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Research Paper

A Study of the Conflicts between Iran's Foreign Investment Protection Law and Iran's Sixth Development Plan Law in the Tobacco Industry

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Abstract
Iran is a country of conflicts. One of the conflicting areas is located between the fundamental legislations and the laws passed throughout the years. Through the current study, the conflict between Foreign Investment Promotion and Protection Act (FIPPA) and Law on Sixth Five-year Development Plan of Iran is reviewed with a concentration on tobacco industry. On the one hand, tax and excise from tobacco industry form an important base for governmental revenue and, on the other hand, the mentioned industry is considered as a harmful business. Therefore, discriminations and injustice existing in the increase in the tax and excise of one such industry is not taken care of properly. During this study the discrimination between local and international companies regarding taxation and the conflict between FIPPA and Sixth Development Plan in tobacco industry are reviewed.

Keywords: Tobacco Industry; Foreign Investment; Iranian Development Plans

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1. Introduction

The conflict between fundamental legislations and other laws is discussed by researchers and practitioners in the field of law [1-3] . Not only can such conflicts impact businesses and industries financially, but also, they can create discriminations among companies with different natures. Iran is a country with a centralized government and there exists a comprehensive control of government over industries and businesses; therefore, any changes in regulations might have huge impacts on the businesses [1, 4-6] .

In this study, the conflict between Foreign Investment Promotion and Protection Act (FIPPA) as a permanent law and Law on the Sixth Five-Year Economic, Cultural, and Social Development Plan as a law which is effective for five years from 2016 to 2021 is reviewed with a concentration on tobacco industry. Capital has a volatile nature and requires peace and security in an environment to stay and be active (Haddadi, 2015). Therefore, the conflicts of laws in a country which reduces the sustainability of investments can be a critical factor for foreign investors deciding to stay in an economy or extract their capital.

2. Foreign Investment Promotion and Protection Act (FIPPA)

In developing economies systematic investment promotions are established with the goal of foreign investment attraction [6, 7] . Foreign Investment Promotion and Protection Act (FIPPA) is the most important law related to foreign investment in Iran. The foreign or international investor is an Iranian or a foreigner individual or company that execute investment inside the country with the cash or any

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form of investment from a foreign origin capital [2, 8-10] .

This act provides guarantees for international investors to have access to the facilities, rights and protections at the same level of domestic companies. Based on FIPPA act an international investor has the permission to invest in any field of business which is allowed for the private sector. Also, the foreign investors can have a hundred percent of the legal entity share in Iran. Another important factor of FIPPA is the protection of international investments against the risk of governments' actions for nationalization and expropriation. However, the risk of expropriation in cases which are related to public interests exists. Meanwhile, a non-discriminatory approach must be followed for expropriation and the investment must be compensated fairly. The possibility of profit and capital transfer related to the actual investments in Iran is ensured in the Act and in case of necessity, the Iranian Rial currency may be changed to other currencies. Through the Act, the related residency permissions of foreign experts who work in entities related to foreign investment companies is facilitated. Foreign investors need to follow the procedures of the Organization for Investment, Economic and Technical Assistance of Iran (OIETAI) and obtain related licenses [11] .

Article 8 of FIPPA which creates a fairground for all companies regardless of their investors is quoted as follow to provide a clear understanding regarding the wording of law:

Foreign Investments under this Act shall equally enjoy all rights, protections, and facilities available to local investments.

Hereafter the critical laws with high impact on tobacco industry are evaluated and the fundamental discriminations that are caused by these laws to internationally invested tobacco companies are explained.

3. Law on the Sixth Five-Year Economic, Cultural, and Social Development Plan for 13961400 (2016-2021)

Development Plans are mid-term plans which are submitted to the Parliament by the government of Iran every five years to be passed and then they will be executed by government. The responsible entity for drafting the plan is Iran Management and Planning Organization. The main aim of the plan is to enhance the living condition of Iranians in different ways including economic, cultural and social [12] .

During the approval of the 6th Development Plan in the Parliament a new concept was added to Article 73 of the plan which was related to tobacco. The term "Local Production with International Brand" was a new field with higher tax compared to the local production of local brands. This term created a huge difference between local manufacturers and international players in tobacco market of Iran.

Clause A1 of Article 73 of 6th Development Plan is as follows:

The amount of Tax of each pack of locally manufactured cigarette is %10, joint manufacturing is %20 and local production with an international brand is %25 based on the ex-work price; and Imported is %40 of Goods price plus freight and insurance (CIF) in destination port.

4. Tobacco Tax and Excises

Tobacco products are applicable to a variety of levies in Iran. Tobacco taxes are categorized in 3 formats including Ad Valorem, Specific and Mix Method. The categories of tobacco products are local production, joint manufacturing production (between a governmental company and a private company), and local production with international brands and imported products. The organizations and related mandatory taxes are illustrated in table 1.

5. Discrimination against International Tobacco Companies

A conflict is observed between Article 8 of FIPPA and Article 73 of Iranian 6th Development Plan regarding the taxation of tobacco industry in Iran. Based on Article 8 of FIPPA, all the foreign investments will have the same facilities, protections and rights as Iranian companies. This Article can be interpreted as the attempt to create a fair and equal environment for all active companies in Iran despite the origin of their investments (Safari, 2018). However, Iranian Parliament has passed new tax regime on tobacco products in Article 73 of the 6th Development Plan which shows a clear discrimination in favor of Iranian and against International companies. Based on Article 73, local cigarette manufacturers are required to pay 10% tax on their ex-work price. This is while local cigarette manufacturers with International brands need to pay 25% tax on their ex-work price. This difference is a clear discrimination which is against Article 8 of FIPPA.

Table 1. The organizations and related mandatory taxes based on the Sixth Five-Year Economic.

	Type of Tax	Cigarettes containing tobacco	Cigars, cheroots and cigarillos of tobacco or of tobacco substitutes	Water pipe (Shisha) tobacco
Local	Ad Valorem Tax	10% on export price	10% on invoice price	10% on invoice price
	Specific tax	IRR 75/stick	IRR 75/stick	-
Joint	Ad Valorem Tax	20% on export price	20% on invoice price	10% on invoice price
	Specific tax	IRR 150/stick	IRR 150/stick	-
Local Product ion with International Brands	Ad Valorem Tax	25% on export price	25% on invoice price	10% on invoice price
	Specific tax	IRR 250/stick	IRR 250/stick	-
Imported	Ad Valorem Tax	40% CIF + 26% Custom Duty on CIF	40% on CIF + 26% Custom Duty on CIF	40% on CIF + 5% Custom Duty on CIF
	Specific tax	IRR 600/stick	IRR 600/stick	-

6. Conclusion

Article 73 of the 6th Development Plan and Article 8 of FIPPA are clearly in conflict and the mentioned differences create discrimination in favor of local and against international brands, which was delved into in previous sections of this paper. Such discrimination will impact the current tobacco players in Iran with international brands, reduce the sustainability of legislations in Iran, and create negative signals to international capital holders, resulting in the reduction of foreign investments volume in the country.

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