

AFRICA

A Legal Guide for Business
Investment and Expansion

EGYPT



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LAW FIRMS WORLDWIDE



EGYPT

FIRM PROFILE: **SHALAKANY** **LAW OFFICE**

Shalakany was founded in 1912 by Abdelfatah El Shalakany, a prominent lawyer who reached the pinnacle of his career when he was elected as the head of the Egyptian Bar Association in 1950. Abdelfatah's two sons, Ahmed El Shalakany and Aly El Shalakany, followed in his footsteps and successfully took over the practice in the 1950s. After Ahmed El Shalakany's tragic passing at an early age in the mid-1970s, Aly El Shalakany assumed the sole custodianship of the firm.

With the advent of the "open door" policy and the rapid rise of the role of the private sector in the economy under President Anwar El Sadat in the 1970s, the firm, under Aly El Shalakany's leadership and vision, seized the opportunity by leveraging its expertise and expanding exponentially to become one of the largest corporate law firms in Egypt and the Middle-East. In the ensuing decades, the firm continued to go from strength to strength and was actively involved in the majority of all leading corporate transactions taking place in the region.

At the start of 2006, Aly El Shalakany's son, Dr. Khaled El Shalakany, took over the reins and has successfully led Shalakany and continued the firm's legacy until the present day.

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1. What role does the government of Egypt play in approving and regulating foreign direct investment?

Egypt has traditionally been a leader in the Arab world in the political, cultural, and economic spheres. Due to recent positive developments in its internal and external policies, Egypt has regained its role as one of the major contributors to security, stability and development in the Middle East region. In the economic sphere, this will be reflected in a greater and more expansive role of Egypt as a business centre for many multi-nationals and other companies operating in the Middle East.

The Egyptian government is currently focusing on economic recovery and growth through five channels: mega infrastructure projects; tourism; improvements to economic policy; attracting GCC (the Cooperation Council for the Arab States of the Persian Gulf) investments; increasing private sector investment. Sectors identified by the government as particular focus for foreign investors in the short to medium term include energy, construction, real estate, transportation and telecommunications.

Egypt's private sector has been growing at a rapid pace. It is now a vital component of the Egyptian economy, rivalling the public sector that was the main area of development during the 1960s. The Government has also embarked on an ambitious and highly successful privatization process, wherein certain elements of the public sector have been privatized.

In general, to enable foreign or Egyptian investors to be involved in any direct investment activities in Egypt, these investors should have a legal entity established in Egypt and under the supervision of the Egyptian Authorities. Foreign investors can invest in Egypt without any restrictions after obtaining security clearances from the national security agencies.

2. Provide advice on best entry strategies to employ in Egypt and common corporate structures used.

The most common forms of business vehicle used by investors are subsidiaries in the form of joint stock companies or limited liability companies. In some cases, branches and representative offices may be established. The following are the conditions of establishment for each:

JOINT STOCK COMPANIES (JSC)

- A JSC may be a closed or a listed company, where the shareholders' liability is limited to the value of their shares in the company. It may offer its shares for public subscription, subject to obtaining the necessary corporate and regulatory approvals. The name of the JSC must indicate its activity or objective.
- A minimum of three shareholders is required for a JSC; there is no maximum number. No minimum Egyptian shareholding is required for an Egyptian shareholding, except in certain specific activities, such as importation and commercial agency.
- A JSC can carry out all commercial activities subject to the limitations imposed by applicable laws.

- The minimum issued capital of a JSC is EGP 250,000. However, if a JSC offers its shares to the public, the minimum issued capital required is doubled, i.e. LE 500,000.
- A JSC is managed by a board of directors composed of at least three members elected at the general shareholders' meeting. The board elects the chairman and the managing director. There are no restrictions on foreign directors.
- The founders of a JSC may only transfer their shares after the lapse of two fiscal years from the incorporation date amongst themselves.
- A JSC must distribute to employees at least 10% of the cash dividends distributed to the shareholders, subject to a maximum of the total annual salaries of the employees.

LIMITED LIABILITY COMPANIES (LLC)

- An LLC is a closed company where the liability of each of its partners is limited to the value of his shares in the company. The shares of an LLC cannot be traded on the Stock Exchange. Consequently, an LLC cannot issue bonds or other financial debentures that are offered to the public. The name of an LLC is usually derived from its objective.
- There must be a minimum of two shareholders in any LLC and a maximum of fifty. Foreign shareholders can form the entirety of a company's shareholders, except in certain specific activities, such as importation and commercial agency.
- No minimum capital is required in the LLC. However, the capital of the LLC must be sufficient to realize the company's objective.

- An LLC is precluded from activities in insurance, banking, savings, receiving deposits or investing funds on behalf of others. It can also carry out commercial, industrial or service activities similar to other business entities, subject only to the general limitations of public policy.
- An LLC is managed by one or more managers, at least one of whom must be Egyptian.
- The partner(s) of an LLC may transfer his/their quotas at any time after the incorporation of the company.
- As long as the capital of the LLC is neither equal to nor exceeds the minimum capital of a closed JSC, there is no obligation to distribute profits to employees as profit sharing.

BRANCHES

A foreign company may establish a branch to undertake commercial, financial or manufacturing activities. However, it must first have obtained a contract to perform work in Egypt (the use of branch is limited to the purpose of implementing a specific contract). For practical reasons the branch is treated as an Egyptian company in all matters except corporate governance. The board of directors of the foreign company appoints a local manager and determines his powers. This manager can be a foreigner but has to be an Egyptian resident. Branch offices are not subject to the requirement of a minimum capital investment. However, initial capital investments must be made in foreign currency transferred to Egypt through a registered Egyptian bank.

REPRESENTATIVE OFFICES

A foreign company may set up a representative office, whose purpose is to carry out market surveys or to study the feasibility of production without carrying out any commercial activity. Such an office must be registered with GAFI (The General Authority for Investment and Free Zones). Bank representative offices must be registered with the Central Bank of Egypt. The authorized activities for a representative office are to conduct market research, market surveys and production studies. The manager, who may be a foreigner, should be appointed by the head office abroad. There is no minimum capital requirement. The parent company covers the expenses of maintaining the representative office.

3. How does the Egyptian government regulate commercial joint ventures between foreign investors and local firms?

The Egyptian government does not differentiate between foreign and local investors in commercial joint ventures. A foreign investor may perform a number of commercial activities in Egypt through different establishments; he may also have full ownership of a company or enter into a joint venture agreement with a local investor to establish a company in the country, whether in the form of a JSC or LLC. Foreign investors may wholly or partially own companies in Egypt, as there are no Egyptian shareholding requirements except for importation and agencies activities as stated above.

4. How does the Egyptian government regulate proposed activities by foreign investors and are there any areas of the economy where they are prohibited (e.g. natural resources, energy, telecommunications or real estate)?

Foreign investors can invest in Egypt without any restrictions after obtaining security clearances from the national security agencies. The following activities are not open to direct investment by foreign investors:

- Importing for trading;
- Acting as a commercial agent.

However, certain regulatory approvals are required for foreign investment in the Sinai Peninsula.

5. How do labour statutes regulate the treatment of local employees and expatriate workers?

Employment issues in Egypt are governed by the Egyptian Labour Law No. 12 for the year 2003 ("Labour Law"), which governs all employees regardless of their nationality. In addition to the provisions of the Labour Law, several ministerial decrees also govern the employment relationship and are considered complementary to the Labour Law.

The Labour Law and all relevant ministerial decrees aim at increasing private sector involvement while simultaneously achieving a balance between the rights of employees and employers.

The Labour Law sets model regulations for guidance to all employers, as well as the minimum rights and benefits of employees. The employer cannot reduce any of these rights.

The main employment issues covered by the Labour Law are:

- Employment contracts
- Salaries and wages
- Employment of foreigners
- Conditions of leave
- Working hours
- Employee duties
- Causes of, and conditions for, termination
- Unfair dismissal
- Collective agreements

The provisions of the Labour Law are mandatory and cannot be derogated from by the agreement of the parties to the detriment of the employee.

The Labour Law does not stipulate mandated preferences in hiring staff. The Labour Law prohibits discrimination based on sex, ethnicity, language, religion or creed in salaries, and prohibits discrimination based on colour, sex, social status, family obligation, pregnancy, religion or political view regarding the termination of employment contracts.

The Labour Law recognizes two types of employment contracts: indefinite period and definite period employment contracts.

Pursuant to the Labour Law, a written employment contract in Arabic, whether for foreigners or Egyptians, must be concluded. A bilingual contract in both Arabic and English may be concluded, but the Arabic language shall prevail in the case of any conflict. If there is no employment contract, an employee could present any evidence to prove his employment to benefit from employment rights.

The Labour Law provides that in the event of an employer seeking to employ a foreign national, the employer must obtain a work permit for the foreigner in advance, which includes a

residency visa. Accordingly, foreigners may not work in Egypt except after obtaining a work permit and a residency visa. Work permits are generally valid for one year or less and are renewable each year, as long as the foreign employees remain in the employ of the original employer.

Foreign nationals who come to Egypt to provide training are exempted from obtaining work permits for up to one year. However, they must still register with the relevant labour office, and their Egyptian sponsor must provide the labour office with the names of the trainers, their period of stay, the subject of the training, and the names of the trainees. The percentage of foreign employees should not exceed 10% of the total employees in any establishment.

According to the Labour Law, the employer may not terminate the employment contract, whether it be a definite or indefinite period employment contract, unless (a) the employee breaches the contract by committing a “grave fault” or (b) at the expiry of the term of the employment contract.

The Labour Law under its Article (69) identifies the following as a “grave fault”:

- Assuming a false identity or submitting forged documents;
- Committing an error which causes grave economic loss to the employer;
- Continually violating safety instructions;
- Absence from work for more than twenty non-consecutive or ten consecutive days in any one year;
- Divulging the employer’s secrets, causing a material loss;
- Competing with the employer in the same line of work;

- Being intoxicated during working hours;
- Assaulting the employer, the general manager or any of his superiors;
- Breaching the provisions governing strikes.

If the employee is unfairly dismissed, he can claim compensation.

Compensation for unfair dismissal is decided by the competent court, and should not be less than two months’ full wages for each year of service.

6. Capital availability and access considerations in Egypt – any major capital, infrastructure or labour constraints to be aware of and strategies to mitigate?

In general, the capital of any company in Egypt will depend on its form and object. Joint Stock Companies (JSC) are frequently formed where there is a project to be established that requires major investments. A JSC may have an authorized capital but must have an issued capital. The minimum issued capital is EGP 250,000 for closed companies of which only 10% must be paid at the time of incorporation. This is to be increased to 25% within three months, and the remaining amount of the nominal value of the shares must be paid up within five years. However, if a JSC offers its shares to the public, the minimum issued capital required is doubled, i.e. EGP 500,000. Foreigners can own up to 100% of the capital of a JSC. The statutes of the JSC may determine an authorized capital: this may not exceed ten times the value of the issued capital. The issued and authorized capital may be increased by virtue of a resolution passed by the General Shareholders Meeting (GSM).

The law does allow the Board of Directors to increase the issued capital within the limit of the authorized capital without the need for a resolution by the GSM. The capital is divided into shares of equal value, each with a nominal value of between EGP 1 and EGP 1000. All shares must be registered and share certificates issued in the name of each shareholder. The sale of shares is not subject to a pre-emptive purchase right of the remaining shareholders, unless explicitly provided for in the statutes of the company.

However, if the JSC is established under Investment Law No. 8 for the year 1997 (the "Investment Law"), or under the Special Economic Zones Law No.83 for the year 2002, the capital of the JSC must be sufficient to realize the company's objective. GAFI or the Authority of the Special Economic Zone has the discretionary right to accept or refuse the capital set by the shareholders.

Limited Liability Companies (LLC) are usually formed for small projects that do not require major financing e.g.: companies involved in internal trade and activities; and no minimum capital is required. However, the capital of the LLC must be sufficient to realize the company's objective and GAFI has the discretionary right to accept or refuse the capital set by the partners. The capital of the LLC must be fully paid at the time of incorporation. The capital is divided into equal shares, either in cash or in kind, and the value of each share cannot be less than EGP 1. No shares certificates are issued and the sale of shares is subject to the pre-emptive purchase right of the remaining partners.

The Investment Law grants privileges to companies involved in: land reclamation and the cultivation of barren land; animal, poultry or fish production; manufacturing and mining; tourism projects (including tourist transportation, hotels and hotel-related facilities); agricultural projects; aviation and transportation services; overseas maritime transportation; oil exploration services; housing and infrastructure projects (including installation, operation and management of cable and wireless communication systems); medical facilities that offer 10% of their capacity free of charge; lease financing; underwriting securities; venture capital projects; information technology; projects funded by the Social Fund for Development; and any other activities as may be added by the Council of Ministers.

The Executive Regulations have added other fields of activity that may also benefit from the Investment Law's incentives and guarantees. These include construction and operation of the underground transportation systems and tunnels; new towns and industrial zones; software development; establishing technology and incubator zones; market and credit analysis; financial planning; factoring and securitization activities; river transport; utilities for industrial projects; and waste treatment.

Aside from the forgoing, there are no special Infrastructural requirements or constraints.

Companies may not employ more than 10% of their work force as foreigners or pay them more than 20% of the total payroll, with the exception of foreigners serving on the board of directors.

7. What types of taxes, duties, and levies should a foreign investment in Egypt expect to encounter?

TAXATION:

Taxes in Egypt are governed by Income Tax Law No. 91 for the year 2005 and its amendments (the "Tax Law"), and Value Added Tax No. 67 for the year 2016 (the "VAT Law"). Tax Law simplified the Egyptian taxation system.

There are two types of taxes applicable in Egypt:

- Income tax applicable to individuals;
- Corporate income tax applicable to all types of juristic persons.

TAXATION OF INDIVIDUALS

Tax on income is in general applicable to the income of a natural person resident in Egypt if he/she has a permanent domicile in Egypt or resides in Egypt for more than 183 days either continuously or occasionally within a period of twelve months, or is an Egyptian national who performs his duties outside Egypt but whose income comes from the Egyptian treasury.

The tax covers four sources of income: (i) income from salaries and wages; (ii) income from commercial and industrial activity; (iii) income from non-commercial professions; (iv) income realized from real estate property.

The tax rates on the net annual income of natural persons are as follows:

- Amount of EGP 6,500 and below: 0% (exempted);
- Amounts above EGP 6,500 to 30,000: 10%;

- Amounts above EGP 30,000 to 45,000: 15%;
- Amounts above EGP 45,000 to 200,000: 20%;
- Amounts above EGP 200,000: 22.5%.

CORPORATE INCOME TAX

Corporate income tax is applicable to the profits realized by all juristic persons operating in Egypt. The annual tax rate is 22.5 % of the total net profits.

WITHHOLDING TAX

Payments, including interest, services fees and royalties paid by Egyptian individuals, companies or non-resident entities having permanent establishment in Egypt to non-residents/foreigners for services provided by the latter, shall be subject to a withholding tax at the rate of 20%. However, reduced rates may apply in the case of an applicable double taxation treaty.

DIVIDENDS TAX

Dividends distributed by resident companies to non-resident natural persons and to resident/non-resident companies shall be subject to 10% withholding tax. The lower tax rate of 5% applies where ownership in the distributing entity exceeds 25% of the capital, conditional on the shares having been held for two years.

CAPITAL GAINS TAX

Capital gains tax realized from the sale of listed Egyptian shares by residents and non-resident shareholders is subject to 10% withholding tax.

VAT (VALUE ADDED TAX)

VAT Law was recently issued in Egypt. The tax applies to the sale of goods and certain types of services. The standard VAT rate varies from 10% to 14% depending on the type of service provided.

SOCIAL INSURANCE CONTRIBUTIONS:

Social insurance contributions from both employers and employees are required for Egyptian employees.

The social insurance contributions are calculated according to the employee's basic and variable salary.

The percentages of social insurance contributions on the basic salary differ from those based on variable salary.

Social insurance contributions amount to 40% of the basic salary (26% to be paid by the employer and 14% to be deducted from the employee's basic salary). A cap for the basic salary is subject to social insurance contributions, as determined by the Ministry of Social Solidarity.

The percentage of social insurance contributions calculated on the variable salary amounts to 35% (24% to be paid by the employer and 11% to be deducted from the employee's variable salary). There is also a cap on the variable salary subject to social insurance contributions.

8. What are the main IP law provisions likely to be most relevant to inbound investors and/or foreign imports and their distributors (e.g. trademark protection, licensing, other)?

Intellectual property rights and rules of protection are set out in the Intellectual Property Rights Law No. 82 of 2002 ("IPR Law"). The following is a summary of the main intellectual property rights that are valid for protection.

PATENTS

Nature of right: To be patentable, an invention must:

- Be original and novel;
- Involve an inventive step;
- Be capable of industrial application;
- Not be specifically excluded by the IPR Law.

How protected: Applications for registration must be made to the Egyptian Patent Office. The IPR Law sets out the rules for protection.

How enforced: Criminal sanctions are imposed. Both the patent owner and the competent governmental body can bring a case in the courts seeking protection. In addition, the patent owner is entitled to civil remedies, such as damages or injunctions.

Length of protection: Subject to certain exceptions, protection lasts for a maximum of 20 years, provided that renewal fees are paid annually from the fifth year after filing.

TRADEMARKS

Nature of right: Trademark protection is available for trade, industrial and service marks. To be registered as a trademark, a sign must:

- Be capable of graphic representation;
- Distinguish the goods or services of one undertaking from another.

How protected: Applications for registration must be made to the Egyptian Authority for Commercial Registration (EACR). The IPR Law sets out the rules on protection. Unregistered trademarks can also be protected through unfair competition actions.

How enforced: Criminal sanctions are imposed. Both trademark owner and the competent governmental body can bring a case in the courts seeking protection. In addition, the trademark owner is entitled to civil remedies, such as damages or injunctions.

Length of protection: Protection lasts indefinitely, subject to renewal every ten years.

REGISTERED DESIGNS

Nature of right: To qualify for registration, a design must:

- Be original and novel;
- Have an individual character;
- Relate to the appearance of all or part of a product resulting from certain features of that product or its ornamentation.

How protected: Applications for registration must be made to the EACR. The IPR Law sets out the rules for protection.

How enforced: Criminal sanctions are imposed. Both the owner of the registered design and the competent governmental body can bring a case in the courts seeking protection. In addition, the owner of the registered design is entitled to civil remedies, such as damages or injunctions.

Length of protection: Protection lasts for a maximum of 15 years, subject to the payment of renewal fees after the first ten years.

UNREGISTERED DESIGNS

Nature of right: To be protected, the design must relate to an aspect of shape or configuration of the whole or part of an article, and must not be commonplace.

How protected: There is no formal procedure for protecting unregistered designs.

How enforced: The design owner must file an unfair competition claim. In addition, civil remedies such as damages and injunctions are available to the design owner.

Length of protection: Protection lasts for an indefinite period.

COPYRIGHT

Nature of right: Copyright exists in original works such as literature (including software and databases); drama; music art; sound recordings; cinematographic films.

How protected: Protection begins automatically from the moment the work is created. The rules on protection are set out in the IPR Law. No formalities are required.

How enforced: Criminal sanctions are imposed. The owner of the copyright and the competent governmental body can bring a case in the courts seeking protection. In addition, the owner of the copyright is entitled to civil remedies, such as damages or injunctions.

Length of protection: Protection lasts for: (i) literary, dramatic, musical and artistic works: 50 years after the death of the author; (ii) cinematographic films: 50 years after the death of the last surviving author of the film. In relation to neighbouring rights, protection lasts for: (i) producers of sound recordings: 50 years from the year of publication or recording; (ii) broadcasting organisations: 50 years from the first broadcast; (iii) performers: 50 years from the first performance or recording.

CONFIDENTIAL INFORMATION

Nature of right: This is protected under the IPR Law. To be protected, the information must be confidential in nature and not in the public domain or common knowledge. It must be communicated in circumstances importing an obligation of confidence.

How protected: There is no formal procedure for protection.

How enforced: The injured party must bring a court action for breach of confidence based on breach of confidentiality. Criminal sanctions are imposed. The copyright owner is entitled to civil remedies such as damages or injunctions.

Length of protection: There is no fixed term, but the information must remain confidential for it to be protected.

9. If a commercial dispute arises, will local courts or international arbitration offer a more beneficial forum for dispute resolution to foreign investors?

OVERVIEW OF COURT SYSTEM

The Egyptian Court system comprises a number of tiers: Courts of First Instance, Courts of Appeal, and the Court of Cassation. Large commercial disputes in civil and commercial matters are heard before the First Instance Full Court, and appeals from there are heard before the Court of Appeal. The branches of the First Instance Full Court and Court of Appeal used are those with local jurisdiction depending on where the defendant is domiciled (for example, Cairo, Giza and Alexandria). Further appeals can be made before the Court of Cassation. In 2008, special economic courts were set up to expedite litigation in commercial disputes (Law No. 120 of 2008). These courts became active towards the end of 2008 and early indications of their viability are quite positive.

Commercial disputes arising from administrative contracts (that is, contracts concluded with governmental authorities relating to public works) are first heard before the Administrative Court (equivalent to the Court of Appeal in the civil and commercial jurisdictions) and appeals from there are heard before the High Administrative Court (equivalent to the Court of Cassation). Conflicts in jurisdiction and contradictory judgments (between the civil and commercial court system and the administrative court system) are resolved before the Constitutional Court.

Some investment disputes are subject to optional amicable settlement. Such is the case, for example, with the ministerial committee that has been formed in order to amicably settle investment disputes arising from contracts concluded between private investors and any state or governmental entity. Also, investor complaints regarding obstacles imposed by the state or governmental authorities hindering their investments can be submitted before a ministerial committee that has the power to issue binding decrees removing such obstructions and therefore settling potential disputes. The Investors' Dispute Resolution Centre has been established under the auspices of GAFI to amicably settle corporate and investment related disputes arising between company shareholders, partners or companies. It should be noted, however, that recourse to such committees is optional and not a prerequisite for litigation, arbitration or any other dispute resolution mechanism.

ENFORCEMENT OF LOCAL JUDGMENTS

Enforcement is carried out by obtaining a writ of execution from the Execution Judge and the judgment is enforced through court bailiffs. Numerous methods are available to delay execution, including a contestation case (which temporarily stops execution for a few months) and third party recovery claims in relation to secured assets. Delays can take up to one year or more in some cases.

ENFORCEMENT OF FOREIGN JUDGMENTS

Egyptian courts will generally recognize and enforce foreign judgments if the following conditions are satisfied: (a) Egyptian courts do not have jurisdiction over the dispute, and the foreign court which rendered the judgment has jurisdiction pursuant to its rules on international jurisdiction; (b) the parties have been notified of the proceedings and are validly represented before the competent court; (c) the judgment or award is final and binding pursuant to the rules prevailing under the law of the foreign court; (d) the foreign judgment is not in conflict with a prior award or judgment rendered by Egyptian courts and is not in contravention of the prevailing public policy considerations.

ARBITRATION

Since the introduction of the Arbitration Law (Law No. 27 of 1994), arbitration has become an important and effective means of dispute resolution in Egypt. There is now increasing resort to arbitration in commercial disputes. Arbitration is often preferred to court litigation, particularly when the parties are seeking a relatively speedy resolution and can afford the much higher arbitration costs. The most prominent

arbitration organization in Egypt is the Cairo Regional Centre for International Commercial Arbitration (CRCICA). The CRCICA basically applies the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules.

An agreement to arbitrate must be in writing. No separate agreement is required. Judges have generally accepted and supported arbitral proceedings and an arbitral award. The Arbitration Law makes it clear that courts shall not accept a case if there is an agreement to arbitrate (unless the defendant waives its right to arbitration). The court rules these cases inadmissible.

ENFORCEMENT OF ARBITRAL AWARDS

Arbitration awards are final, binding and subject to no appeal on the merits. However, awards can be challenged in actions of nullity and can be declared null and void. Grounds for nullity are set out in the Arbitration Law, and include lack of jurisdiction, breach of public policy, failure to grant a party a right of defence, and exclusion of the application of the agreed law governing the merits of the claim. Enforcement is made through depositing the award with the courts and obtaining a writ of execution. An arbitration award is then enforceable in the same way as a court judgment, through court bailiffs. Procedures must be undertaken, including a 90-day period to grant the other party the right to bring a nullity action. A nullity action does not stop enforcement.

There are procedural defences to delay enforcement for some time, perhaps even a year or longer, but ultimately an award that is not annulled will be enforced in due course.

At the end of 2008, the Ministry of Justice imposed new regulations governing the deposit of awards for enforcement. These regulations potentially cast serious doubt over enforceability and may be contrary to the Arbitration Law and therefore unconstitutional.

ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) to which Egypt is a signatory, a foreign arbitration award is enforceable in a similar way to an award issued in Egypt, by deposit and obtaining a writ of execution. At the stage of recognition or enforcement, arbitral awards, like foreign judgments, are not reviewed on their merits.

10. What laws and business practices are peculiar to Egypt?

There are no specific peculiar laws or business practices in Egypt.

11. What are the regulations, protocol, and practicalities around public procurements and financing in Egypt?

The Procurement Law (Law No. 89 of 1998) and its amendments (the “Law”) governs all governmental procurement of goods, services and construction for public sectors.

Procurement may be conducted through limited tendering, local tendering, private bidding or direct agreement. A tender cannot be transferred to a public or private bidding.

Individual ministries and bodies handle procurement, and may form committees for that purpose.

Local tenders are permitted when the value of the contract does not exceed L.E. 400,000, whereby participation is limited to local suppliers and contractors working in the governorate where the contract is to be executed.

Limited tenders are permitted in situations that require the participation of specific suppliers, contractors, consultants, technicians or experts, whether in Egypt or abroad, provided they have the appropriate technical and financial capacities and enjoy a good reputation. “Private bidding” – which is not defined by the law – is permitted under the following circumstances:

- For products that can only be manufactured, imported or stocked by specific parties.
- For products that necessitate being chosen or purchased from the places where they are produced.
- For artistic or technical works that must be performed by specific artists, specialists or experts.
- Agreements that must be conducted secretly for considerations of national security.

“Direct agreement” – or sole source procurement - is used for urgent situations with the approval of the competent relevant minister, or in very urgent cases for the purchase of movable assets, contracts, or receiving services or consultancy studies or artistic works or transport construction not exceeding L.E. 5,000,000 and for construction contracts with the value of L.E. 10,000,000; the Prime Minister’s approval is required for amounts exceeding these thresholds.

“Local tenders” are only open to local parties but these are not defined. However, an offer based on Egyptian manufactured goods or services or work performed by Egyptian parties shall be considered the lowest if it only exceeds a foreign offer by 15%.

Regarding local participation rules, Prime Ministerial Decree Number 2041 for the year 2000 stipulates that in advertising for supplies and for public works in Egypt, the main contractor or consultant must be Egyptian. Sub-contractors may be non-Egyptian if there are no suitable Egyptian parties.

No foreign companies and governments providing procurement for military use are subject to any taxes or fees, according to Law 204 of 1957 and its amendments. Local laws allow for a competitor who was not awarded a contract to challenge or protest the award. Among these laws is the Ministerial Decree Number 3549 of the year 1998 establishing the Government Contract Follow-up Office in the Ministry of Finance, which receives all complaints in connection with the application of the Law Number 89 for the year 1998 on Tenders and Auctions.

12. What kind of actions should investors take to avoid corrupt practices in Egypt?

In Egypt, many efforts have been made to avoid corrupt practices, including passing adequate laws against corruption, international treaties that have been ratified, and the establishment of anti-corruption bodies.

The Egyptian Penal Code is the main law describing criminal acts and sanctions in the context of corruption and bribery. Several Egyptian laws set out additional obligations and responsibilities of civil, and public sector employees, judges and public prosecutors, as well as the disciplinary sanctions that may be imposed on them in the event of a breach of their employment obligations (The Egyptian Criminal Procedures Law No.150 of 1950, the Public-Sector Employees Law No.48 for 1978, the State Civil Employees Law No. 47 for 1978, and the Judiciary Law No.46 for 1972 all address corruption and bribery. There is also the Illicit Gains Law No. 62 for 1975).

The Penal Code explicitly contains anti-bribery provisions. Articles 103 to 125 deal with bribery, embezzlement of public funds, and abuse of position and authority. The Penal Code prohibits bribes, including gifts or hospitality, to government officials and/or public employees if the gifts or hospitality are deliberately given for the purpose of performing, refraining from performing or having previously performed or refrained from performing a public duty. Recipients, intermediaries and providers of bribes

are equally liable. Article 106 prohibits bribes, including gifts or hospitality, to private sector employees if such gifts or hospitality are deliberately given for the purpose of performing or refraining from performing the employees' duties without the knowledge and consent of the employees' superior.

Article 109 comprises the offense of attempted bribery, stating that anyone who offers a bribe to a public employee, even if it is not accepted, is guilty of a bribery offense.

It is advisable for any gift to a government employee to be nominal and inexpensive. All business courtesies such as meals should be kept to the course of ordinary business. Transportation, lodging and entertainment should only be provided after the issuance of an invitation to or with consent of the government body where the employee is employed. Facilitation payments (small payments made to any public officials) are prohibited and constitute an offense of bribery under the Penal Code.

In 2013, a new law relating to conflict of interest of public employees was promulgated. The law provides that symbolic gifts that are customarily acceptable in events and feasts (of a monetary value not exceeding EGP 300), would not be considered as a bribe. Gifts that are provided by official visitors, either Egyptian nationals or foreigners who do so out of courtesy, however, shall be delivered to the relevant employer and registered in the relevant registries.

The Egyptian government has established several institutes to combat corruption. The Ministry of State for Administrative Development set up the Transparency and Integrity Committee (TIC) to combat corruption at central and local government levels. The Ministry of Investment established a Transparency Unit supported by the UNDP to improve the investment climate through legislative amendments that strengthen freedom of information and transparency.

Egypt has also joined a number of international initiatives and projects to combat corruption. These include the MENA-OECD Task Force on Anti-Bribery, the OECD Good Governance for Development in Arab Countries Initiatives, and the Arab Anti-Corruption and Integrity Network (ACINET). Egypt is also a signatory to the UN convention Against Corruption (UNCAC, 2003). It obliges the signatory states to implement a wide range of anti-corruption measures affecting their laws, institutes and practices.

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