

Egypt: Legislative Changes - The Search for Inclusive Development

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Egypt has suffered major turmoil during the past 5 years but its situation has not been as dramatic as some neighbouring countries.

A new elected government came to power in 2014 and a new parliament was recently elected in line with Egypt's new constitution issued in 2014.

It is not an easy job for the current government to meet the calls for social justice and to tackle the challenges Egypt faces such as deficits, need for economic reform and reform for healthcare, training and development and education.

The government however has taken material steps towards developing Egypt by, first, identifying all the major challenges and second, designing a roadmap with measurable objectives to achieve a more developed Egypt. This was set out in the recently announced Egypt Vision 2030. Egypt Vision 2030 focuses on inclusive development that has social justice at its heart.

Without dramatic legislative reform and administrative changes to the outdated bureaucracy that is obstructing Egypt's development, these aspirations will be difficult to realise. Legislative changes will require cultural changes to accompany their enactment, ie. they must achieve Egypt's overall objective of attracting more investments to fuel economic growth without being restricted by other legislation or customs.

Egypt's legislative challenges have long been on the agenda of many governments to try to find a solution to the thousands of laws which conflict in some instances. Though not sufficient in our view, Egypt has already taken some steps towards legislative development in recent years, both pre and post-2011, and much more is expected from the current parliament.

Some recent legalisation has provided a good starting point, even though it has had its critics (for example, there have been calls for a unified investment regime rather than the changes introduced in 2015).

Some of the key legislative reforms that have taken place in Egypt since 2007 can be summarised as follows:

Minority Protection - Ministerial Decree No. 12 of 2007 Introducing Mandatory Tender Offers

In 2007, the Minister of Investment issued an amendment decree adding a new chapter to the Executive Regulations of the Capital Market Law 95 of 1992, whereby an additional tier of minority protection was introduced to companies listed by the Egyptian Stock Exchange or those which have undergone an IPO or public subscription whether full or partial, and even if not listed.

The amendment, as enacted in March 2007, requires a shareholder who acquires or intends to acquire one third of the share capital, voting rights or convertible bonds of the target company (whether alone or together with a third party as broadly defined to include any person with which an arrangement is made) to submit a tender offer to acquire the entire share capital and voting rights of the target company. The Mandatory tender Offers should generally be unconditional. However, the Egyptian Financial Supervisory Authority may make conditional offers by meeting certain thresholds in certain instances.

The obligation to submit a Mandatory Tender Offer is also triggered if a shareholder whose ownership is more than one third but does not exceed 50% of the share capital, voting rights or bonds convertible into shares, acquires in a consecutive 12 months more than an additional 2%. Similarly, shareholders owning more than 50% but not exceeding 75% are obliged to acquire the entire share capital of the target company if said shareholder increased its ownership acquired during a consecutive 12 months by more than 2%. At any point of time, exceeding 75% of the share capital triggers the submission of an offer.

Pursuant to the above, the Mandatory Tender Offer obligation can be triggered for the same shareholder every time it increases its shareholding stake. Additionally, the minority shareholders (owning at least 3% of the target company) have the right to request the shareholder owning 90% during the 12 months following its acquisition to purchase the minorities' stake in the company.

The outlined amendments above have succeeded in securing an additional protection from and supervision of the shareholder(s) who control the target company in a manner that affects the rights of the minority shareholders (whether directly or indirectly through their related parties).

The Economic Courts - A More Commercially and economically Responsive Route for Litigation

The legal maxim "justice delayed is justice denied" was the impetus for the legislature to promulgate Law No. 12 of 2008 establishing and vesting competence in the Economic Courts to decide on commercial and criminal disputes evolving from commercial and investment laws. These laws include the:

- Capital Market Law;
- Investment Incentives and Guarantees Law;
- Trade Law in relation to the transfer of technology, commercial agency, banking transactions and bankruptcy;
- Telecommunications Law;
- Anti-Trust Law;
- Banking Law;
- IP Law;
- Law governing joint stock companies, partnerships limited by shares and limited liability companies; and
- Banking Law and Mortgage Finance Law.

The Economic Courts are intended not only to overcome the lengthy and slow pace of the ordinary court system but also to provide the expertise to satisfy the special nature of the disputes arising from commercial laws.

Public Private Partnership Law - Enabling active participation by the private sector

The continued efforts of the Egyptian government to increase private sector involvement in public mega projects and reduce governmental borrowing to finance these projects was encapsulated in the issuance of Law No. 67 of 2010 regulating the Participation of the Private Sector in Infrastructure, Public Services and Utilities Projects (known as the PPP Law). The PPP Law is part of the economic and social reform plan in the field of public utilities services.

The PPP Law regulates BOT and BOOT arrangements for infrastructure and public utilities projects executed by the private sector company with a value of not less than EGP100 million. The PPP Law defines the private sector as the companies where the ownership by public entities does not exceed 20% of the

share capital.

The length of involvement for the private project SPV varies between five years and thirty years guaranteeing the feasibility of the project to the private SPV. Where there is a material public interest, the government can execute the arrangement for more than thirty years.

EGX Listing Rules & Related Party Transactions Control

Further to the amendment to the Executive Regulations of the Law No. 159 of 1981 regulating Joint Stock Companies, Partnerships Limited by Shares and Limited Liability Companies (as issued by Decree No. 96 of 1982), an ordinary general assembly of shareholders was required not only to approve related party transactions in advance but to approve each contract separately and allowing the shareholders commercial scrutiny before giving their approval.

In line with this amendment, the latest Listing and De-Listing Rules of securities at the Egyptian Stock Exchange (as issued by the Egyptian Financial Supervisory Authority by virtue of Decision No. 11 of 2014) require listed companies to promptly disclose any arrangements concluded with related parties and to demonstrate general assembly approval of the same. Conflicted or concerned shareholders are deprived of their right to vote on the pertinent resolution, which adds another tier of protection to the shareholders not covered under the Companies Law and its Executive Regulations.

Law No. 17 of 2015 Amending The Investment Regime in Egypt

Contemporaneously with Egypt's Economic Development Conference in Sharm El Sheikh in March 2015, Law No. 17 of 2015 was passed to amend certain provisions regulating investment in Egypt.

The amendments touch on certain World Bank business criteria as well as the bureaucratic requirements for investors to obtain the approvals necessary for their projects. The law proposed an integrated unit for approval and allocation of land procedures while awarding certain investment incentives and opening the door for further motivation.

The Movable Security Law – a Step Towards Banking Secured Transactions

Law No. 115 of 2015 regulating the grant of banking loans against movable securities (known as the Movable Security Law) was passed as a response to the need for more secured grant of facilities by banks and financial institutions especially to small and medium size enterprises ("SMEs") which in most cases lacked sufficient collateral (ie. real estate and other immovable assets).

The Movable Security Law is a step to encourage and expand SMEs and micro financing through allowing non-possessory pledges to be arranged over movable assets and electronically registered in a special record established for this purpose.

The movable assets that can be used as collateral under this Law include, in addition to movables existing at the date of the facility, future movables expected to be possessed by the borrower or guarantor in the ordinary course of business as well as intangible movables. This would include, without limitation, outstanding or deferred debts, banks credit accounts (including saving and current accounts), equipment and machinery, trees, agriculture crops, animals and birds, minerals before extraction as well as innovation rights associated with patents trademarks and copyrights.

The register in which the immovable assets are recorded would include sufficient information to allow the financing bank or institution to trace and undertake enforcement procedures in the case of disposal by the borrower or guarantor.

New Importation Regulations a Combined Strategy between the Government & the Central Bank of Egypt

The Egyptian Government together with the Central Bank of Egypt ("CBE") in a series of successive

decrees and circulars have adopted a new currency support strategy aimed at minimising the importation of unnecessary or luxury finished products and thereby lifting pressure on the Egyptian pound.

The strategy was first put into force by virtue of the Resolution No. 992 of 2015 issued on 31 December 2015, which requires exporters to Egypt of certain products including certain food products, dairy products and electrical equipment as well as certain accessories and other products outlined in the resolution, to register their plants in Egypt in order for these products to be cleared for trading therein. Products of unregistered manufacturers or trademark holders cannot be imported into Egypt.

This resolution was misperceived to be a ban on importation, but instead it provides a more regulated importation climate where importation of trivial or unnecessary goods can be controlled. This further guarantees an additional route for trademark counterfeit control since only products of registered manufacturers and trademarks holders will be allowed.

The above resolution was issued simultaneously with successive CBE circulars that regulated the financing of importation transactions and provision of documentary credit services. This strategy is aimed at allowing the CBE to control the transfer of foreign currency by importers that do not have sufficient solvency or importing goods which are considered unnecessary in the current economic climate.

The CBE has later eased deposit and withdrawal restrictions on foreign currency followed by an historic devaluation of the Egyptian pound along with offering attractive dollar and Egyptian pound investments at local banks.

These steps are collectively targeting the following:

- Reduction of unnecessary importation particularly when it causes a de facto dumping of counterfeited projects;
- Increasing investment by minimising concerns as to the value of the currency; and
- Mitigating the risks of black market trade and moving towards its eradication.

Conclusion

Although Egypt has made several legislative improvements and countless changes over the past 25 years, it is our view that much more is needed to achieve the following:

- Increase the speed of doing business and speed of resolving disputes;
- Develop the overall justice system; and
- Abolish control by bureaucracy and improve the capability of public servants to meet international standards.

Such improvements will require the currently elected parliament to implement further changes soon. The approach needed is substantive rather than superficial. Three examples of this can be listed below:

- Social justice cannot be furthered without a strong civil service system based on qualitative measures; therefore a law digging deep down on the merits is urgently required;
- Social justice cannot be furthered without attracting more foreign investment and the latter will not happen without reducing obstructive bureaucracy and its deep-rooted culture. This role should be assigned, when it involves investment, to well-trained and competent civil servants who rely on current or forthcoming legislation; and
- The justice system cannot be further developed without increasing the number of judges and setting time barriers on resolving disputes as well as cost measures to limit frivolous lawsuits.

These are not impossible changes but will require detailed debate and immediate implementation by the parliament. We hope this will be the approach it adopts when executing its legislative functions to meet Egypt's demands for a better future. A version of this article first appeared in IFLR Magazine, April 2016.