

Land Allocation in Egypt's New Investment Law

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Investment Law No. 72 of 2017 ("Investment Law") came into effect on 1st June 2017. By repealing Law No. 8 of 1997, the newly promulgated law aims to promote foreign investments through the reduction of bureaucracy and the simplification and enhancement of processes in relation to the acquisition and allocation of properties by exploring the provisions of the Investment Law, as well as its Executive Regulations No. 2310 of 2017 ("Executive Regulations"). As part of the government's plan to increase revenue and exports, the land allocation provisions in the Investment Law and its Executive Regulations, which detail the process of acquisition and allocation of property by the government to investors serve as a way to optimise use of the properties under its jurisdiction and allow for far more investment opportunities than ever before.

With regards to the allocation of land, Article 55 of the Investment Law provides that the investor has the right to obtain the required properties for pursuing its activity, subject to the special laws that regulate properties located in certain geographical areas. Accordingly, the competent administrative authorities shall provide, through detailed maps, the availability of properties and the investment activities suitable for their nature, as provided by Article 56 of the Investment Law.

Types of Land Allocation and Partnerships

Pursuant to Article 58 of the Investment Law (and subject to the provisions of Article 37 of the same law) and further stipulated in Article 47 of its Executive Regulations, the properties required for investment projects shall be disposed of through one of the following means:

- Sale;
- Rent;
- Rent to own; or
- License to use, where the license to use or lease is only valid for a period that does not exceed 50 years.

Accordingly, Article 62 requires that the transfer of ownership, in case of sale or rent of properties, be conditional upon the full price payment. Moreover, pursuant to Article 58, the competent administrative authority which has jurisdiction may participate in the investment projects conducted, with the property being an in-kind share or through a partnership in the cases determined by a decree issued by the Cabinet of Ministers. Consequently, Article 48 of the Executive Regulations details that this participation could take the form of either:

- a Public-Private Partnership (PPP);
- a Long-Term Partnership;
- a Build, Operate, Transfer ("BOT");
- a Build, Own, Operate, Transfer ("BOOT"); or
- a Revenue Sharing Partnership.

Pursuant to the Investment Law and Articles 45 and 46 of its Executive Regulations, a database shall be

created (and updated every 6 months) in order to comprise a list of these properties, their sizes, established heights as well as estimated price, and the method of disposal thereof. The allocation of land is conditional upon the approval of the Cabinet of Ministers and the President of the Republic issuing a decree transferring the title and jurisdiction of the property from the administrative body which has jurisdiction, to the General Authority of Free Zones and Investment (GAFI), in order to execute the investment plan and dispose of said property according to the provisions of the Investment Law.

It is noteworthy that the provisions of the Investment Law currently allow for a dual route to obtaining property from the government. One way is to obtain property directly from the competent administrative authorities and the other is to deal with GAFI, whereby the property would initially be transferred to GAFI and then onto the investor. This serves to allow more flexibility to the investor in terms of deciding which path would be more convenient. This was not present under previous iterations of such provisions. The only path for the investor is to seek land allocation through the competent authorities, which may lead to several bureaucratic obstacles that arise from dealing with several authorities and their respective requirements. Such a system also ensures that GAFI, a national body for investments, allocate disposition of land and property according to a wider vision for the economy.

Requirements and Conditions

In cases where the investor requires a privately state-owned property, Article 59 of the Investment Law requires the investor to indicate such requirements in its application, by specifying the purpose, size and location of the desired property. Moreover, for purposes of development, Article 60 of the same Law allows for the free disposal of privately state-owned properties to investors in areas determined by a decree issued by the President of Republic, where the investment projects meet technical and financial criteria, determined by a decree issued by the Cabinet of Ministers. This free disposal of properties is conditional upon the investor providing a cash guarantee not exceeding 5% of the overall value of the investment project's cost.

In particular, according to Article 49 of the Executive Regulations, where it concerns an activity involving production, the investor shall provide a cash guarantee representing 1% of the overall value of the investment project's cost. Where the activity concerned involves services, the investor shall provide a cash guarantee representing 3% of the overall value of the investment project's cost. Finally, where the activity concerned involves storage, the investor shall provide a cash guarantee representing 5% of the overall value of the investment project's cost. This guarantee shall be refunded after three years from the actual commencement date of production of projects of a productive nature or the commencement of any of the other aforementioned activities, provided that the investor complies with the conditions of disposal. In the event that this contract is not completed for reasons attributed to the investor, the said guarantee is returned after the deduction of any administrative expenses incurred by GAFI or the concerned administrative body without the need for any judicial proceedings.

Pricing and Selection Criteria

Article 63 of the Investment Law stipulates that investors or investment projects are chosen according to a points-based system, ranking projects based on preference principles according to technical or financial specifications, or based on the value of the bid. In particular, Article 51 of the Executive Regulations stipulates that these points be calculated according to:

1. The investor's previous experience;
2. The investor's international standing;
3. The project's ability to generate foreign currency, either by exporting its products abroad or by providing a local substitute for a product imported from abroad;

4. Projected investment costs;
5. The value of the bid and payment method.

In case the competition, i.e. the points, prove to be close, the value of the bid takes precedence during the decision-making process. Furthermore, Article 64 of the Investment Law requires that any price estimation for the value of the properties, be it for sale, rent, or for other uses, such estimation of value shall be conducted by 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. The enumeration of such standards in pricing and decision-making raises confidence in the transparency of the process and prevents potential legal battles concerning misallocation, bribery or profiteering. When the process is fair and transparent, investors are more confident and willing to enter a bid knowing that there won't be any foul play.

The involvement of the abovementioned authorities shall vary according to the nature of the project. Following the decision of the relevant authority's Executive Officer, in addition to the approval of the competent Minister, Article 65 of the Investment Law and Articles 54 and 55 of the Executive Regulations, condition the creation of one or more committees in order to include technical, financial, and legal teams whose positions and expertise correspond with the significance and nature of the projects, to decide on the applications for disposal of the properties as submitted by investors. In the application of the provisions of Article 66 of the Investment Law, and as per Article 57 of the Executive Regulations, the investor shall be bound by the initial purpose for which the property was disposed of. The investor may not change the purpose stipulated in the contract unless after the receipt of a written approval from the relevant Administrative Authority. A change in purpose may ensue after one year from the date of commencement of production or any other activity following the consent of all concerned parties, provided that the investor pays at least 50% of the difference between the value of the property when obtained and the market value at the date of submission of the application. This applies to properties disposed of by public legal persons and to privately state-owned properties.

Finally, as per Article 67 of the Investment Law and Articles 58 and 59 of the Executive Regulations, the competent administrative authority may terminate the contract (based on follow-up reports submitted by employees of the administrative authority) of sale, lease, lease-to-own, or license to use, and recover the property. This termination is subject to the investor's failure to:

1. Receive the property for 90 days from the date of receiving a notification of receipt;
2. Start the implementation of the project within 90 days of receipt of the property;
3. Comply with the terms of payment of financial dues;
4. Comply with the initial agreed upon purposes of the use of the property;
5. Comply with the terms of the contract or license to use at any stage of the project.

Conclusion

The new land allocation provisions allow for more partnerships between the government and investors and to establish a framework under which such partnerships may be concluded under fair, transparent, and expedited conditions. Moreover, it allows all transactions to be centralised through GAFI, which in turn enhances the ability of the government to ensure that its resources are being utilised efficiently and according to the wider investment vision.