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01 Egypt Upholds Data Privacy with Issuance of New Data Protection Law

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On 17 July 2020, President Sisi approved Data Protection Law No. 151/2020. The new law governs the storage, processing and transmission of personal information to ensure its security. A unique aspect of the law is its application to the security of Egyptians' data, whether the violator is an Egyptian citizen, foreign resident, or a foreigner accessing Egyptians' information from abroad. The Data Protection Law represents an extension of Egypt's sovereignty over its citizens' information across international borders, breaking the self-imposed barriers that have been erected by other countries over a state's right to ensure citizens' electronic privacy and security. It will go into effect three months from the date of its publication in the Egyptian Gazette, in October of this year.

Key Provisions

The Data Protection Law does not protect corporate data from hacking. Personal data is limited to the data of natural persons. It is not permitted for anyone engage in the unauthorized access, use or dissemination a citizen's personal information. This provision is especially relevant in light of the campaign against sexual harassment, an element of which is online sexual harassment. It has become common for spurned partners to engage in revenge pornography, taking advantage of prior consent regarding the acquisition of personal information and images, then sending the information to third parties against the owner's will. In the event of a data breach, entities responsible for processing and retaining private data must notify the Personal Data Protection Center within 72 hour of the breach, unless the data is related to a national security concern, in which case the Center and the authorities must be notified immediately.

The new law governs direct marketing, a phenomenon through which companies or individuals legitimately obtain customers' contact information then sell the data to third parties, resulting in the bombardment of customers with unwanted advertisements and communications. Such communications are now prohibited unless the customer has given consent. Companies will adapt to the new law by including provisions granting them users' consent to exploit their private information for marketing purposes in applications' terms of use, adhesion contracts that are seldom subject to the user's line-by-line review.

Violations of the Data Protection Law are misdemeanors, with fines ranging from EGP 100,000 to EGP 1 million.

Exceptions

The Data Protection Law does not apply to the following types of information, as per Article 3 thereof:

1. Personal information retained by third parties for personal use;
2. Personal information used by third parties for statistical purposes;
3. Personal information used for journalistic reasons in compliance with the applicable press and journalism laws, when such information is correct and precise;
4. Personal information obtained for national security reasons;
5. Personal information obtained and retained by the Central Bank of Egypt and by entities subject to its supervision

This means that a website's collection of personal data through cookies is not a violation of the press law. Neither is it a violation for the Egyptian military or police to access a user's data when the country's national security interests are concerned. Such a broad exception raises the possibility that Egyptian state authorities can access the information of Egyptian expatriates abroad without violating the Egyptian Data Protection law; yet, such access may violate the domestic data protection laws in the jurisdictions where such expatriates are residing. The fifth exception is necessary for the continuity of online banking and e-payment systems.

Enforceability

Despite the vast reach of the law, it's primarily enforceable against Egyptians and foreigners residing in Egypt. Courts may issue in absentia rulings against Egyptian expatriates, yet the impact of such rulings will only take effect when such expatriates return to Egypt. It will be almost impossible to enforce a criminal judgment against foreign individuals who have never entered the country's borders, and it is extremely unlikely that a foreign state would permit the extradition of one of its citizens to face charges under Egypt's Data Protection Law.

Olena Shyrokova
Member of Dubai Team



02 New Business Chapter for Russian Investors in Egypt

In November 2015, **Egypt** signed an **Intergovernmental Agreement** with **Russia** to collaborate in the construction and operation of a Russian-designed nuclear power plant in Egypt. By October 2019, Russia allocated \$190M to the infrastructure of the nuclear plant.

The Project will be monitored by the International Atomic Energy Agency (IAEA), which effectively ensures compliance with international standards.

The new Investment Law No.72 of 2017 offers many advantages for international investments. In essence, the purpose of the law is to incentivize new foreigner investments. It allows investors to conduct business and eases the process of doing so by removing procedural and substantive obstacles. It replaces traditional tax exemptions that have not proven impactful.

Further, its aim is to induce economic growth in the developing areas by encouraging investors to build projects that are needed in underdeveloped areas in Egypt.

It also aims to attract foreign investors to the Egyptian market by providing tax and customs exemptions for companies established under its umbrella.

There are different mechanisms wherein a business can be set up in Egypt. Each mechanism serves a particular purpose, and allows for certain functions to be carried out:

→ **Representative Office.**

For instance, a Representative Office has a limited legal capacity. This means it can only carry out limited business activities and transactions that are expressly permitted under its internal rules. Moreover, its capacity is limited to the representation and protection of the interests of the parent company. It is also not permitted to generate any profit.

→ **Branch Office.**

The Branch Office however, can perform activities which may generate profits. It is not a separate legal entity but an extension of the parent company. Its activities must also be the same as the parent company.

→ **Subsidiary Company.**

Alternatively, a Subsidiary Company is owned and controlled by another company, known as the parent company. It is a separate legal entity distinct from its parent company. It can perform activities which are either the same as or different from the parent company.

→ **Limited Liability Company (LLC).**

Another mechanism to set up a business is known as LLC. It is formed by one or more individuals or entities through a special written agreement. LLC is permitted to engage in any lawful, for-profit business or activity other than banking or insurance.

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03 Pandemic and Taxes in Egypt

While there is no end in sight concerning the COVID-19 pandemic, many governments have ordered for the economy to be reopened. In Egypt, stores, restaurants, theaters, and even sporting clubs have been reopened to the public in an effort to allow those affected by the lockdown to make headway. However, in the same breath, one must comment on the less-than-ideal status of the government concerning taxes.

Many small and medium sized businesses operating on a cash basis with regularized book-keeping will find it easier to absorb the lost income and will likely face smaller tax amounts based on their reported net income. However, companies which base their income estimates on projected days of operations, may be in trouble. Companies which had failed to file for a partial halt of operations with the Egyptian Tax Authority may face full taxes as projected in their initial estimates. Had they filed for this halt; they would only have been accountable only for taxes due based on actual days of operations. It is not clear whether corporate tax breaks or extensions will be granted to companies practicing in Egypt, keeping in mind that this stance might change based on new data concerning the negative effects of COVID-19 on the economy in the medium term.



On a separate note, the Egyptian Parliament commenced discussions surrounding a proposed new law earlier this month. This law supposedly enforces mandatory payment of 1% of all net salaries earned within Egypt's borders to a so-called "Solidarity Contribution fund".

This fund is said to be dedicated for the relief of "the economic repercussions of epidemics or natural disasters". While authorities have not officially announced implementation of this law yet, it is expected to be applicable starting in late 2020 (watch for upcoming Client Alerts). Details concerning the bank account associated with the "Solidarity Contribution Fund" and to which these supposed monthly payment are to be made has not been announced. The uses of this fund and who the primary beneficiaries of it are also not clear.

Eslam Magdy
Senior Corporate Associate



04 New Measures for Hotels in Egypt

The Egyptian government has coordinated with the Ministry of Tourism and Antiquities and the Ministry of Health and Population to enact the required measures concerning hotel accommodation for domestic tourism. Such measures have been adopted by the Prime minister in order to meet the guidelines of the World Health Organization.

It is worth mentioning that according to the new measures, the hotel occupancy rate until the end of May shall not be exceeded 25% and such rate will be increase to be 50% starting from the first of June.

The new measures have been classified into three categories as follows:

Hotels requirements:

- The hotel must provide a clinic and a doctor in the hotel with the constant coordination with the Ministry of Health in this regard;
- Ensuring the quality of the personal protective equipment and sterilization substances;
- Prohibition of holding all kinds of parties or weddings in the hotel;
- Prohibition of all kinds of night activities in the hotel;
- Allocation of a specific place inside the hotel as a quarantine for the confirmed cases and suspected cases;
- Conducting permanently rapid testing for security employees;
- Prohibition of providing Shisha; and
- Using only single -use cutlery.

Guests requirements:

- Providing a sterilization device at the hotel entrance;
- Using the technological methods to complete and finish the procedures of guests check in or by using Single-use pens;
- Sterilizing guests' luggage before arriving and leaving the hotel;
- Measuring guests' temperature upon entering the hotel each time;
- Providing hand sterilizer in the reception area and all areas at all times; and
- Permanent Sterilization of all public areas.

Employees requirements:

- Rapid examination of employees, who are returning from leave before receiving the work, provided that the period of time for employees in coastal cities to obtain holidays is at least 60 days between each vacation;
- Measuring employees' temperature on a daily basis and presence of accommodation for employees at the hotel;
- Providing quarantine areas for the suspected cases;
- Providing employees with all required information and all preventive measures against COVID.19; and
- Sterilizing the rooms on a daily basis.

It is well established that all hotels must comply with all instructions of the Ministry of Health and the abovementioned measures to ensure the efficacy of the Egyptian Tourism.



05 Expropriation: Conditions, Forms, and Right to Regulate

In principle, expropriation, in the realm of international investment law, stands for the host state's power to seize over foreign owned property; however, expropriation, per se, is not an illegal measure under the international law. Expropriation might take place in compliance with spirit and merit of law when it subjects to certain conditions widely followed in the international practice. These conditions are grounded in public interest, non-discriminatory acts, adequate and prompt compensation, and due process of law.

Expropriation poses two conflicting interests in any investment agreement. Namely, the foreign investor's right to full protection and security, and the host state's right to regulate investments within its geographical boundaries. This conflict interprets the host state's behavior and motivation while expropriating the investor's property, and results in different forms expropriations. While forms of direct expropriation have become rarely nowadays, indirect expropriation forms have increasingly become the most common form of

the foreign property seizure. Expropriations may be embodied into various forms; Direct Expropriation; Creeping Expropriation; Intangible Property Seizure.

Direct Expropriation (Nationalization), as stated in the United Nation Conference on Trade and Development in 2012, means mandatory legal transfer of the title to the property or its outright physical seizure for the benefit of the host state. Thus, the host state's intention must be reflected through a legal or a physical act to deprive the investor of his/her property.

In contrast, in-direct expropriation, as a terminology, is not fully uniform, but one may encounter many forms that are sub-categories of indirect expropriation. The host state may impose a series of separate actions, gradually and in different stages, that eventually destroys (or nearly destroys) the value of investor's investment or deprives him or her

of control over the investment, establishing the creeping expropriation.

Also, intangible property rights may be sub-categorized under the indirect expropriation. These rights might include claims to money, claims to performance pursuant to the contract of the property in question, intellectual property rights, and generally any right conferred by law or contract among protected investments. Hence, expropriation is not limited only to tangible acts, but its scope extends to cover any intangible protected rights. An example of the expropriation of intangible rights is in *Wena Hotels vs Egypt*, in which the investor was deprived of his property (hotel management). The tribunal confirmed that “It’s well established that an expropriation is not limited to tangible property rights”.

This, however, not every breach of the investment contract constitutes an expropriation claim. Sometimes the state may act in a way that may cause some commercial losses to the other contracting party, showing no intention for expropriation. In this regard, the main criterion of distinguishing between the two overlapping situations is the appearance of the state. If the state appeared as a sovereign entity vis-à-vis the investor, then there will be grounds for expropriation dispute. Vice versa, if the state abandoned its sovereignty and acted like a normal contracting party to the agreement, there will be cause for expropriation claims.

To sum up, there is a plethora of elements that contribute in assessing the process of expropriation. Elements such as the severity of the measure, the duration of property deprivation, the host state’s expected benefit, and the investor’s loss, play a vital role in determining whether a certain measure amounts to expropriation or not. In both scenarios, the investor is entitled to an adequate and prompt compensation.

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