

UNIFIED DRAFT LAW FOR COMPANIES
Analytical Study Tackling Proposed Amendments

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Unified Draft Law for Companies

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Any law is enacted for setting control measures, organizing relations and determining rights and duties. Amendments introduced to prevailing articles or standing laws are based on developing and updating old articles, while introducing new ones, with the aim of absorbing the rising numbers of labour and young graduates.

Undoubtedly, the state has nurtured this industrial boom, witnessed in our country, sponsoring it diligently within a framework of laws and facilities, such as Investment Law, Urbanization Law, and facilities granted in new industrial zones.

Ever since the adoption of the free market economy by the state and a wider ownership of the private sector, with the application of international standards on industry, by virtue of the GATT, the state has become committed to provide more facilities to producers, industrialists and tradesmen, eliminate obstacles hindering the wheel of production and absorb the largest number of manpower, in order to overcome unemployment.

It deems important to discuss the Unified Draft Law for Companies that has raised great controversy between advocates and opponents. The idea is to come up with a new law that is more liberal and of greater benefit to the people of this country, facilitating their strife for development and sustaining the present boom.

This has led us to scrutinize items and articles of the proposed draft law, comparing them to existing laws, in order to pinpoint the negative and positive

aspects, in full impartiality, as the matter involves the future of this nation and its honest people.

May this endeavour be worthwhile, opening the door for different opinions that would ultimately lead to the general interest of the people and their right to development.

Chapters of the Law

The draft law includes ten basic chapters, as follows:

Chapter I Legal Forms of Companies

Chapter II One-Man Project

Chapter III Public Business Sector Companies

Chapter IV Guarantees, Privileges & Taxation

Chapter V Federation of Share-holding Personnel & Wider Ownership Base

Chapter VI Changing Legal Forms, Mergence, Dividing or Sharing a Company, and Liquidation

Chapter VII Branches & Representation Offices of Companies, Establishments and Foreign Organizations in Egypt

Chapter VIII Arbitration & Settlement of Disputes

Chapter IX Control & Responsibility

Chapter X Personnel Provisions

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| Article | Text | Proposed Amendment |
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| <u>Article 2</u> | Egyptian laws are applicable to free zones listed in the attached law, without breaching its provisions for such zones | <ul style="list-style-type: none"> - No text on free zones was found in the draft law - Introduction of a new article to the law, stipulating that free-zone companies are to enjoy all privileges and exceptions currently granted to them. |
| <u>Article 5</u> | <p>The following laws & articles are to be abolished:-</p> <p><u>Paragraph 4</u></p> <p>Law No. 230 for 1989 with the issuance of the Investment Law</p> | <ul style="list-style-type: none"> - Abolishing this paragraph in the new law, as there is no contradiction between Law No. 230 for 1989 and the Unified Draft Law for Companies, or, at least, abolishing some of its articles that deem controversial to the Unified Draft Law of Companies, where the following would arise from such abolishment: <ul style="list-style-type: none"> - Abolishing the General Authority for Investment, in spite of its success in enhancing investment in Egypt - Abolishing all guarantees and tax exemptions and exceptions granted to projects and companies subject to this law |
| <u>Article 26</u> <u>Paragraph 2</u> | Issued capital should be fully subscribed, with each shareholder paying at least ¼ of the nominal value of the monetary shares and settling | The remaining nominal value is to be settled within 10 years from the date of establishing the company. (This is a return to the prevailing system, which gives |

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| | the remaining amount within 5 years from the date of establishing the company | more freedom to general assemblies and boards to adopt decisions in the interest of board members, without any interference or restriction on decisions). |
| <u>Article 51</u> <u>Paragraph 1</u> | The company is managed by a board of directors, including at least three members elected by the general assembly for a three-year term, in accordance with the company statute. | The company is managed by a board of directors with an odd number of members, not less than three, to be elected by the general assembly for a three-year term, in accordance with the company statute. The board term is to be 3 years for companies, where the state owns at least 25% of the capital, and 5 years in other companies, so long as the company statute does not stipulate otherwise. |
| <u>Article 63</u> | No one is to be managing director for more than one board of joint-stock companies. This prohibition applies to the chairman too, so long as he is an active manager. Director general of a company, or its manager, is considered a managing director, even if he is not a board member. Neither of them can be a managing director for another joint-stock company, except with the consent of the general assembly of both companies. No one in his personal capacity, or in his capacity as representative of a legal person, can be member in more than three boards of joint-stock companies. Whoever breaches this | No one can be managing director in the board of more than one joint-stock company, where the state owns at least 25% of the capital, or any company established by general subscription. |

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| | <p>provision loses membership of boards exceeding the fixed quorum, according to most recent appointments. However, it is possible to be a member as cited hereinabove, as well as in boards of joint-stock companies, in which the member or his representative owns 10% at least of the capital shares, for an unlimited number of companies.</p> | |
| <u>Article 73</u> | <p>Joint-stock company personnel are entitled to participate in management. The Company executive statute determines rules & regulations for participation of personnel in management. The Company statute should stipulate which mode of participation in management is applicable.</p> | <p>Joint-stock company personnel could be entitled to participate in management, should the Company statute stipulates that. The Company executive statute determines rules & regulations for participation of personnel in management.</p> |
| <u>Missing Text in Draft Law</u> | | <p>After each session, minutes of board meetings should be systematically registered in a record book, signed by the chairman & secretary. This book is to be subject to provisions & conditions of general assembly record books.</p> |
| <u>Article 73</u> | <p>Each shareholder is entitled to attend the general assembly of shareholders, in person, or through deputation, so long as the company statute does not stipulate holding a certain number of shares, in order to attend. For deputation to be</p> | <p>Omitting the sentence "Still, the deputy could be no shareholder, if the executive statute stipulates so", as it opens the door to non shareholders to interfere in general assembly decisions.</p> |

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| | valid, it should be by virtue of a power of attorney, with the deputy being a shareholder. Still, the deputy could be no shareholder, if the executive statute stipulates so. | |
| <u>Article 181</u> | Companies and enterprises falling under provisions of this law enjoy protection, concerning nationalization and confiscation, in accordance with the Constitution, where their monies are not to be confiscated, sequestrated, or seized for public use, except in accordance with provisions of the law, together with fair compensation, while taking into consideration the market value of the building or edifice under prevailing conditions. | Companies and enterprises falling under provisions of this law enjoy protection, concerning nationalization and confiscation, in accordance with the Constitution, where their monies are not to be confiscated, seized, frozen or sequestrated, except through the Judiciary. |
| <u>Article 182</u> | No administrative authority is entitled to interfere in setting prices for products of companies or enterprises, or determining their profits. Still, the Cabinet could make exceptions, in order to confront monopoly or bad repercussions on the market, while taking into consideration economic costs, under all circumstances. | This article is to be abolished |
| <u>Article 183</u> <u>Paragraph 3</u> | Annual relative fiscal stamp tax, imposed on banknotes, including deeds, equities, shares and quotas, is not payable, except when a profit | This article is to be abolished |

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| | or revenue is made, exceeding tenfold the due tax. | |
| Article 184 | <p style="text-align: center;"><u>Tax Reductions</u></p> <p>Due tax on companies & enterprises in the following areas is to be reduced as indicated:</p> <p><u>I: Remote & Desert Areas:</u> 10% throughout the duration of the company or enterprise</p> <p><u>II: New Urban Communities:</u> 10% for the first three years 8% for the following three years 6% for the following four years 3% for the following 5 years</p> <p><u>III: Rural Areas:</u> 5% for the first three years 4% for the following three years 3% for the following four years</p> | <p style="text-align: center;"><u>Tax Reductions</u></p> <p><u>I: Remote & Desert Areas:</u> 70% annually, if workers are not 50 80% annually, if workers are 51 – 100 90% annually, if workers are 101 – 300 100% annually, if workers are over 301 Workers should be Egyptian and socially insured, according to the Social Security Law. Companies enjoying this reduction are not entitled to any other reduction included in provisions of this law.</p> <p><u>II: New Urban Communities:</u> A conflict arises between this article and Article 24 of Law No. 59 for 1979 for New Urban Communities. Hence, it is necessary to amend this article, as follows: 100% for the first ten years 10% for the following three years 8% for the following three years 6% for the following four years 3% for the following five years</p> <p><u>III: Rural Areas:</u> 20% for the first three years 16% for the following three years 12% for the following four years</p> |

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| <u>Article 185</u> | <u>Tax Reduction for Exportation</u> Due tax on companies & enterprises, whose products are exported, whether directly, or through an agent, is to be reduced by 10% for the year in which exportation exceeds 50% of the production, 7% for the year in which exportation exceeds 30 - 50% of the production, and 5% for the year in which exportation exceeds 10 - 30% of the production. | <u>Tax Reduction for Exportation</u> Due tax on companies & enterprises, whose products are exported, whether directly, or through an agent, is to be reduced by 50% for the year in which exportation exceeds 50% of the production, 40% for the year in which exportation exceeds 30 - 50% of the production and 30% for the year in which exportation exceeds 10 - 30% of the production. Upon applying this article, both semi-manufactured and under-operation production are not to be taken into account. |
| <u>Article 186</u> | <u>Tax Reduction due to Labour Layoff</u> Due tax on companies & enterprises engaging 50 - 100 workers, annually, is to be reduced by 5% per annum, 101 - 300 workers, annually, by 7% per annum and over 300 workers, annually, by 9% per annum. To enjoy such reduction, it is obligatory to engage Egyptian workers, who are socially insured, in accordance with the Social Security Law. | <u>Tax Reduction due to Labour Layoff</u> Due tax on companies & enterprises engaging 50 - 100 workers, annually, is to be reduced by 10% per annum, 101 - 300 workers, annually, by 15% per annum and over 300 workers, annually, by 25% per annum. To enjoy such reduction, it is obligatory to engage Egyptian workers, who are socially insured, in accordance with the Social Security Law. |

| <u>Article 187</u> | <u>Tax Reduction Based Upon Local Component Percentage</u> | <u>Tax Reduction Based Upon Local Component Percentage</u> |
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| | <p>Due tax on companies & enterprises that include a local component in their machinery & equipment is reduced, as follows: 7% for ten years, if the local component exceeds 80% of the total value of machinery & equipment, 6% for ten years, if the local component exceeds 60 – 80% of the total value of machinery & equipment, and 5% for ten years, if the local component exceeds 40 - 60% of the total value of machinery & equipment. Value of lands and buildings is not to be taken into account when calculating the local component percentage, in accordance with provisions of this article.</p> | <p>Due tax on companies & enterprises that include a local component in their final production is reduced, as follows: 50% for the year, in which the local component in the final production exceeds 80%, 40% for the year, in which the local component in the final production exceeds 60 – 80%, and 30% for the year, in which the local component in the final production exceeds 40 - 60%. Value of wages and salaries, paid by companies & enterprises, is not to be taken into account when calculating the local component percentage. These percentages are to be determined and adopted by committees formed by the Minister of Industry for this purpose.</p> |
| <u>Article 196</u> | <p>Provisions of the foregoing articles do not breach privileges and tax exemptions stipulated for existing companies & enterprises upon the implementation of this law. These companies & enterprises continue to enjoy such privileges and exemptions throughout their validity periods, in accordance with the law and related decisions. Upon expiry of such periods, the</p> | <p>Provisions of the foregoing articles do not breach privileges and tax exemptions stipulated for existing companies & enterprises upon the implementation of this law. Free-zone companies & enterprises continue to enjoy such privileges and exemptions. As for other companies & enterprises, they continue to enjoy such privileges and exemptions throughout their validity periods, in accordance with the law ... etc.</p> |

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| | above-mentioned companies & enterprises are to enjoy tax reductions contained in the foregoing articles for the following periods, once they are qualified to benefit from them. | |
| <u>Article 269</u> | <p>The competent administrative department is to be in charge of monitoring the implementation of provisions of this law and its executive statute. First-class technical assistants of this department and other departments specified in the executive statute, who are selected by an arrêté of the competent minister, in agreement with the Minister of Justice, enjoy a judiciary status in verifying crimes of violating provisions of this law and its executive statute. Hence, they are entitled to peruse records, ledgers and documents at the company premises and elsewhere. Company managers and officials are obliged to submit data, extracts & copies of documents needed for this purpose.</p> | <p>Abolishing this article and substituting it with Articles 158, 159 & 160 of Law No. 159 for 1981, instead:</p> <p><u>Article 158</u></p> <p>The competent administrative authority and shareholders of at least 20% of the capital for banks, and at least 10% of the capital for other joint-stock companies, are entitled to demand an inspection on the company, concerning grave infringements committed by board members or auditors, while performing their duties, as set by the law or statute.</p> <p>An application is to be submitted to the committee stipulated in Article 18 of this law. In this case, an auditor from the Central Agency for Auditing has to be member in this committee. The application should include evidence that would justify adopting such a procedure. Together with the application submitted by shareholders, they should enclose their shares, which remain deposited, until the matter is settled.</p> <p>Upon hearing all applicants, board members and auditors in a closed session, the committee is entitled to give orders for the</p> |

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| | | <p>inspection of company actions and ledgers, where one or more experts are to be assigned with this task. The committee also determines a sum of money to be deposited by applicants under the account of expenses, should this deems necessary, before the convention of the general assembly. Inspection is then carried out, only after depositing this sum.</p> <p>Furthermore, the inspection order could include perusing documents or records of another company, related to the one under inspection.</p> <p><u>Article 159</u> Board members, employees and auditors of the company are to allow inspectors to peruse all ledgers, documents and papers of the company, under their hands, while furnishing them with the necessary explanation and information. Whoever refrains from responding to the assigned inspector's requests in this concern falls under punishments stipulated in Article 163.</p> <p>The assigned inspector is to question any person related to the company affairs, after taking the official oath.</p> <p><u>Article 160</u> The assigned inspector is to submit a detailed report on his task to the committee secretariat, within the period designated in the decision, or within a maximum of one month from the date of</p> |
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| | <p>depositing the sum stipulated in Item 4 of Article 158.</p> <p>If the committee finds that what the applicants have attributed to board members or auditors is untrue, it is entitled to order publishing the report, in full or in part, in one of the daily papers, while obliging them to bear the expenses, without breaching their responsibility to pay indemnities, if necessary.</p> <p>If the committee finds the board members or auditors at fault, it is to order the adoption of prompt action, inviting the general assembly for an immediate meeting, to be chaired in this instance by the head of the competent administrative authority, or one of its employees selected by the committee.</p> <p>In this case, the company bears inspection expenses and fees, to be retrieved later from the perpetrator, together with indemnities.</p> <p>The general assembly is then entitled to dismiss the board members, while suing them for responsibility. Its decision is valid, once accepted by partners possessing one half of the capital, after deducting the share of the member in question. Furthermore, the assembly is entitled to replace the auditors, while suing them for responsibility.</p> <p>Dismissed persons cannot be re-elected on the company board before the lapse of five years from the date of the decision of</p> |
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| | | their dismissal. |
| | <p>5- Anyone intentionally obstructing the auditors or employees of the competent administrative authority from perusing the ledgers and documents that need be checked, according to provisions of this law;</p> <p>6- Anyone, among the board members, intentionally obstructing the general assembly from convening;</p> <p>7- Anyone breaching any commanding stipulation of this law.</p> | |

Hence, we have swiftly tackled the proposed amendments of articles concerning joint-stock companies, contained in the unified draft law of companies, where we commented on certain articles that concern private sector joint-stock companies, but not on those concerning the public business sector and its affiliated institutions, as this sector is entitled to give its own opinion on what deems beneficial to it.

While we praise some articles that encourage working in remote areas and the facilities offered here, still, we call for a closer look at exportation rules and regulations, purifying them of articles that obstruct exportation.

We also call for establishing an export development bank, which could follow up this activity and motivate it in every possible legitimate way to achieve this objective, on which the state holds high hopes in reforming its economic path and creating a surplus for accomplishing development goals in future plans.