NAVIGATING THE LEGAL LANDSCAPE OF FDI IN EGYPT WITH AYMAN NOUR

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With Suzan Taha

Foreign Direct Investment (FDI) in Egypt has been a key driver of economic growth and development in the country. In recent years, Egypt has implemented a number of reforms to improve its investment climate and attract more FDI. These efforts have paid off, as FDI inflows to Egypt have increased significantly in recent years.

One of the main factors contributing to the growth of FDI in Egypt is the country's strategic location. Located at the crossroads of Africa, the Middle East, and Europe, Egypt is a gateway to markets in these regions. This makes it an attractive location for businesses looking to access these markets.

With a vast understanding of the country's legal and judicial system, **Ayman Nour** (pictured) Partner, Head of Al Tamimi & Company Egypt offices, has provided comprehensive insights into the various aspects related to FDI in Egypt.

What are the key legal considerations for foreign companies looking to invest in Egypt?

When it comes to foreign direct investment (FDI) in Egypt, there are three key legal considerations that foreign companies should keep in mind: entry, operation, and exit. Egypt has taken steps to facilitate the process of establishing businesses and increased the types of corporate vehicles required to operate in the country.

Egypt's vast natural resources and young, qualified labour force make it an attractive destination for foreign investment. However, exiting the market can be a lengthy and burdensome process that requires clearance from authorities such as Tax and Social Insurance.

Nevertheless, the major challenges to FDI are manmade and can be rectified. The culture of public employees, who may fear facilitating solutions for investors due to regulatory authorities' mindset to penalize such actions, needs to become more enabling. Additionally, security clearance on acquisitions or sales of stocks can stall transactions, even in cases where the countries involved are politically friendly. To attract more FDI, there needs to be a faster and clearer criteria for security clearance. Despite the challenges, with the right culture and system in place, Egypt has the potential to be an attractive destination for foreign investors.

What are the requirements for setting up a business in Egypt, and what are the associated costs and fees?

Egypt has made it easier for individuals and corporations to establish business in the country, with several options available for company formation. Limited Liability Companies (LLCs) require two or more partners, who can be either natural or judicial persons, with no nationality restrictions. The minimum capital requirement is generally not specified, except for specific activities like importation which require a minimum of EGP 2 million. The management of LLCs is carried out by managers, and there are no nationality requirements for either shareholders or managers. Governmental fees and expenses for LLCs are determined based on the company's capital.

Joint Stock Companies (JSCs) require a minimum of three shareholders, with no nationality restrictions. JSCs may also be fully owned and managed by foreigners. The minimum required issued capital for a JSC is EGP 250,000, and there are specific capital requirements for certain activities. JSCs may be listed on any stock exchange and may issue bonds or other financial instruments. The management of JSCs is carried out by a board of directors, and there are no nationality requirements for directors. Governmental fees and expenses for JSCs are also determined based on the company's capital.

Finally, Single Member Limited Companies (SMLCs) were introduced in 2018, allowing individuals or companies to establish an entity with limited liability. The capital requirement for SMLCs is a minimum of EGP 1,000, which must be paid in full in advance. However, SMLCs are prevented from certain activities like insurance and banking. The fees and expenses for SMLCs are determined based on the company's capital.

What are the restrictions on foreign ownership of businesses in Egypt, and how can these be navigated?

The restrictions on foreign ownership of businesses in Egypt are primarily related to importation, commercial agency, outsourcing companies for employees outside of Egypt, clinics, private universities, and maritime agencies. For importation, the Importers Register Law requires that the Egyptian ownership must be 51% for all types of companies. However, the General Organization for Export and Import Control (GOEIC) does not track the ultimate beneficial owner of the Egyptian company at present, which means that foreign investors can own an Egyptian company 100% and said Egyptian company can own the 51% of the importation company.

For commercial agency, the Agency Law requires that all commercial agents and intermediaries to be Egyptian or 100% owned Egyptian companies and be registered in the Commercial Agents Register held by GOEIC. The same requirement applies to outsourcing companies for employees outside of Egypt and clinics, which must be owned by Egyptian individuals or 100% owned Egyptian companies.

For private universities, the Egyptian ownership quota must be 51% for all types of companies. Finally, for maritime agencies, any company concluding maritime agency activities should procure an operational license from the Maritime Transport Sector of the Ministry of Transportation, and the licensed company must be at least owned by 51% Egyptian nationals (individuals or entities).

To navigate these restrictions, foreign investors can consider setting up an Egyptian company and ensuring that at least 51% of the ownership is held by Egyptian nationals or entities. Alternatively, they can explore the option of setting up a joint venture with an Egyptian partner or finding an Egyptian commercial agent or intermediary to work with. It is also important to stay up to date with any changes or developments in the laws and regulations related to foreign ownership in Egypt.

How can foreign companies protect their intellectual property in Egypt, and what are the available enforcement mechanisms in the event of infringement?

Enforcement mechanisms for intellectual property (IP) infringement in Egypt are available to foreign companies that want to protect their IP. The Egyptian IP Law No. 82 of 2002 outlines the provisions for protecting patents, utility models, trademarks, industrial designs, and copyrights in Egypt. The Egyptian Patent Office is the competent authority for registering and enforcing patents and utility models, and foreign applicants must appoint an Egyptian registered attorney to represent them before the Patent Office.

If a foreign company's IP is infringed in Egypt, they can use the available enforcement mechanisms such as filing a complaint with the Public Prosecutor or initiating a civil lawsuit to seek compensation and stop the infringement. The Public Prosecutor can initiate criminal proceedings against infringers, and the Egyptian courts can grant an injunction to stop the infringement and award damages to the IP owner.

In conclusion, foreign companies can protect their IP in Egypt by registering their patents and utility models with the Egyptian Patent Office and using the available enforcement mechanisms in case of infringement. It is also essential to appoint an Egyptian registered attorney to represent them before the Patent Office.

The available enforcement mechanisms in the event of infringement of a patent or utility model certificate in Egypt include the right to sue any party infringing on the owner's rights. The inventor will have different legal rights at different stages of the patent process, such as weak protection during the pending stage and full legal rights after the issuance of the patent. If an infringement occurs, the patent owner can file a civil lawsuit to make the infringing party cease their use of the patented invention and pay damages.

For industrial designs, any natural person or legal entity can file an application to register an industrial design with the Egyptian Trade Registry Department. The design application undergoes both formal and substantive examinations, and after payment of the official registration fee, the patent for the industrial design is issued. The protection period for an industrial design in Egypt is 10 years from the filing date, and it can be extended once for a further period of 5 years upon payment of renewal fees.

However, industrial designs whose shape is due to technical or functional requirements of the product, designs that include emblems, religious symbols, stamps or flags of Egypt or other states, or designs that closely resemble a registered trademark or a well-known mark cannot be registered. Filing requirements include a legalized power of attorney up to the Egyptian Consulate in Arabic, an extract of the commercial register, four copies of the drawing of the design, a summary description of the design, and a certified copy of the priority document. Foreign applicants must appoint an Egyptian registered attorney to represent them before the Trademarks and Industrial Designs Office.

The available enforcement mechanisms for industrial design infringement in Egypt are fines ranging from 4,000 to 10,000 pounds for imitating a protected industrial design, manufacturing, selling, or offering for sale products bearing imitated industrial designs, and unlawfully affixing indications that may lead to believe that such a person has registered an industrial design. In case of repetition, the punishment includes imprisonment for a period of not less than one month and a fine of not less than 8,000 pounds and not more than 20,000 pounds. The court also orders the confiscation of the incriminated industrial design, the infringed products, and the implements used in the infringement. The convicting order is published in one or more newspapers at the expense of the convicted party.

Some constraints of the intellectual property system in Egypt include a lack of expertise and trained human resources, the lack of integration between scientific and industry research, legal loopholes in the Egyptian IP law in terms of enforcement strategy and extension of time for deadlines, and the absence of a unified authority coordinating amongst each other. Additionally, there is a remarkable delay in the prosecution of patent applications in the pharmaceutical sector, and some employees at the Egyptian Patent Office and the Egyptian trademarks and industrial designs office lack expertise or up-to-date IP knowledge.

An initiative has been taken to address these constraints. Egypt launched its National Strategy for Intellectual Property in September 2022. The strategy aims to establish a National IP Authority to coordinate the efforts of IP departments and offices across Egypt, configure the legislative environment for IP, and optimize the economic return of IP in achieving the Sustainable Development Goals. The strategy will be implemented over the next five years.

Trademarks and copyrights are forms of intellectual property that are protected by governments worldwide. Copyright law protects the rights of creators over their artistic and literary works, while a trademark is a recognizable symbol, phrase, or sign that distinguishes a product or service from others in the market. Governments work to establish laws and regulations to grant creators exclusive rights over their work. In Egypt, these laws include the Intellectual Property Law No. 82 of 2002, as well as implementing regulations and international conventions such as the Madrid Protocol, Paris Convention, and Bern Convention. It is recommended that individuals protect their intellectual property by registering them with the relevant governmental bodies before disclosing them to the public. Depending on the type of intellectual property that needs protection, different authorities oversee the registration process.

In the event of infringement of a trademark or copyright, enforcement mechanisms are available. In Egypt, the enforcement of trademarks involves legal notices, criminal actions, and civil actions, while copyrights require petitions filed with the relevant authority. Border measures are taken at Egyptian customs to prevent counterfeit shipments from entering the market. Protecting intellectual property is crucial, and creators should take measures to ensure their intellectual property is legally safeguarded.

What are the tax implications of investing in Egypt, and what tax incentives are available to foreign companies?

It is important to note that tax incentives and benefits provided by the Investment Law in Egypt vary based on the investment regime, whether it is inland, free zone or economic zone.

For inland companies, projects set up according to the investment map will be granted an investment incentive in the form of a discount off taxable net profits. The discount will be 50% off investment costs for Sector A and 30% off investment costs for Sector B. The sectors cover different geographic areas of the Republic and project types, including labor-intensive projects, SMEs, renewable energy projects, tourism projects, automotive manufacturing, and more.

For free zone companies, investment incentives include exemption from custom duties, sales taxes, and other taxes for all capital assets and production requirements for the project activities throughout the project period. Additionally, the project's exports and imports are exempt from custom duties and taxes, and the project and its profits are not subject to any taxation or customs laws or legislations applicable in the country throughout the project period.

For economic zone companies, there is a 0% customs tax initiative applied on all the material and tools imported from abroad. Re-exports are also subject to the same initiative. A 0% VAT is applied within the economic zone when importing from the local market or abroad into the economic zone, while exporting products from the economic zone to the domestic market is subject to a 14% VAT. Investment projects in the economic zone are granted an investment incentive as a deduction from the net taxable profits at a rate of 50% of the total investment costs, with a discount period not exceeding seven years from the date of practicing the activity.

Overall, these tax incentives and benefits provided by the Investment Law in Egypt aim to encourage foreign investment and support economic growth in different sectors and geographic areas of the country.

How do labour laws and employment regulations in Egypt impact foreign companies?

The labour laws and employment regulations in Egypt can have both positive and negative impacts on foreign companies. The relatively low minimum wage and high number of qualified unemployed individuals can be advantages for companies seeking to hire in Egypt. However, the difficulty in terminating employment contracts and the requirement to pay large severance or compensatory settlements can be a major disadvantage for businesses. This may lead to retaining undesirable employees or hiring through outsourcing companies to avoid paying increased compensation or profit share. Additionally, the entitlements of women employees to maternity leave and carry-over of annual leave, alongside the numerous public holidays, can create financial distress among employers.

These labour law obstacles can hinder foreign investment in Egypt if companies are unwilling to invest due to the lack of clarity around important labour provisions and regulations, such as employee dismissal procedures. Therefore, it is important for strict policies to be established and authenticated by competent authorities to ensure compliance by employees and avoid such obstacles that may hinder foreign investment in Egypt.

How effective are the available channels for dispute resolution in Egypt for foreign companies?

The available channels for dispute resolution in Egypt for foreign companies are generally effective. The Egyptian legal and judicial system is well-established and has specialized courts, such as Economic Courts, to oversee commercial matters. Disputes can be resolved through litigation before courts, arbitration, mediation, and specialized committees. The arbitration legislation in Egypt is based on the UNCITRAL Model Law and allows for party autonomy, meaning parties are at liberty to elect the institution and arbitrators to adjudicate the dispute.

Egypt is also a signatory to several multilateral conventions regarding arbitration, and it has signed around 115 bilateral investment treaties with other countries that include possible recourse to arbitration. The enforcement mechanism for domestic judgments, foreign judgments, and arbitral awards is well-established under local laws, the New York Convention, and other bilateral and regional enforcement treaties. Recently, Egypt has also adopted measures and laws to digitalize the litigation process before courts and increase the use of alternative mechanisms such as mediation and conciliation.

About Ayman Nour

As the head of the Corporate Structuring department for Al Tamimi & Company in Egypt, Ayman Nour brings extensive experience in corporate governance, compliance, and FDI.

He is also a member of the Education, Healthcare, Sports & Event Management and Hotel & Leisure sector groups.

Nours represents local and multinational corporations, including NYSE-listed entities, and has been recognized for his expertise in employment law. Prior to joining the firm, he practiced law in a number of firms and also served as an Assistant District Attorney with the Egyptian Public Prosecutor Office.