Recent Egyptian Legislative Amendments: Another Step in the Right Direction

Mohamed Khodeir - Partner - Corporate / Mergers & Acquisitions / Capital Markets
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In a speech at the Sharm el-Sheikh Egypt Economic Development Conference ("EEDC"), Christine Lagarde, the Managing Director of the International Monetary Fund, said of Egypt

"Let me start with the good news. The journey to higher growth has already begun."

She further noted, "The new investment law is an important step in the right direction."

The new investment law to which Ms Lagarde refers is Law 17 of 2015, which amends provisions of certain investment-related laws in force in Egypt, namely the Companies Law, Sales Tax Law, Income Tax Law and the Law on Investment Guarantees and Incentives. Before discussing the new changes taking effect with the implementation of the new law, it is important to consider the context under which this law has been passed as well as the present environment in Egypt in wake of the recent political uncertainty.

Macro Mapping

The current Egyptian regime has taken several initiatives to restore order and design a long-term roadmap for Egypt's economy, and signs of hope and positive momentum are already becoming evident.

Egypt has started venturing into numerous mega projects including construction of roads and new communities to utilise the undeveloped lands in Egypt, which comprise the majority of the country's surface area. Examples include newly completed roads as well as the nearly completed parallel Suez Canal, which was funded by non-conventional financing in the form of direct funds received from the Egyptian people (with proceeds of 64 billion Egyptian pounds collected in 8 days).

In addition to infrastructure projects, Egypt has taken policy measures to address the social needs of the country and provide sustainable relief by tackling subsidies on fuel products, setting caps and minimum wages in the Government bodies.

Whether critics agree or not, the reality is that the country's economy has shown clear signs of improvement, as evidenced by Egypt's improved ratings and the resumption of investment into the country by friends of Egypt and the international community.

To top it off, the success of the EEDC illustrates that monumental projects and initiatives, if completed, would elevate Egypt to a completely different economic position from where it is now, or where it was over the past few decades.

Background to Law 17 of 2015

Before assessing some of the legislative amendments introduced by Law 17 of 2015, it is important to highlight the surrounding investment requirements from legal and regulatory standpoints.

As with several legal and regulatory topics, there is no single prescriptive legal formula that captures how best to regulate doing business or creating investment friendliness in a jurisdiction. Numerous factors impact investment considerations in any jurisdiction such as the regulatory structure, government regulatory functions and the effectiveness of the court systems, which differ from one jurisdiction to another. There are currently 10 key areas that the World Bank assesses for purposes of ranking states on the ability to attract business and investment, which include:

- Starting a businesses
- Obtaining Construction Permits
- Getting Electricity
- Minority protections
- Registration of property
- Obtaining Credit and Credit Information
- Paying taxes
- Trading Cross border
- Enforcement of contracts
- Resolving insolvency

In addition to the 10 key areas noted above, the ease of settling disputes, the overall efforts of government officials to combat corruption, and efficient public service functions are generally regarded as crucial components in boosting investor confidence and re-attracting foreign direct investments into Egypt.

Approach adopted under Law 17 of 2015 and other Legislative Amendments

Law 17 of 2015 was promulgated in the official Gazette on 12 March 2015 simultaneously with the EEDC to support the revival of investor confidence in Egypt.

The concern in Egypt is not the lack of well established laws and regulations; rather, the need is for the introduction of particular missing provisions that can help facilitate investment, abolish a hindering bureaucracy and the putting in place of a sound implementation mechanism.

The Egyptian government appears to foster this view and as such, rather than introducing a unified new investment regime, the government has opted to amend certain provisions relating to investment under the existing laws while also introducing new provisions under the Law on Investment Guarantees and Incentives (the “Investment Regime”).

The laws that have been specifically amended by Law 17 of 2015 are as follows:

- The law on joint stock companies, limited liability companies and companies limited by shares issued by Law 159 of 1981 (the “Companies Law”);
- The law on general sales tax issued by Law 11 of 1991 (the “Sales Tax Law”);
- The law on investment guarantees and incentives issued by Law 8 of 1997 (the“ Investment Law”); and
- The law on income tax issued by Law 91 of 2005 (the “Income Tax Law”).

Upon assessing the amendments introduced by Law 17 of 2015, one can find that most of the 10 key World Bank assessment areas have not been absent in these amendments.

Highlights of key amendments introduced under Law 17 of 2015

Although Law 17 of 2015 does not introduce a new investment regime, it substantially amends the current regime. Some of the key amendments include:

- Central registration of securities is marked as a mandatory requirement upon incorporation.
- Sales tax on manufacturing equipment has been amended to be 5% and is refundable upon submitting the first tax declaration for products or services produced by such equipment.

- Investors may agree to resolve disputes in any manner agreed to or pursuant to arbitration under the Egyptian Civil and Commercial Arbitration Law.
- The 10% employee profit distribution provided for under Article 40 of the Companies Law is no longer applicable to companies subject to the Investment Regime.
- Provisions relating to free zones have been amended to boost cross border trade by giving preferential treatment to goods imported and exported from free zones.
- Under Article 10 of Law 17 of 2015, without prejudice to legitimately acquired third party rights, investors' unlimited right to their investments, including the right to remit liquidation proceeds without restriction, is explicitly reemphasised.
- Licensing procedures for businesses subject to the Investment Regime, is centralised with the General Authority for Investment and Free Zones ("GAFI") and time limits are imposed by law on issuing licenses within 15 days from obtaining all other relevant regulatory approvals that GAFI will now procure and/or facilitate through the signal investor window at GAFI.
- Any investment found by a court of law to be based on fraud or misrepresentation would be deprived of incentives and guarantees provided for under the law.
- Strategic investments listed under Article 20 of Law 17 of 2015 may be afforded further non-tax related preferential treatment as prescribed for in Article 20 and by a cabinet resolution. The investments captured under Article 20 include investments relating to logistical services, electricity from conventional or non-conventional resources, agriculture, promoting local products, transportation, railways, employee-geared investments, development of internal trade, and investments in areas in need of development.
- Entities regulated under the Investment Regime as amended by Law 17 of 2015, are now subject to a unified custom duty of 2 % on all equipment and machinery imported for their establishment.
- Awarding rights to lands is more regulated under Articles 71- 83 of Law 17 of 2015 and covers instances of gifting of land or awarding usufruct rights for up to 30 years for certain investments pursuant to requirements and conditions outlined under these Articles.
- GAFI is the exclusive body competent to implement Law 17 of 2015 and other investment related laws.
- GAFI is exempted from government administrative restrictions and financial caps and is permitted to engage high-quality local or international personal to join its operations.
- The National Centre for Developing and Promoting Investment has been established under Law 17 of 2015 as an independent department responsible for developing and promoting investment locally and internationally.
- Under Section 7 of Law 17 of 2015, Alternative Dispute Settlement mechanisms are prescribed to facilitate settlement of investment disputes with investors.
- Investors are entitled to apply for a tax credit on their income tax, corresponding to 30% of the value of equipment used for production during the first tax period.

In parallel, the Egyptian government is also introducing a new law to regulate public/government service in an effort to address bureaucratic practices that could hamper the hard work and efforts the government has been undertaking. The said law provides more qualitative measures to monitor government employees and their training and development as well as creating early exit pathways to relieve the burden of the billions of pounds spent on public services, which unfortunately often do not necessarily function efficiently. This law may take time to materialise but is a good step towards implementing state administrative reform urgently required at this stage.

The figure on the right and the World Bank Principles ("WBP") marked against notes below summarise our opinion as to the common investor concerns and principles addressed by Law 17 of 2015.

The table below summarises how, in our view, certain of the World Bank Principles for assessing doing business ("WBP") were tackled under Law 17 of 2015.

WBP	**How was it addressed?**

Starting a businesses	*Approval time limits adopted. *Consolidated approval process introduced.
Dealing with Construction Permits	*With the approval consolidation highlighted above an expedited route is enabled, but such permits process will be tested in practise.
Getting Electricity	*With the approval consolidation highlighted above an expedited route is enabled, but, such permits process will be tested in practise.
Getting Credit and Credit Information	*Reconfirming central registry of securities under Article 1 of Law 17 of 2015 can help boost the pledges over securities and thus potentially swifter credit options.
Registration of property	*With the introduction of Section 5- “Registration of Property Rights”, including the valuation processes, dealing with property rights covered under the Investment Regime have been improved and implementation of these provisions will determine the actual benefits in practise.
Trading Cross border	*Free zone provisions incorporated under Law 17 of 2015 and reliefs on customs duties can eventually improve cross border trade.
Resolving insolvency	*Law 17 of 2015 has introduced a more rapid process for dealing with liquidation.

Conclusion

Without a doubt, we strongly believe that the legislative amendments introduced by Law 17 of 2015 constitute a solid move in the right direction in respect of addressing concerns raised by investors and to meet recognised international standards at least from a legislative point of view.

The positive signs of renewed investor interest and committed investments in Egypt thus far will create great momentum for Egypt that will require a swift implementation machinery to be in place.

To capitalise on these amendments introduced by Law 17 of 2015, our recommendation would be to utilise the flexibility awarded to General Authority for Investment and Free Zones (“GAFI”) in engaging the right talent that is capable of meeting investors’ expectations and to maximise the momentum achieved post the EEDC by delivering the spirit of these legislative amendments.