



March 2018

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COMPENSATION FOR PUBLIC CONTRACTORS AFFECTED BY ECONOMIC CHANGES IN EGYPT

The long-awaited Public Contractors' Compensation Law¹ (**Law**), which obtained parliament approval back in May, finally entered into force on 9 July 2017.

The Law is the latest of a series of initiatives² to mitigate the financial imbalances caused by the changes to the economic landscape in Egypt in 2016. The Law applies to the contracts affected by the economic changes (**economic changes**) enacted between the 1st of March and 31st of December 2016 (**the specified period**). Although the law does not specify what the economic changes are, they presumably include: (i) devaluing the Egyptian Pound by 13% on 14 March 2016³, (ii) floating the EGP on 3 November 2016⁴, (iii) introducing the Value-Added Tax Law⁵, and (iv) increasing the prices of energy products⁶.

I. Background

Contractors (inc. suppliers and services providers) engaged in public contracts with the Egyptian government (inc. state-owned companies and public entities) experienced serious difficulties after the enactment of the economic changes, due to inter alia the significant increases in the construction materials and other associated costs.

II. Newly established Supreme Committee for Compensation

The Law introduced a "Supreme Committee for Compensation" headquartered at the Ministry of Housing, Utilities and Urban Communities. The committee is tasked with setting the criteria and guidelines for and rates of compensation to be paid in order to compensate the damages resulting from the economic changes enacted during the specified period⁷.

¹ Law No. 84 of 2017 on the compensation of public construction, supplies and services contracts; published in the Official Gazette, Issue No. 27-*bis* of 9 July 2017.

² Previous newsletter on decree to mitigate negative effects of the floatation of the Egyptian pound available [here](#).

³ See article in the Wall Street Journal [here](#).

⁴ Previous newsletter on the floatation of the Egyptian Pound available [here](#).

⁵ Value-Added Tax Law No. 67 of 2016; published in the Official Gazette, Issue No. 35-*bis* of 7 September 2016.

⁶ See article in Reuters [here](#).

⁷ Art. 1 of the Law.

The committee was formally established by prime ministerial decree⁸, is chaired by the minister of Housing, Utilities and Urban Communities, and includes government representatives (e.g., the Ministry of Finance), the State Council, the Federation of Egyptian Industries and the Armed Force Engineering Authority⁹.

The committee prepares its proposals on the criteria/rates and timings for compensation payments¹⁰ for each revised contract on a case by case basis, which must be submitted to the Council of Ministers (**Cabinet**) for approval¹¹.

III. Request for compensation

On the 1st of October 2017, the Cabinet issued the Decree No. 13 of 2017¹² (**Decree**), where it ratified the proposals approved by the Supreme Committee for Compensation regarding the criteria, guidelines and rates of compensation that all the Egyptian government entities subject to the Law must comply with when preparing their studies of the compensation due to contractors.

The compensation can be requested for the contractual works performed during the specified period¹³ until the end of the contract's execution provided that (i) there are no delays attributable to the claiming contractor/supplier and (ii) the counterparty did not provide a contractual term extension. Pursuant to the Decree, contractors that have been awarded contracts by Public Entities after 31st of December 2016 and/or who have completed their contractual works prior to 1st of March 2016 are both ineligible to request any compensation.

The Law applies on all types of works in contracting, supplies and service provision contracts. The Decree better identifies than the Law the Egyptian government entities subject to applying the compensation regime. The designated subjects of the Law (hereinafter referred to as

⁸ By Prime Minister Decree No. 1677 of 2017; published in the Official Gazette, Issue No. 29-*bis*(g) (cont.) of 26 July 2017.

⁹ Art. 2 of the Law

¹⁰ Art. 3 of the Law.

¹¹ Art. 4 of the Law.

¹² Cabinet Decree No. 13 of 2017; published in the Official Gazette, Issue No. 39-*bis*(b) of 01 October 2017.

¹³ The Compensation Law applies to all contractual works contracts valid within the specified period regardless of their conclusion date.

Public Entities/Entity) include the (i) State's administrative units (e.g. ministries, authorities and bodies with special budgets), (ii) State-owned companies¹⁴ and (iii) local administration units.

Those seeking compensation will need to submit a request in a certain format¹⁵ to the Public Entities. Requests must include (i) information on the relevant contracts¹⁶, (ii) a presentation of all damages incurred by the contractor due to the economic changes and how the changes disturbed the contract's economic and financial balances and (iii) an approximated valuation of the requested compensation based on the contractor's point of view.

IV. Public Entities' obligations under the Law

Upon filling the compensation requests in line with the requirements of section III, the Public Entities can on case by case basis study the possibility of applying the Law on the contract at stake, determine the compensation due before raising the whole study to the competent authority for its final decision. The mentioned study must include the (i) definitions (e.g. rates of compensation proposed by the Supreme Committee for Compensation, price differences, compensation due) and (ii) the equation and rules of calculating the compensation.

The equation of compensation does not apply to:

- (i) contracts where the contractor submits no compensation requests;
- (ii) contracts where there is a delay in the execution as per the agreed timetable for reasons attributable to the contractors' will; and
- (iii) items exceeding (125%) of the initial quantities and size of the contract.

The Public Entities must ensure the payment of the due compensation within at most 90 days from the date of submitting the compensation request. In this regard, the Law obliges each Public Entity to create an internal department responsible for applying the Law, where the sums dedicated in each Public Entity's budget will be allocated thereto.

¹⁴ This includes companies that are (i) 100% owned by one Public Entity or more, (ii) 51% or more owned by a Public Entity and (iii) subsidiaries where 51% or more of the shareholders are public holding companies.

¹⁵ Template is annexed in Cabinet's Decree No. 13 of 2017.

¹⁶ This includes details of any advance payments made and differences in prices, as provided under the Tenders and Bids Law No. 89 of 1998; published in the Official Gazette, Issue 19-*bis* of 8 May 1998.

The compensation payments must be made in compliance with the rates provided in the Cabinet Decrees 14¹⁷, 16¹⁸ and 17¹⁹ of 2017. By way of example, the aforesaid Decrees determine the rates of compensation for works under specific contracts (e.g. pipes works, intersection of a tunnel with a road, concrete bridges, etc). Moreover, according to the tables attached to the aforesaid Decrees, the compensation rates are based on the dates the contracts had been entered into.

V. Outside the scope of compensation

The contractor's compensation request cannot be reviewed by the Public Entity if the:

- (i) contract is disputed in judiciary or arbitration, until the dispute is finally decided upon; and
- (ii) public entity intends to consider the cancellation or withdrawal of the contract due to the contractor's prejudice of a contractual term for reasons attributable to his will (as long as the reasons for the withdrawal or cancellation of the contract is not an outcome of the economic changes).

Additionally, the contractor is not entitled a compensation under the Law if the:

- (i) contractor has committed himself or through a third party an act of fraud when dealing with the public entity or when was awarded the contract;
- (ii) contractor becomes bankrupt unless the bankruptcy is an outcome of the economic changes; and
- (iii) public entity issues a decision cancelling or withdrawing the contractual works as long as the decision is not an outcome of the economic changes.

VI. Conclusion

The Law represents an important step towards mitigating the serious burdens incurred by the public contractors arising from their contractual

¹⁷ Cabinet Decree No. 14 of 2017; published in the Official Gazette, Issue No. 42-*bis*(b) of 23 October 2017.

¹⁸ Cabinet Decree No. 16 of 2017; published in the Official Gazette, Issue No. 45-*bis*(d) of 13 November 2017.

¹⁹ Cabinet Decree No. 17 of 2017; published in the Official Gazette, Issue No. 49-*bis*(b) of 12 December 2017.

arrangements with the GOE. Finally, it is worth noting that in cases of delays in executing the works with respect to the agreed timetable, a previous careful legal assessment of the causes of the delay will be critical to qualify for compensation.

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