



November 2018

Energy & Infrastructures
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This newsletter has been prepared
also with the support of Thebes
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EGYPT: Giving Preference to Egyptian Products in Government Contracts

I. Introduction

On 11 June 2018, the Egyptian government enacted Law No. 90, which amends Law No. 5 of 2015 on Giving Preference to Egyptian Products in Government Contracts. The amendments **aim to further boost local industry in Egypt** by expanding Law No. 5's scope of application.

We provide below an overview of selected issues regarding: (a) Law No. 5 as amended by Law No. 90 (“**Law**”); and (b) the Law's executive regulations enacted by the Ministry of Trade and Industry through Decree No. 565 of 2015. These issues will be significant to companies planning to enter into government contracts when the project in question is not financed directly or indirectly by multilateral agencies or by an export finance scheme that envisages the participation of foreign export credit agencies.

II. Scope of the Law

The Law requires public entities to comply with an “Egyptian component percentage” when entering into either:

- a **project contracts** (i.e., contractor contracts and contracts for the construction, preparation and development of infrastructure or public utilities); or
- a **purchase contracts of industrial products**, entered into by the State's administrative bodies – including ministries, authorities, and entities with a special budget – local administrative units, and public authorities.

Specifically, Egyptian industrial product must account for at least **40%** of the cost of the product or project in question (“**Egyptian Component Requirement**”).

Calculation of the Egyptian component

The following definitions must be taken into account to calculate the Egyptian Component Requirement:

“Industrial product”: any act of physical or chemical transformation, or addition to or modification of a good. This includes assembly, classification, packaging, recycling, software, application, IT production, and any other process that meets the standards and conditions set out in a decree to be issued by the Ministry of Trade and Industry.

“Product satisfying the Egyptian component percentage”: any industrial product in which the Egyptian component accounts for at least 40% of the product’s price. This is calculated by subtracting the value of imported components from the product’s cost in the manner set out in a decree to be issued by the Ministry of Trade and Industry.

Specific provisions applicable to project contracts

The Law also applies to project contracts entered into by:

- companies owned entirely by the State or by any public entities;
- public sector companies;
- public works companies; and
- companies in which any of the following – jointly or severally – hold a controlling stake: (a) the State, (b) any public legal entity, (c) any company referred to in the Law, or (d) State-owned private legal entities.

Specific provisions applicable to purchase contracts: exemptions

The public entities mentioned in this paragraph II may enter into purchase contracts for industrial products **without meeting** the Egyptian Component Requirement in the following cases:

- if the product which can satisfy the Egyptian Component Requirement are not up to the certified required standards;
- the products are 15% more expensive than competing products;

- the products are in short supply;
- the purchase contract is in the public interest (as set out in a Prime Minister's decree).

Exclusions:

The Law **does not** apply to any kind of contracts:

- entered into by the Ministry of Defence, the Ministry of State for Military Production, the Ministry of the Interior, or Egyptian General Intelligence entities;
- entered into by ministries, authorities, or other bodies that must remain confidential for reasons of national security (as set out in a Prime Minister's decree); and
- regulating public-private partnerships (PPP) – and related special consulting contracts – that are entered into by administrative bodies for infrastructure projects, public services and public utilities, and the services offered under those contracts in accordance with PPP Law No. 67 of 2010.

The Egyptian **Prime Minister may grant an exemption** from the Egyptian Component Requirement following a recommendation from the relevant minister and the Ministers of Planning and Finance.

III. Obligation to notify

The Law requires the relevant public entities to **notify the Committee** for Preference of Egyptian Products (“**Committee**”) of the terms and specifications of contracts with a value **exceeding EGP 1 million**.

IV. Penalties

The Law sets out penalties of **EGP 5,000–EGP 100,000** for refusal or failure to disclose the information mentioned in section III above.

Moreover, any individual/entity that provides incorrect information or documentation to the Committee will be subject to a penalty of at least **EGP 50,000 and up to 10% of the total value of the contract**.

Finally, any individual/entity that intentionally splits contracts to circumvent the scope of the Law will be subject to a penalty of **EGP 50,000–EGP 500,000**. However, a lower penalty may be applied if the split is due to negligence and not to wilful misconduct.

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V. Conclusion

The Law was enacted to boost local industry in Egypt, making it an important piece of legislation for any company that wishes to enter into government purchase or project contracts when the project is: (a) not financed directly or indirectly by multilateral agencies, or (b) not financed by an export finance scheme that envisages the participation of foreign export credit agencies. Indeed, the requirement to fulfil the Egyptian Component Requirement **may have an impact on how a company is envisaging the performance or delivery of the works/supplied goods covered by the contracts.**

Some **grey areas still exist**, such as the standards and conditions that apply to the industrial product and how to calculate the relevant cost. It is hoped that this will be clarified further by the Ministry of Trade and Industry with a decree that it is expected to issue in accordance with the Law.

The **need for further clarification** is especially important in light of Law No. 182 of 2018 on public contracts, which refers to the Egyptian Component Requirement.