lex arabiae

Legal News of the Gulf

Vol. XIX – 4th Issue **October 2015**

Meyer-Reumann & Partners
P.O. Box 9353
Dubai, U.A.E.
Tel: 00971-4-331 7110
Fax: 00971-4-331 3832
dubai@meyer-reumann.com
www.meyer-reumann.com

With offices in
Dubai + Alexandria + Erbil + Muscat + Riyadh + Tehran

Though we constantly and carefully review and update the legal news and facts published in lex arabiae, the publisher/authors do not accept any legal liability for its contents, and the detailed facts cannot replace a thorough individual legal consultancy.

Publisher and copyrights©: Meyer-Reumann & Partners, Dubai. All rights reserved. Any kind of reproduction is subject to the publisher's prior permission.

Inside this Issue

United Arab Emirates
Inheritance of EU Nationals in the UAE
Elena Schildgen, Dubai p.1

United Arab Emirates
New UAE Labour Rules in the UAE
Tarek Jairwdeh, Dubai p.6

United Arab Emirates
Effects of the New UAE Company Law, Federal Law No. 2/2015 (Part 2)
Dr. Michael Krämer, Dubai p.8

Egypt
Investing in Egypt
Morad S. Ahmed, Alexandria p.13

Saudi Arabia
New Amendments to the Saudi Labour Law to be Enforced on October 18th, 2015
Hany Kenawi, Riyadh p.17

United Arab Emirates

Inheritance of EU Nationals in the UAE

Guiding Principle

As of August 17, 2015, the adoption of the uniform rules of a new EU Regulation No. 650/2012 must find consideration for inheritance cases of EU nationals in the United Arab Emirates as well. The Regulation addresses such issues as appropriate jurisdiction and applicable law and shall facilitate cross-border successions and harmonize the conflict-of-law rules of 24 EU states with the effect that in principle only one single criterion remains for determining the jurisdiction and the law, namely the last habitual residence of the deceased.

A. Effects of the EU Regulation on Succession of EU Nationals resident in the UAE:

I. General Principles of the EU Regulation:

The EU Regulation No. 650/2012 is a directive and as such directly applicable in all EU member states except Denmark, United Kingdom and Ireland since August 2015. However, it affects all persons of all EU Member States, including nationals of the three Member states where it is not applicable, as well as nationals of Non-EU States if these persons are resident in any of the "Regulation Zone States = RZS" (all EU states less Denmark, UK & Ireland) at the moment of their death.

The Regulation governs everything related to inheritance law and succession and excludes specifically everything related to tax and administrative matters. In addition, civil matters related to marital status, legal capacity, matrimonial economic regime, donations, company law, real estate rights and the registration of the rights over properties are excluded.

Quite clearly, the main aim of the EU Regulation is to streamline inheritance cases within the RZS and as such shall ensure that

- a given succession is treated coherently, by one single court applying one single law;
- the inheritance shall include the worldwide assets;
- citizens are able to choose whether the law applicable to their succession should be that of their last habitual residence (by default) or that of their nationality (by last will/testament);
- splitting of inheritance should be prevented;
- parallel proceedings and conflicting judicial decisions are avoided; and
- decisions relating to successions given in one EU state are recognized and enforced in other EU states.

It has to be noted though that the EU Regulation is not a uniform law i.e. it does not harmonize the internal succession rules of the RZS but only the conflict-of-law and jurisdiction rules regarding inheritance and succession.

1. Jurisdiction:

Concerning jurisdiction the main doctrine as per Art.4 of the EU Regulation is that courts at the place of residence shall be competent:

Article 4 General Jurisdiction

The courts of the Member State in which the deceased had his habitual residence at the time of death shall have jurisdiction to rule on the succession as a whole.

However, the following exceptions are included in Art 10 of the EU Regulation:

(1) Article 10 Subsidiary Jurisdiction

(2) Where the habitual residence of the deceased at the time of death is not located in a Member State, the courts of a Member State in which assets of the estate are located shall nevertheless have jurisdiction as a whole in so far as:

(a) The deceased had the nationality of that Member State at the time of death; or, failing that,

(b) The deceased had his previous habitual residence in that Member State (...) and a period of not more than 5 years has elapsed since that habitual residence changed.

Another exception is that the heirs may conclude a so-called choice-of-court agreement, provided the deceased, which includes a choice of law, did a last will/testament.

Result: The authorities of the country of the last residence shall handle the whole inheritance unless the heirs conclude a choice of forum agreement or a court in one of the RZS where assets are located may assume jurisdiction.

2. Applicable Law:

The provisions of the EU Regulation are conflict-of-law rules and as such determine which law the competent court shall apply on cases with connection to multiple laws i.e. residence, nationality, location of assets etc. The EU Regulation replaces the international private laws of the RZS, hence it provides succession and inheritance cases that the law applicable by the competent courts is the law at the place of the last residence of the deceased:

Article 20 Universal Application

Any law specified by this Regulation shall be applied whether or not it is the law of a Member State.

Article 21 General Rule

(1) (...) the law applicable to the succession as a whole shall be the law of the State in which the deceased had his habitual residence at the time of death.

(2) Where, by way of exception, it is clear from all the circumstances of the case that, at the time of death, the deceased was manifestly more closely connected with a State other than the State whose law would be applicable under paragraph 1; the law applicable to the succession shall be the law of that other State.

The default concept stipulated by the EU regulation is that there is no last will/testament and that therefore the applicable law in inheritance cases and for succession wil be that law of the state where the deceased was last resident. Only in exceptional cases, as described above, the law of another state may apply if the deceased did choose the applicable law in a last will/testament or another close connection can be established.

Result: The EU Regulation provides for the law at the place of the last residence of the deceased, unless the deceased has issued a last will or testament including a choice of law, which determines otherwise; for example choosing the law of the nationality.

II. Practical Implications of the EU Regulation for Inheritance cases of EU National resident in the UAE

1. Scope of Application:

Although predominantly designated to govern EU matters the principles of the EU Regulation does have certain effects beyond the prescribed scope of application and must find consideration in general for inheritance cases of

a) EU Nationals resident abroad i.e. outside the EU, particularly if assets are held in one of the RZS; and

b) Nationals of Denmark, UK and Ireland holding assets in one of the RZS; and

c) Non-EU Nationals having their last habitual residence and/or holding assets in one of the RZS.

2. Matters of Succession and Inheritance of EU Nationals resident in the UAE:

When faced with succession and inheritance matters brought before them by foreigners, the UAE courts in the past have always tended to apply as “lex fori” their own principles and national laws to determine which court is competent and which law applies; notwithstanding the nationality and religion of the deceased and whether there is a foreign will or not.

a) UAE Courts shall be Competent to Deal with Inheritance matters of Foreigner i.e. EU nationals:

The concept that the UAE courts and authorities by default will assume competence for inheritance matters also of non-muslim of EU nationals resident in the UAE in fact provides the same result as the EU Regulation would i.e. the authorities/courts at the place of the last residence shall be competent to handle inheritance cases of foreigners/EU nationals. The matters, which the UAE courts will deal with, may include the transfer of real estate property located in the UAE, release of the funds on bank accounts in the UAE, transfer of ownership of all other assets such as cars, boats or transfer of a lease agreement or other contracts etc.

b) UAE Courts shall be Competent to issue Judgments and Court orders Governing the Worldwide assets:

Whenever a UAE court assumes competence to rule on an inheritance matter of foreigners in the UAE it has always been clear and undisputed that the UAE court will only decide on assets - movable or immovable - located in the UAE. The result of this is that the application of Sharia rules and any distribution is limited to assets in the UAE.

Consequently, if the inheritance includes assets outside the UAE and such assets are located in one of the RZS the heirs based on the EU Regulation can refer the matter to the courts at the place of the location of the assets to obtain a decision on such assets or even on the inheritance as a whole (Art.10 EU Regulation).

3. UAE/Sharia Law will apply on Inheritance matters of EU Nationals resident in the UAE:

The EU Regulation stipulates that the last place of residence of the deceased EU National henceforth will determine the applicable law not the nationality.

If, therefore, a German or any other EU court is competent to decide on a succession matter involving an EU national with last residence in the UAE the application of the EU Regulation is mandatory. From now on this will result in the consequence that the German/EU courts may have to apply UAE i.e. Sharia Law on the succession case (or any other foreign law for that matter).

Even though the international private law rules of the UAE Civil Code in its Art. 17 (1) indeed stipulates, “Inheritance shall be governed by the law of the deceased at time of death” this is not a rule applied by UAE courts. As per the legal practice, UAE courts in all cases where they assume competence will always apply their own local laws on inheritance matters submitted to them.

B. Effects of a Choice of Law in a Last Will/Testament for Inheritance cases of German nationals resident in the UAE:

I. Enforcement of a Choice of Law:

The result of above is that indeed the application of the EU Regulation may result in the circumstance that an EU court situated in the RZS may have to apply UAE / Sharia Law on inheritance matter of EU Nationals resident in the UAE. The only possible way to avoid this appears to be do a last will/testament and clearly determine by choice the law applicable to the inheritance for example the law of the nationality of the testator.

1. Acknowledgment of Last wills/testaments:

a) Competence of German courts:

If therefore the heirs can submit a last will/testament including a choice of law declaring the law of the nationality of a EU National as governing law, the provisions of the EU Regulation stipulate that this chosen law shall be applied as per the last will of the testator. This will be directly acknowledged by the competent German or other RZS courts and the courts will apply the law of choice rather than the law of the place of the last residence.

The choice of law in a last will / testament indeed may avoid that a court in Germany or the EU will have to apply UAE law.

b) Competence of UAE courts:

From the current legal practice it must be concluded that the UAE courts will neither honour a last will/testament nor a choice of law included in such last will/testament for that matter, but will rather completely ignore any last will/testament therefore invalidating any included choice of law and instead will decide on the applicable law in their own discretion.

2. Exceptional Competence of EU courts:

Considering that the application of UAE law cannot be avoided in any event where UAE courts assume competence testators should make use of certain provisions included in the EU Regulation:

a) The heirs appointed in a last will/testament including a choice of law may approach the courts and authorities in the country of the law of choice directly and apply for a probate for individual assets which are located in that country or other EU states, although the deceased may have been resident in the UAE.

b) Furthermore, if the heirs because of certain circumstances i.e. their residence in EU countries wish that other courts and authorities should handle the whole matter the heirs could agree on and conclude a choice of forum agreement.

However, both options are only possible if there is a last will/testament including a choice of law, as only this provides other courts and authorities with the basis to assume competence.

II. Recommendations:

Art. 1 Review of Existing Last Wills/Testaments done prior to August 17, 2015:

The clauses included in any last will and testaments done prior to the EU Resolution taking effect will have to be checked if they continue to be valid as per the stipulations of the EU Regulation particularly concerning the choice of law.

Art. 2 Including a Choice of Law in Last Wills/Testaments later than August 17, 2015:

It is recommendable to do a last will for assets outside the UAE and to include a choice of law to determine the law of any of the EU countries corresponding to the nationality of the deceased in order to safeguard inheritance and succession of assets as per the wishes of the deceased.

Concerning the assets in the UAE the conclusion of this article is that despite a choice of law in a last will/testament or rather despite a last will/testament all together only UAE law will be applied. Therefore alternative solutions will have to be considered for the inheritance and succession of assets within the UAE i.e. registering a will with the DIFC Wills & Probate Registry.

Elena Schildgen
Meyer-Reumann & Partners,
Dubai Office

United Arab Emirates

New UAE Labour Rules in the UAE

Guiding Principle

The UAE-Ministry of Labour has issued a new set of rules through three new Decrees, which aim to regulate relations between employers and workers, and which should become effective January 1, 2016. These decrees are a big development in the Labour Law and deemed to clarify important issues of the Labour Law.

The UAE intends to enforce a new Labour Law at the start of 2016 to better regulate the relationship between employers and workers and curb violations of either parties' rights. From January 1, 2016, the UAE will implement sweeping reforms to the existing Labour Law, plugging loopholes that will now make employees even more content and secure in their workplace. These rules will take the labour market to a new stage based on a strong and balanced relationship between all parties and on agreement and transparency in contracting to guarantee the rights of all parties

The new law includes three main rules governing labour contracts for workers from abroad, terminating contracts between the employers and workers and the issuance of a new work permit to a resident worker, as follows:

a) Ministerial Decree 764: Standard Work Contracts

b) Ministerial Decree 765: Termination of Limited Contract and Unlimited Contract

c) Ministerial Decree 766: Granting of New Work Permits

Ministerial Decrees 764, 765 and 766 pave the way for improved labour relations by securing more stable practices governed by regulations that protect workers who are legally sponsored to enter the UAE, the Ministry said.

I. Standard Work Contract

The first rule in the new law requires the employer to issue a "clear and detailed" contract for the foreign workers employed from abroad, including all duties and rights for the two parties, the job terms and other requirements in a language understood by the worker.

The Ministerial Decree 764 of 2015 that governs the ministry-approved standard employment contracts states that a worker must be presented with an employment offer that conforms with the unified contract. Then the worker must sign the contract before it is submitted to the labour ministry for the issuance of a work permit, which must not be altered at any stage.

All contract renewals in force beforehand must use the new unified contract. The terms of the new contract, in addition to the employment offer, cannot be altered or substituted unless approved by the Ministry.

II. Terminating Work Contract

The second rule governs contract termination i.e. the Ministerial Decree 765 of 2015 includes a series of articles outlining conditions when a contract can

be terminated for term and non-term contracts.

1. Under term contracts of no more than two years, an employee contract may be terminated

- if the term of the contract expires,
- if an employer and employee mutually agree to end the contract,
- if either party acts unilaterally to terminate the contract or renewal, but complies with legal consequences of early termination including notification in writing at least one month in advance and no longer than three months.

A contract can also be terminated if a worker commits violations prohibited under Article 120 of the Federal Labour Law.

2. Non-term contracts can be terminated

- if both parties consent to termination,
- if one party gives notice of termination at least one month in advance and not exceeding three months or
- if one party unilaterally acts to terminate but bears consequences of early termination.

III. Granting a new Work Permit

The new rules also cover new job contracts to workers whose contracts have expired or terminated by an agreement between the employer and the worker provided the worker has completed at last six months with his employer.

Under Article 1 of Ministerial Decree 766 of 2015, rules and conditions for granting a permit to a worker for employment by a new employer must meet a set of new rules. For both term and non-term contracts, a new permit may be granted upon termination of the workers employment when the term of the contract has expired. A new permit can be granted when both worker and employer mutually consent to terminating the contract during the term

- if the worker has completed at least six months employment or
- if workers qualify for a skill set series classified by the ministry.

The decree also notes that a new permit can be issued for a worker whose employer terminated him or her without reason provided the worker has completed six months. The six-month rule is waived if the worker has skill levels classified by the ministry as 1, 2, and 3 meaning those who hold a university degree, post-secondary diploma or high school diploma, respectively.

Meanwhile, a worker may be granted a work permit for all term and non-term contracts if it is determined that the employer has failed to meet legal and contractual obligations, including but not limited to when the employer fails to pay the worker's wages for more than 60 days.

A worker may also be granted a permit if the labour ministry confirms that the employing company has not provided work due to the firm being inactive for more than two months and, if the worker reports to the ministry during the company shutdown.

Work permits may also be issued in cases in which a labour complaint is referred by the ministry to the labour

court and final ruling in favour of the worker who is terminated early or is owed outstanding wages less than two months of dues for end of service.

Tarek Jairwdeh
Meyer-Reumann & Partners,
Dubai Office

United Arab Emirates

Effects of the New UAE Company Law, Federal Law No. 2/2015 (Part 2)

Guiding Principle

On July 1, 2015 the long-awaited new UAE Commercial Company Law, Federal Law No. 2 of 2015 (New CCLaw) has taken effect and replaced the existing Federal Law No. 8 of 1984 concerning Commercial Companies (Old CCLaw). While the changes in the law are unlikely to have a substantial impact on the day-to-day operations of most companies in the UAE, the by-laws of virtually all companies with limited liability (LLC) will have to be updated in order to avoid such companies being "deemed dissolved" as imposed by Art. 374 New CCLaw).

A. Introduction:

Part 1 of this article in the previous issue of “lex arabiae” provided an overview of the most important changes, which were introduced by the New CCLaw. The second part of this article now aims to provide guidance on some of the changes that need to be introduced to virtually every LLC’s by-laws in order for such by-laws to comply with the provisions of the New CCLaw.

To be clear, we do not expect these mandatory changes to a LLC’s Memorandum and Articles of Association (MOA) to have any significant impact on the day-to-day commercial operations of such LLCs. In most cases, the MOA is factually

overruled by either a side agreement between a foreign investor and a local "sponsor" (the typical 51/49% UAE LLC). Or the MOA is overruled by a shareholders' agreement, which describes the rights and obligations of the shareholders in a LLC in more detail than would be appropriate to be contained in a MOA. However, given the penalty Art. 374 New CCLaw imposes on all companies, which do not comply with the New CCLaw ("[…] if a company fails to comply […], the company shall be deemed as dissolved in accordance with the provisions of this law."), action will need to be taken.

B. Required Changes (Selection):

I. Managers' Duties and Liability

One of the more important new requirements that are set out in the New CCLaw relates to the duties and liabilities of the general managers of an LLC. The Old CCLaw was comparatively quiet on this topic.

According to Art. 22 New CCLaw all managers of a company now have a duty to "preserve [the company's] rights and work for the benefit of the company honestly and faithfully". Art 24/84/162 New CCLaw underlines this obligation according to which managers are liable for their actions and any exemption from their liability is declared null and void.

Many existing MOAs do include such exemptions or indemnifications to the managers' benefit, and such provisions are now non-compliant with the requirements of the New CCLaw and must be removed.

At the same time, the New CCLaw strengthens the management authority of all managers. Art. 83 New CCLaw establishes an assumption that all managers "are authorized to exercise full powers to manage the company […]" unless the MOA states otherwise. Although the Old CCLaw contained a similar provision, practice in the UAE has so far been that MOAs were supposed to set out each individual power granted to the manager. It has, however, always been a bit of a problem setting out all acts a particular manager was authorized to undertake (thus leading to rather lengthy and often misleading management powers of attorney and corresponding provisions in the MOA), rather than simply stating the limitations of the manager's authorities. Hence, the New CCLaw gives reason to believe that defining the general managers' authorizations will now be significantly simplified. MOAs should use this newfound liberty and simply refer to Art. 83 New CCLaw while specifying the general manager's powers.

For the first time the New CCLaw (Art. 86) now also introduces an obligation on managers not to compete with the company they manage, be it by such manager also managing another, competing enterprise or otherwise. Such non-compete obligation can be lifted, however, subject to a resolution by the general assembly to that effect.

The New CCLaw further introduces an increased focus on the company's books and records being maintained in a proper fashion. Art. 15 New CCLaw establishes an obligation to maintain the MOA up-to—date at all times. Where registration is required i.e. for example, share transfers, any amendment in the activity

of a company, restrictions on the manager's powers, etc. this must be done with the "competent authority" (i.e. the relevant Department of Economic Development or later the newly introduced "Registrar" – see below) within not more than fifteen working days. Failure to do so will result in the risk for the company's manager(s) to be personal liabile for any damage resulting therefrom.

Furthermore, proper registration of all relevant details in the MOA has become a prerequisite for such details being effective vis-á-vis third parties. Matters, registration of which is required, are not enforceable against third parties until and unless properly registered in the MOA (Art. 15 New CCLaw).

II. Accounts and Auditors

In an effort to bring the accounting practices in the UAE more in-line with international accounting practices, some provisions related to accounting were amended as well. The requirement to maintain accounting books did exist under the Old CCLaw as well, but the New CCLaw now establishes requirements that are more specific.

According to Art. 26 New CCLaw, all companies are now required to maintain accurate accounting records at all times. Records shall be kept for at least five years following the end of the financial year of the company.

All accounting records need to be maintained in accordance with "International Accounting Standards and Practices" and must be audited at least once every year (Art. 27 New CCLaw). A new requirement is the requirement for all existing LLCs to appoint new auditors at least every three years (Art. 102/243 New CCLaw). This should be reflected in each company's MOA as well.

III. Registrar

For the first time, the New CCLaw introduces the office of a "Registrar" (Art. 33 – 38 New CCLaw). While the final role of such Registrar remains to be defined by the Minister of Economy, the New CCLaw suggests that the Registrar will have mainly two tasks: the supervision of the allocation of trade names and record keeping of all relevant corporate documents.

Duplications of trade names have long been a problem in the UAE. Not only has there been no proper communication amongst the Departments of Economic Development in the individual Emirates, thus allowing completely unrelated "XYZ LLCs" to exist in each of the Emirates. There has also always been a conflict between trade names and registered trademarks, leading to a range of UAE based companies being named after well renowned global corporations, presumably in many cases with rather dubious intentions.

In light of the above, the introduction of the office of the Registrar is a welcome step indeed.

The Registrar will also be charged with maintaining a register of all relevant corporate documentation. Up until now, commercial entities have only been required to provide the relevant Department of Economic Development with very basic documentation (usually not more than a current lease agreement) upon license renewal once a year. As mentioned above (see part B. I.), the

company managers are now obliged to maintain up-to-date corporate records and provide copies thereof to the Registrar.

IV. Annual General Meetings

Each company is required to have an annual general meeting of all shareholders within four months following the end of the company's financial year (Art. 92 New CCLaw). Nothing has changed insofar. However, the minimum quorum has changed, as has the process to call for an annual general meeting.

The Old CCLaw (Art. 244) required invitations to be sent to all shareholders at least 21 days prior to the planned annual general meeting. Invitations had to be sent by registered mail. No other option was permissible.

The New CCLaw (Art. 93) shortens the notice period to at least 15 days and now allows notifications to be sent by any means, provided that such means (invitations by email, for example) are expressly allowed in the company's MOA. The shareholders are free to agree on even shorter notice periods.

Another change that will need to be made to most MOAs relates to the quorum requirement for annual general meetings. Art. 249 Old CCLaw required only shareholders representing at least 50% of the company's capital to be present at the annual general meeting in order to constitute a quorum. Most current MOAs refer to such minimum quorum requirement. This is no longer permissible under the New CCLaw, however (Art. 96), which requires shareholders representing not less than 75% of the company's capital to be present at the annual general meeting.

This new quorum requirement is likely to be particularly cumbersome in practice. Under the Old CCLaw there was no particular quorum requirement for a second meeting, if a quorum is not present at the first annual general meeting. Art. 96 New CCLaw now requires a quorum of 50% (and hence, still more than the maximum of 49% a non-UAE national shareholder is allowed to hold) even at the second meeting. This means that the foreign shareholder(s) alone will constitute a quorum only at the third meeting, assuming that no quorum was present at the first two meeting attempts. In practice, this means that the only way for the foreign shareholder(s) to make decisions at annual general meetings without involvement of the local shareholder is at the third meeting attempt. A lot of time will have passed at such time, thus making the whole process unnecessarily (or deliberately?) cumbersome.

V. Pledging of Shares

Art. 79 New CCLaw introduces the opportunity for shareholders to pledge their shares "to another partner or to a third party". Any such pledge becomes effective only after such pledge has been registered in the commercial register. This is new and could have a significant practical application since, in principle, the local shareholder can now pledge his/her shares to the foreign partner and have such pledge officially registered.

VI. Other Requirements

The New CCLaw describes a range of further requirements that UAE companies need to comply with going

forward. Most importantly, Art. 104 New CCLaw states that the provisions in the New CCLaw relating to Joint Stock Companies are applicable to LLCs as well.

Due to their nature, Joint Stock Companies are usually more heavily regulated than “simple” LLCs. It is, therefore, rather surprising to see a provision like Art. 104 in the New CCLaw.

Art. 151 New CCLaw, for example, requires the chairperson and the majority of the board of directors of a company to be UAE nationals. Most LLCs are unlikely to have more than one manager, the nationality of whom can hardly be split by a 51/49 ratio.

Further, Art. 140 New CCLaw requires JSCs to publish their MOA on their company website. Through Art. 104 New CCLaw, this applies to LLCs as well. While it is common in other jurisdictions for LLCs to publish the most vital company information on their website, this is a new requirement for companies in the UAE and somewhat contradicts the UAE authorities’ classification of even the most basic corporate information as being of a “confidential” nature. That being said, it remains to be seen if this requirement will actually be enforced in practice.

The examples above do not require any amendment of the companies’ MOAs however, which is why this article will not deal with these requirements, and their potential implications in the future, in more detail.

C. Conclusion

The New CCLaw establishes various new requirements, which all UAE companies, including LLCs will need to follow. Given that most of these new requirements are unlikely to have a significant effect on a company’s operations it remains unclear why the New CCLaw aims to penalize any non-compliance as drastically as it does in Art. 374 thereof. However, it remains a fact that all UAE incorporated companies do have to comply in order to avoid being “deemed dissolved”, so all companies are well advised to have their by-laws checked and adapted in order to ensure undisturbed continued operations.

Dr. Michael Krämer
Meyer-Reumann & Partners,
Dubai Office

Egypt

Investment Projects in Egypt

Guiding Principle

The office of Meyer-Reumann & Partners (M&P) in Egypt assists foreign investors to establish their projects under the EG-Investment Law. The General Authority for Investments and Free Zones (GAFI) acts as the official regulator. It is the governmental body responsible for project's approval and reviewing their Articles of Association for a local entity for pursuing the investment project. Additionally M&P provides local support in the preparation for getting access to projects in the market.

A. The EG-Investment Law Law No. 8 of 1997 as amended by Law 17/2015

I. Introduction and Scope of What has not been Changed

On 12 March 2015, the Presidential Decree 17/2015 was issued to introduce substantial amendments to the Egyptian Investment Law 8/1997 (Egyptian Investment Law also known as "Egyptian Investment Guarantee and Incentives Law"). It amended certain provisions of the Companies Law 159/1981 (Companies Law), the Sales Tax Law 11/1991 (Sales Tax Law), and the Income Tax Law 91/2005 (Income Tax Law). All amendments generally aim to attract new investments to Egypt through offering further incentives and guarantees, removing obstacles, and streamlining the procedure.

II. Guarantees and Incentives of the Investment Law 8/1997 not amended

The amendments of Law 17/2015 are substantial (see below) except for some guarantees and incentives. Basically, the following summary shows, what has not been changed:

- Immunity from nationalization or expropriation,
- Immunity from administrative attachment or freezing assets,
- Exemption from certain provisions of Companies law (including distribution of 10 % of profits to employees),
- In general, foreign investors can invest in Egypt without any restrictions after obtaining security clearances from the national security agencies. However, the following activities are not open to direct investment by foreign investors:
- Importing for the purpose of trading in Egypt
- Acting as a commercial agent
- Foreign investments in certain aviation activities are also restricted.

III. The Amendments of Law 17/2015 of Law No. 8 of 1997

Below is a brief description of the main amendments and additions:

1. Trimming Sales Tax and Customs Duties

The sales tax on machinery and equipment necessary for production was reduced from 10% to 5% to be returned to the investor when presenting his first tax return. Customs duties on imported equipment and machinery linked to an investment under Law 8/1997 are set at 2% instead of 5%. There are no more

fees for non-pre-defined destination goods entering free zones.

The Egyptian Investment Guarantee and Incentives Law No. 8 of 1997 and its amendments are the investment laws that governs foreign investments and activities in Egypt.

Additional Non-Tax Incentives

Further non-tax incentives may be granted to labor-intensive projects and to investments in remote areas and in certain sectors such as energy, agriculture, logistics, and transportation.

2. Non-Tax Incentives may be Applied to:

- Project related own customs ports;
- Subsidies and favourable payment terms of the price of the power needed to operate the project.
- Refunding the expenses after the commencement of the project for extending the infrastructure for the project's land.
- Subsidies for technical training programs for employees and social insurance subscriptions.
- Allocation of governmental owned land free of charge or at discounted prices.

3. Additional Non-Tax Incentives

Incentives may be granted to labor-intensive projects and to investments in remote areas and in certain sectors such as energy, agriculture, logistics, and transportation.

Non-tax incentives may be applied to project related own customs ports such as:

- Subsidies and favourable payment terms of the price of the power needed to operate the project.
- Refunding the expenses after the commencement of the project for extending the infrastructure for the project's land.
- Subsidies for technical training programs for employees and social insurance subscriptions.
- Allocation of governmental owned land free of charge or at discounted prices.

4. Shielding Senior Executives from Prosecution

Companies' executives are now shielded from criminal prosecution for legal violations committed by the company. Senior executives may only be liable if it is proven that they had knowledge of the crime and intended to commit it for their own benefit or the benefit of others.

Penalties such as fines or suspension are now to be imposed on the company itself only. In case of recurrence, the operational license of the Company may be revoked or the company may be liquidated. This is in addition to any other complementary or ancillary penalties as stipulated by the law

5. The One-Stop-Shop System

The General Authority for Investment (GAFI) of the Ministry of Investment is now empowered to act as a one-stop-shop. Investors, in certain sectors, can get all licenses and approvals needed to establish and pursue the licensed activities. GAFI itself undertakes the burden of coordination between the different authorities ensuring the success of the one-stop-system. The determination, durations, procedures and methodology of such coordination shall be governed by a separate law.

6. Exclusion from the Bids and Tenders Law

Selection between investors qualified to obtain a license for a project shall be conducted on a free-competition and transparency basis. The Investment Law shall prevail over the Egyptian Bids and Tenders Law No. 89/1998. The criteria of selection shall be decided in the Executive Regulations.

7. Facilitated Exit Procedures

According to amendments, investors may freely exit the market without restrictions and without a lengthy procedure. Upon receiving the liquidation request, the authorities in charge shall notify the investor with all its pending obligations within a maximum period of 120 working days. The lapse of the said 120 days without a reply shall be considered an automatic release the investor from any further liability.

8. Allocation of State Land

A full new chapter is added to the Investment Law regulating allocation of state land and cutting through bureaucracy in a transparent and simple manner.

9. Alternative Forums for Investor-State

A new Chapter Seven is added to the Investment Law under title "Investment Disputes Settlement". The chapter created three out-of-court forums to encourage amicable settlement of investment disputes with the government. The three out-of-court forums are:

a) The GAFI Complaint Committee

The Complaint Committee is competent to consider challenges against administrative decisions issued by GAFI in connection with the implementation of the Investment Law and its executive regulations.

The committee will issue its decision within 60 days from the date of submitting the challenge. The lapse of the 60 days without a reply is considered a refusal of the challenge. The decision of the committee will be final and binding on GAFI. Resorting to the committee is voluntary and its decisions are not binding on the investor.

b) The Ministerial Committee for Resolution of Investment Disputes

A ministerial committee will be created at the Cabinet of Ministers to consider requests, complaints or disputes that may arise between an investor and a governmental body in connection with the implementation of the Investment Law The committee shall issue its decision with the reasons thereof within 30 days from finalizing the hearings. If approved by the Cabinet of Ministers, the decision shall be binding on the governmental party only. The Investor, conversely, retains his right to resort to state courts or arbitral tribunals to initiate the claim anew.

c) The Committee for Settlement of Governmental Contract Disputes

This ministerial committee will be established and charged with settling disputes between investors and governmental bodies arising out of investment If a settlement is reached between the parties, it will be effective and binding only when approved by the Cabinet of Ministers. If no settlement is

reached, each party can commence litigation or arbitration as the case may be. Submission to the committee is not a pre-requisite for commencement of a litigation or arbitration case.

B. Some Selected Investment Opportunities in Egypt

The new incentives as per EG-Law 17/2015 are targeted to encourage more investors to invest in Egypt. Egypt's Ministry of Investments has outlined specific investment opportunities in 2016 and onwards, in many sectors.

Hereinafter some projects are roughly indicating its basic nature: in the Industrial Sector:

1. The Project Bio-Ethanol from Molasses

- Bio-Ethanol from Molasses is an eco-friendly investment opportunity for alternative fuel production from sugar beet molasses).
- The costs of the project are estimated at USD 135 million (including capitalized interest).
- Period of Implementation: Expected construction period of 3 years (by 2017)
- The projects key investment rationales are:
- Locally available feedstock (sugar beet molasses)
- Strong demand for biofuels: bio-ethanol to be sold either locally through an off-take agreement or exported to the EU given growing bio-fuels global demand.

IV. The Project Bio-Ethanol from Rice Straw

- The Project Bio-Ethanol from Rice Straw is an investment opportunity for alternative fuel production from rice straw. It is an eco-friendly alternative bio-ethanol product to other agricultural wastes. Project land location has been identified and secured by the government.
- Location: Mutubas, Kafr El Sheikh Governorate.
- Project Description:
- Expected annual output of 50,000 tons
- Project feedstock (estimated at 275,000 tons) secured by a long-term feedstock supply agreement with waste recycling companies
- the products may be exported to EU countries or use for, local sales to EGPC
- Custom duties exemption on imported machinery for eco-friendly projects
- Project land location has been identified and secured by the government
- Strong government support to develop waste recycling projects through financial incentives and project development (Agriculture Waste Recycling Project or Ayady)
- Availability of Pre-Feasibility Studies, Feasibility Studies, and other Studies:
- Estimated Cost of the Project: USD 226.6 million

Rolf Meyer-Reumann
& Morad S. Ahmed
Meyer-Reumann & Partners,
Alexandria Office

Saudi Arabia

New Amendments to the Saudi Labour Law to be Enforced on October 18th, 2015

Guiding Principle

Following the approval of proposed amendments to the Labour Law by the Saudi Cabinet on March 23, 2015, the Ministry of Labour has set October 18, 2015 to be the date of enforcing the new amendments. This Article will provide a brief overview on these amendments.

A. Introduction

Having a large proportion of the Saudi labour market taken by expatriates, while there is a significant proportion of unemployment rate amongst the citizens, the Government is keen to keep the Labour Law meeting the developments of the market.

In line with these efforts, the Saudi Cabinet has approved the proposed amendments for the Labour Law on 23.03.2015. These amendments came shortly after recent amendments to the law about one year ago.

B. Amendments

The new amendments include 38 Articles of the Saudi Labour Law ("SA-LL")[1] organizing various topics such as vocational training, qualifications, privileges granted to employers nationalizing the jobs, articles associated with employment contract as well as articles associated with women's work and the mechanisms of inspection.

As per the new amendments, a married woman is now granted a leave for a period of 4 months and 10 days in the case of the decease of her husband. The current period is 15 days as determined by Art. 160, SA-LL.

Each employer having a work force of 50 or more is obliged to train a percentage of Saudi Nationals of not less than 12% of this work force (instead of previously 6%).

The period of fixed term i.e. limited employment contracts is now extended to four years instead of three. Such contract shall be considered concluded for an indefinite i.e. unlimited period if renewed for three consecutive years.

The new amendments granted the Ministry of Labour the right to abstain from renewing the work permits whenever the employer violates the standards for nationalization the jobs as set by the Ministry.

Both Parties of the employment contract at the unlimited period contracts have the right to terminate the contract for a legitimate reason by a written notification to the other party with a period no less than 60 days for monthly

[1] The Saudi Arabian Labour Statute (Law), promulgated by the Royal Decree No. M/51 dated 22.08.1426 corresponding to 26.09.2005, as amended; abbreviated ("SA-LL").

paid workers.

All entities operating in the Kingdom now are obliged to pay the wages of their workers through local banks in line with the Wages Protection System.

Violations are now punished with penalties including fines reaching up to SR 100,000[2], and closing the violating entities for a period of 30 days or even permanently.

Further amendments might be imposed shortly as the Shoura Council (the Saudi Parliament) is currently studying other topics including reducing the weekly working hours from 48 to 40 hours.

Hany Kenawi
Meyer-Reumann & Partners,
Riyadh Office

[2] € 1 = Saudi Riyals 4.279 as per 14.10.2015. For the updated rates, kindly revert to the following website: http://www.xe.com/