# Rules Governing the Entry and Exit of Foreign Investors in the Iranian Capital Market

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**Extended Abstract**

Investing in the capital market (or, in other words, trading security by individuals) requires preliminaries and formalities and also involves the various stages of the investor's presence in the capital market, i.e. the stages of entry, activity, and exit. Therefore, identifying the preliminaries and formalities governing the entry, activity, and exit stages regarding foreign investors interested in investing in the capital market of the country is important due to the foreignness and lack of sufficient information on the governing regulations - in other words, on the process of investment in the capital market. In this research, it has been attempted to examine the concept of "investor", "foreign investor in the capital market of the country" and "the entry and exit of foreign investor in the capital market" according to the existing regulations. In addition, the rules governing the entry and exit of foreign investors in the capital market are studied considering the "Foreign Investment Promotion and Protection Act" and the "Regulations on Foreign Investment in Exchanges and Offshore Markets" (the new code) and highlighting their weaknesses and strengths as compared to the former code passed in 2005. Finally, some suggestions are also offered.

**Key Words:** Foreign Investment, Capital Market, Strategic Foreign Investors, Non-Strategic Foreign Investors

## Introduction

Foreign investment in the capital market is considered important, as it involves two basic issues, namely “foreign investment” and “capital market” (Qasemi-Hamed & Baqeri-Motlaq, 2013). Concerning the importance and necessity of foreign investment, suffice to say that in today's world, not only developing countries but also developed countries attempt to attract foreign investment and compete in this

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area (Baqeri-Motlaq, 2012).

Such advantages and necessities have caused this type of investment to be considered by the country's administrators despite the fact that the legislator has not stipulated it in the “Foreign Investment Promotion and Protection Act” for the first time in 2005 according to the bylaw passed by the Council of Ministers. The "Foreign Investors' Investment in the Stock Exchange Bylaw" passed in 2005 dealing merely with the issue of foreign investors investing in the stock market, which is in fact one of the pillars of the capital market in the country, due to some deficiencies and problems, was replaced by the " Foreign Investment in the Exchanges and OTC Markets Bylaw" in 2010 (Baqeri-Motlaq, 2012).

Under the aforementioned bylaw, the possibility of foreign investment in OTC markets has also been provided as a pillar of the capital market. However, the bylaw does not foresee any mechanism for the possibility of foreign investment in the commodity exchange, and it does not include it. One of the most important factors in foreign investment in the capital market is to get acquainted with the concept of investor, foreign investment, and the way of entry, activity, and exit from the capital market from the point of view of the governing regulations in the host country (Lashkari, Emamverdi, & Hamzei, 2012).

Considering the provisions included in the 2005 and 2010 bylaws, this article revolves around three main axes, including entry, activity, and exit. The present article studies the rules governing the entry and exit of the foreign investors from the capital market considering Foreign Investment Promotion and Protection Act and Foreign Investment in the Exchanges and OTC Markets Bylaw (the new bylaw) and highlighting its weaknesses and strengths as compared to the previous bylaw approved in 2005.

**Results and Suggestions**

Despite the lack of stipulation in the Law of Promotion and Protection of Foreign Investment, the necessity of attracting foreign capital to the capital market of the country has not been neglected by the administrators of the country. Although the former bylaw caused some barriers and constraints for the foreign investors, it was considered a positive step towards the legal acceptance of this type of foreign investment. The former bylaw attempted to cover foreign investment in the stock exchange under the “Foreign Investment Promotion and Protection Act”. While it seems that another approach is considered in the new bylaw, and also because foreign investment in the capital market is one of the activities taking place in this market, therefore foreign persons are exempted from referring to the Organization for Investment, Economic and Technical Assistance Of Iran to obtain investment licenses and also complying with the requirements for the withdrawal of capital from the country, and the authority to grant foreign investment licenses in the capital market and decide on the withdrawal of capital from the country is determined by the Securities and Exchange Organization as an entity governing the capital market, which it seems to be a positive step towards facilitating foreign investment in Iran's capital market.

Although the new bylaw, in contrast to the former bylaw, has positive implications for the entry and exit of foreign investors from the capital market, in some cases, it also has some shortcomings. It does not predict foreign investment possibility in the commodity exchange and does not provide a comprehensive definition for the

mentioned investment. Therefore, it is expected that the weaknesses and strengths of the "Foreign Investment in the Exchanges and OTC Markets Bylaw" are taken into account by adopting a newer bylaw in the future in order to approve the bylaw covering the entire capital market of the country. In addition, effective steps should be taken to avoid any ambiguity and confusion for foreign investors and considerable foreign investments are attracted to the country's capital market in this way.

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# The Legal Regime Governing Import and Export of Petroleum Products with a Comparative Look

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**Extended Abstract**

In spite of widespread efforts on the part of Iran to develop a non-oil-dependent economy, experts believe that the prominent position of oil and petroleum products in the Iranian economy, particularly in relation to import/export operations is still undeniable. The main purpose of this study is to emphasize that the presence of a country in the international trade arena is significantly influenced by the legal regime governing the import/export of such products. On the other hand, it is inferred that oil, rather than being an economic commodity, is a political one, and this explains why it is the focus of attention in many states with oil-based economies. Despite the fact that scholars have not paid much attention to the legal regime governing customs import and export so far, it is imperative that the opportunities, barriers and requirements of the Iran's presence in the dynamic sectors of the oil trade (including exports and imports) globally with respect to the regime Internal law be investigated. Failure to pay attention to the oil export sector makes the economy more vulnerable to these fluctuations, and this can affect the stability of the financial market and foreign exchange rates. According to the existing resources, since the theory of relative superiority is based on the basis that a country is specialized in the production and export of goods that can produce the product at relatively low cost, this should lead to the encouragement of the

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production and export of goods. The obvious application of this theory in Iran is the production and export of petroleum products, because the production of petroleum products can be done at a very low cost with regard to crude oil resources in Iran. The legal regime governing import/export of petroleum and non-petroleum products also pinpoints many differences in terms of tax exemptions and export incentives.

Over the past few years, the World Bank Business Unit has been exploring the business environment in different countries and has used 10 indicators to measure business environments in the country, the eighth indicator of which is foreign trade. The company measures the three factors that businessmen are facing to trade in different countries in order to measure the ease of trade and how customs operate in different countries. These factors are: 1. Costs for clearance or administrative procedures; 2. When they are doing business; 3. The number of steps to be taken and the number of documents that must be prepared; in fact, this indicator is the indicative of the efficiency of customs in different countries. According to the World Bank's rating based on the ease and difficulty of transnational trade in the countries of the world in 2017, Singapore was ranked first, Afghanistan was ranked 183th and ranked last, and Iran was ranked 120. One of the most important problems in the customs system of Iran is the large changes in customs regulations and regulatory instability, which causes not only traders but also customs officials themselves to be confused and ambiguous. Regarding comparative law, since it seemed reasonable to learn from legislative experiences in other countries, particularly those countries with economic conditions similar to those in Iran, the author investigated the legal regimes practiced in the field of import/export. Certain measures adopted by some of the studied countries to create economic advantage were of particular interest: for instance in Brazil, an international airport is allocated for the transportation operations required for the import/export of petroleum products in the United States, the detailed legislation in compliance with natural resources is enacted; in the European Union, serious efforts are being adapt to international trade rules, Especially in Turkey, tax exemptions for /export of the specific products, and apply , the concept of “Single Trade Window” in Singapore has been implemented for creating economic advantage. Similar measures can also be considered in Iran for the purpose of improving the present economic situation in the country. In the economic justification for the reduction of trade barriers, it can be included that if a country reduces trade barriers, its economic benefits will not only come to its trading partners, but also the country itself will benefit from this decline because its consumers are cheaper and better. And manufacturers in the country will also be more competitive through competitive pressure. It should be noted that the sensitivity and importance of this in the export of petroleum products to countries has led to identifying the tools and factors in it and attempting to expand exports. Regarding oil and oil products, the undeniable capacity of a country is in fossil fuel transit which improves its position in the oil market. Iran's position on oil transit routes is unique, and it is essential that this capacity is investigated and full use. .

**Keywords**: Oil,Petroleum products exportation,Petroleum productsimportation, Legal regime,Customs regime

**JEL:**$K_{22}$,$K_{29}$,$K_{32}$

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# Transaction and Lawsuit based on Market Manipulation in the Stock Exchange

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**Extended Abstract**

Market manipulation is a deliberate attempt to interfere with the free and fair operation of the capital market and to create artificial, false or misleading appearances with respect to the price or market of security. Manipulation is an example of market abuse in which financial market investors have been unreasonably disadvantaged, directly or indirectly, by others who have disseminated false or misleading information and have distorted the price-setting mechanism of financial instruments.

In deferent legal systems, manipulation is illegal and prohibited in most cases. One of its legal sanction is criminal sanction. But legal process about its civil sanction is not completed and somewhat not clear. The topic of this article is the legal status of transactions based on manipulation and remedies that the lost parties can resort to.

**Theoretical framework**

The main feature of financial markets is that the right information is complete and it is directly converted to price. This price determines the balance between supply and demand in the market, while manipulation disarranges this equilibrium. In fact, the main element of manipulation is the alteration of stock prices through disturbances in the normal functioning of the market. Consequently, market manipulation reduces the efficiency of a financial market, and many legal systems for protecting the health and competitiveness of the capital market and its activists can rely on the fair pricing method in securities market which have prohibited the price manipulation.

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**Methodology**

The method for collecting the information is a library method. We studied statutes, regulations, cases as well as articles and books about this topic. In this comparative study, the method of thinking is the descriptive-analytical method.

**Results & Discussion**

In most legal systems, there is no clear concept of market manipulation. However, manipulation requires a special attention to influencing the price of securities, and this must be done with a deceptive method. There are deferent approaches about legal status of transactions based on the manipulation and the remedies available for lost person. It seems that the theory of invalidation of transactions based on manipulation is not defendable and the use of mechanism and adopting the approaches that guarantees the rights of investors is preferred. Therefore, to review the proceedings of the arbitral board of SEO (Securities & Exchange Organization) is necessary to achieving a fair legal procedure. It must be noted that just considering of criminal aspect of manipulation is disregarding the principles governing the capital market.

**Conclusions & Suggestions**

Market manipulation is an undesirable phenomenon that undermines the security of investment in the stock exchange. However, the most important sanction in dealing with this phenomenon is the criminal sanction, which is also foreseen in the Iranian Securities Market Act. In fact, the reality is that criminal prosecution is an inadequate, ineffective and socially costly way to solve the complex problems of capital market and remedies in civil law, and the mechanisms that the legislator has provided to stockholders can be much more effective, efficient, and less costly.

**Keywords:** market manipulation, transaction, legal sanctions, lawsuit based on market manipulation

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# Explaining the Standard of Review of WTO Dispute Settlement Body

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**Extended Abstract**

General Council of WTO as the Dispute Settlement Body (DSB) has exclusive jurisdiction to settle disputes between WTO members. DSB works by Panels and Appellate Body and inevitably should review and investigate disputes. The question is that how DSB should review the measures and decisions of members for the settlement of disputes. Indeed, the main question raised here is about "standard of review".

Within the Dispute Settlement system of World Trade Organization, whenever the DSB is called for reviewing the members' measures or interpreting the laws and regulations, the issue of standard of review is raised. This issue explains how much deference should be granted by Panels and Appellate Body to national decisions. In other words, Should the Panels respect the findings of the national authorities and their decisions regarding the subject (total deference approach), or should they re-examine and review national measures and decisions completely and independently (de novo approach)?

*De novo review* and *total deference* are the two most common standards of applying appropriate level of deference. The first one entails an independent examination of the domestic measures and decisions; a policy of full de novo review allows the panel to completely substitute its own findings for those of the national authority and arrive at a different factual and legal conclusion. The standard of the review of total deference means that a panel should not review in substance the investigations conducted by the national authority. Under such policy, panels examine whether the relevant procedural requirements for the adoption of a measure or decision are complied with or not (Oesch, 2003).

The issue of standard of review is a large part of procedural law in general; it plays an important role in the judicial review of authorities' measures in both domestic

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and international jurisdictions. However, standards of review do not only accomplish a procedural function; they also express a deliberate allocation of power between an authority taking a measure and a judicial organ reviewing it.

In legal framework of WTO, especially in the Dispute Settlement Understanding, there is no explicit standard of review clause. But it has been generally interpreted by the Appellate Body that the requirement to adopt an appropriate standard of review arises from Article 11 of the DSU which obliges a panel to make an objective assessment of the matter before it. It thus appears from the language of Article 11 that the Panels should make an *objective assessment* of the matter in carrying out their responsibility, including an objective assessment of facts of the case and the application of and conformity with the relevant covered agreements. This has been clarified by the Appellate Body in a number of instances. For example, in the *EC – Hormones*, the Appellate Body noted that in regard to the fact-finding by the Panels, the applicable standard of review is neither *de novo* nor total deference, but rather an objective assessment of facts. It is a general rule about the standard of review in dispute settlement system of WTO; however, the scope and intensity of the panel's assessment is not the same for every issue and every dispute. Therefore, the nature and intensity of review (standard of review) differs depending on which kind of issues is being reviewed - Is the issue a question of fact or a question of law?. The nature of review also changes with the subject matter of the dispute. For example, the measure that is in question under the Anti-Dumping Agreement is examined with a different standard from a measure under Agreement on Sanitary and Phytosanitary Measures (Ehlermann & Lockhart, 2004).

In legal determinations (the question of law), *de novo* review of a national authority's legal determination is necessary, because the panels and appellate body have duty to interpret the WTO agreements. It's clear that preserving the WTO members' balance of rights and obligations is subject to providing a uniform interpretation. For achieving this goal, panels and appellate body should conduct an original, *de novo* review of a national authority's legal determinations.

Compared to legal determination, in factual determinations there is no need to a complete, original and *de novo* review. By looking at Appellate Body's statements in different disputes, in factual determinations it appears that panels should accord a considerable degree of discretion to national authorities in the assessment of facts. In other words, panels should not seek to displace the national authority by doing their own factual investigation; nor should they reject factual findings by the national authority just for this reason that they prefer other findings.

Standard of review is different in specific WTO agreements as well as in legal and factual determinations. For instance, article 17.6 (i) of Anti-Dumping Agreement provides a specific assessment criterion for factual determinations. This article explicitly affords a broad discretion to the national authority to assess the facts and events. According to this article, panel should respect the factual determinations of national authority provided that the process of establishing of those facts was "proper". The standard for legal determinations and the interpretation of provisions are referred to in article 17-6 (ii) of the Anti-Dumping Agreement. This clause is the only rule by which the panels are allowed to apply different interpretative rules to the WTO rules which are not covered by other agreements of the WTO. According to this clause, the panel should interpret the relevant provisions of the Agreement in accordance with the customary rules of the interpretation of public international law. It is possible that a relevant provision of the Agreement admits of more than one

permissible interpretation; so if the authorities' measure rests upon one of those permissible interpretations, the panel should find it to be in conformity with the Agreement (Jane, 2006). Some other agreements of WTO have their own specific rules about standard of review which should be considered in relevant disputes.

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# TheChallenge of Theoretical and Practical Status of Human Rights in the System of the World Bank

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**Extended Abstract**

Nowadays international economic law and international human rights law as two diverse domains of international law have complex relations. The relationship between these legal branches is mainly around the development of law. One of the areas of interconnection and coincidence between these two branches of international law in the framework of development is the activities of international economic organizations including the World Bank. The activities of the World Bank have a substantial effect on the issue of human rights, and different societies are affected by the implementation of the World Bank's projects. The World Bank has no vivid human rights policies and has always adopted doubtful measures in relation to human rights. Sometimes the World Bank has avoided contribution in promotion of human rights and sometimes it has declared itself bounded to protect the human rights law by developing its operation and applying a new definition. Even at the times that the actions of the World Bank have human rights effects, it doesn't mention the human rights explicitly. The main question raised here concerns the role of the World Bank on human rights in the period of its existence.

**Research Method**

the research method used in this study is descriptive-analytical using library resources. In order to answer the question, the statute of IBRD and its related documents were analyzed.

**Results and Discussions**

The World Bank, as an important international economical organization is the challenging area between human rights discourse and development discourse. This challenge in the framework of the World Bank may be addressed in theoretical and pragmatic aspects. The inquiry on this challenge in the field of theoretical aspects

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reveals that the protection and propagation of human rights is not outside the competence of the bank and theoretically it is desirable. Some consideration such asThe promotion of human rights status in international issues, adoption of human policies in development, and excessive experimental proofs in relation to the consistency between all human rights instances, make difficulties in applying confined and limited deduction in relation to the human rights status in the world bank system. Gradually, the absolute economical deduction of the notion development has been faded by the emergence of notions such as sustainable development and good governance and has caused the human rights deduction to be coupled with the notion of development. According to this fact, today the human rights have a desirable status in the bank's constitution and general international documents of the World Bank system. To sum up the bank is obliged to consider human rights in the context of economical consideration or any other ways.

The inquiry between development and human rights discourse in the framework of the World Bank policy shows the inconsistency among the mentioned domains. Despite the bank and its authority's claims, the applied measures in protecting human rights were not so satisfactory. Examining several pragmatic cases such as stablishment of inquiry commissions, formation of inspection assembly and conducting structural programs reveal this fact that the mentioned cases could not be in line with the promotion human rights status in the World Bank system. in spite of claims of the bank and its authorities, the measures applied by the World Bank in mentioned cases were not satisfactory and there was considrable gap between the human rights status in the bank's claims in their reports and their operations. Although human rights has a desirable status in the constitution of the World Bank and general international law rules, but the study on the pragmatic cases shows the relative indifference of the bank to the human rights issue.

**Conclusions & Suggestions:**

Finally, it can be expressed that the only method to promote the human rights, both theoretically and pragmatically, is perhaps to consider the development in the field of human rights and applying a human rights-centralized approach to development. This is an issue which must be result in the emergence of the issue of human rights in strategical and operational policies of the World Bank. In adopting such an approach, the real connection might be made between the development and the human rights ideals. Otherwise the obvious unbalance between the status of human rights in theoretical and practical aspects would remain unsolved. The World Bank approach in relation to the human rights is an important opportunity to propagate the human rights, and at the same time it is a serious threat to the human rights protection. If this opportunity is utilized, the bank might have a constructive role in human rights propagation, the rule of law establishment, and also good governance and sustainable development. If this opportunity is not used, however,it will result in a stream that only would bring the development of violence to the mind.

**Keywords:** World Bank, human rights, development, economic consideration, right to development

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# Legal Expenses Insurance as a tool for Citizen Empowerment

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**Extended Abstract**

Legal Expenses Insurances (LEIs) are among the tools experienced in many countries to increase citizens' access to justice; however, Iran is one of the countries without such experience. LEI means the arrangements that distribute the risk of failure in judicial cases. LEI transfers the costs of litigation, administration of case and enforcement of the judgment from citizen who is involved in the proceedings, and therefor makes it an option for citizen to go to court. In a such way financial obstacles are removed from the citizen's litigationproject.

This article is a comparative library study using descriptive and legal critical methods. The purpose of this study is to investigate the features of LEIs which remain unusual in Iran's legal system. This article attempts to introduce legal requirements for the formation of LEIs in Iran. For this goal,firstly we'll introduce legal expenses insurance and alternative methods that are not insurance in fact, but formulated on the basis of the distribution of heavy costs of judicial services.

Judicial cases are based on a variety of different types of risks, including speculative or pure ones; therefore, the current insurance is used to cover pure risks and not to cover cases that have a speculative risk due to the heavy costs that such files can impose on insurers. These types of insurance are also subject to 'moral hazards'. One of these hazards is the purchase of a policy for an existing conflict, or raising the risk of conflict by citizens who have bought a policy. Insurers, of course, are also in charge of the growth of false claims, but foreign experiences show that failure in insured demands is not more than the other demands. In other words, the growth of existing cases for the growth of insurance represents an increase in access to justice, not the abuse of the possibility created by insurance.

The review of this article shows that the non-transparent and unregulated market of lawyering services is a huge obstacle to the growth of LEIs in Iran. The prevalence

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of LEIs needs regulating the market of lawyering. In countries where the market is free, these insurance policies have not been redeemed. At the same time, it should be noted that lawyering services in Iran are offered in a free market in spite of the monopoly of bars. The supply side of the market is monopolized; therefore, the market formed in Iran around the lawyering is not really free, and it still offers free pricing for the monopolized side. However, it is one of the market failures in which the intervention of government is justified. In the United States of America, lawyering services cost hourly by convention, but in Iran, we do not have even this level of regulation. In such situation, insurer can't assesses the risk and therefor pricing of these policies become impossible. This major weakness is the main obstacle to the spread of legal expenses insurance in Iran.

This article briefly presents the alternatives designed in the literature as the legal expenses insurance. Such methods are not necessarily insurance, because of the underlying element of insurance, that is, the distribution of risks, but these tools just make it easy to pay the costs of the proceeding. These include: "group buying of lawyering services", "helping employees by employers and with facilities available to businesses," "Founding the claim by bank loans," and "After the Event Insurance." Of these, after the event, could means knowing the insurance. These insurance products are sold after a lawsuit and are priced higher, because they cover the larger risk.

In this paper, the merits and demerits of LEIs from the perspective of legal empowerment are also examined. In addition to being able to increase citizens' domination over their lives, legal insurance is able to reduce their domination on their cases. LEIs may not reduce the domination of customer or opt-out him from choosing appropriate services. Such actions may be imposed on the insured as a contractual term and force him to choose a lawyer, strategy for the court, or anything else that reduces the degree of autonomy of the insured party. Therefore, we need regulation-making for such situations.

Keywords: Legal expenses insurance, access to justice, lawyering insurance, monopoly in lawyering market
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