to the laws of the country, where it is to be executed.

Clause 6 corresponds to some of the provisions con-

(Please turn to Page 211)