Egypt: Impact of the modern investment law

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Egypt has lived in unstable conditions since the Arab Spring in 2011. For the first time in its history, the Egyptian people overthrew their president, voted in a theocratic president, overthrew him after a year of constitutional interventions to tighten his grip on power, and elected a new president presently leading an aggressive reform program.

Among the hallmarks of this reform is a progressive strategy to reduce the burden of government spending by reining in fuel and power subsidies while encouraging investment. It is fair to say that the last three years have seen a reinvigoration of hope in Egypt's ability to rise from its dormancy and claim its rightful place among global economic players. This article considers the key legislative change that underpins the above strategy.

Due to the Arab Spring and the challenges it inevitably created, a new investment law was introduced to fulfil the needs of the local business community and encourage foreign direct investment (FDI). After some debate, the Egyptian legislative and executive branch accepted the challenge of promulgating a new law that would observe the latest business practices and confront the economic challenges that have been facing Egypt for decades.

The drafting of the law involved lengthy debate with various stakeholders. Finally, the new investment law was issued on the 31st May 2017 as Law No. 72 of 2017 (the "Law") effective 1st June 2017.

The purpose of the Law is to create an environment where business is conducted with ease, clarity, and predictability, where new investments are incentivised and existing guarantees and incentives are maintained and strengthened. In our view, the Law has had a direct impact on Egypt's FDI attractiveness and has appreciably helped to place it among the most FDI attractive countries in Africa.

Clear Interpretation and Ease of Doing Business

The Law reinstated incentives and guarantees prescribed by former investment laws, while adding much more progressive guarantees and incentives. Further, it defined the concept of investment for the first time in a modern way and clarified ambiguities in applicability by allowing all companies whose activities are prescribed in the Law to benefit from it, not simply those that are incorporated under its regime.

The Law addresses procedural overlaps between incorporating an investment law vehicle and any other vehicle under the auspices of the General Authority for Investment and Free Zones (GAFI). It creates a streamlined process for investors to ensure the ease of doing business and removes procedural and substantive obstacles for investments to take place. Importantly, the Law reinstated land allocation procedures and provided for considerably more progressive, flexible options and procedures to facilitate the process that GAFI had already begun implementing.

Among its most pivotal guarantees, the Law maintains and ensures the right of investors to repatriate funds, whether as dividends or proceeds of liquidation. Prior to the promulgation of the Law, repatriation was quite a challenge given shortage of foreign currency at the time. In support of this renewed guarantee, the Central Bank of Egypt also lifted restrictions on companies to deposit and withdraw foreign currency. The Law has also taken positive steps towards easing some restrictions on work permits and visas by doubling the quota of expatriates allowed to work on a project from 10% to 20% of its total workforce, whilst also allowing investors to obtain residency visas in Egypt for the term of the project.

As a response to the bureaucracy that has long hindered Egypt's ability to progress, the Law addresses key procedural challenges. Article 4 of the Law stipulates that, among other guarantees and incentives, regulatory authorities may not impose burdens or increase governmental charges on investors without first consulting with GAFI and before obtaining the approval of both the Cabinet of Ministers and Supreme Investment Council headed by President Abdel Fattah El-Sisi.

Other legislative steps are also being taken to create an investment climate that attracts a wide range of foreign investors. For example, the Ministry of Industry and Foreign Trade issued Law No. 15 of 2017 that facilitates the issuance of industrial licenses and promises to create a streamlined process by which licenses can be obtained quickly. Due to the application of the aforementioned laws, investors will now have a clear path to obtain land/property for their businesses and licenses for their operation within a definitive period.

Smart and Effective Incentives

According to Articles 11-12 of the Law, investment projects established pursuant to the Law enjoy 30% to 50% (depending on their activity and geographical location) of their investment costs as being deductible from their taxable net profits. This is a new tax incentive mechanism being implemented in Egypt for the first time and has been lauded by professionals and institutions. It replaces traditional tax exemptions that have not proven impactful in bringing in FDI. The purpose of this deduction is to spur the larger macroeconomic goal of developing areas in Upper Egypt as well as special economic zones by encouraging investors to build projects that are needed in underdeveloped areas.

Governance

A key component of Egypt's reform program is sound governance. Particular importance has been given to empower decision-makers towards strategic and sustainable reform. For instance, GAFI's CEO now has five deputies to decentralize their originally vested authorities and powers in order to expedite procedures and processes. On a wider scale, the Supreme Investment Council was created to oversee the planning and implementation of investment policies while ruling out all conflicts and inefficiencies between executive authorities that would otherwise hinder the investment climate and push back the strong wave of economic progress.

Conclusion

Although it represents a quantum leap from its predecessors, and not to mention that FDI started showing signals of revival in 2016-2017 reports, the Investment Law alone cannot transform the climate. In our view, the Law must be supported by executive desire to continue to develop new policies and follow through on reforms attained so far. All these measures are required in order to further stimulate the investment climate in Egypt. It also requires support from business leaders, audit firms and law firms to ease the process for FDI and build upon the new dynamics created by the Law and other legislative reforms. It is necessary that investors continue to keep in mind both the challenges and opportunities in Egypt so that they are well informed in terms of their investment choices and decisions.