

LICENCE III – ANGLAIS JURIDIQUE

2^e Semestre – Partie I

Cours de M^{me} S. Fahmy

Introduction on Business in Egypt
<https://www.gafi.gov.eg/English/Pages/default.aspx>

Whether you are a foreigner or Egyptian investor, in order to do business in Egypt you need to go through certain legal channels, one of them is GAFI.

What is GAFI?

General Authority for Investment and Free Zone (GAFI) is the principal governmental authority concerned with regulating and facilitating investment in Egypt, and the promotion of Egypt's potential sectors to attract foreign investment, reinvestments and expansions.

GAFI work is based on five main pillars:

1. The stimulation of domestic investment.
2. The development of investment services.
3. The management of free zones and development of investment zones to accelerate the expansion of competitive strategic clusters.
4. Institutional development support to entrepreneurship and stimulating the development of innovation.
5. In order to achieve this, GAFI is committed to building and implementing a quality management system to meet the requirements of international standards ISO 9007:2008.

GAFI Strategic Goals:

1. Promote Egypt globally as a safe and stimulating environment for investment.
2. Reinforce cooperation with investment authorities worldwide, especially on the African level.
3. Increase the competitiveness of Egypt in respect of attracting investment, especially the fields in which Egypt does not have a competitive advantage.
4. Enhance Egypt's ranking in the relevant international reports.
5. Coordinate and integrate with stakeholders on the local level to create a positive stimulating environment for investment.

The Laws and Regulations needed for doing business in Egypt (:

A. Investment Laws:

1. The Companies Law n° 159/1981 amended by Law no 4/2018:

- The provisions of the law are applicable to both Capital Companies as well as Persons Companies.
- Capital Companies are: Joint Stock Companies (JSC), Limited Liability Companies (LLC), and Partnership Limited by Shares Companies.
- Persons' Companies are: Partnership and Limited Partnership Companies.
- In 2018, the amendments of Law n° 4/2018, introduced the Sole Proprietorship companies.
- This law cancels all other previous laws relevant to JSC and LLC such as: Law n° 26/1954, Law n° 244/1960, and Law n° 137/1961. It also canceled any provision that contradicts its provisions and/or its Executive Regulations in any valid and effective laws.

2. The New Investment Law n° 72/2017:

- The new Investment Law aims at increasing the percentage of local product, raising the level of competition and fighting monopoly.
- It gives exceptional incentives for labor-intensive projects and geographical areas that are most in need of development, as well as for small enterprises, especially youth projects, women, entrepreneurs and emerging projects.
- It specifies a set period of time for the services provided by the investment services center stipulated in the Law and grants powers to the administrative bodies represented in the service center to expedite decision making, pass approvals and activate the one-stop-shop service.
- The Executive Regulations consist of 132 articles divided into 5 sections:
 - 1- General provisions;
 - 2- Facilitations and incentives for investors; which includes a chapter for regulating the residency of non-Egyptian investors and the employment of foreign workers, a chapter for guarantees and a third chapter for special and additional incentives.
 - 3- The investor services center;
 - 4- The investment zones, technology parks and public free zones, and;
 - 5- Regulation of the investment environment.

3. The Special Economic Zones (SEZ) Law n° 83/2002:

- Which allowed the establishment of special zones for industrial, agricultural or service activities that are dedicated to the export markets.
- The law allows firms operating in these zones to import fixed assets and equipment, raw materials and intermediate goods duty-free.
- Companies established in the new zones are subject to lower corporate taxes and are exempt from sales and indirect taxes.
- They also operate under more flexible labor regulations and enjoy other incentives.
- The executive regulations of the law were issued on September 2002.
- Currently, there is one Special Economic Zone operating in the Northwest Gulf of Suez.

4. The Income Tax Law n° 91/2005:

- This Income Tax Law added some fundamental amendments to the previous regulations related to income tax in Egypt.

5. The Labor Law n° 12/2003:

- The law targets increasing private sector involvement and as well as achieving a balance between employees' and employers' rights.
- A new law project is currently under discussion in the parliament.

6. The Microfinance Law by Presidential Decree n° 141/2014:

- This Law regulates the financing process for economic productivity, service, and commercial purposes as per the rules set by the Financial Regulatory Authority (FRA)'s Board of Directors.

7. The Mineral Resources Law n° 198/2014:

- The law applies to mineral wealth, raw materials of mines, quarries and salt panes.
- It applies as well to nuclear materials and radioactive isotopes.

8. The Protection of Intellectual Property Rights Law n° 82/2002:

- It aims to make the Egyptian legal system related to intellectual property rights in compliance with Egypt's commitments stipulated in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).
- The Law aims to protect property rights to create a suitable environment that encourages innovation and enhances foreign direct investment.
- The new law consists of 205 articles unifying and controlling the current laws on intellectual property rights.
- It includes four sections: trademarks; copyrights; patents and plant varieties.

9. The Environmental Law n° 4/1994:

- It provides for the creation of an agency for the protection and promotion of the environment, the Egyptian Environmental Affairs Agency (EEAA).
- The EEAA formulates general policy and prepares the necessary plans for the protection and promotion of the environment.
- It also follows up on the implementation of such plans.

B. Commercial Laws:

1. Export Promotion Law n° 155/2002:

- It determines the responsibility of the Minister of Foreign Trade and Industry for issuing rules and procedures to guarantee Egyptian exports growth, opening of new markets and increasing competitiveness in the global market.

2. Customs Law no 66/1963 amended by Law n° 95/2005:

- The Law unifies procedures at all customs points, establishes and develops databases to automate all customs procedures and increases the transparency of customs revenue procedures.

3. Import and Export Regulation Law n° 118/1975:

- Next to the Customs Law, it is the most important Law that organizes import and export activities.

4. Commercial Agency Law n° 120/1982:

- A commercial agent, whether a person or an entity, he must be registered in the Commercial Agents and Brokers Register at the Ministry of Industry and Foreign Trade.
- A commercial agent is defined as a natural person or legal entity that submits tenders or concludes purchase, sale, lease contracts or provides services on behalf of and for producers, merchants or distributors.

5. Commercial Register Law no 34/1976 amended by Law no 98/1996:

- It regulates the process of registration for both agents and companies. The basic rule is that anyone engaged in the commercial activity must register in the Commercial Register.

6. Anti-Dumping Law no 161/1998:

- Egypt promulgated the Anti-Dumping Law to protect the Egyptian economy from harmful practices of international commerce.
- The Law has led to a series of decisions issued by the Ministry of Supply and Internal Trading where penalties for anti-dumping practices were imposed and enforced.

7. Protection Of Competition & the Prohibition of Monopolistic Practices Law no 3/2005:

- It aims to preventing monopolistic practices that harm the Egyptian economy and deprive consumers of their rights to obtain goods of high quality at value prices.
- The Law considers the rights of manufacturers to enhance their economic effectiveness through access to global markets.

C. Financial Laws:

1. Mortgage Law n° 148/2001:

- It provides a regulatory framework for the issuance of mortgages by bank and non-banking institutions, targeting middle-income families as the main beneficiaries of this Law.
- It regulates the securitization of mortgages to increase trading activity in the stock market.
- According to that law, borrowers can pay a 20% down payment and the remaining shall be paid over 20-30 year installments.

2. Public Tenders & Auctions Law no 182/2018 amended by Law n° 188/2020:

- The provisions of the Law shall apply to the organization of tenders and auctions by the units of government and public bodies.
- This Law cancels the previous laws such as: Law No. 147/1962, Law n° 9/1983 and the Law n° 89/1998 on the implementation of the Economic Development Plan and the regulation of Tenders and Auctions Law.

3. The Anti-Money Laundering Law no 80/2002 amended by and Law n° 17/2020:

- In 2002, the first Anti-Money Laundering Law in Egypt was promulgated, and then several amendments took place.
- The Law reflects the government's concerns towards the harmful effects of money laundering on the Egyptian economy.

4. Banking Laws n° 194/2020:

- It cancels the Banking Law n° 88/2003.
- The law regulates the Central Bank of Egypt, the banking sector, and dealings in foreign exchange, the accounts secrecy and private ownership of public sector banks.
- The law strengthens banking prudential regulations and raises the minimum capital requirements for banks and foreign exchange offices.

5. The Financial Regulatory Authority (FRA) Law n° 192/2009:

- The Financial Regulatory Authority (FRA) is responsible for the supervision and oversight of all non-banking financial markets and instruments, including: (1) Capital markets, (2) Stock exchange, (3) Insurance services, (4) Real Estate Mortgage, (5) Micro-Finance, (6) Financial Leasing, and securitization.

6. Capital Market Law n° 95/1992:

- It regulates the capital markets in Egypt and grants the “Misr for Central Clearing, Depository and Registry (MCDR), the legal authority and status necessary to ensure the effective execution of stock market legislation and regulation.

Trade Law n° 17/1999

We will tackle some of the some fundamental concepts to help us understand some of the basics of business law:

- What is trade/commerce?
- Who is a trader?
- What acts are considered commercial acts?

Part-I Trade in general General provisions

Article 1:

The provisions of the present law shall apply to trading activities and to all natural or juridical person for whom the quality of trader is established.

Article2:

1. The provisions of the accord between the contracting patties shall apply to commercial matters. In case no such accord exists, the provisions of the present law, or other laws related to commercial matters, then the rules of trading practices and customs shall apply. If no trading practices or customs exist, the provisions of the civil code' shall apply.
2. The agreements between the contracting parties, or the rules of trading practices or customs shall not be applicable where they contradict with the public order in Egypt.

Article3:

If the contract is commercial with regard to one of its parties, the provisions of the commercial law shall not be applicable except to the obligations of that party, exclusively; the provisions of the civil code shall apply to the obligations of the other party, unless otherwise prescribed in the law.

Chapter 1 Commercial Activities

Article 4:

The following works shall be considered commercial activities:

1. Purchase of movables whatever their kind with the aim of selling or leasing them as they are, or after shaping them in another form, and also selling or leasing these movables.
2. Renting movables with the aim of leasing them, and also leasing these movables.
3. Founding trading firms.

Article5:

The following activities are considered trading works if they are exercised by way of profession:

1. Supply of goods and services;
2. Industry;
3. Land and inland water transport;
4. Trade agencies and brokerage whatever the nature of the operations exercised by the broker;
5. All kinds of insurance;
6. Bank and money exchange transactions;
7. Warehousing the goods, the means of transport, the crops, etc.
8. Publishers houses and offices operating in the fields of publication, printing, photocopying, typewriting, translation, broadcasting, televising, journalism, news transmission, postal activities, and communications, as well as publicity and advertisement.
9. Commercial exploitation of computer software, and space transmission via satellites.
10. Prospecting operations of natural resources, such as mines, quarries, oil and gas explorations.
11. Poultry industry and livestock breeding and others, with the aim of setting them.
12. Building construction, restoration, modification, demolition, painting & public work contracts.
13. Construction, purchase or rental of realties with the aim of selling or leasing them complete or divided into apartments, rooms, or administrative or commercial units, whether furnished or unfurnished.
14. Tour and travel offices export and import offices, customs release offices, employment offices, and halls for public auction sales.
15. Hotels, restaurants, coffee shops and Coffee, acting and cinema works, circus works, and other public entertainment and amusement Sites.
16. Distribution of water, gas, electricity and other energy sources.

Article 6:

All works connected with maritime or air commercial navigation shall be considered a commercial activity, particularly the following:

1. Building, repair, and maintenance of ships or aircraft.
2. Buying, selling, leasing, or renting ships or aircraft.
3. Purchase of supplies, provisions, or equipment for ships or aircraft.
4. Sea or Air transport.
5. Freight, loading or unloading operations.
6. Employing navigators, pilots, or other workers on ships or aircraft.

Article7:

All works can be compared analogously to the works in the foregoing articles due to likeness in qualities and purposes shall be considered a commercial works.

Article 8:

1. Works that are carried out by the trader for business affairs connected with his trade shall be considered commercial works.
2. All work carried out by the trader shall be considered related to his trade, unless otherwise established.

Article 9:

The farmer's sale of the products of the land cultivated by him whether in his quality as its owner or just using it, this shall not be considered a commercial work.

Chapter 2 The Trader

Article 10:

The following shall be a trader:

1. Whoever exercises by way of profession, in his name or for his own account, a commercial activity.
2. Each firm assuming one of the forms prescribed in the laws concerning the companies, whatever the purpose for which the firm is established.

Article 11:

1. The following, whether Egyptian or alien, shall be qualified and eligible for the exercise of trade:
 - A. Once he completes the age of twenty one (21) years old, even though the law of the state, to which he belongs by his nationality, considers him as minor at that age.
 - B. Whoever completes the age of eighteen (18) years old under the conditions prescribed in the law of the state to which he belongs by his nationality, after obtaining the permission of the competent Egyptian Court.
2. A Person who is less than the age of eighteen (18) years old shall not exercise the profession of trade in Egypt even though the law of the state to which he belongs, by his nationality considers him of full age on completing eighteen years, or allows him to exercise trade.
3. A minor who is authorized to exercise trade shall have complete legal to fulfill all legal dispositions as required for his trade.

Article 12:

1. If the child or the person placed under an interdict has a fund in some trade, the court issue an order to extract his money from it, or continue placing the funds there according to the best interest of such person.
2. If the court orders continuing the exercise of trade, the proxy deputizing for the minor or the interdicted individual may be granted an absolute or restricted permission to effect such dispositions as necessitated by the trade.
3. If serious reasons should arise to cause fear of mismanagement by the deputizing proxy who is authorized to continue exercising the minor's trade or that of the interdicted person, the court may withdraw or restrict the permission without prejudice to the rights acquired by the bona fide third party.
4. Each court-writ that is pronounced concerning the continuation of the minor's trade or that of the interdicted person, or withdrawing, restricting or liquidating the trade, shall be recorded in the Register of Commerce and published in the register's journal.

Article 13:

If the court should order continuing the trade of the minor or the interdicted person, no commitments shall be made except within the limits of his funds, which are invested in that trade. The trader's bankruptcy may be declared, providing the bankruptcy shall not compromise the funds and property un-invested in the trade.

In this case, the declaration of bankruptcy shall not have any effect with regard to the minor of the interdicted person.

Article 14:

1. The law of the State to which a married woman belongs by her nationality shall regulate her eligibility to exercise trade.
2. An alien wife exercising trade as a profession shall be supposed to be exercising it with her husband's permission. If the law applicable allows the husband to object to her exercise of trade as a pm Cession, or to withdraw his previous permission the objection or withdrawal of the permission shall be recorded in the Register of Commerce and shall be published in the Register's journal. The objection or withdrawal of the permission shall have no effect except from the date of completing such publication.
3. The objection or withdrawal of the permission shall not affect the rights acquired by the bona third party.

Article 15:

1. An alien wife exercising trade shall be supposed to have goi married according to the system of separation of (lands and property, unless otherwise provided by the terms of the financial agreement between the two spouses.
2. The terms of financial agreement between the two spouses shall not be invoked vis-a-vis third parties except after its notarization by Publishing its summary in the register's journal.
3. In case of neglecting the publication of the financial terms of agreement between the two spouses, the third party may prove that the marriage had taken place according to a financial system more suited to his interests than the system of separation of funds.
4. A court ruling pronounced abroad concerning the separation of finds and property between the two spouses shall not be invoked except from the date of recording it n the register of Commerce and publishing its summary in the register's journal.

Article 16:

1. The provisions of the Commercial Law shall not apply to small craftsman.
2. A craftsman exercising a trade of insignificant costs to obtain an amount of income securing his daily sustenance shall be considered the owner of a small craft.

Article 17:

If a person prohibited to exercise trade by virtue of special laws, regulations or systems, embarks on exercising trade activities, he shall be considered a trader and shall be subject to the provisions of the Trade Law.

Article 18:

Whoever chooses trade for a profession under a false or hidden name behind another person shall be regarded as an established trader, in addition to establishing this quality in the visible person.

Article 19:

The quality of trader shall be presumable in the person impersonating it by announcing it in the papers, leaflets, on Radio or Television, or by any other method. This presumption may be denied by establishing that the person assuming the said quality did not exercise trade actually.

Article 20:

The quality of trader shall not be established to the State and other public law persons However, the provisions of this law shall apply to the trading activities exercised by the State, excluding those excepted by special text.

Why do we distinguish between civil and commercial acts/activities?

1. To know if the conditions of a trader apply:

- **Article 10 of the Trade Law:** *“The following shall be a trader: 1) Whoever exercises by way of profession, in his name or for his own account, a commercial activity. 2) Each firm assuming one of the forms prescribed in the laws concerning the companies, whatever the purpose for which the firm is established.”*

2. The rules of evidence are different:

- **Article 69 of the Trade Law:** *“1) Evidence of the commercial obligations, whatever their amount, may be established by all methods of evidence unless otherwise prescribed by the law. 2) In other than the cases for which the law necessitates establish the evidence in writing) in commercial matters, evidence of opposite of written evidence content or of exceeding such write evidence may be established by all methods. 3) Papers in private form in commercial matters shall be regarded as a proof in their date, vis-à-vis a third party, even though such date might not be affirmed or established, unless the law provides for the affirmation of the date. The date shall be considered valid until the opposite is established.”*
- **Article 70 of the Trade Law:** *“Commercial books may be accepted in establishing an evidence in court actions brought by or against the traders, once these books are connected with their commercial works, in accordance with the rules stated in this article.”*
- **Article 60 of the Evidence Law for Civil and Commercial Matters:** *“In non-commercial matters, if the legal disposal is worth more than one thousand pounds or the value is not specified, the testimony of witnesses in proving its existence or its lapse is not permissible unless there is an agreement or a text to the contrary.”*

3. Grace period:

- **Article 59 of the Trade Law:** *“The court may not grant the commercial obligation debtor a time during which he shall fulfill or divide his debt, except in necessary cases, and no gross damage shall attain the creditor.”*
- **Article 346 of the Civil Law:** *“1) Payment must be made immediately as soon as the obligation is finally owed by the debtor, unless there is an agreement or text to the contrary. 2) However, the judge may, in exceptional cases, if not prohibited by a provision in the law, to consider the debtor for a reasonable period or deadlines within which to implement his obligation, if his condition so requires and the creditor did not inflict serious harm from this postponement.”*

4. Joint liability of debtors:

- **Article 47 of the Trade Law:** *“1) Those who are bound together for a commercial debt shall be jointly responsible for that debt, unless otherwise prescribed by the law or the agreement. 2) This provision shall also apply in case of multiple warrantors for the commercial debt.”*
- **Article 279 of Civil law:** *“Solidarity between creditors or between debtors is not assumed, but is based on an agreement or a provision in the law.”*

5. Legal notices:

- **Article 58 of the Trade Law:** *“Demanding or notifying the debtor, in commercial matters, shall be done by virtue of an official warning, or by registered letter with acknowledgement of the receipt. In case of urgency, the demand or notification may be effected by virtue of a cable, telex, fax, or other quick communication methods.”*
- **Article 219 of Civil law:** *“The notice to the debtor shall be by sending him a warning or similar, and the notice may be made by mail in the manner indicated in the Procedures Law, and it may also result from an agreement stipulating that the debtor shall be excused as soon as the term has expired without the need for any other procedure.”*

6. Interest rate:

- **Article 50 of the Trade Law:** *“3) The interest shall be calculated according to the rate with which the Central Bank deals, unless otherwise agreed upon.”*
- **Article 226 of Civil law:** *“If the object of the obligation is a sum of money and the amount is known at the time of the request and the debtor is late in fulfilling it, he is obligated to pay the creditor as compensation for the delay interest of four percent (4%) in civil matters and five percent (5%) in commercial matters. These benefits shall apply from the date of the judicial claim for them, if the agreement or commercial custom does not specify another date for its validity, and all this unless the law provides otherwise.”*
- **Article 227 of Civil law:** *“1) The contracting parties may agree on another rate of interest, whether in consideration of delaying payment or in any other case in which interest is stipulated, provided that this price does not exceed seven percent (7%). Pay more than this amount. 2) Every commission or benefit, of whatever kind, stipulated by the creditor if it and the agreed-upon interest exceed the aforementioned maximum, shall be considered a hidden interest, and it is subject to reduction, if it is proven that this commission or benefit is not matched by a real service that the creditor has performed and no benefit legitimate.”*

7. Prescription by lapse of time:

- **Article 68 of the Trade Law:** *“The action resulting from the obligations of the traders towards one another, and which are connected with their commercial transactions shall prescribe with the lapse of seven years from the date on which the fulfillment of the obligation falls due, unless otherwise provided by the law. Similarly, the final rulings as pronounced in these actions shall lapse with the expiry of ten years.”*
- **Article 347 of Civil law:** *“1) If the subject of the obligation is a specific thing in particular, it must be delivered in the place where it was present at the time the obligation arose, unless there is an agreement or text to the contrary. 2) As for other obligations, the fulfillment shall be in the place where the debtor is located at the time of payment, or in the place where the debtor’s business center is if the obligation is related to these business.”*

8. Bankruptcy:

- **Article 550 of the Trade Law:** *“1) every trader who by virtue of the provisions of this law is bound to hold commercial books shall be considered in a state of bankruptcy if he stops paying his commercial debts following disturbance of his financial affairs.”*

2) Discontinuance of payment shall produce no resultant effect before a court ruling is pronounced declaring him bankrupt, unless otherwise prescribed in the law.”

- **Article 552 of the Trade Law:** *“A trader shall be declared bankrupt upon his request, the request of one of his creditors, or that of the Public Prosecution. The court may pass its ruling for declaration of his bankruptcy, motu proprio (of its own).*

ASSIGNMENT

Analyze the articles and summarize – using your own words – the reasons why we need to distinguish between civil and commercial acts.

(5 points)

NB: There are 3 important things I want to see in your assignment:

- 1- Analysis (understand the articles and find relations between them).
- 2- Summarized answer (write the essential only).
- 3- Use your own words as much as possible (express yourself do not copy).