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Breaking New Regulatory Ground on the New Suez Canal Free Zone

In August, Egypt celebrated when it completed the expansion of the Suez Canal. Now, Egypt is attempting to build on this success through the creation of a Suez Canal Free Zone (SCFZ). From Dubai to Dailan, Free Zones, also known as “Special Economic Zones,” have helped developing countries grow by attracting prestigious foreign investors. How can Egypt best position itself so that the SCFZ succeeds?

Promotional material states that the goal of the SCFZ is to “world class value added services hub.” The SCFZ has many qualities suggesting that it could reach that goal. Upon full development, the zone will be massive, occupying over 500 square kilometers, which is two-thirds the size of the entire Kingdom of Bahrain. Like the Suez Canal itself, the new zone provides easy access to Europe, Africa, and Asia, including the rapidly growing Egyptian market of over 90 million people. The Egyptian government has already pledged to build 18 new factories in the SCFZ, and the Russian government has already pledged to establish a Russian industrial zone in the SCFZ.

This is an auspicious start, but to sustain investment, regulations need to promise investors the same slate of incentives provided worldwide. Egypt’s General Authority for Investment and Free Zones (GAFI) has not yet published regulations for the SCFZ, so we would like to recommend some best practices used by other free zones. Investors need to know at a minimum that they can have full foreign ownership of companies, can repatriate their capital freely, will receive a tax holiday, will work with a responsive “one-stop shop” for registration, and receive support in obtaining Egyptian visas. These suggested policies ought to be presented in clear language.

The Suez Canal Free Zone presents a large opportunity at the crossroads of three continents. To ensure that it receives the benefits of foreign investment, it must be supported through pro-investment regulation that draws on the lessons of successful free zones.

Eslam Magdy

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Extending Decennial Liability to Construction Project Managers

In a classic situation where construction or consultancy contracts assign typical management responsibilities to a construction project manager, the manager should not be liable under decennial liability. However, if a project manager is assigned design-related responsibilities which are normally assigned to engineers or architects, particularly those that require the project manager to compare or check the executed works to the design set by the engineer, the project manager could then be exposed to legal liabilities, primarily decennial liability. Decennial liability is a form of liability set forth in the laws of many countries, including the Egyptian Civil Code, which is imposed on design and supervision professionals and construction contractors jointly. The extent of decennial liability is for the total or partial collapse of buildings that the contractors and designers took part in or anything that affects the safety of the buildings for a period of ten years. The depth of intervention by the project manager in design-related matters is an essential factor that determines the extension of decennial liability to include the project manager. If the intervention is only for coordination purposes, a project manager should not be liable under decennial liability.

Decennial liability is of public order, meaning that parties to a contract cannot annul such type of liability by any means available. It is based on the assumption that if a building collapses wholly or in part, the contractor and the engineer are jointly liable to the owner of the building for this collapse regardless the reason. The main reason for the imposition of decennial liability is to protect the owners of buildings against technical defaults by engineers and contractors that usually the owners are unaware of due to the nature of these defaults.

Until the 1950s, project management was practiced by engineers and architects. Extending decennial liability to project managers was not in question except when the 400-year old practice became an independent practice. With the exception of practice by engineers and architects in small-value projects, project management is an independent practice in large-scale construction projects due to the complexity of such projects.

Unless it is intended by both an employer and a project manager, the latter should review the contract conditions that provide him with design-related responsibilities. If such responsibilities are to the extent that a project manager should check that the executed works are in compliance with the design set by the engineer or architect, then the project manager is liable under decennial liability jointly with the engineer and the contractor. However, if a project manager is assigned typical management responsibilities, such as dispute management, risk management, project planning and cost control, these responsibilities should not withhold a project manager liable under decennial liability.

Muhammad El-Haggan

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Ras Al Khaimah Opens for Business: How One Emirate Plans to Attract Investment

For years, Ras al Khaimah (RAK), the northernmost member of the UAE, has been in the shadow of fellow emirates Dubai and Abu Dhabi. However, in recent years RAK has seen over ten percent annual growth in both tourism and property prices, which indicates that it is starting to emerge as a destination for investment. This article explores whether RAK has the legal infrastructure to support sustained growth.

As a member of the UAE, RAK operates under civil law. Like many Arab countries, the UAE's Civil and Commercial Codes are derived from Egyptian law. Although the UAE decided not to allow full foreign ownership of companies when it revised its Commercial Companies Law earlier this year, all seven member emirates host free zones. All free zones offer advantages to foreign investors, including full foreign ownership, tax and customs exemptions, and repatriation of capital and profits.

RAK opened its single free zone in May 2000, and this free zone offers the same basic benefits to investors as the more famous free zones in Dubai and Abu Dhabi, namely tax-free status and full foreign ownership. Today, over 8,000 companies from 100 countries are in this free zone, and RAK seeks to keep this figure growing, as indicated by its decision in June to begin a major expansion of the free zone. RAK's free zone, like many other free zones such as Dubai Silicon Oasis, is owned by the government of the host emirate. Ahmad Bin Saqr Al Qasimi, a member of RAK's ruling family, is the Chairman of the free zone. As opposed to other free zones, which are built around a specific sector, RAK's free zone has four business parks divided by sector. In 2013, the free zone contributed roughly one-sixth of RAK's GDP, which indicates its importance.

RAK's free zone follows best practices of other free zones, including a "one-stop-shop" for registration of free zone entities. Its main comparative advantage is cost, where it provides services for roughly half the price of free zones in Dubai. Because of the reduced costs, the *Financial Times* recognized RAK's free zone as a desirable location for small and medium-sized enterprises.

Given that RAK's free zone is less than an hour's drive away from Dubai International Airport, and its free zone has the same combination of legal infrastructure and government support that has succeeded elsewhere, RAK seems prepared for continued additional investment.

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Phil Zager

Full Foreign Ownership in Saudi Arabia?

As a recent positive development concerning foreign investment in the Kingdom of Saudi Arabia, The Custodian of the Two Holy Mosques, King Salman Bin Abdulaziz Al-Saud gave his directions to both the Minister of Commerce and Industry and the Governor of the Saudi Arabian General Investment Authority (SAGIA) to review all trade and investment laws and regulations. This move aims at facilitating the work of multinational companies and provides incentives to foreign investors, including direct access to the Saudi market. This is intended to position Saudi Arabia as an international center for the distribution, sale and re-export of products.

International companies are invited to submit fully detailed proposals expressing interest and highlighting value propositions that will include: manufacturing plants, technology and know-how transfer and research centers, establishing regional and global branches, and hiring Saudi nationals in highly technical and enriching jobs. The desired result of the new regulation is a win-win situation for both the Saudi government and foreign investors.

Once adopted the new rules will give these Companies the opportunity to do business in Saudi Arabia, through 100% owned subsidiaries. It will eliminate the need for Saudi participation in the capital of the company, which used to be at least 25% of the capital of the company, whether or not the Saudi actually participated in the business.

It is expected that this new approach will attract and encourage international companies to do business in the Kingdom of Saudi Arabia. Companies can manufacture their own products and sell directly the customers, along with providing after sale services. Companies like Apple and Samsung can benefit from this new rule because they sell their own products. However, purely retailing companies like WalMart, TESCO and EBay would not benefit for this rule, because they sell other companies products.

The main reason of this rule is to increase competition and to increase employment opportunities for Saudi nationals. It is expected that the Government will increase the Saudization percentage for international companies who will benefit from this new approach.

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Ahmed Baraka

How Egyptian Law Approaches Profit Sharing with Employees

Egyptian Companies Law, Law No. 159 of 1981 and its Executive Regulations, require every company to distribute at least ten percent of its net profit to its employees. This definition of "company" includes Limited Liability Companies, Joint Stock Companies, Representative Offices and Branch Offices, but it does not include partnerships. All of these types of companies in Egypt, including foreign branches, must follow this law. It is worth noting that the law defines "net profit" as profit that remains after deducting all related costs and expenses.

Article 41 of Law 159 sets out the minimum requirement that at ten percent of net profit is to be shared with employees. It also sets out the maximum amount: profit distribution cannot exceed total employee annual wages. Article 196 of the Executive Regulations declares that the quantities for profit sharing must be earmarked in a special account, and that the amounts in this account must be invested prudently for the benefit of the employees. This distribution of profit can only occur after approval of the company through a general meeting.

An additional question that companies face is who qualifies as an "employee" eligible for profit sharing? Law 159 does not explicitly define "employee," but Article 235 of its Executive Regulations state that members of the company's board of directors are prohibited from undertaking any work in the company during their time in office. The prevailing view is that the prohibition on directors working means they are not subject to Egyptian labor law.[1] This means that they are not employees and are not eligible for profit sharing. This means that a company with no employees are not obliged to distribute a portion of its profits to its directors.

It is a common mistake for companies to grant employees 10% of gross annual profit, rather than net annual profit. Gross annual profit does not account for costs and expenses. This misunderstanding of the law leads to a misallocation of funds. We understand that employers may wish to reward their employees with larger amounts than the legal minimum. We recommend that companies, rather than accidentally basing their profit distribution on gross profit, explicitly discuss their profit sharing approach during their General Meeting.

Profit sharing with employees is a requirement under Egyptian law, but companies must be sure that they accurately calculate their quantities to be shared and know who should receive a share.

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Yehia Zakaria

[1] The Egyptian Counsel of State Legal Opinion No. 118 of the year No. 42, Hearing dated 6/1/1988, Legal Opinion dated 27/1/1988, File No. 372/2/47