

SMEs:

INCORPORATION AND OPPORTUNITIES



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Through the CSR activities undertaken by Sharkawy & Sarhan, derived from our culture and values, we believe that we are better able to serve and contribute to our community through the provision of legal services of which we have detailed knowledge and in which we have accumulated a wealth of experience. We have a fully dedicated pro bono department, operating through several channels, the ultimate aim of which is to attain maximum social impact. We work on several parallel axes, providing free legal services to NGOs, conducting public interest research studies, tackling a wide range of legal issues affecting community well-being, as well as more broadly making the law accessible to all.

SMEs and start-ups hold significant strategic importance in the Egyptian economy. They play an important role in economic growth, creating more than 75% of current job opportunities in Egypt. In alignment with our strategic vision, we aspire to empower SMEs and social entrepreneurs through knowledge-sharing.

Our “Law for All” initiative aims to create a comprehensive legal guide, answering the majority of legal questions an entrepreneur might have in the early stages of business life. It addresses issues related to the incorporation and management of LLCs, the liabilities incurred by the founders and managers, and even employment-related issues. For further information, please see our website lawforall.info.

This article aims to provide SMEs and start-ups with a better picture of the incorporation process and the opportunities available for SMEs in Egypt.

FROM IDEATION TO OPERATION

Choosing the best legal structure to meet your business needs is the first step towards ultimately having stable operations.

In order to choose the right legal structure for your business, you must first be aware of your options. Accordingly, it is good to ask yourself the following key questions: how many founders are there and what are their rights? How much money are you allocating for the company’s capital to be paid upfront? What are the company’s activities/overall goals and purpose?

If you are only one person willing to start and maintain your business without including other shareholders or investors, the Sole Person Company is your best option. This type of company was recently recognized as a legal structure as part of the latest amendments to the Companies Law issued on 16 January 2018. A Sole Person Company is a limited liability company that is owned by one person, which can be a natural person or a juristic person (e.g. another company). The liability of the owner is limited to his share in the

company. The minimum capital for incorporating a Sole Person Company is 50,000 EGP, which must be paid in full at the time of incorporation. Allocating this amount at such an early stage might be a challenge for many businesses. If your main concern lies in allocating the funds constituting the capital for your business, then your best option would be to establish a Limited Liability Company (LLC). Requiring no minimum capital, incorporation as an LLC has always been a first choice for startups and SMEs. However, to establish an LLC, the minimum number of founders/shareholders is two. Another factor limiting your options when choosing your company’s legal structure is the company’s activities and operations. Some sectoral laws governing specific areas of operations impose additional requirements for practicing certain activities, such as electricity production, microfinance and capital market activities. These requirements may mean that a specific type of company must be established (e.g. a Joint-stock Company or JSC), with a fixed minimum capital which is usually considerably higher than the amount generally required under the Companies Law (159/1981).

Incorporating a Company

As previously noted, LLCs are the most common choice for SMEs and startups; therefore, we are mainly focusing in this article on incorporation requirements pertinent to LLCs, taking into account that there are very few differences in incorporation processes between types of companies. There are three main phases for incorporating a company.

Initial Phase: “Preparation Phase”

This is the phase where the most time and effort is expended, and it includes:

- Deciding upon the company type (i.e. your legal structure);
- Appointing the company’s auditor and the founders’ attorney, who will be responsible for undertaking all procedures on behalf of the founders;
- Opening a bank account for the company and depositing the full amount of the allocated capital (since it’s an LLC). It is worth noting that this capital will be frozen throughout the incorporation procedures;
- Preparing all required documents.

Second Phase: “Incorporation Procedures”

LLC incorporation procedures are concluded before GAFI (the General Authority for Foreign Investment). GAFI is considered to be a one-stop-shop that offers a wide range of services for companies, including all incorporation procedures. This phase includes presenting the aforementioned documents and undertaking incorporation procedures before the relevant entities/officials in GAFI until you have reached the final stage, which is the registration of

the company in the commercial registry. These procedures usually take three to five working days, depending on GAFI’s capacity. However, incorporation procedures may only take a few hours if concluded through the VIP system, which offers an extremely speedy service, allowing the founders or the founders’ attorney to communicate with only one official, a very efficient process. The fees for such a service are currently 7,500 EGP, but we are expecting these to increase within the year. It is worth noting that GAFI will soon operate a new electronic incorporation procedures system. This online portal is now available; however, it is not in active operation yet.

Third Phase “Post-Incorporation Procedures”

This phase includes unfreezing the company’s bank account, along with the issuance of its tax card and commercial ledgers.

OPPORTUNITIES for SMEs

Egypt is currently witnessing significant legislative reform, aimed at enhancing the investment environment and encouraging both local and foreign investments. SMEs, which constitute more than 70% of the economy across different sectors, are one of the main pillars of the Egyptian economy. Accordingly, it is not a surprise that the Egyptian government is prioritizing addressing the needs of such key players through legislative reforms.

New Investment Law: Specific Incentives for SMEs

When incorporating your company, if its activities fall under one or more of the thirteen sectors identified under the Executive Regulations to the New Investment Law, then you would be subject to the New Investment Law (72/2017), and would thus benefit from all general incentives and guarantees stated within it. In addition, the New Investment Law explicitly addresses SMEs, including them under sector (B) for obtaining specific incentives. This allows for deductions from taxable net profits constituting a 30% discount off investment costs.

SMEs: Finance Opportunities

Perhaps the most prominent governmental initiative addressing the financing needs of SMEs is the CBE initiative aiming to increase SME financing opportunities, offering low interest rates and increasing financial inclusion more generally. Initially launched in 2008 as a scheme that offered incentives to banks for lending to SMEs, it has evolved over the last ten years. It currently makes it mandatory for registered banks in Egypt to allocate a minimum of 20% of their loan and credit portfolio by the end of 2019 to financing SMEs. Since one of the key issues yet to be developed in

Egypt’s legislative environment for SMEs is the adopting of a unified definition or criteria for what constitutes an SME, we must point out that when we refer to SMEs in this context, we are adopting the final amended definition of the CBE. According to this, a small entity is one which has an annual business turnover of minimum one million and maximum fifty million EGP, while a medium sized entity is one with an annual business turnover of minimum fifty million and maximum two hundred million EGP.

If your business size is in accordance with the above criteria then your chances of getting a loan from a bank will be enhanced, as you will then be falling under the 20% obligation. Remarkably, that is not even the good news. In addition to the above, banks are incentivized to grant loans at a maximum interest rate of 5% simple diminishing return for small entities. Furthermore, for medium sized entities, the CBE has allocated a total of 15 billion EGP to be offered through banks in Egypt with discounted interest rates (long-term loans at 7% and short-term financial facilities for working capital at 12%). These loans are offered according to a specific set of requirements, focusing on specific sectors, in particular the industrial and agricultural sectors.

Additional important financing opportunities are offered to SMEs through the Micro, Small and Medium Enterprises Development Agency (MSME Development Agency). Loans range from 10,000 EGP to five million EGP, mainly directed to small entities (with a minimum paid capital of 50,000 EGP and a maximum of one million EGP). These are available either directly through the MSME, or through a list of banks which collaborate with the MSME, as announced on their official websites. Qualifications, requirements and guarantees to obtain these loans are tailored to fit the nature of SME business models.

These are just examples of many tailored opportunities available for SMEs. In a developing legal environment such as Egypt, as a founder or business owner, you should always keep yourself posted on the changing legal environment so as not to miss emerging opportunities.

Nouran Gamal is Pro Bono Associate at Sharkawy & Sarhan law firm, which she joined in 2016. She obtained her LLB and her LLM from Ain Shams University. Her main areas of professional focus at Sharkawy & Sarhan have been NGO laws and regulations, banking and finance, employment and general commercial issues. She has also advised several international organizations including IECD, Samusocial International Egypte and Magrabi Foundation on legal issues and presented legal sessions for incubators in Egypt, in partnership with USAID’s SEED project.