

## Construction 2021

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## 1. Is a local partner required in any part of the construction process?

Under the Egyptian Building Law, Egypt Law No. 119/2008 (as amended) (the Building Law), any construction works exceeding 350,000 Egyptian Pounds should be awarded to a contractor who is registered in the Egyptian Federation for Construction and Building Contractors (EFCBC) in the relevant classification for the construction works in question. This registration may be with a local company incorporated in Egypt and satisfying certain conditions to be qualified for this registration.

According to the Implementing Regulation of the EFCBC Law, Egypt Regulation No. 104/1992 (the EFCBC Law) and the internal regulations of EFCBC, foreign construction contractors performing works in Egypt of at least 40,000,000 Egyptian Pounds should register themselves as foreign correspondents at EFCBC and participate or sub-contract at least 51% of the awarded works to an Egyptian contractor registered with EFCBC in the relevant classification to these awarded works. Exceptions to these restrictions will be determined by EFCBC, taking into account reciprocity between Egypt and the country of the foreign company, public interest or technical necessity of the project, correspondent members of foreign countries providing loans or grants approved by the Egyptian Parliament which provides for awarding projects to contractors of specific nationalities.

## 2. How do preferences to nationals apply to those employed on a construction project at specific levels?

According to the internal regulations of EFCBC regarding registration of foreign correspondents, the foreign contractor pursuing the registration should submit a statement (legalised by the Egyptian Embassy in the country of origin) with the number of engineers, accountant, administrative and legal personnel and technical employees and craftsmen.

In addition, under the Egyptian Companies Law, Egypt Law No. 159/1981 (as amended) (the Companies Law), the companies subject to the Law should employ at least 90% Egyptian employees. Exceptions to the 9:1 rule will be granted according by the Committee established according to the Ministry of Manpower Decree, Egypt Decree No. 150/2016 regarding the Formation of the Deciding Committee on Exemption Requests from the Applied Percentages of Employing Foreign Employees against Egyptian Employees. However, the percentage of foreign employees may not in all cases exceed 20%. This exception is also adopted under the Egyptian Investment Law, Egypt Law No. 72/2017 (the Investment Law) and its Implementing Regulation and subject to specific criteria.

In general, there is no preferences given to nationals instead of foreigners. However, Egyptian components are preferred in certain events.

## 3. Do preferences to nationals have an impact on the tendering process?

According to the Minister of Manpower Decree, Egypt Decree No. 146/2019 regarding Conditions and Procedures for Foreigners' Work Permits, the work permit is issued for one year or less to foreign employees and should be renewed annually, with an increase in the permit fees.

In terms of tendering processes for public entities contracts, Egypt Law No. 182/2018 regarding Contracts Concluded by Public Entities (the Public Contracts Law), states public entities subject to the Law should take factors related to costs and best allocation of public funds into account as well as other things. Under Egypt Law No. 5/2015, Government entities when inviting tenders in projects, should ensure the Egyptian accredited industrial component is not less than 40% of project estimated value. The percentage could increase or decrease within 10% in certain cases determined by the Prime Minister.

## 4. Is a local owner or partner in ownership required of the land and/or final property?

Under Egypt Prime Minister Decree No. 350/2007, any company or establishment is allowed to own land and real estate required for pursuing their activities, regardless of the nationality of the partners, shareholders, their residency, shareholding percentage or capital contribution, with the exclusion of certain lands and real estate, mainly those of military strategic significance in line with Egypt Presidential Decree No. 152/2001, including roads and land in the Sinai Peninsula.

## 5. Are specific qualifications/accreditation needed for those designing or building in the jurisdiction?

The Implementing Regulation of the Building Law classified building works as follows:

- 1) Class (A): All works
- 2) Class (B): All works, excluding establishments and projects mentioned in Article 124 (bis). These establishments are related to those of several and multiple purposes or multiple occupancies, which have more than two types of occupancies of residential, commercial administrative, theatres and cinemas, restaurants, sports courts and similar works. These specific projects or establishments are subject to specific requirements. Elevation, amendment, strengthening, and restoration works.
- 3) Class (C): Residential buildings up to a height of 28 metres; non-residential buildings up to a height of 22 metres and a floor area not more than 1,000 square metres.
- 4) Class (D): Residential, administrative, and commercial buildings up to a height of 16 metres and a floor area not more than 500 square metres.

These Implementing Regulation state the requirements for the engineer or the engineering office undertaking the design of the works required to be licensed, are as follows:

- 1) For Class (A) works: Engineering expert bureau, or an engineering consultancy office with experience of less than five years; or a consultant engineer with experience of less than 10 years.
- 2) For Class (B) works: Engineering consultancy office, or a consultant engineer.
- 3) For Class (C) works: Specialist engineers in architectural or civil engineering, with experience of less than seven years.
- 4) For Class (D) works: Specialist engineers in architectural or civil engineering, with experience of less than two years.

These Implementing Regulations state the engineer or the engineering office supervising the execution of the licensed works should be in the same Class mentioned in Article 126.

## **6. What are the key differences (if any) when building in freezones or secondary jurisdictions?**

In terms of free zones, there are two types of free zones in Egypt, which are subject to the Investment Law and its Implementing Regulations (as amended). They are also subject to the close supervision of the board of relevant free zone. Under the Investment Law, some projects could not be set up in Free Zones, like petroleum manufacturing, cement manufacturing, steel and iron manufacturing, natural gas liquification and manufacturing. Under the Ministry of Investment and International Cooperation Decree, Egypt Ministerial Decree No. 39/2019 regarding the Free Zones Regulation, a guarantee of 5% of the contracting project amount in Egyptian Pounds and not less than 20,000 Egyptian Pounds should be submitted as insurance against possible damages to the utilities of the zone during the construction period. The guarantee would be restituted after finalising of the construction works without violations having occurred.

Under the Implementing Regulation to the Investment Law, free zones projects will employ at least 80% Egyptians.

In terms of secondary jurisdictions, this case is not applicable because Egypt is a unitary government whose legislation applies to the whole of Egypt.

## **7. Are there any Islamic law considerations for property ownership which need to be taken into account by those involved in construction projects?**

No, there are not. Ownership of property in Egypt is governed by the relevant Egyptian Laws.

The Egyptian legal system is primarily based on the French civil legal system, various other European codes and religious law. In practice, religious law is only applied to personal status and family matters which are governed by the religious law of the individual concerned.

## **8. What are the main differences in building regulations between those in other major international jurisdictions?**

Egypt is a member of international standardisation organisations, like the:

- International Organisation for Standardisation (ISO)
- The European Committee for Standardisation CEN.

Building codes could therefore be highly related to standards and codes issued by these organisations.

## **9. How do termination of employment obligations differ for those employed as principles or sub contractors?**

Under the Egyptian Civil Code, Egypt Law No. 131/1948 (the Civil Code), employees of the principal contractor, or the sub-contractors have the right to claim directly from the employer of the project their rights within the limits to which the employer owes the principal contracts. Employees of the sub-contractor will have the same right before both of the principal contractor and the employer.

Under Egypt Ministerial Decree No. 152/2019 issued by the Minister of Social Solidarity, all contractors and sub-contractors are required to cover specific types of works including, inter alia, installation and maintenance workers by a special Social Insurance for Construction.

## **10. What are the main differences in health and safety rules between those working in construction in this jurisdiction and internationally?**

In general, Occupational Safety and Health (OHS) requirements are governed by the Egyptian Labour Law, Egypt Law No. 12 /2003 (the Labour Law). These requirements cover, inter alia, assurance of an adequate working environment.

The OHS requirements apply, without exceptions, to all establishments and companies whether in the private and public sectors, municipal government services, public authorities and civilian Government units, in line with the Labour Law.

The OHS requirements include all necessary elements which must be satisfied by companies to ensure safety and health of their employees covering, inter alia, the following:

- Requirements for the selection and establishment of sites,
- Responsibilities of employers to ensure safety and health at workplaces,

- Organisation of OHS in the company itself,
- Obligation of employers to report accidents, injuries and/or diseases.

An employer who violates any of the OHS requirements will be jailed for up to three months and/or fined between 500 and 10,000 Egyptian Pounds. The fine may be doubled for repeat offences.

Other than the OHS requirements, there are other additional Ministerial Decrees issued by the Minister of Manpower imposing more specific technical provisions which must be met (the Special OHS) including the following notable decrees:

- Egypt Decree No. 126/2003 regulating the procedures and different forms for the notification of work-related accidents, injuries and diseases.
- Egypt Decree No. 211/2003 regulating the conditions and necessary precautions for the provision of OSH measures at the workplace; and
- Qatar Decree No. 134/2003 regulating the types of establishments covered, OSH services and committees and OSH related training institutions.

### **11. Are there specific health and safety rules for those working in the construction industry during the summer?**

No, the OHS, applies throughout the year and there are no specific rules for workers who work in the construction industry during the summer.

### **12. Are there specific health and safety rules for those working in the construction industry during Ramadan?**

No, the OHS, applies throughout the year and there are no specific rules for workers who work in the construction industry during Ramadan.

### **13. What are the specific planning/registration/site establishment/building reg rules required before starting a construction project?**

As a general rule, in order for a company to be able to participate in construction projects, the following procedures should be respected:

- A. In line with the Building Law's Implementing Regulation, Egypt Regulation No. 144/2009, the relevant company should first submit a request to the Municipal Authority for obtaining the Site Validity Certificate (the Validity Certificate), which proves the site conforms to the planning and building requirements. The request will have to identify the site, its address, the land borders, the roads leading into the site and a sketch of the location of the site and its routes. Once the request is submitted, an inspector from the Municipal Engineering Department inspects the construction site to check all the data submitted by the relevant company to the Municipal Authority and this is to ensure there are no irregularities on the plot of land. The Validity Certificate should be issued within one week of the submission of the request by the relevant company. Where there are any hindrances in the site, Municipal Authority will issue a statement indicating the obstacles preventing the issuing of the Validity Certificate.
- B. After obtaining the Validity Certificate, the engineer or the engineering office of the relevant company will submit a request to obtain the Construction Permit (the Permit). In order to obtain the Permit, the engineer of the relevant company will submit the following documents in line with the Building Law and its Implementing Regulation:
  - 1) The original ownership contract of the plot of land which is the subject of the Permit.
  - 2) A copy of the national ID which the Permit will be issued in the name of.
  - 3) The engineer's delegation to act on behalf of the owner.
  - 4) The construction value form.
  - 5) The Validity Certificate.
  - 6) Three copies of the architectural drawings, signed and accredited by the engineer or the engineering office.
  - 7) The insurance policy for the construction projects exceeding one million Egyptian Pounds or for buildings with more than four floors which cover (i) the responsibility of the architect and contractor during the implementation period except for their work, (ii) the responsibility of the architect and contractor during the period of warranty provided for in the Civil Code (namely the 10 years warranty), by virtue of the Building Law.
- C. Once the Permit is issued by the Municipal Authority, according to the Building Law, the company should send a letter to the Municipal Authority to inform them construction work will begin, noting that failure to notify will lead to the suspension of construction work which took place before notifying the competent administrative until the administrative authority authorises the resumption of the construction works. The letter must be sent at least 15 days before the construction works are started, along with the following documents : (i) the contractor's contract, approved by the EFCBC and where the value of the construction works exceeds 350,000 Egyptian Pounds, by virtue of the

Implementing Regulations (ii) and the execution supervision certificate, approved by the Syndicate of Engineers. Under the Building Law, the company has to hire an independent engineer to supervise the project.

#### **14. What are the specific rules for sign off at the end of a construction project?**

After the completion of the construction project, under the Building Law and its Implementing Regulations, the supervising engineer should issue a certificate of the building's validity for occupancy, stating the building has been built in line with the relevant laws and regulations.

#### **15. What are the specific rules if a contractor decides to abandon a project without completion?**

Generally, Egyptian law explicitly distinguishes between two types of work contracts: (i) private works contracts, (ii) public works contracts. However, there are differences between the two. These differences affect how a contractor can abandon a project without completion, because they set out different rules under the applicable law.

- A-Public works contracts:

Where a contractor fails to complete the project under the Public Contracts Law, the competent administrative body may rescind the contract or implement it at the contracting party's expense. The rescission or implementation at the contracting party's expense will take effect under a substantiated decision by the competent authority. This will be communicated to the contracting party by express mail letter which will be sent through the National Postal Authority. Concurrent confirmation will also be sent. Alternatively communication may be made by e-mail or fax to the address indicated in the contract. In all rescissions or executions of the contract at the expense of the contractor, the competent administrative authority will be entitled to confiscate the performance bond and they may also deduct the delay penalty owed as well as the value of any loss suffered by them from any amounts owed or payable to the contracting party. Where the contracting party's entitlements are not sufficient for a deduction, the competent administrative authority will resort to deduct the excess amount from the contracting party's entitlements with any other administrative body, whatever the cause of the entitlements may be, without having to initiate any judicial proceedings. All of this will be without prejudice to the right of the competent administrative authority to claim, by judicial means and all amounts not collected by administrative means.

- B-Private work contracts:

Under the Civil Code, if, during execution, it is established the contractor is performing the work in a way which is defective or contrary to the contract, the master may formally summon them to alter, within a reasonable period fixed by them, the way in which they are performing the work. If after the expiration of the period the contractor fails to adopt the proper way of working, the master may either demand rescission of the contract or the handing over of the works to another contractor at the cost of the first contractor. Immediate rescission of the contract may, however, be demanded by the contractor without it being necessary to grant the reasonable period of time, when the rectification of the defective method of performance is considered impossible.

As a rule, under the Civil Code, if a party does not perform their contractual obligations, the other party is entitled to request the defaulting party perform their obligations. If the defaulting party does not perform their obligations, the affected party, before notifying the defaulting party, is entitled to claim damages under the Civil Code.

The damages will be estimated by the competent court, on a case-by-case basis, based on the value of losses suffered and deprived profits the defaulted party should have expected at the time of concluding the contract unless otherwise agreed on in the contract or stipulated by law.

#### **16. What is the most common contract standard form contract used in this jurisdiction - and are there any differences for specific types of construction project?**

As a general rule, there is no one unified contract template for construction contracts determined by the Building Law or its Implementing Regulations. However, the Federation Internationale des Ingenieurs-Conciels (the FIDIC) is considered, in practice, the most used international standard contracts for civil engineering construction projects in Egypt.

#### **17. Who bears the costs when material prices increase - and what factors impact this?**

Egyptian law explicitly distinguishes between two types of work contracts: (i) private works contracts, (ii) public works contracts. However, each contract has different rules when it comes to an increase in material prices.

- A-Public work contracts

Under the Public Contracts Law, for construction contracts with an implementation period of six months or more, the competent administrative authority will, at the end of each contractual quarter as of the date set for opening the technical envelopes or the contract signing date based on the direct award order, as the case may be, amend the contract's value according to the increase or decrease in the costs of contract items which emerge following the date the contract was signed and subject to the implementation timeline in light of the Producer Price Index issued by the Central Agency for Public Mobilisation and Statistics. In addition, the amendment will be binding on the parties to the contract and the content of it will be included in the contract.

- B-Private work contracts



Under the Civil Code, if a contract is concluded on a lump sum basis according to a plan and/or design agreed on, the contractor will not have the right to claim an increase of price, even if modifications and additions are made to the plan and/or design, unless the modifications or additions are due to the fault of the master, or have been authorised by the master and the price agreed with the contractor.

The contractor may also not have the right to claim an increase of price on the grounds of an increase in the price of raw materials, labour or any expenditure, even if the increase is so great as to render the performance of the contract onerous.

However, when, as a result of exceptional events of a general character which could not be foreseen at the time the contract was concluded, the economic equilibrium between the respective obligations of the master and of the contractor collapse and the basis on which the financial estimates for the contract were fixed has consequently disappeared, a judge may, at their sole discretion, grant an increase of the price or order the reciliation of the contract.

## **18. Are there any jurisdictional differences which impact who bears the costs of time delays?**

Egyptian law distinguishes between two types of work contracts: (i) private works contracts, (ii) public works contracts. There are differences between each contract in terms of time delays, because each type of contract sets different rules.

- A-Public work contract

Under the Public Contracts Law, if during the execution of the contract, a contractor fails to comply with the date stated in the time table or the term of execution set out in the contract, the competent authority may, for public interest considerations grant the contracting party an extension of time to complete the execution of the contract without charging any delay penalty, providing the delay is for reasons beyond their control.

In the event of failure to implement the contract for any reason attributable to the contracting party, the delay penalty will be calculated and collected as of the start date of time extension, with no need to serve a notice or notification or to take any other action. In work construction projects the delay penalty will be calculated as follows: the total delay penalty will not exceed 10% of the contract's value, if the delay period does not exceed 10% of the total period of the contract the delay penalty will move up to 15% if the delay period exceeds the ratio. The delay penalty will only be charged on the value of delayed works if the competent administrative authority is convinced the delayed part does not preclude perfect exploitation of the already completed part, directly or indirectly, on the scheduled dates. However, if the competent administrative authority is convinced the delayed part does indeed prevent exploitation of the already completed part, the delay penalty will be calculated based on the contract's total value. Price variance equation will be applied to the quantities carried out within the time extension, provided the delay is attributable to any reasons beyond the control of the contracting party, provided the timeline is amended as mutually agreed between the parties, if necessary and in proportion to the delay period.

## **19. What are the key legislative factors to be aware of in public procurement of construction or infrastructure contracts?**

As a general rule, any company which wishes to take part and contribute in any Egyptian public infrastructure project or a Government project, meaning this project will involve the State as a sovereign party, any of the public bodies, authorities or units, should be subject to the Public Contracts Law. In order for the interested company to participate in the public works, the relevant public authority will assign the completion of the specific project to the company, according to the Public Contracts Law through public tender or a limited tender; a two-stage tender; a local tender or a direct agreement.

In order to take part in a Government procurement process, a temporary bid bond is still required to be submitted as a precondition, under the Public Contracts Law. The amount of the bid bond in case of construction works will not exceed 1.5% of the estimated value of the transaction. The bid bond will be valid for 30 days following the expiry date of the bid or the expiry date of its extended validity period.

Other than the bid bond, the performance bond is one of the conditions which needs to be fulfilled by the company wanting to participate in a Government project. Under the Public Contracts Law, the performance bond will be paid by the successful bidder in case of construction projects, within 10 working days at 5% of the contract's value, effective as of the day following the date of notifying the successful bidder that its bid has been accepted. For contracts concluded with a contracting party abroad, the performance bond will be furnished within twenty working days and notification will be communicated by an express mail letter to be sent through the National Postal Authority, with a confirmation it has been sent by e-mail or fax, as the case may be. Subject to the Competent Authority's approval, an additional time extension not exceeding ten working days may be granted for providing the performance bond.

Sub-contracting is allowed in Government projects. However, the successful bidder will be allowed to assign part of the works to a sub-contractor(s) provided its bid includes experiences, subcontracted items according to the determinants and any other requirements stipulated in the Request For Proposal (RFP) by the competent administrative body, by virtue of the Public Contracts Law. In all cases, the contracting party will remain solely responsible to the Contracting Administrative Body for the implementation of the contract.

## **20. How do damages between principle contractor and subcontractor negligence work - where subcontractors are negligent?**

As a general rule, under the Civil Code and multiple Court of Cassation judgements, contractual liabilities may be limited, expressed in a form of liquidated damages or waived except for any liability resulting from gross negligence.

## **21. Can contractors get damages when contracts are cancelled - does this differ where the client is a private or public sector body?**

As a general rule, under the Civil Code and several Court of Cassation judgments, any one whose fault caused damage to another person will compensate them. Therefore if the party who cancelled the contract caused damage to the other contracting party by the cancellation, they will be entitled to compensation. The damages will be estimated by the competent court, on a case-by-case basis, including losses suffered by the injured person and profits from which the person has been deprived, provided the losses suffered and deprived profits are the normal result of the committed fault.

However, for public works contracts, the Public Contracts Law provides that in all cancellation cases of bids, the price of the RFP and the bid bond will be delivered back to the bidders other than those who have committed any collusion, fraud, corruption, or monopoly practices.

## **22. Are there specific matters to be aware of when opting for arbitration in construction contracts?**

No. In both public and private works contracts, the parties may agree to resort to arbitration in case of a dispute arising during the implementation of the contract and this is in line with the rules and procedures set out in the Arbitration Law on Civil and Commercial Matters promulgated by Egypt Law No. 27/1994.

## **23. Are there any specialist construction dispute resolution bodies - what powers do they have?**

Under the Egyptian Building Law, Egypt Law No. 119/2008 (as amended) (the Building Law), any construction works exceeding 350,000 Egyptian Pounds should be awarded to a contractor who is registered in the Egyptian Federation for Construction and Building Contractors (EFCBC) in the relevant classification for the construction works in question. This registration may be with a local company incorporated in Egypt and satisfying certain conditions to be qualified for this registration.

According to the Implementing Regulation of the EFCBC Law, Egypt Regulation No. 104/1992 (the EFCBC Law) and the internal regulations of EFCBC, foreign construction contractors performing works in Egypt of at least 40,000,000 Egyptian Pounds should register themselves as foreign correspondents at EFCBC and participate or sub-contract at least 51% of the awarded works to an Egyptian contractor registered with EFCBC in the relevant classification to these awarded works. Exceptions to these restrictions will be determined by EFCBC, taking into account reciprocity between Egypt and the country of the foreign company, public interest or technical necessity of the project, correspondent members of foreign countries providing loans or grants approved by the Egyptian Parliament which provides for awarding projects to contractors of specific nationalities.

## **24. Are there any specific rules on bribery those working in the construction industry need to be aware of?**

There are no specific rules on bribery applicable to people working in the construction industry. However, as a general rule, Egypt's Penal Code, Egypt Law No. 58/1937 (the Penal Code) criminalises several forms of corruption like active and passive bribery. Under the Penal Code, it is strictly prohibited for a public official to request, accept, or 'take for him/herself or another, a gift' or a benefit whether material or non-material, for performing or abstaining from performing an inherent function of their position, even if they mistakenly believe a function falls within the scope of their official duties.

It is worth noting funds of any Egyptian Joint Stock Company whether listed or non-listed at the Egyptian Stock Exchange are covered under the Penal Code by the protection of the State's public funds.

## **25. Do currency controls lead to any difficulties for those undertaking development work - can these be overcome?**

The Central Bank of Egypt (CBE) decided to float its Egyptian Pounds as of 3 November 2016 in order to secure the IMF's \$12 billion Loan. As a normal consequence of the floating, the exchange rates at both the official and parallel markets are now likely the same.

Foreign investors are generally allowed to deal with banks who are registered with the Central Bank and open bank account(s) with them. However, within the limits allowed under the Egyptian laws, each of these banks has its own policies for providing banking and finance services.

Investors are freely allowed by law to transfer dividends to their home country and exchange currencies in line with the list of priorities for exchanging Egyptian Pounds with any of the foreign currencies at their respective banks.

## **Firm**

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**Description**

Soliman, Hashish & Partners (the “Firm”) is a full-service corporate law firm, recognized as one of the leading financial and corporate law firms in Egypt by IFLR 1000, Chambers and Partners and Legal 500, focusing on Corporate, Mergers & Acquisitions, Banking & Finance, Telecom, Media and Technology (“TMT”), Energy & Electricity, Public Procurement, Dispute Resolution, Intellectual Property Rights (“IPRs”) and Employment.

The Firm acted/continues to act as local legal counsel to private and public sector entities including, inter alia, governments, NGOs and leading multinational companies working mainly in the sectors of Agriculture, Banking & Finance, Cement, Consultancy, Diplomatic Services, Energy & Electricity, Food, Healthcare, Information Technology, Media, Oil & Gas, Pharmaceutical, Steel, Telecoms, Tourism, Transport and Water Treatment.

The Firm is dedicated to providing an exceptional legal service and bringing a creative, quality and business-awareness approach to all of its assignments and keeps developing a close relationship with most of the leading law firms across the world in order to provide clients with innovative and pragmatic solutions to the most complex of legal problems.

Over the years, the firm's lawyers represented more than seven hundred (700) multinational clients and established a good relationship with decision makers in both public and private sectors, which are indispensable to the effective representation and protection of clients' interest.

Soliman, Hashish & Partners is the only law firm in Egypt that participated in the foundation of the United Nations Global Compact Egypt Network and most of our lawyers are Associates of the Chartered Institute for Securities & Investment and, therefore, we shall always act with integrity and transparency in fulfilling the responsibilities of our appointment.

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