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NEWSLETTER

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www.hegazylaw.com

1095 Corniche El Nile Street
4th & 5th Floors, Suites 35 & 43
Garden City, Cairo, Egypt

Tel.: +202 27 93 49 39

Fax: +202 27 93 49 44

Email: info@hegazylaw.com

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01 Egypt's 30th Governorate: The New Administrative Capital

The New Administrative Capital (NAC) is a tremendous step forward that, once fully developed, will cement Egypt's position as an infrastructural leader on the African continent. Over the next two years, government infrastructure and services will shift from Cairo to the NAC. Private schools and universities are already offering classes there. The NAC is located close to Shorouk, Madinaty, Badr City, and 10th of Ramadan City. Adding the NAC to an already taxed Cairo governorate would be a mistake.

Designating the NAC as its own governorate and delineating its borders to include the satellite cities mentioned above would allow the government considerable legislative freedom to expand the NAC's current construction regulations, facilitate the imposition of tolls for passenger vehicles passing between Cairo and the NAC, and reduce the administrative and logistical burden on Cairo governorate. On a lighter note, increasing the number of Egyptian governorates to 30 fits in well with the Egyptian government's 2030 vision.

What Is the Legal Process for Declaring the NAC a Governorate?

In accordance with Article 1 of Local Governance Law no. 43/1979, the Egyptian president is authorized to declare a governorate and its borders via presidential decree.

Legal Comparison (City vs. Governorate)

Local Governance Law no. 43/1979 sets out the variation in legal status and regulatory authorities between villages, cities, counties, districts, and governorates. The governor is appointed directly by the Egyptian president and enjoys substantial authorities incomparable to those of a city's mayor or a district head. A governor's decisions carry the same legal weight as those of a minister. A governorate has its own council, public transportation network, and utilities services. The governorate's council has the right to set its own budget, obtain loans no greater than 40% of the existing budget, and subsidize charitable, financial, and cultural endeavors.

The governor holds administrative authority over the governorate's administrative employees, schools, and universities.

Adding a 30th governorate would decentralize Egypt's urban administrative apparatus in a more successful way than transferring employees from Cairo to the NAC. The population continues to grow exponentially, and Egypt is experiencing a youth bubble. A new administrative division would create more job opportunities, and the NAC can take advantage of PPP contracts to reduce the fiscal burden on its budget, entering into contracts with private companies to provide public services. Pressure on the Cairo courts would also be alleviated should NAC be decreed an independent governorate.

Construction and Investment Regulations

President Sisi first authorized the construction of the NAC on 20 August 2015, when he certified the transfer of land from the Armed Forces to be used as its site. The NAC's construction regulations were issued subsequently by virtue of Ministry of Housing and Utilities Decision no. 543/2018 and its Implementing Regulations, which complemented the existing Unified Construction Code no. 119/2008. The scope of the decision applies to the services, residential, and investment districts of the NAC.

Decision no. 543/2018 is more precise than the Unified Construction Code, and designating the NAC as an independent governorate would lead to the amendment of Decision no. 543/2018 to apply to the NAC governorate as a whole, which would reduce the instances of informal

settlements and promote the uniformity of construction in the surrounding areas. It would also allow the recently amended provisions of the Implementing Regulations of Investment Law no. 72/2017 to extend investment incentives to companies hoping to capitalize on construction in areas outside the NAC's city limits.



02 Foreign ownership of international schools operating in Egypt

Decree no. 422 of 2014, issued by the Minister of Education regulates and organizes some fundamental rules related to international schools in Egypt that adopt different educational systems with international programs. Some of said decree's provisions have been modified by other further decrees, but most importantly decree number 306 of 2019 implemented a crucial amendment to paragraph (a) of the third section of second article of the 2014 decree.

The amended provision rules that in the case of ownership of the managing company by a company, fund, foreign authority, foreign person, or even to dual nationality persons; then some conditions should be respected.

One of these conditions is to submit a statement concerning the shareholders' participation percentage, as well as their actual shares in the educational institution. In the case of the approval of said shares by the competent authority, then no further modifications can be made; either by substituting actual shareholders by non-Egyptian shareholders, or any other type of modification unless prior approval is obtained.

A previous condition was the requirement that the participation rate of foreign shareholders or of dual nationality shareholders should not exceed 20% of the total shares of the managing company. Finally, the decree of 2019 prohibited any waiver of the shares of these mentioned shareholders.

Despite being in force for more than a year, a new decree was issued in 2020 (decree number 238) further modifying 2019's decree.

The amended provision substitutes the ownership provision discussed above by stating conditions allowing shareholders in the managing company the same procedures applied for juridical persons owned by Egyptians.

We can deduce from such provision that an implicit modification of the previously allowed percentage of 20% has been replaced to treat the foreign owners like any juridical person owned by Egyptians, that it can then be totally owned by foreigners.

The last condition in 2019's decree related to the waiver of the said shares is replaced in the 2020 decree by the fact that in case there is any objection related to the aforementioned shareholders in the managing Company; then the issue is submitted to a competent committee to decide about the fulfilment or not of the condition related to these specific shareholders of the managing Company.

We can conclude this article by mentioning that such flexibility regarding the ownership conditions of the Company that manages the educational institution for foreigners of dual nationality persons encourages them to invest in Egypt as they can incorporate a Company to manage an international educational institute in Egypt with the same conditions and requirement applied for Companies owned totally by Egyptians.



03 Crowdfunding - the Silicon Valley Model

What would the world look like if there were Silicon Valley everywhere?

The new form of capital formation emerged in an organized way in the wake of the 2008 financial crisis largely because of the difficulties faced by artisans, entrepreneurs and early-stage enterprises in raising funds. The search for funds to finance a business sometimes finds interesting forms of investment.

Crowdfunding is an Internet-enabled way for the raising of funds for specific projects on platforms that pool a group of founders to provide loans, investment, money contributions or donations.

In less than a decade, crowdfunding has gained traction in a number of developed economies, including Australia, the United Kingdom, the Netherlands, Italy, and the United States. By 2025, global crowdfunding investment will reach \$ 93 billion, according to World Bank forecasts.

However, people need transparent crowdfunding in order to trust in this new phenomenon. Credible crowdfunding systems require more than entrepreneurs and willing investors. They also need a supportive ecosystem and enabling factors,

including forward-thinking regulations, effective technological solutions, and cultures that can adapt to this new investment vehicle. And it should be noted that it is very important to enact regulation that is not too burdensome, which might otherwise drive companies into the gray economy.

Four declinations of crowdfunding exist:

- 1) Donation crowdfunding involves contributors giving (altruistically) money to a campaign and getting in return, at most, an acknowledgment.
- 2) Reward crowdfunding involves contributors giving to a campaign and getting in return a product or a service.
- 3) Lending crowdfunding involves investors offering a loan to a campaign and getting back in return their capital plus interest.
- 4) Equity crowdfunding involves investors buying stakes in a company and getting company stocks in return.

In the United States only crowdfunding has received regulation. In 2012, the JOBS Act (Jumpstart Our Business Startups Act) was developed, which finally entered into force only in 2016.

The activities of crowdplatforms in the US are regulated by the Securities and Exchange Commission (SEC). Under the law, it is allowed to attract up to USD 1 million online with the maximum possible number of 2 thousand investors. The investor receives shares of the enterprise, dividends, the right to vote at general meetings of shareholders, etc. An investment limit has been set for non-professional investors during the year in the amount of up to 5% of its annual net income if the investor's annual net income is less than USD 100 thousand (maximum

USD 2 thousand), and up to 10% if the net income is over USD 100 thousand (maximum USD 100 thousand). At the same time, certain US states have the right to limit the investment limit for individuals who are non-professional investors; for example, in the State of Indiana, the limit is \$ 5,000 per year, in the state of Maryland, the minimum size of one investment is \$ 100.

Crowdfunding in the UK is regulated by the Financial Conduct Authority (FCA), an independent non-governmental body. Similar to the approach taken in the United States, the FCA has set a limit on crowdfunding investments for various types of investors: for non-professional investors throughout the year, up to 10% of their investment capital.

The limit does not apply to qualified investors. There are no mandatory requirements that a due diligence procedure is required when selecting projects.

Platforms should disclose the nature of the service provided and related information about it; disclose sufficient information about the nature of the

service in such a way that investors can understand that due diligence is being undertaken properly, and assess the need to carry out their own due diligence before investing.

France was one of the first countries to enact specific legislation to regulate crowdfunding, in October 2014. Investment portals and intermediary resources were divided into 3 categories:

1. Platforms for loans with or without interest (IFP).
2. Resources for the sale of shares (CIP).
3. Resources for the provision of investment services (PSI).

All three types of platforms must be registered with the Association for Certification of Intermediaries in Insurance, Banking and Finance (ORIAS). PSI is the most professional crowd investing platform that requires clients to have a certain amount of capital. The law sets the maximum amount of funding at 1 million euros, and the maximum amount of investment is 1 thousand euros. The restriction is made to protect investors from large losses.

In Italy in virtue of Legislative Decree 50/2017 and the new CONSOB Regulations of 2018, the following types of companies have the right to use the crowdfunding system:

- 1) Micro-enterprises; where the number of employees is no more than 10 people, and the total turnover (or overall balance) does not exceed 2 million euros

2) Small enterprises; where the number of employees is not more than 50 people, and the total turnover (or overall balance) does not exceed 10 million euros

3) Medium-sized enterprises; where the number of employees is not more than 50 people, and the turnover (or overall balance) does not exceed 43 million euros.

Internet platforms for crowdfunding should clearly reflect the services offered to the public, guarantees, and rules of transparency. Crowdfunding platform executives are also required to join the compensation scheme in order to protect their investors. Alternatively, these managers can also provide for proactive insurance contracts against any risks that may arise from professional liability, covering an amount of at least € 20,000 for each claim and € 1 million for all claims over one year.

Australian Securities and Investment Commission (ASIC) is in charge of local marketplace lending. According to the country's laws, companies offering such products need an Australian financial services (AFS) license along with an Australian credit license for those dealing with personal loans. The country's crowd-sourced funding transactions are monitored by another regulator, the Corporations and Markets Advisory Committee (CAMAC) whose report suggested Australia introduce regulations that allow retail investors to put up to \$10,000 a year in start-ups via equity crowdfunding, backing each project with a maximum of \$2,500. CAMAC proposed that CF platforms offer businesses to raise up to \$2 million per year.

Since January 2020, 259-ФЗ "On attracting investments using investment platforms and on amendments to certain legislative acts of the Russian Federation" came into force. According to the law, an Investor can use three ways to invest in a project on the platform: loans, purchase of equity securities (by private subscription), purchase of utilitarian digital rights (project tokens on the platform, certified by a digital certificate). In fact, now an LLC will be able to issue tokens, which simplifies the procedure for investing in start-up projects. The law sets the maximum amount of funding at 1 billion rubles and non-professional investors can invest with a limit of 600 thousand rubles per year, for professional investors there is no such limit. Investment platforms must have equity capital of at least 5 billion rubles and be registered in the register of the National Central Bank.

In the fall of last year, the Financial Regulatory Authority's (FRA) Board of Directors in Egypt has approved a draft law that aims to regulate and support the use of Fintech services in the non-banking financial sector. Covering areas including crowdfunding and digital investments as well as issuance of bonds and securities, the draft law enables the FRA to issue temporary licenses to qualified fintech companies. The regulator is required to establish a regulatory sandbox for fintech companies to test their products and services under the supervision of the regulators. The sandbox would likely be a virtual setup. The draft defines the types of companies and solutions that would be regulated under the proposed framework as well as licensing procedures,

infrastructure requirements, technical competence and information systems, organization structure and professional competence as well as other minimum requirements to facilitate fintech activities.

It is not yet possible to get acquainted with the draft due to the state policy. We hope that the law will be adopted and be moderately free, ensure safety, transparency, fruitfulness, and “Sand Valley” will be also here in Egypt.



Mohamed Hamza
Senior Corporate Associate

04

Highlight on the Unified Tax Procedures Law No. 206 of 2020

The Egyptian Government issued the Unified Tax Procedures Law No. 206 of 2020 (the “Law”) on October 20, 2020, amending certain articles of the income tax law, value-added tax law, stamp tax, state development tax, and other similar taxes.

The Law aims to establish unified tax procedures for filing and regulating direct and indirect taxes. Accordingly, taxpayers will have a single tax code for their tax registration for the different types of taxes.

The key issues addressed by the Law involve filing of returns, financial penalties, rights, and obligations of the Egyptian Tax Authority (“ETA”) and taxpayers as relevant to tax audit, appeal, refund, documentation retention, etc.

Amended corporate tax returns

Taxpayers have the right to submit an amended corporate income tax return within one year of the original submission date.

Taxpayers will lose their right to submit an amended tax return upon either of the following:

- Tax evasion

- Receiving a tax audit notification from the Egyptian tax authorities (“ETA”)
- In case the amended tax return provides a lower tax due than the original return, the taxpayer should submit a refund request to the ETA. The ETA will review the case and respond to the taxpayer within six months of the request’s submission date.

Payroll tax returns / reconciliations

- The Law states that taxpayers are required to submit quarterly payroll tax returns to the ETA including the following information; names and number of employees (along with other relevant data), total salaries, allowances, and withheld taxes, along with the payment receipt.
- Taxpayers are also required to submit, to the ETA, an annual tax reconciliation every January and settle any tax variances which may arise therefrom. The employer has the right to deduct such variances from its employees.

Value added tax returns

- The Law states a new deadline for the monthly value added tax returns,

which is a period of one month from the end of the tax period (which used to be two months, previously).

- For businesses which involve; i) importation/exportation, ii) ad-hoc provision of a VAT-table service, where those businesses only engage in a limited number of transactions per year; the taxpayer should be eligible to submit a VAT return only for the month of the relevant transaction. An approval from the head of the tax authority should be obtained for that purpose.
- Taxpayers who are not subject to VAT should still register with the ETA's online platform. An annual fee, that does not exceed EGP 500, applies on such registration.

Tax refund

- According to the Law, in case of tax overpayment, ETA is obliged to utilize the mentioned tax for settling the taxpayer's previous tax obligations or refund the tax overpayment unless the taxpayer requests the ETA to utilize the overpayment for the future tax obligations.
- Overpaid taxes shall be refunded by ETA to the taxpayer within 45 days following receipt of the taxpayer's refund request, along with the relevant supporting documentation.
- Additionally, an interest (equal to 2% above the Central Bank of Egypt Credit and discount rate for the relevant year) shall be applied, moreover, in case ETA fails to meet the above-mentioned timeline.

Tax appeal procedures

- Upon a taxpayer's appeal on a tax assessment, an appeal form should be submitted to ETA, including the disputed points in detail. Otherwise, the form will be inadmissible. ETA shall notify the taxpayer of the committee's date to review their objection within 30 days of submitting the appeal form.

Financial penalties

The Law provided a range of financial penalties for non-compliance with the tax laws as follows:

Penalty of EGP 3,000 up to EGP 50,000 applicable in the following cases:

- Non-compliance with the deadlines of submitting the different types of tax returns (such as: corporate income tax, payroll tax, VAT, and state development tax) for a period not exceeding 60 days from the tax return due date;
- Including false information in the tax returns;
- Non-cooperation during tax audits;
- Non-compliance with Transfer Pricing three-tier filing requirements; and
- The above-mentioned penalty could be doubled or tripled in case of recurrence.

Penalty of EGP 5,000 up to EGP 200,000 applicable in the following cases:

- Non submission of tax returns for a period exceeding 60 days following their due date;

- The above-mentioned penalty could be doubled or tripled in case of recurrence within a three year period.

Penalty of EGP 20,000 up to EGP 100,000 applicable in the following case:

- The taxpayer not notifying ETA of change(s) in the company's tax registration information within a period of 30 days of such change.

Tax clearance certificate

- Tax clearance certificates shall be issued by ETA within 40 days of the date of receiving a taxpayer's request.

State development tax

- Businesses addressed by the state development tax law (issued in July 2020) are required to submit a monthly return.
- The above-mentioned financial penalties should also apply to state development tax returns.
- Business sectors to which state development tax applies, include entertainment / leisure, sport unions and clubs, manufacturers of pet food, manufacturers of mobile phones and internet services providers.

Documentation retention

- Taxpayers are required to maintain books, records, and supporting documents for a period of five years as of the date of submitting the tax return.

ETA's access to information

- Tax auditors have the right to access taxpayers' premises and request to review books, documents, etc. without prior notice. This applies regardless of whether the taxpayer is taxable or not (e.g., free zone entities).

Exchange of information

- ETA has the right, as per the Law, to exchange taxpayers' information with the tax authorities in jurisdictions that have double taxation avoidance treaties ("DTT") with Egypt. Exchange of information should be limited to the purpose of DTT application.
- Furthermore, ETA may enter into agreements, or protocols with other authorities, organizations, institutions, etc. to allow for the exchange of information with those entities.
- The exchange of information in the above context, shall not breach the confidentiality of commercial, industrial, or professional information relevant to the taxpayer.

Executive Regulations

- The Minister of Finance shall issue the executive regulations of the unified tax procedures law within a period of six months from the issuance date of the law.
- The existing laws shall remain in force until the issuance of the executive regulations, as long as they do not contradict with the provisions of the Law.

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