SHEHATA & PARTNERS

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Memo

Doing Business in Egypt

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A.Background:

This memo of advice ("Memo") sets out the legal and regulatory framework for doing business in Egypt. We understand that the potential client (the "Client") wishes to set up a legal presence in Egypt to carry out its business in the Egyptian market.

In this regard, this Memo shall provide the Client with general advice highlighting the applicable legal system pertaining to investment activities and the setting up requirements in the Egyptian market to assist the Client in conducting its business in Egypt. The legal advice is set out in the below sections.

B.Applicable Laws and Regulations:

i. The Investment Law No 72 of 2017 (the "Investment Law") and the executive regulations issued by Ministerial Decree No 2310 of 2017 (the "Investment Law Executive Regulations");
ii. The Companies Law No 159 of 1981 (the "Companies Law") and the executive regulations issued by Ministerial Decree No 96 of 1982, as amended (the "Companies Law Executive Regulations");
iii. The Industrial Registry Law No 24 of 1977 (the "Industrial Registry Law") and the executive regulations issued by ministerial decree No 186 of 197 (the "Industrial Registry Law Executive Regulations");
iv. The Industrial License Law No 15 of 2017 (the "Industrial License Law") and the executive regulations issued by ministerial decree No 1082 of 2017 (the "Industrial License Law Executive Regulations");
v. The Commercial Registry Law No 34 of 1976, as amended (the "Commercial Register Law") and its executive regulations issued by way of ministerial decree No 946 of 1976 (the "Commercial Register Law Executive Regulations");
vi. The Labour Law No 12 of 2003, as amended (the "Labour Law") and its executive decrees;
vii. Social Security and Pension Law No 148 of 2019 (the "Social Security Law");
viii. Income Tax Law No 91 of 2005, as amended (the "Income Tax Law");
ix. The Environmental Law No 4 of 1994 (the "Environmental Law"); and
x. The Egyptian Arbitration Law in Commercial and Civil Matters No. 27 of the year 1994 (the "EAL").

C. Memo Structure:

- Section (D): Investment Regimes Overview.
- Section (E): Incorporation of Companies (JSC vs. LLC).
- Section (F): Residency for Foreign Investors.
- Section (G): UBO Disclosure.
- Section (H): Industrial (IDA) Licensing.
- Section (I): Taxation & Invoicing.
- Section (J): Employment.
- Section (K): Social Security.

D. Investment Regimes Overview

The Investment Law permits foreign investment activities in various sectors including manufacturing, education, tourism, transportation, information technology, trading, health, agriculture, water and natural resources, housing, construction, electricity, and power projects (the "Activities"). The incorporation of legal entities under the Investment Law is broadly regulated and supervised by the General Authority for Investment and Free Zones ("GAFI").

1. Investment Regimes:
1.1 Generally, the Investment Law provided three main types of investment regimes in Egypt as follows (i) internal investment; (ii) special economic zones, and (iii) free zones. These investment regimes differ in the applicable requirements for setting up the business as well as available investment incentives.
1.2 The internal investment scheme is the most common investment regime. It is generally offered to investment projects that target the local Egyptian market (i.e. projects that are not targeting export activities).

2. Key Restrictions:
The applicable laws generally do not restrict foreign ownership in companies established in Egypt. The key limits to be highlighted include, most notably, the following:
2.1 Commercial agency activities;
2.2 Acquiring land and/or real estate in Sinai; and
2.3 Acquiring Agricultural Lands.

3. Investment Guarantees and Incentives:
3.1The Investment Law generally offers a broad range of investment guarantees (the "Guarantees") including but not limited to fair and equitable treatment to both foreign and Egyptian investors,
i.protection against any coercive or discriminatory measures,
ii. granting the foreign investors residency permit throughout the term of their investment project, protection of investment against nationalization and expropriation (except for public interest and against fair market value compensation to be paid in advance and without delay),
iii. right to repatriate profits outside of Egypt and receive foreign funds to finance the project without restriction,
iv. flexible liquidation procedures for the business to be finalized within 120 days,
v. investor right to acquire assets to establish, manage and develop the investment project with the right to finance the project in foreign currency without restriction,
vi. permitting the investor to import machines, equipment, and raw materials needed for the purpose of establishing, expanding or operating the investment project without a requisite importation license,
vii. right to use 10% foreign employees from the total workmanship in the investment project. This percentage could be increased to 20% if certain requirements are met such as the non-availability of national skilled workers and obtaining the relevant approval.

3.2 In addition to the Guarantees:
the Investment Law also offers investment incentives. These incentives are threefold as follows: (i) General Incentives, (ii) Special Incentives, and (iii) Additional Incentives.

3.3 General Incentives:

Upon satisfying certain conditions, all investment projects subject to the provisions of the Investment Law, whether established before or after the implementation of its provisions, regardless of the legal system to which they are subject, shall enjoy the below general incentives, except projects established under the free zones regime:

i. Articles of incorporation for companies and establishments, as well as credit facility and mortgage contracts related to their business, are exempted from stamp duty, documentation fees, and registration fees for a period of five years from the date of their registration in the commercial registry.
ii. Land registration contracts necessary for the establishment of companies and establishments are exempt from the tax and fees referred to.
iii. The provisions of Article (4) of the Law Regulating Customs Exemptions No. 186 for 1986, regarding the collection of a customs tax of a unified category of (2%) of the value shall apply to companies and establishments subject to the provisions of the Investment Law on all imported machinery, equipment and devices necessary for its construction.
iv. Without prejudice to the provisions of temporary release stipulated in the Customs Law No. 66 for 1963, investment projects of an industrial nature subject to the provisions of the Investment Law may import molds and other production requirements of a similar nature, without customs duties for use for a temporary period in manufacturing its products and re-exporting them abroad. The release and return abroad shall be according to the arrival documents, provided that the entry and re-shipment documents are recorded in records prepared for this purpose by the General Authority for Investment & Free Zones (GAFI) in coordination with the Ministry of Finance.

3.4 Special Incentives:

Upon meeting specific requirements, projects established under the Investment Law shall receive an investment incentive in the form of a deduction from the net taxable profits, as outlined below:

i. A (50%) discount of the investment costs of Sector (A) investments from the net taxable profits:
Investments falling under Sector (A) encompass the geographical regions identified as requiring significant development, as indicated by the investment plan and supported by data and statistics from the Central Agency for Public Mobilization and Statistics. These areas align with the approved General Plan for Economic and Social Development and adhere to the designated distribution of investment activities outlined in the Executive Regulations of the Investment Law. Further, Zone (A) includes the Suez Canal Economic Zone, the Golden Triangle Zone, the New Administrative Capital, and the Ras El-Hikma Zone.
ii. A (30%) discount of the investment costs for Sector (B) investments from the net taxable profits
Investments falling under Sector (B) encompass the remaining regions of the Republic that exhibit development potential. These investments aim to attract investments to capitalize on the available development opportunities, fostering their growth and that of the surrounding areas. This pertains to the following investment projects:

- Labor-intensive projects under the controls stipulated in the Executive Regulations of the Investment Law.
- Medium and small projects.
- Projects that rely on or produce renewable energy.
- National and strategic projects issued by a decision of the Supreme Council for Investment.
- Tourism projects issued by a decision of the Supreme Council for Investment.
- Electricity production and distribution projects that are determined by a decision of the Prime Minister based on a joint proposal from the competent minister, the minister concerned with electricity affairs, and the minister of finance.
- Projects whose at least 50% of their production is exported abroad.
- The automobile industry and its supporting industries.
- Wooden, furniture, printing, packaging, and chemical industries.
- Antibiotics, oncology drugs, and cosmetics industries.
- Food industries, crops, and agricultural waste recycling.
- Engineering, metallurgy, textile and leather industries.
- Technological and IT industries.

Nevertheless, in any scenario, the investment incentive should not surpass 80% of the paid-up capital until the commencement of the activity, adhering to the stipulations outlined in Income Tax Law No. 91 for 2005. Additionally, the duration of this discount should not extend beyond seven (7) years from the initiation of the activity.

3.5 Special New Cash-Back Incentive for Industrial Projects Funded by Foreign Funds:

Investment projects engaging in industrial activities which are located within the Suez Canal Economic Zone, the Golden Triangle Zone, the New Administrative Capital and the Ras El-Hikma Zone, any of the Industrial Zones, any of the Investment Zones or any of the Technology Zones, will receive a cash investment incentive ranging from (35%) to (55%) of the submitted tax return value. This incentive is disbursed by the Ministry of Finance within forty-five days after the tax return deadline. Failure to do so incurs a delay fee based on the credit and discount rates set by the Central Bank. The incentive is non-taxable income. For eligibility, the project or its expansions must secure at least 50% of its funds from foreign exchange abroad until the activity begins, and it should commence within six years from the 25th of July 2023. This incentive runs for a period of seven (7) years from the start of its granting.

3.6 Additional Incentives:

Without prejudice to the incentives, benefits, and exemptions stipulated in the Investment Law, additional incentives may be granted by a decision of the Cabinet to the projects located in Zones (A) and (B) mentioned above, as follows:

i. Allowing the establishment of special customs ports for investment project exports or imports in agreement with the Minister of Finance.
ii. The State covers the expenses incurred by the investor for connecting facilities to the property allocated for the investment project or a portion thereof, post the project becomes operational.
iii. The State covers a portion of the technical training costs for workers.
iv. A reimbursement of half the value of the land allocated for industrial projects is applicable if production commences within two years from the land handover date.
v. Free allocation of land for certain strategic activities under established legal regulations.
vi. Exemption from the fee for using allocated lands for project establishment for a maximum of ten years from the start of operations, subject to the proposal of the competent minister.
vii. Upon the decision of the Prime Minister, and based on the competent minister's proposal, projects specified in Articles (11 and 11 bis) of the Investment Law may be exempted from contributing up to 50% of the costs for establishing infrastructure, services, and public facilities, as determined by the controls issued by the Supreme Council's decision.
viii. Additionally, the public treasury may cover up to 50% of the project's consumption of essential facilities for a maximum of ten years, in accordance with controls established by a decision of the Supreme Council for Investment.

4.Investment Permits & Golden License:

4.1 The Investment Law sets out a single window service (Investors Services Centre) available in GAFI and its branches to facilitate the business setup and procuring the necessary permits for investors wishing to carry out Activities in Egypt.

4.2 On the other hand, the Investment Law also allows granting a single approval (Golden License) to eligible investors. The Golden License would be granted by way of the prime minister's decree. The main benefit of the Golden License is that it would greatly facilitate undertaking the investment activity since it waives any additional permits or licenses pertaining to the investment activity from other governmental authorities.

5.Special Economic Zone vs. Free Zones Incentives Comparison:

Special Economic Zones	**Free Zones (Public & Private)**
(50%) discount of the investment costs of Sector (A) investments from the net. taxable profits; plus, A cash investment incentive ranging from (35%) to (55%) of the submitted tax return value, if the project is an industrial project.	1-2% tax fees calculated on the basis of the revenues of the project. No other taxes or customs will be applied.Please note that the free zones projects are designated for exporting products abroad. For a Public Free Zone, the percentage of minimum required exports is designated by GAFI on a case-by-case basis. As for the Private Free Zone, it has to export a minimum of 80% of its products abroad.

E. Incorporation of Companies (JSC vs. LLC):

6.The Investment Law generally permits the incorporation of legal entities (permanent or temporary establishment) in the forms available under the Companies Law. Permanent establishment available would include (i) joint stock companies (JSC), (ii) limited liability companies (LLC); (iii) limited by shares companies (LSC), and (iv) sole person companies (SPC). Conversely, the temporary establishment of a legal presence in Egypt would take the form of (i) a branch of a foreign entity or (ii) a representation office.

7. Generally, the preferred legal forms for a permanent presence of foreign investment are (i) joint stock companies and (ii) limited liability companies; due to the legal protection to the shareholders (corporate veil) and flexible management structure offered under these regimes. This is not the case for a sole-person company whereby the corporate veil may be pierced in certain scenarios.

8. Below are the main descriptions and key differences between the JSC and the LLC:

Ref:	**Joint Stock Company**	**Limited Liability Company**
General	A JSC divides its capital into equal shares, with shareholder liability limited to their contribution. It requires a minimum of (3) shareholders, with no maximum limit.	LLC is also a company where the partner's liability is limited up to their capital contribution. The minimum number of partners in an LLC is two (2) and the maximum number is 50 (fifty).
Activity	No particular restrictions on the activities to be carried out by a JSC, save those activities generally restricted to be carried out by foreign investors.	An LLC is restricted from certain activities such as banking, insurance, or managing investment for third parties, or electricity production activities.
Share Capital	The JSC can have the share capital in EGP or foreign currency. The JSC will have a minimum issued share capital of EGP250,000 (around USD 5,000). The share capital can be in (EGP) or in foreign currency.	There is no minimum share capital in an LLC. The share capital could be in (EGP) or in foreign currency.
Management	A JSC is managed by a board of at least 3 directors, with no nationality restrictions. The board holds extensive powers over the business and can delegate executive authority to any member or form specialized committees. A corporate entity may also serve on the board, represented by an appointed individual.	The LLC is managed by one or more managers appointed by the partners and could be removed in accordance with the terms agreed in the articles of association. There are no particular restrictions on the nationality of the managers in an LLC.
Compliance, Reporting,and Employees' Profit Share	The employees in any JSC will be entitled to receive a profit share being 10% of the distributed profit in the company (which shall not exceed to total annual wages of the employees).	Employees in an LLC with a share capital of EGP250,000 will be entitled to receive a profit share being 10% of the distributed profit in the company (which shall not exceed to total annual wages of the employees).

F. Residency for Foreign Investors:

9. The Investment Law generally permits foreign investors to obtain a business residency visa in Egypt. The business visa would offer residency to foreigners from 1 to 5 years. The business visa would be applied for through the Investors Service Centre with GAFI.

10. The business residency visa is available for the founders, shareholders, partners, and directors/managers in the commercial register of the Egyptian company. The application for a business visa would be submitted after the successful incorporation of the legal entity.

11. Noteworthy to mention that issuance of a business residency visa(s), and quota permitted for foreigners to obtain a business visa in the company, will depend on some criteria such as the capital of the company, the type of activity, and the number of employed nationals.

G. UBO Disclosure:

12. New controls were recently enacted in connection with the disclosure of the ultimate beneficiary in companies registered in Egypt. In this regard, all companies in Egypt are required now to disclose their ultimate beneficial owners who have actual ownership or control over the Egyptian subsidiary.

H.Industrial (IDA) Licensing:

13. Projects entailing industrial activity will require (i) obtaining an operational license and (ii) opening an industrial registry with the Industrial Development Authority ("IDA"). Both the operational license and the industrial registry come as the next step after the incorporation of the legal entity is complete (i.e. the company is registered in the commercial registry and has issued its tax card).

14..The operational license could be obtained (i) either by way of notification or (ii) prior approval. The timeline, procedural steps, and requirements for both licensing regimes are different. Below is a summary describing both regimes, as follows:

14.1 Licensing by notification: Licensing by notification generally provides a more simplistic approach to procuring the operational license as opposed to licensing with prior approval. Licensing by notification is offered to low-risk industrial projects. The industrial project qualifying as low risk will only have to notify the IDA start of operation. The notification should be made on the relevant IDA application form duly supported with the necessary information – listed below. The license is deemed to be granted for an unlimited period of time and produce its full effects once the IDA receives and stamps the application (the "Notification"). After the Notification, the IDA would inspect the project within (90) days from the date of the Notification. If during the inspection the IDA observed that the project was not compliant with the license application requirements, the IDA would grant the applicant 180 days grace period (extendable for 1 time) to make the necessary adjustments. Non-compliance with the IDA inspection requirements might expose the project to be closed administratively.

14.2 Prior Approval Licensing: Under this regime, the industrial project would obtain the requisite approval of the IDA prior to establishing or starting the operation of the industrial project. Prior approval licensing applies to high-risk industrial projects.

14.3 The next step after obtaining the operational license is to register the company in the industrial registry with the IDA.

I. Taxation and Invoicing:

15.The corporate income tax rate in Egypt is currently set at a flat rate of 22.5% on annual taxable profits. Companies established in Egypt are required to have audited financial statements and file a tax return every year. The corporate income tax is imposed on any company considered to be a tax resident in Egypt whether on profits realized from Egypt or from abroad.

16. In this regard, all the corporate entities in Egypt shall issue a tax card, after which it is obligatory to register on the electronic invoicing system newly adopted in Egypt under Minister of Finance Decree No. 188 of 2020. The new system obliges all companies registered for value-added tax ("VAT") and selling taxable goods or services to register and submit electronic invoices on the Egyptian Tax Authority's ("ETA") online portal.

17.Noteworthy to highlight that salaries are also subject to the Income Tax Law. The employer is required to deduct and pay the salary tax to the ETA.

J. Employment

18. Employment relations are generally regulated under Labor Law. This law applies to both nationals and foreign employees working in Egypt. The Labor Law sets out the minimum rights granted to the employees which may not be deviated by the agreement of the parties. These rights include inter alia the probation period, salary, leaves, deductions, annual increments, disciplinary actions, severance, and compensation rights against unlawful termination. The permissible probation period under the Labour Law is three (3) months.

19. The Labor Law provides a number of paid leaves including annual leave (21 days minimum), sick leave, maternity leave (3 months minimum), casual leave (6 days maximum), and national holidays.

20. As per Article 1 of Decree No. 27 of 2024, the Ministry of Planning and Economic Development and the National Wages Council has agreed to increase the minimum wage for employees in the private sector to be six thousand Egyptian Pounds (6,000 EGP). This increase has come into force on the 1st of May 2024.

21. In addition, the employment contract could be (i) with limited duration or (ii) unlimited duration:
21.1 A Limited duration contract would terminate at its expiry date unless the parties decided to renew the contract for an additional period. If the parties elect to continue performing an expired limited-duration employment contract without renewal, the employment relation would reclassify as an unlimited-duration contract. This reclassification would not however apply to foreign employees. Moreover, an employer cannot terminate the limited duration employment contract before the fixed term has elapsed unless there is an occurrence of fundamental breach under the cases enlisted under article (69) of the Labour Law.

21.2. On the other hand, an unlimited-duration employment contract is with no fixed term. This type of contract could be terminated by the employee with proper justification (such as health, financial or marital circumstances) and with serving prior notice to the employer as follows (i) 2 months if the employment service is below 10 years and (ii) 3 months if the employment service is more than 10 years. Conversely, the employer may terminate the unlimited duration employment contract by serving the above notice in the following cases (i) occurrence of fundamental breach under the cases enlisted under article (69) of the Labour Law; or (ii) the employee is proven to be unfit under the applicable work policy. The penalty for abusive termination of unlimited employees is usually a minimum of two months ' salary for each year of service of the employee.

21.3. In practice, employers often tend to use limited duration for a short period of time (i.e. 1 or 3 years) which offers the right not to renew the contract at the lapse of its term without justification (as opposed to an unlimited employment contract).

H. Social Security

22.Companies incorporated in Egypt are required to register and obtain social security number from the Social Insurance Authority for the purposes of subscribing the employees in accordance with the Egyptian Social Insurance Law. After obtaining the social security number for the newly established entity, the company will be able to register its employees with the Social Security Department as per the law requirements.

23.The social security registration would apply to all employees who are employed for a period exceeding six months by private sector employers.

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