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Egypt enacts new investment law to promote foreign investments

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Executive summary

A new Investment Law No. 72 of 2017 (Investment Law 2017 or new Law) was officially published on 31 May 2017 and came into effect on 1 June 2017. The new Law repeals the Investment Guarantees and Incentives Law No. 8 of 1997. The new Investment Law No. 72 aims to promote foreign investments by offering further incentives, reducing bureaucracy, and simplifying and enhancing processes.

The provisions of Investment Law No. 72 shall not affect the benefits and tax exemptions, and other guarantees and incentives for existing companies and establishments. These companies and establishments shall retain their privileges, exemptions, guarantees and incentives until the end of the related investment periods.

In this regard, Investment Law No. 72 also retains the amendments to Law No. 8 introduced in 1997.

Detailed discussion

Investment principles

The investment principles set forth under the new Law are:

- Equality of investment opportunities
- Government support for newly established or emerging companies

Building a better working world

- Consideration of the social dimension, environmental protection and public health
- Freedom of competition, prevention of monopolistic practices and consumer protection
- Maintain government principles and transparency
- Provide stability and consistency of investment policies
- Accelerate transactions for investors
- Maintain national security and public interest

Investment guarantees

The investment guarantees set forth under the new Law are:

- The Government shall treat foreign investors in a similar way as national investors.
- Preferential treatment may be established for foreign investors in accordance with the principle of mutual agreement.
- Invested funds are not subject to arbitrary proceedings.
- Non-Egyptian investors shall be granted residence in the Arab Republic of Egypt throughout the operation of the project.
- The Government is obliged to respect and enforce the contracts it concludes.
- Nationalization of investment projects shall not be allowed.
- The funds of investment projects shall not be seized except for the public interest and in return for fair compensation.
- A final judicial ruling will have the authority to impose guardianship.
- Project funds may only be seized by a court order, with the exception of tax debts and social insurance contributions.
- Administrative authorities may not cancel the license issued for the project until a warrant of violation has been issued to the investor, after a hearing for the investor and the opportunity to dismiss the violation.
- The investor has the right to finance the project from abroad in foreign currency and is entitled to derive profits, transfer profits abroad, or liquidate the project and transfer the output of liquidation abroad.
- Administrative authorities must notify a company under liquidation of their obligations within a maximum period of 120 days from the date of submission of the liquidator request; otherwise, the company will have no responsibility.
- The right of investment projects to import the necessary raw materials, production necessities, equipment and spare parts, without the need to register in the importers' register. They also have the right to export their products without registering them in the exporters' register and without a license.
- The investment project has the right to employ foreign workers up to 10% of the total number of employees. This shall be increased to 20% in the absence of national labor with the necessary qualifications. In addition, foreign workers have the right to transfer their remuneration abroad.

Investment incentives

Investment projects shall qualify for three types of incentives:

General incentives for all investment projects except free zone projects

1. Registration of the articles of association of companies and the establishment of credit facilities and mortgage-related contracts shall be exempted from stamp duty and authentication fees. In addition, the registration of land for qualifying projects shall also be exempt from taxes and fees.
2. Customs duties of 2% shall be imposed on all imported machinery, equipment and devices necessary for projects.
3. Industrial projects and investments shall qualify for custom duty-free importation of moldings, models, etc., for temporary use in the manufacture and re-exportation of products.

Specific incentives

Qualifying investment projects established after the implementation of Investment Law No. 72 shall qualify for deduction of investment costs from the taxable net profit as follows:

- 50% of the investment costs of projects in Sector A, which includes the geographical areas most in need of development in accordance with the executive regulations.
- 30% of the investment costs of projects in Sector B, which includes the rest of the Republic of Egypt, and the project is in one of the following activities:
  - Labor-intensive employment projects
  - Medium and small projects
  - Projects that depend on new and renewable energy or the production of the same

- Strategic national projects
- Tourism projects
- Electricity production and distribution projects
- Projects that export their production
- The automotive industry and its input industries
- Wood, furniture, printing, packaging and chemical industries
- Manufacturing of antibiotics, oncology and cosmetic products
- Food industries, agricultural crops and recycling of agricultural wastes
- Engineering, metal, textile and leather industries

In all cases, the investment incentive deduction should not exceed 80% of the paid-up capital at the activity start date.

The incentive period must not exceed seven years from the activity start date.

Specific incentives shall be granted for projects on the basis that:

- A new company or entity is established within three years from the date the regulation came into force
- The company or establishment maintains regular accounts
- If the company operates in more than one area, it may benefit from the determined rate for each region, provided each region has its own separate accounts

And

- Only if shareholders, partners or owners of the establishment have contributed any physical assets for the company or an existing establishment at the time of the implementation of this Law

Additional incentives

By virtue of a decision of the Council of Ministers, additional incentives may be granted for projects as follows:

1. The establishment of special customs points for the project's exports and imports.
2. The Government shall bear the value of the cost incurred by the investor for the delivery of the facilities to the property allocated to the project.
3. The Government shall bear part of the cost of the technical training of the employees.
4. The Government shall refund half of the value of land allocated to industrial projects in the event of commencement of production within two years from the handover of land.
5. The Government shall assign free land for certain strategic activities.

By virtue of a decision of the Council of Ministers, new incentives may be introduced whenever the need arises.

Corporate social responsibility

The investor may allocate a percentage of annual profits to be used for furtherance of corporate social responsibility for:

1. Protection and improvement of the environment
2. Health, social or cultural care
3. Support of technical education
4. Training and scientific research

Income Tax Law No. 91 of 2005 provides that the amounts paid by the investor related to the above are deductible costs, provided such costs do not exceed 10% of the annual profits.

Investment sectors

Investment sectors include activities undertaken in industrial, tourism, housing, construction, sports, electricity, energy, natural resources, water, communications and technology sectors.

The Minister of Investment may add other sectors in accordance with the economic development plan of the Government.

Streamlining investment procedures

Inland internal investments

The Ministry of Investment has proposed the investment plan and priorities of the target investment projects for approval by the Supreme Investment Council. This plan includes defining the investment type, system and its geographic regions and sectors.

The Investment Authority shall issue guidelines within 90 days from the date of the implementation of Investment Law No. 72. The guidelines will include the conditions, procedures and determined dates for the allocation of real estate, and issuance of approvals, permits and licenses. This information will also be available through the authority's website and its various publications.

The Prime Minister may grant companies, established for strategic or national projects, a single approval for operation and management of the project, including building permits and the allocation of real estate required.

Investor Services Center

To facilitate the process and reduce bureaucracy, an administrative unit called "Investor Services Center" will be established to function as a one-stop shop for investment-related services. These will include services related to establishing companies and their branches, approving the minutes of their boards of directors and their general assemblies, issuing approvals and permits, and allocating the necessary real estate for the establishment of projects. The center will provide automated services.

The Investment Authority will license parties called "Accreditation and Authorization offices" to grant approvals, permits and licenses, after examining the procedures and documents for the investment projects. This will include issuing temporary authorization certificates valid for one year until the issuance of permanent authorization certificates.

Investors may fulfill the technical requirements and other procedures necessary for investment through the accreditation and authorization offices or by referring directly to the authorities concerned, or through their representative at the Investors Services Center.

The Investment Authority may issue approvals, permits or licenses necessary for the establishment of activity on land allocated for investment before the allocation to investors.

Investment in investment zones

An investment zone is a geographical area with a specific location and boundaries designated for the establishment of a particular activity or specialized investment activities and other complementary activities. The developer is responsible for developing and setting the infrastructure for this zone and is permitted to establish, manage and develop an investment zone.

The appropriate investment guarantees and incentives will be applied to the operating projects within an investment zone including the rules relating to temporary customs clearance and drawback.

It is not permissible to dispose of the license in whole or in part, except with the approval of the investment zone Board of Directors.

This license is limited to dealing with the various government agencies to obtain services, facilities, privileges and exemptions for the project.

The licensee shall not enjoy the guarantees, incentives and benefits stipulated in the Law, except within the limits of the purposes mentioned in the license.

Investment in technological zones

The Prime Minister may license the establishment of technological areas in the fields of the Information Technology and Communications (ITC) industry, including industrial activities, design and development of electronics, data centers, software development and technological education.

All plant and equipment required to carry out licensed activities for projects located within the technological zones are not subject to taxes and customs duties.

Projects in the technological areas enjoy special incentives, depending on the established sector.

The appropriate investment guarantees and incentives shall be applied to investments in the technology zones.

Investment in free zones

The establishment of a free zone that includes an entire city shall be by law.

The establishment of the public free zone shall be by a decision of the Council of Ministers. The exportation of products should be the main purpose of the licensed projects.

The establishment of specific free zones, in which each is limited to one or more projects with similar activities, shall be by a decision of the Council of Ministers.

The establishment of projects in free zones in the fields of petroleum manufacturing, fertilizers, iron and steel industries, manufacturing, liquefaction and transportation of natural gas, and energy-intensive industries is not permitted.

Projects that invest in the system of free zones are subject to customs and tax control.

The free zone project shall provide a financial guarantee not exceeding 2% of the investment costs.

The licensed project shall not enjoy the exemptions and benefits stipulated in the Law, except within the limits of the purposes mentioned in the license.

The products imported and exported by free zone projects are not subject to tax and custom procedures related to imports and exports. They are also not subject to custom taxes, value-added tax (VAT) and any other taxes or charges.

Equipment, machinery and means of transport necessary for carrying out the licensed activity shall be exempted from custom duties, VAT, and any other taxes and charges, except for passenger cars.

Importing from the free zones within the country should be in accordance with the general rules for importation.

Customs duty shall be applied on goods imported from the free zone to the domestic market.

Projects within the free zone and their profits shall not be subject to the provisions of the applicable tax laws and charges enforced in Egypt.

However, projects in public free zones are subject to the following charges:

1. A charge of 2% of the value of goods upon entry Custom Insurance Fraud (CIF) for storage projects. A charge of 1% of the value of goods at the time of exit Free on Board (FOB) for manufacturing and assembling projects. Transit goods of specified destination are exempted from the trade charge.
2. A charge of 1% of the total revenue realized from projects in which the main activity does not require the introduction or removal of goods as per the financial statements approved by a certified accountant.

Projects in private free zones are subject to:

A charge of 1% of the total revenue realized from manufacturing and assembling projects when exporting goods outside the country and 2% of the total revenues of these projects upon the entry of goods to the country. Transit goods of specified destination are exempted from the trade charge.

A charge of 2% of the total revenue realized in respect of other projects mentioned above.

Projects in the public and private free zones are obliged to pay an annual service fee to the Investment Authority not exceeding 0.001% of the capital up to a maximum of EGP100,000.

These projects are required to submit the financial statements approved by a certified accountant, to the Ministries of Finance and Investment.

The provisions of the Labor Law shall apply to labor relations, safety and occupational health in these areas.

The provisions of the Social Insurance Law shall apply to employees of projects which operate in the free zones, as well as Social Insurance Law relating to the employers.

The objectives, principles, guarantees and special incentives relating to the inland internal investments shall be applicable to investment in the free zones in a manner that does not contradict the nature of work of this system.

The projects operating in this system may switch to the inland investment system in accordance with the conditions and controls determined by the executive regulations.

Provisions for establishing companies and post-incorporation services

The Investment Authority is responsible for the establishment and post-establishment services, and the Investors Services Center, for companies subject to the provisions of this Law and Law No. 159 of 1981.

The Minister concerned with investment affairs shall issue a contract or form for each type of company and its main activity.

Electronic signatures, documents and forms prepared by technological means and acceptance of electronic payment will be valid.

The Investment Authority shall review an establishment request within one business or working day after its submission. The company shall have a valid certificate of incorporation once it is registered in the commercial register, and this certificate is considered as an official document after it is issued.

Each company or establishment shall have a national unified and authorized number for all dealings of the investor with the governmental bodies.

The capital of the company subject to the provisions of Investment Law No. 72 may be determined in any convertible currency, used to prepare its financial statements and issuing it using this currency on condition that the capital offering should be in the same currency.

Shares of incorporation and shares of companies of funds subject to the provisions of this law may be traded or exchanged during the first two financial years of the company.

Books and documents shall be replaced by electronic means in line with the technological development.

Allocation of real estate required for the establishment of investment projects

The investor has the right to obtain the necessary real estate to start the activity or expand it, whatever the percentage of the contribution or participation in the capital. In addition, the Investment Authority shall have detailed maps of all properties available for investment.

The provisions of the Investment Law No. 72 on organizing bids and auctions shall not apply to the disposition of property owned by the Government.

The real estate required for investment projects may be disposed by one of the following means:

- Sale or rent
- Rent to own
- License to use

The ownership of real estate shall not be transferred in the case of the sale and rental of the property until the full price is paid or the full value of the rent has been made.

The license to use or lease is valid for a period not exceeding 50 years.

The administrative authorities for the real estate may participate in the investment projects of such properties as a share in kind or participation.

For the purposes of development, free disposal of property owned by the Government may be made to investors on specific technical and financial terms, provided the investor provides a cash security or similar security to the disposing party not exceeding 5% of the investment cost of the project.

The estimate of the price of the sale or the rental value or the use of the value through the General Authority for Governmental Services for the Higher Committee of State Land Pricing in the Ministry of Agriculture, the New Urban Communities Authority, the General Authority for Tourism Development, or the General Authority for Industrial Development that is in accordance with the nature of the targeted established project.

In all cases where government-owned property is disposed of, the investment project must comply with the purpose for which the property was disposed of, and the purpose may be changed under certain conditions.

The administrative authority has the right to terminate the contract of sale or rent or lease ending in ownership or license to use, and may withdrawal the real estate in one of the following circumstances:

1. Refrain from receiving the property for 90 days from the date of notification of receipt
2. Failure to start the implementation of the project within 90 days from the date of receipt of the property
3. Violation of the terms of payment of financial dues
4. Change in the purpose of the use of the property to which it is assigned
5. Violation of the terms of the contract or license to use at any stage of the project

Investment affairs agencies

The Supreme Investment Council, chaired by the President of the Republic, within its capability, may approve the investment plan and take the necessary steps to create a better investment climate.

The General Authority for Investment and Free Zones (GAFI) is a public economic committee with a general legal nature that is headed by the Minister of investment affairs. GAFI aims to encourage investment in the country, developing and managing its affairs, and promoting it.

This Investment Authority shall be the party responsible for the implementation of the provisions of the Investment Law, the Law of Joint Stock Companies, and the Law of Limited Liability Companies.

Settlement of investment disputes

The Appeals Committee will consider complaints from decisions issued by the Investment Authority or the authorities responsible for granting approvals, permits and licenses.

The Ministerial Committee for the Resolution of Investment Disputes is responsible for the resolution of disputes that may arise between investors and the state governmental bodies.

The Ministerial Committee for the Settlement of Investment Contracts Disputes shall settle disputes arising out of investment contracts for which the Government or any related party is in charge.

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