

Egypt: Compliance under the new Investment Law

- ◆ Egypt's new Investment Law offers many advantages for international investments in Egypt. At the same time the new law aims at breaking down administrative barriers and shortening licensing procedures notably.
- ◆ In spite of the numerous simplifications and incentives, there are important compliance obligations still to be kept in mind by every investor when considering an entrepreneurial engagement in Egypt.
- ◆ Violations against the rules of the new Investment Law will be sanctioned rather severely. Sanctions include the administrative imposition of a suspension of the investment project, the compulsory reduction of investment incentives and even the immediate termination of the investment license.

On July 1st, 2017 the new Egyptian Investment Law entered into force. It had been passed and promulgated as the law No. 72 of 2017 and aims at expanding the inflow of foreign direct investment funds into Egypt.

Numerous Advantages under the New Investment Law

The new Investment Law replaces the provisions of the former Investment Law (i.e. the law No. 8 of 1997). It holds out the prospect of many advantages for foreign investors in Egypt as well as it aims at breaking down bureaucratic barriers, expediting the digitalization of administrative procedures and abbreviating the duration of investment related procedures. Taking into account this broad legal objective, the new Investment Law may be understood as a modern and forward-looking piece of legislation.

The guarantees and advantages embraced by the new Investment Law include fair and equal treatment of foreign and domestic entrepreneurs (cf. Art. 2 Sec. 3 No. 1 and Art. 3 Sec. 1, 2), residence and work permits for foreign investors and their employees for the duration of the respective investment project (cf. Art. 3 Sec. 4 and Art. 8), a wide scope of protection against governmental expropriation and other state-interference (cf. Art. 4 and 5), import and export benefits (cf. Art. 7 and Art. 10 Sec. 3), tax incentives (e.g. under Art. 10 Sec. 1 and Art. 11 et seqq.) as well as free remittance of profits generated in Egypt (cf. Art. 6).

Even though the new piece of legislation has already been praised to be a major leap towards the simplification of investment in Egypt quite often, there are various compliance-requirements that must still be kept in mind under the new investment regime. Hence, this contribution will provide an overview over some of the most important compliance-challenges that arise from the new Egyptian Investment Law.

General Compliance-Requirements

First and foremost investors must exercise care during the process of communication and coordination with the competent Egyptian authorities when applying for the necessary licenses and permits. Pursuant to Art. 3 Sec. 5 the advantages provided for by the new Investment Law will be inapplicable if the establishment of an investment project has been precipitated by wrong statements, acts of deceit, fraud or corruption.

Furthermore, Art. 12 provides for the general preconditions and requirements that have to be met by the investment project in order to actually be governed by the new Investment Law. According to these provisions a new company or establishment has to be incorporated to conduct the investment project. Additionally, the new Investment Law will only be applicable for projects that are incorporated within a time limit of three years since October 25th, 2017. Thereby the new Investment Law is designed to incentivize near-term investments in Egypt. The deadline may be extended under a decree issued by the Egyptian council of ministers, however.

Finally, the new Investment Law prohibits the use of shares and assets from such other companies and establishments that existed at the time the new Investment Law entered into force for purposes of incorporating a new company and benefitting from the new law's advantages and incentives. Breaches of this requirement will effect the inapplicability of the advantages and incentives of the new Investment Law.

The general compliance-program to be met by investors in Egypt also includes reporting and announcement duties with regards to the size of the investment, annual financial statements, as well as structural information on employees and salaries (cf. Art. 79).

Compliance relating to Accounting, Import and Export

While the new Investment Law is designed to simplify various procedures with respect to trade and tax law, it should be duly noted that the advantageous rules still bring along a set of compliance-obligations that must be met.

This includes an obligation to establish, practice and uphold a proper accounting system for every company within the scope of the new Investment Law. Especially, it is mandatory for Investors operating two or more investment companies in different investment zones to keep separate accounting books (cf. Art. 12 No. 3). This is a necessary prerequisite for all investors to qualify for the advantages under the new law.

Furthermore, investors are exempt from the duty to register with the Egyptian register of importers and exporters with regard to most imports and exports relating to their investment activity pursuant to Art. 7 Sec. 1 and Sec. 2 on one hand. On the other hand, the investor is obliged to file quarterly reports on the amount and types of imported and exported goods with the Egyptian General Authority for Investment and Free Zones (**GAFI**) according to Art. 7 Sec. 3.

Also, with regard to import of investment related goods and production resources, the new law offers a simplified customs duty scheme. Basically, a standard rate of 2 % of the value of the imported goods will be levied as customs duty (cf. Art. 10 Sec. 3 and 4). Thereby customs clearing may be simplified and expedited which may benefit a swift and smooth installation and establishment of the investment project. Nonetheless caution is imperative with regard to the many exemptions and special provisions to this standard rate.

Such exemptions are e.g. applicable for importation of casts and moulds as well as other construction equipment and production supplies that are either required to build an industrial establishment or for temporary production purposes, provided that such material will be exported immediately after its use (cf. Art. 10 Sec. 5). However, this exemption comes with an obligation to report the use and the re-exportation of such material (cf. Art. 10 Sec. 6). Likewise, all goods that are designated to be used to establish an investment project in an IT-investment zone are exempt from customs duty (cf. Art. 32 Sec. 3). By way of contrast,

importation into Egyptian free zones is subject to special rules applicable in the relevant free zone (cf. Art. 35 Sec. 1, Art. 40 et seqq.).

Keeping the various standard schemes, exemptions and special rules in mind, it is important to note that the protection from governmental expropriation and other state-interference does not cover governmental enforcement of tax payment and payment of other public charges (cf. Art. 4 Sec. 4). Hence, investors must determine the correct legal basis and calculation scheme for any and all public charges most carefully in order to avoid disadvantageous acts of governmental enforcement against their projects.

Strict Sanctions

According to Art. 81 of the new Investment Law any violations against the provisions of the new law will prompt a notice from GAFI, outlining the relevant breach and calling for a rectification within 15 business days. In case the breach will remain uncorrected, GAFI may impose a suspension of the respective investment project for a period of up to 90 days. If the relevant violations are still unattended to or in case another violation comes to light within a period of one year after the preceding breach, GAFI may suspend or shorten the investment project's incentives and exemptions or even terminate the investor's investment license with immediate effect. This will cause the termination and liquidation of the investment project itself.

Careful Compliance for a Promising Investment

The information provided above shows that the new Investment Law doubtlessly offers appealing advantages for potential investors in Egypt. However, the law's system of rules, exemptions and special rules faces investors with considerable challenges. Especially when determining the applicable legal basis and relevant compliance-obligations for an investment project in Egypt, thorough legal consultation is paramount. Thereby investors may avoid the strict sanctions and a premature termination of a project.

However, careful handling of the new provisions in Egyptian Investment Law may convey brilliant chances for an advantageous and fruitful entrepreneurial engagement in Egypt.

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