COMPANY & COMMERCIAL - EGYPT

Parliament passes new investment law

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Introduction

On May 7 2017 the House of Representatives passed the final draft of the new Investment Law. The new law will come into force after being signed by President Abdel Fattach El Sisi and subsequently being published in the *Official Gazette*. The law will replace the existing Investment Law (8/1997) and forms part of Egypt's ongoing efforts to encourage foreign investment.

The new law will compliment other economic reforms which have been recently implemented, including:

- the shift from the previous sales tax regime to a comprehensive value added tax (VAT) system;
- the liberalisation of the foreign exchange system;
- the adoption of a flexible exchange rate regime; and
- the gradual reduction of energy subsidies.

The key features of the new law include the following:

- Administrative reform – the new law replaces the General Authority for Investment and Free Zones (GAFI) with the yet to be established General Authority for Investment (GAI) and the streamlining of administrative procedures for the incorporation and administration of companies.
- New investment incentives – the new law introduces certain investment protection measures as well as tax incentives, the liberalisation of imports and legislative reforms.
- Repatriation of profits – the new law explicitly guarantees the repatriation of profits.
- No labour market reforms – the highly anticipated loosening of restrictions imposed on the employment of foreign staff have not been introduced.
- Free zones – the new law seeks to limit the market share of free zones to increase tax revenues.

These measures will affect both foreign and domestic investors in Egypt. Below is a more detailed discussion of the key features of the new law.

Administrative reform

The GAFI will eventually be replaced by the GAI. Following the establishment of the new authority, administrative procedures will be more streamlined. The procedures to be updated are outlined below.

Incorporation of companies
Under the law a new electronic system for the incorporation of companies will be created. Other related public authorities will be required to connect their databases to that of the GAI. Through the new system, it will be possible to incorporate and register companies electronically. Further, it is planned for the system to facilitate the transfer of shares, as well as capital increases and decreases.

Company and investment register
Under the authority of the GAI, new registers for companies and investment projects will be introduced. Each company will be assigned a unique identification number. Further, the GAI has been tasked with setting up a system for issuing investor certificates containing key information on individual investment projects they are engaged in as well as the incentives granted to each project. Both measures aim to ease the interaction between investment-related authorities and streamline administrative procedures.

Duration of administrative procedures
The new law provides deadlines for the completion of tasks by the GAI. For example, the GAI must make decisions on the incorporation of new companies within one business day and the ratification of board and general assembly resolutions must be completed within 15 days.

Incentives for investment

The new Investment Law provides several key guarantees and incentives to investors. These incentives and guarantees are outlined below.

Fair and equitable treatment of investors
The new law provides for the fair and equitable treatment of both foreign and domestic investors. However, the prime minister may grant favourable treatment to investors from a specific country, provided that this country in turn grants favourable treatment to Egyptian investors.

Investor visas
The new law grants foreign investors residence permits for the term of their investment projects in Egypt.

Protection of licences
The new law guarantees the continuity of licences issued to both domestic and foreign investors. Therefore, no Egyptian authority may suspend, restrict or withdraw licences granted to an investor unless the investor has violated Egyptian law or the conditions under which the licence was granted. Where a competent authority seeks to suspend, restrict or revoke a licence due to such a breach, the authority will:

- serve the investor with a notice outlining the relevant breach of law or conditions;
- grant the investor reasonable time to legitimise his action; and
- consult the GAI.

Unfortunately, the new law does not specify whether any breach of law by the investor allows for the suspension, restriction or withdrawal of licences granted to it or whether the less invasive measures (ie, suspension or restriction of licenses) must be imposed before a licence can be revoked.

It remains to be seen how the competent authorities will exercise their authority under the new law. The ambiguity of the new law's provisions is likely to be received negatively by foreign investors. It is hoped that Egyptian legislators will issue guidelines and standards specifying how and when the authorities granted under the new law may be exercised.

Repatriation of profits
Obstacles for the repatriation of profits have been a significant point of concern for foreign investors in Egypt as well as a significant deterrent for those considering investing in the country. While Egyptian law does not impose specific restrictions on the repatriation of profits and numerous bilateral investment treaties have been signed to allow for repatriation, in practice it has not been possible to guarantee the repatriation of profits.(1) The new law explicitly guarantees the right to repatriate profits and receive foreign financing without restriction. However, given the lack of trust

in previous similar guarantees made by the Egyptian government, investors are likely to remain cautious. Foreign investors will be likely to appreciate the statutory pledge, but will probably wait to see whether existing obstacles are removed.

Accelerated liquidation of companies

The liquidation process will be accelerated by requiring the competent authorities to issue a written notice outlining all liabilities on the company that is under liquidation by no later than 120 days from the date of submitting the liquidation request.

Direct imports and favourable customs regime

The new law provides that investors can directly import raw materials, equipment and spare parts necessary for an investment project without having to register such imports with the Importers Registry. Further, equipment and spare parts that are necessary for the establishment of an investment project will be subject to a flat rate customs duty of 2%. Where the investment project involves infrastructure development, this flat rate customs duty also applies to equipment and spare parts required for the ongoing operation of the project. Finally, moulds and similar tools intended for temporary use in Egypt are exempt from the custom duty otherwise applicable for such items.

Exemption from stamp duties and notarisation fees

Under the new law, investments are exempt from stamp duty and notarisation fees on:

- the legalisation of articles of association, facilities and loans agreements;
- security documents and real property sale; and
- purchase agreements.

This exemption applies for five years starting from the date of registration of the investment company with the Commercial Registry.

Favourable tax regime

Subject to some specification that will be provided in the executive regulations issued with the new law, the law provides tax incentives for investments in specific geographic areas. Under this law, Egypt has been divided into two zones:

- Zone A, which comprises Upper Egypt and areas which are most in need of economic development; and
- Zone B, which comprises the rest of Egypt.

Investment projects in Zone A will benefit from an investment cost deduction of 40%, with a maximum of 80% of paid capital. Investments in this zone will also benefit from a tax deduction for seven or more years.

In Zone B, investment projects will benefit from a deduction of 30% of the investment cost. This also includes the Suez Canal economic zone. These areas grant incentive packages for a number of different sectors, including medium-cost education projects and projects producing and distributing electricity.

Eligible investments

The incentives provided under the new Investment Law are available to both foreign and domestic investors who satisfy the following conditions:

- The incorporation of a new company must be made within three years following the implementation of the new law and its executive regulations. This period may be extended by the prime minister.
- Existing companies may benefit from the incentives under the new law provided that they were established less than 30 months before the new law is issued and have not conducted any investment in Egypt before the new law comes into force.
- Investment must be made in one of the following eligible sectors:
    - industrial;
    - agricultural;

    - trading;
    - education;
    - healthcare;
    - transportation;
    - tourism;
    - housing;
    - construction;
    - electricity;
    - energy;
    - natural resources;
    - water;
    - telecommunications; and
    - technology.
- The company – whether newly incorporated or existing – must keep clear and regular financial records. Where a company is engaged in investments in different zones, it must keep separate records for each zone.
- The investment cannot rely on assets of any company incorporated over 30 months before the issuance of the new law.
- An investment will not be granted any incentive where the company's shareholders liquidate a company which was incorporated more than 30 months before the new law is issued for the purpose of incorporating a new company to secure beneficial treatment under the new law.

Social responsibility

The new Investment Law explicitly allows investors to allocate up to 10% of the net profits generated with the investment in social projects by contributing to any of the following fields:

- environmental protection;
- provision of healthcare, social or cultural services or programmes;
- technical education support or the financing of researches or studies aimed at developing or improving production in collaboration with any university or scientific research institution; and
- scientific research and training.

Investors may deduct the aggregate amount contributed to social projects as expenses for the purpose of calculating income tax.

Foreign employees

The new Investment Law does not amend the restriction on the employment of expatriates. As is the case under the existing regime, expatriates cannot make up more than 20% of any company workforce.

Role of free zones

The new Investment Law affects free zones. As the implementation of free zones has been perceived negatively as they may decrease tax revenues, free zones are less favoured under the new law. Therefore, investments in free zones will be eligible under the new law only if the project exports products outside of Egypt, thereby increasing foreign currency inflow. The new law restricts the activities which may be pursued in a free zone, and restricted projects include:

- petroleum production;
- steel industry;
- natural gas liquefaction;
- industries with high energy consumption; and
- production of alcoholic beverages.

In addition, the new law introduces so-called 'private free zones', which are private projects which enjoy the benefits of a free zone. These projects are required to export production and a 2% revenue levy applies.

To encourage the development of the technology and IT sector in Egypt, the new law provides a framework for the establishment of so-called 'technological zones'. These technological zones may be established with the authorisation of the minister of communications and information technology. These zones promote manufacturing and the development of electronics, programming and technological education.

Comment

The new Investment Law comprises considerable changes to Egyptian business law. Whether the new law will be successful in further improving the investment climate in Egypt will depend on whether it is stringently applied in practice and is accompanied by substantial administrative reforms. Unfortunately, complicated and lengthy administrative procedures and corruption continue to impede the Egyptian economy and discourage foreign investors.

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Endnotes

(1) See:

- Article 6(1) of the Austria-Egypt Bilateral Investment Treaty (BIT) 2001;
- Article 5(1) of the France-Egypt BIT 1974;
- Article 5(1) of the Germany-Egypt BIT 2005;
- Article 5(1) of the Switzerland-Egypt BIT 2010;
- Article 7(1) of the United Arab Emirates-Egypt BIT 1999;
- Article 6(1) of the United Kingdom-Egypt BIT 1975; and
- Article V(1) of the United States-Egypt BIT 1986.
