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## Overview of the New SMEs Law

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# Introduction

**W**ithin the last three (3) years, the Egyptian legislature has embarked on a journey of business-friendly legislative changes through enacting various legal instruments that consider the benefit, protection, and ease of doing business in Egypt.

The prime examples of this include the 2017 Investment Law, the 2018 Companies Law Amendments, the 2018 Public Procurement Law, the 2018 Cyber Security Law, the 2020 Data Protection Law, and now the 2020 MSMEs Law. These legislations were 'on-time' as the subject of each of them is too delicate in its regulatory aspect, and it comes as no surprise that with the intended development and economic growth of the Egyptian Market, these new laws create a business-friendly environment.

Naturally, a closer look at the New MSMEs Development Law No. 152 of 2020 – which was enacted on the 15th of July, 2020 (the "Law") is a must in this business-friendly environment for many reasons; MSMEs comprise a massive share of the Egyptian Labour force (70%) and also, almost all agricultural production in Egypt comes from MSMEs. MSMEs also generate (34%) of Egypt's GDP and constitute – as of 2019 – (95%) of the Egyptian corporation landscape. In addition, MSMEs represent 44.6% of the private sector, with approximately 1.7 Million foundations. In terms of production, MSMEs production value has reached about EGP 1.237 Trillion, and EGP 804 Billion in Added Value.

The Law deals with Micro, Small, and Midsize Enterprises (the "MSMEs"), as well as Entrepreneurships – as a sector – from the cradle to the grave as the Law deals with categorization, funding, and facilities for such business entities. Moreover, the Law touches upon some crucial points related to Informal Economy Projects (the "IEPs"), which has been a highly controversial topic for some time in Egypt since it comprises almost (60%) of the Egyptian Economy.

Naturally, the Law details a few incentives given to all entities comprising the life cycle of MSMEs, including both tax and non-tax incentives. In addition, the Law facilitates the work of the entities that will support the ecosystem of these MSMEs; this includes Business Incubators, Business Accelerators, and funding entities.

Furthermore, the Law has established a governmental body, namely, the MSMEs Development Authority (the “MSMEs Authority”), that will overview the financing and facilitation of any required procedures for MSMEs, Entrepreneurships, and Informal Economy Projects.

The Law also annuls the only instrument that was regulating this matter, which is law no. 141 of 2004 (the “Old Law”). However, given the executive regulations of the law were not issued till date, The Old Law’s regulations remain in effect.

# Market

## Players under the Law

The Law addresses and defines multiple entities based on their eligibility for funding and facilitation by the governmental authorities and funding entities. The Law regulates (3) types of entities as follows:

# 1) M S MEs

### Micro Enterprises

- All projects and enterprises with an annual business turnover less than EGP 1M; or
- Any enterprise that is incorporated no more than (2) years ago with a paid or invested capital of less than EGP 50K.

### Small Enterprises

- All projects and enterprises with an annual business turnover between EGP 1M to 50M; or
- Any industrial project that is incorporated no more than (2) years ago with a paid or invested capital between EGP 50K to 5M; or
- Any non-industrial project or enterprise that is incorporated no more than (2) years ago with a paid or invested capital between EGP 50K and 3M.

### Mid-sized Enterprises

- All projects and enterprises with an annual business turnover between EGP 50M to 200M; or
- Any industrial project that is incorporated no more than (2) years ago with a paid or invested capital between EGP 5M to 15M; or
- Any non-industrial project or enterprise that is incorporated no more than (2) years ago with a paid or invested capital between EGP 3M and 5M.

## 2) Entrepreneurships

Projects or enterprises that were established or has started production no more than (7) years ago, which rely on creativity or innovation determined as per the parameters set by the Board of MSMEs Authority.

## 3) Informal Economy Projects (“IEP”)

MSMEs that operate without a construction permit or an operating license or any other license or authorization that is required for it to operate. IEPs will be determined through a decree to be issued by the Prime Minister as per the MSMEs Authority’s recommendations.

All privileges & incentives stipulated under the Law may not be granted to any of the Market Players in two cases as follows:

A) If the project’s owner, or its shareholder, or shareholders of the company or the Supporting Entities that are affiliated with the Market Player (“Affiliated Parties”) are non-MSME projects as defined under the Law. Affiliated Parties comprise natural persons who have up to 4th degree natural or in-law relation with the Market Player, any juristic persons of any sort where its shares or capital is directly or indirectly owned by a single party, and any person subject to effective control of another, or in agreement with them during General Assembly or Board meetings (Supporting Entities are exceptionally allowed such a status). In other words, the MSME must be a true MSME. However, it must be noted that there is an exception under this case concerning the relationship between the Market Player and the Supporting Entities if specific criteria are met.

B) If the Market Player carries out any behavior to obtain the stipulated incentives under the Law without just cause. This includes dividing the project – at the time of issuance of this Law – without an economic necessity.

Naturally, if any of the above cases occur, then any granted incentives will be revoked, and the Market Player would be bound to repay the value of any awarded incentives. Further, tax incentives may only be granted upon keeping regular books and records as per the yet-to-be-issued executive regulations for the Law. Additionally, a Market Player may not be granted both this Law’s and the 2017 Investment Law’s incentives at the same time.



part 2 :



## Incentive under the New Law

### I. Eligible Market Players for Non-Tax Incentives:

The non-tax incentives under the Law are granted based on the economic sector in which the market player is acting or the status of the market player itself (i.e., being an IEP or an Entrepreneurship). In this regard, the Law has enumerated an exhaustive list of situations whereby a market player would be eligible to receive specific non-tax incentives as follows:

- Informal Economy Projects (IEPs) filing for regularization (the regularization will be detailed later in this guide);
- Entrepreneurships (as defined above);
- MSMEs operating in the Digital Transformation and the Artificial Intelligence Sectors;
- Industrial MSMEs or MSMEs generally that work on increasing the use of local Egyptian components in their products;
- MSMEs that replaces and renovates production machinery and technology systems;
- MSMEs that operate in the following sectors:
  - Agricultural and Livestock Sectors;
  - Information Technology Sector;
  - Industrial and Technological Sectors whereby the MSMEs provide innovations; and
  - New and Renewable Energy Sector.

It must be noted that the MSMEs Authority is entitled to propose new activities and sectors as per the dynamics of the Egyptian economy.

### II. Available Non-Tax Incentives:

The market players detailed in the above section should be eligible to receive any of the following non-tax incentives:

- Allocating land for free or in return for a relatively small fee;
- Refunding no more than 50% of the value of the land allocated to the enterprise;
- Exempting the enterprises from or reducing the value of the necessary guarantees it must provide at the time of allocation of real estate required for such enterprises;
- Refunding the value of utilities dedicated to the allocated land upon operation;
- Prolonging the due dates for paying the utilities dedicated to the allocated land including full or partial waiver of delay costs;
- Bearing part of the cost of workers technical training;
- Full or partial refunding the participation value in exhibitions;

Moreover, non-tax incentives also include monetary incentives that comprise (0.3) of Egypt's GDP with a minimum of EGP 1.5 Billion that might be allocated as per the executive regulations, which are not yet issued. This, of course raises a question of determining the standards that will be adopted by the executive regulations given that the size of each category of SMEs significantly varies in its needs. The Law also promises "flexibility of funding" as it did not specify the sources of funding and left it for each year's state budget.

In addition, the Law exclusively states that Entrepreneurships are exempted from the cost of registering patents, utility models, and design plans. Furthermore, the government may also assist in registering the aforementioned intellectual properties for Entrepreneurships. This reflects the reality of the market as most entrepreneurships produce intellectual property that must be protected despite the financial burden of such protection.

## Temporary Allocation of Land to MSMEs:

Another interesting form of non-tax incentives under the Law is the temporary allocation of land or real estate to MSMEs in line with their needs. The allocation is provided by the governmental authority that owns the land. This temporary allocation is conditional on having the MSME bearing all the obligations that arise from such an allocation. The provisional allocation may take the form of sale, or the sale usufruct rights or lease of usufruct rights, or lease, or lease with a sale option.

Land allocation is not 'free diner' as the Law requires any sort of disposition of the allocated land or property to be authorized by the Supporting Entity and the Government as well. Otherwise, there is a general prohibition on any dispositions in that regard, which – if failed to be observed – may result in legal proceedings against the MSMEs.

The means of allocation are those of standard procedure. Meaning; that there are no special regulations regarding how the means of allocation may be performed (traditional sale & lease regulations). However, usufruct – as a mean of temporary allocation of land and property – has its own regulations in terms of time limits and obligation of the beneficiary (the MSME), as usufruct remains in effect for its stipulated period regardless of the dissolution of the entity that was granted such usufruct rights.

Nevertheless, the Law also compels the MSMEs Authority to demand non-governmental bodies and entities to allocate lands and properties in touristic, urban communities, and terraformed lands will be allocated to SMEs with various pricing systems– as explained in Part 5 – in order to make land allocation more practical given its importance for MSMEs.



# Tax Incentive under the Law:

Unlike non-tax incentives, there are no specific sectors or activities that benefit from the tax incentives. These incentives apply to all MSMEs, and IEPs receive such incentives regardless of their field of business. The exception here is Entrepreneurships, which are not included to receive any of the tax incentives under the Law.

| Type of Eligible Market Player Tax Incentive                   | Tax Incentive   |
|--|---|
| <p><b>A) MSMEs and IEPs that apply for regularization:</b></p> | <p>A 5-year exemption from stamp duty tax and notary public governmental fees levied on all articles of association, credit facilities agreements, and mortgages, and other facilities as well as the registration of lands required in conjunction with the business of such enterprises. This 5-year period starts from the date of filing with the commercial registry.</p>  |
| <p><b>B) MSMEs Only</b></p>                                    | <ul style="list-style-type: none"> <li>• A fixed tariff of (2%) on all imported equipment and tools used by the MSMEs except for passenger vehicles.</li> <li>• Exemption from the Capital Gains Tax on the disposal of assets or machinery provided that the gains realized from such disposal are used to purchase new assets or machinery within (1) year from the date of disposal. Further information on this tax incentive will be detailed under the executive regulations of the Law.</li> </ul> |

In addition, the Law provides that the Micro and Small Enterprises might get exempt from taxes on built properties concerning the units owned by such enterprises, as per the discretionary power of the Cabinet and the Board of the MSMEs Authority. Further, the Law exempts sole person companies from taxes on the distribution of profits provided that the founding entity of such a sole person company is a natural person and not a corporate entity.



# Part 4: Special Tax Rates & Tax Treatment under the Law:

One of the most essential features under the Law is the special tax rates that are levied for MSMEs only.

## I. Special Tax Rates for Micro Enterprises:

| Annual Revenues of the Micro Enterprise | Due Income Taxes under the Law |
|---|--------------------------------|
| Less than EGP 250,000                   | EGP 1,000                      |
| Between EGP 250,000 & 500,000           | EGP 2,500                      |
| Between EGP 500,000 & 1,000,000         | EGP 5,000                      |

## II. Special Tax Rates for other MSMEs:

| Annual Revenues of Other MSMEs     | Income Tax Rate under the Law   |
|------------------------------------|---|
| Between EGP 1,000,000 & 2,000,000  | (0.5%)  |
| Between EGP 1,000,000 & 2,000,000  | (0.75%)   |
| Between EGP 3,000,000 & 10,000,000 | (1%)<br>However, this tax rate would be applicable only for five (5) years. |

## III. Record Keeping Exemption

The Law provides a special exemption for MSMEs with respect to keeping financial records for submitting tax returns which are required under the Income Tax Law No. 91/2005. Instead, the Law entitles the Minister of Finance to issue special regulations instead with much more simplified procedures for record keeping for MSMEs.

## IV. Application for Tax Treatment under Income Tax Law No. 91/2005

The Law entitles MSMEs to revert to the tax treatment under the Income Tax Law No. 91/2005 in two instances:

- a) If the MSME is recording a loss; or
- b) If the MSME would pay a lower tax under the Income Tax Law No. 91/2005.

However, MSMEs have to be cautious as converting to the tax treatment under the Income Tax Law No. 91/2005 means that such MSMEs might not revert back to the simplified tax procedures and the above-mentioned special tax rates for at least five (5) years after the MSME's decision to convert.

## Part 5: Incentives for Supporting Entities under the Law:

### I. Definition of Supporting (Funding) Entities:

As per the Law, Supporting Entities include banks, financing institutions, corporations, and any other entities that are licensed to finance or provide facilities to MSMEs or those operating within such activities.

### II. Supporting Entities vs. Incubators & Accelerators:

Incubators are companies, facilities, associations, and other entities that are aimed towards supporting newly established enterprises (no more than two (2) years since their establishment) & Entrepreneurships in its growth by providing its services for them. Accelerators play the same role but for MSMEs and Entrepreneurships.

Generally speaking, Supporting Entities are concerned with funding and facilities of MSMEs. At the same time, Incubators and Accelerators tend to provide support services in terms of financing, marketing, and management, hence comprising a more comprehensive range of much-needed help for MSMEs and Entrepreneurships.

### III. Incentives for 'Supporting Entities':

The same non-tax incentives as the MSMEs and Entrepreneurships are granted to the Supporting Entities in the event they:

- Establish industrial, production, crafts, or services complexes that grant MSMEs spaces for their activities;
- Are Business Incubators and Accelerators, especially if they are working with newly established enterprises (no more than two (2) years since their establishment) & Entrepreneurships.

The Law also proposes monetary incentives for corporations and Investment funds that finance MSMEs upon a few conditions, including that these Supporting Entities do not operate in the banking sector. Moreover, the Law seems to limit these monetary incentives to the situation whereby the Supporting Entities are funding Entrepreneurships which themselves should also attain specific criteria as well in order to entitle the Supporting Entities to receive such monetary incentives.

# Part 6: Facilities for

# Commencement

# of Operations

Facilitating the commencement of operations for MSMEs under the Law focuses on two aspects, namely, (a) the facilitates for licensing, and the (b) facilities for securing land and operations.

## **I. Licensing Procedures and Services Facilities for MSMEs**

The Law establishes an MSMEs' service units, which undertakes to issue for the benefit of the MSMEs all relevant authorizations and licenses. These units may also provide any other necessary services in order to facilitate the commencement of operations for the MSMEs

In essence, licensing does not hold much significance except for the fact that the aforementioned units – representing the MSMEs Authority – when issuing any licenses, such licenses will override all other permits and licenses issued by different authorities. In other words, the units may issue all necessary permits without the need for issuing the same relevant license from its competent authority.

## **II. Land allocation and Operational Facilities for SMEs**

The Law stipulates that at least (30%) of the available lands in industrial, touristic, urban communities, and terraformed lands will be allocated to MSMEs. Also, lands could be allocated to Micro and Small Enterprises against prices that are equal to that of the cost of connecting utilities to such lands as long as such pricing does not contradict with any other facilities or incentives stipulated under the Law. Further, Micro and Small enterprises may also be granted usufruct rights for such lands in return of no more than (5%) of its sale price per annum.

Moreover, the Law set some attractive incentives embodies in allocating a percentage of 20% for governmental contracting to be exclusively done with MSMEs, in addition to the possibility of limiting certain bids & tenders to MSMEs.

# Part 7: Informal Economy

## Projects – Regularization & Challenges.

**The** crown jewel of the Law is that it finally gives detailed guidance on the regularization of Informal Economic Projects (IEPs). IEPs were always a recurring issue for the process of integrating the Egyptian economy as they constitute almost 60% of the entirety of the Egyptian economy. However, given that the IEPs usually (considering their size, purpose, and lack of regulations) tread outside the grid by not registering nor dealing with financial institutions, it was tough to give a helping hand to such a sector. The Law puts into consideration all the relevant factors that would allow for IEPs to integrate with the official **economy**.

### I. Regularization in a Nutshell

Regularization occurs when an IEP files for a temporary license that entails its regularization, which may not last for more than (5) years. This is followed by a request for a final license to regularize an IEP fully. Needless to mention that the temporary license produces all effects and waives all competent authorities' licenses.

### II. Incentives that are Necessary for Regularization

The Law address the facilities that are needed for IEPs to become regularized. For instance, the Law allows the MSMEs Authority to demand an allocated land from the government if this condition is a significant issue that prevents an IEP from being regularized. However, this constitutes a very critical point as an IEP that relocates through allocated land or property must file for regularization within the prescribed time limits. Failure to do so without acceptable reasons may result in revocation of the allocation decree, and the regularization license.

Nevertheless, the Law recognizes all the MSMEs non-tax incentives for any IEP post-regularization. Additionally, the Law stipulates that no taxes may be levied on a regularized IEP for the years before its regularization. Further, the Law provides for a simplified tax treatment for the IEPs, whether during the period of the temporary license and permanently thereafter, to encourage more and more IEPs to apply for the regularization process.

### III. When to File for Regularization?

The Law states that any IEP must file for regularization within one (1) year from the date of issuance of the executive regulations in order to be granted a temporary license. The timeline to issue a final license is still subject to determination by the MSMEs Authority.



# MSMEs Development Authority & its Role in Funding the MSMEs

**A**t this point, it is needless to mention that funding, operations, and any other facilities are subject to the careful review – and sometimes, the interference – of the SMEs Development Authority. A good understanding of this authority and its role always help SMEs realize their vision and understand the boundaries of The Law.

## **I. Who is the MSMEs Development Authority?**

The Law defines the MSMEs Authority as a special fund that holds a juristic personality that follows the Cabinet. This fund is exclusively focused on the development and financing of MSMEs.

## **II. Eligibility for funding**

The MSMEs Authority only finances entities for the sake of realizing the aims and objectives of the Law. Putting that in consideration, eligibility for funding is determined by the type of entity which may be financed as per the following list of entities:

- MSMEs
- Companies that sponsor insolvent MSMEs
- Corporations, associations, financial institutions, and authorities operate concerning the purposes of the Authority.
- Financial Risk Management Corporations.
- Business Incubators and Accelerators.

### III. Services of The MSMEs Authority

Aside from being a financier or a facilitator, the MSMEs Authority also provides extensive services for MSMEs for them to utilize their best efforts and plans. These services include information on available investments in each governorate, raising awareness of possible risks that an MSME may face, informing MSMEs about local and international exhibits and their attendance, and many other services that are provided for the sake of giving enough insights for MSMEs for them to proceed with their businesses at ease.

### IV. Role of The Authority with entities other than financiers and SMEs

The MSMEs Authority also plays an advisory role in all legislative matters that stem from the subjects of this Law. The Law makes it mandatory as well to have the recommendations of the MSMEs Authority on all legislations and international treaties that are relevant to the provisions of the Law.

# Conclusion:

It is no surprise that the Law holds much promise to all components of the MSMEs sector in Egypt. While we cannot assess the situation entirely without the enactment of executive regulations, it is safe to say that the broader guidelines embodied in the Law suggest a more tailored and responsive mechanism for the facilitation of the business of MSMEs.

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