

CLOSING THE IMPLEMENTATION GAP:

Proposed Amendments to the Executive Regulations of the Simplification of Licensing Procedures for Industrial Enterprises Law Law No. (15) of 2017

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إتحاد جمعيات التنمية الإقتصادية وتنمية الدخل
Federation for Economic Development Associations

The Federation of Economic Development Associations (FEDA) aims to promote entrepreneurship culture, improve business and investment environment for small businessmen. It also aims to improve job quality as a key indicator of SMEs performance development and competitiveness. Moreover, FEDA represents its members at the local and international level, and works closely with government entities to assist small investors to be able to overcome legal and operational obstacles, by providing, in cooperation with local and international partners, a package of programs, consultancy and services.

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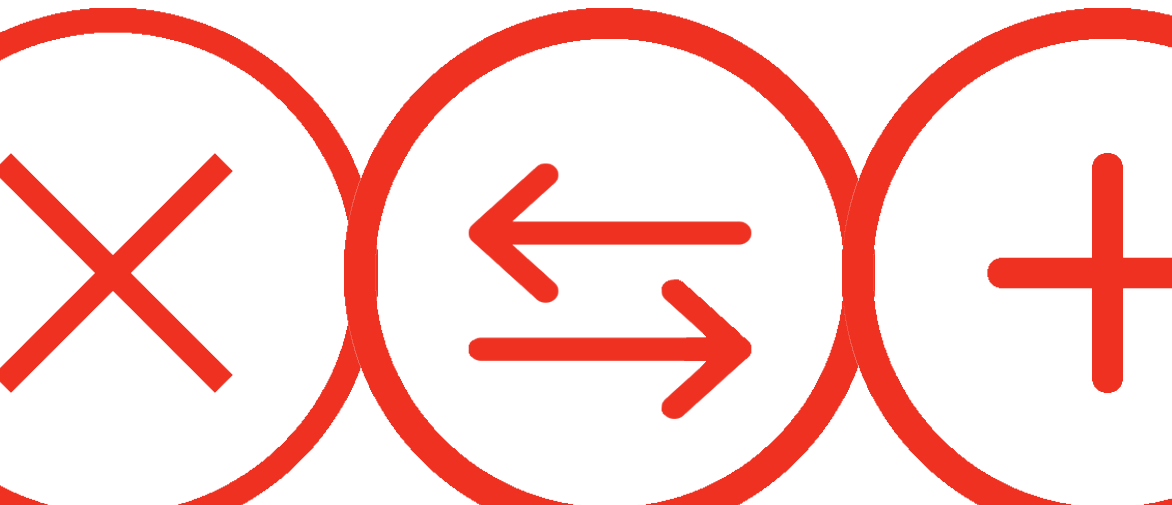
BACKGROUND

In August 2017, the Ministry of Trade and Industry issued the Executive Regulations (ERs) of the Simplification of Licensing Procedures for Industrial Enterprises Law, Law No. 15 of 2017 (the Law). The ERs were issued through Ministerial Decree No. 1082 of 2017. Subsequently, the Federation of Economic Development Associations (FEDA) undertook a legal review and analysis of the Law and its ERs. FEDA held a number of hearings and dialogues with a diverse group of industrial establishments—with a focus on small and medium-sized enterprises (SMEs)—to discuss the practical aspects of the Law’s application, as well as its impact on their operations. FEDA then prepared a preliminary report, which included several proposed amendments to the ERs.

Representatives of industrial enterprises, ministries, and other government entities, including the Industrial Development Authority (IDA), the General Authority for Investment and Free Zones (GAFI), the Ministry of Planning, Monitoring and Administrative Reform (MOPMAR), the Ministry of Finance (MOF), and the Ministry of Trade and Industry (MOTI) discussed the preliminary report as a series of roundtables. During the round-table discussions, FEDA’s legal advisor presented the preliminary report, described the rationale of the proposed amendments, analyzed which specific articles required changes, and explained the proposed language for the amendments. The IDA’s deputy chairman and its legal advisor also presented the IDA’s view of the ERs.

During this effort, the IDA—which is the competent entity under the law—and FEDA collaborated closely, holding several legal and subject-matter workshops on implementation of the industrial licensing law. This report comes out of that collaboration and includes a set of consensus-based proposed amendments to the ER, which have been reviewed by FEDA’s Chairman, Secretary General, and Director of Projects, as well as their counterparts at the IDA.

PROPOSED AMENDED
LANGUAGE BY ARTICLE



ARTICLE NO. 4 (1)

In exercising its authorities provided for in the law, the competent Administrative Entity must coordinate with the authorities relevant to licensing, each according to its functional competency, in the following areas:

- ① Setting the necessary requirements for obtaining licenses according to the type of industry to be licensed.
- ② Verifying the fulfillment of the licensing qualification and experience requirements for the accreditation offices, in such a manner as to ensure that these offices are able to provide accreditation services for applicants.
- ③ Verifying that the necessary justifications for reconciliation are in place to correct the violations stipulated in the law, particularly relating to eliminating the causes of the violation and rectifying the situation or enabling the offender to correct the violation, in accordance with the provisions of the law.

PROPOSED CHANGE

Amend the first part of the Article to read:

“In exercising its authorities provided for in the law, the competent Administrative Entity must have the full and supreme authority to directly issue licenses, and it may coordinate with authorities relevant to the licensing process, each according to its functional competency in the following areas:”

The remaining part of the Article is to remain intact.

RATIONALE

To eliminate the overlapping jurisdictions among administrative entities. This will grant the competent Administrative Entity, the Industrial Development Authority, the full authority to grant licenses, which will better facilitate the licensing process.

ARTICLE NO. 4

In exercising its authorities granted by the law, the competent Administrative Entity must coordinate with the authorities relevant to licensing, each according to its functional competency, in the following areas:

- ① Setting the necessary requirements for obtaining licenses according to the type of industry to be licensed.
- ② Verifying that accreditation offices have the licensing qualifications and experience requirement that allow them to provide accreditation services for applicants.
- ③ Verifying that the necessary measures for reconciliation are in place to correct violations stipulated in the law, particularly relating to eliminating the causes of the violation and rectifying the situation or allowing the offender to correct the violation, in accordance with the provisions of the law.

PROPOSED CHANGE

Add the following fourth item (Item 4) to Article No. 4:

- ④ This coordination must not result in any delay in issuing licenses or cause harm to the interests of the enterprise, manufacturer or investor.”

RATIONALE

This proposed amendment is in line with the legislators' intent to facilitate the licensing procedures for enterprises by limiting their interaction to a single government entity. The required coordination between government entities should not result in delays in granting licenses or inflict any harm on the interests of investors or industrialists.

ARTICLE NO. 9

The competent Administrative Entity is obliged to make the requirements for undertaking an industrial activity, and any updates, available on its website and in the manual for carrying out an industrial activity, which must be made available at its headquarters and branches in the governorates. ERs

PROPOSED CHANGE

Add the following new paragraph to Article No. 9:

The competent Administrative Entity is obliged to provide specialized human resources, with expertise in presenting and clarifying the requirements for undertaking the industrial activity, to the industrial enterprises or their representatives; and provide the enterprise with all necessary information to assist it in completing the licensing procedures.”

RATIONALE

It is standard that the competent Administrative Entity should have well-trained human resource professionals equipped to provide enterprises with all the information, data, and requirements necessary for obtaining the license; this should facilitate the process for manufacturers and investors.

ARTICLE NO. 10

Licensing requests must be submitted on the forms issued by the competent Administrative Entity. These forms may be obtained from the website of the competent Administrative Entity, or by any other means it specifies.

PROPOSED CHANGE

Omit the following last phrase in Article No. 10, specifically: “or by any other means it specifies.”

Add the following phrase: “or as a hard copy available at the Industrial Development Authority offices, at the central level and in governorates.”

RATIONALE

It is important to clearly specify the means by which licensing application forms can be obtained; these forms must be made available at all Industrial Development Authority offices— both at the headquarters and governorate-level offices.

ARTICLE NO. 11 (2)

The notification licensing system applies to the industrial enterprises, and their annexes, that do not carry out any of the activities listed in the table attached to the ERs.

The competent Administrative Entity may apply the notification licensing system for licensing any of the activities that are carried out within the industrial zones, which are specified in a Prime Ministerial decree, provided that security, health, safety and environment requirements determined by the licensing requirements committee were taken into consideration in the planning, construction or restructuring of these activities.

PROPOSED CHANGE

Omit the following phrase from the beginning of the second paragraph in Article No. 11: "The competent Administrative Entity may"

In lieu of the omitted phrase noted above, add the following phrase: "The competent Administrative Entity must"

RATIONALE

It is noted that in providing the exception contained in Article 11, the legislators intended to have the notification licensing system apply to the industrial enterprises located within the industrial zones; these enterprises, by virtue of their location and size, do not pose any danger, and thus, should be included among the class of enterprises that can benefit from the notification licensing system.

ARTICLE NO. 12

The person concerned will notify the competent Administrative Entity of the operation of the industrial enterprise, either electronically or by submitting a hard copy of the form designated for this purpose; the applicant, through the submitted form, will affirm that all requirements for operating the enterprise have been fulfilled. Information contained in the submitted form and all enclosures is the responsibility of the owner of the enterprise. In all cases, whether the application is hand-delivered, submitted electronically, sent by certified mail with return receipt requested, or sent through a courier delivery services company, it must be accompanied by the original documents or certified true copies of the documents listed below:

- ① A recent certificate from the Commercial Register.
- ② Proof that the prescribed licensing fees have been paid, and proof of receipt of a certified copy of the manual for carrying out an industrial activity.
- ③ The title deed for the land or building, whether an ownership contract, lease, or use agreement.

PROPOSED CHANGE

Omit the following phrase from the first paragraph of Article No. 12:
“the original documents, or certified true copies of the documents”

In lieu of the omitted phrase noted above, add the following phrase:
“the original documents, or certified true copies of the following documents for review; with attached photocopies of the documents signed by the applicant, to confirm that he is personally responsible for the photocopies submitted.»

Add the following new paragraph to Article No. 12:

“Within ninety days from the date of filing the license notification, the enterprise must submit to the Administrative Entity the original documents specified in the Executive Regulations for its review; the photocopies deposited with the competent Administrative Entity must include a notation indicating that the original documents were reviewed.”

RATIONALE

It is not considered safe to send original documents by electronic means, mail or courier, which is what an applicant would have to do if they are submitting the application by these means. Thus, to ease the process for applicants, the required accompanying documents should be certified photocopies, provided that the applicants provide the Administrative Entity with the original documents for review.

ARTICLE NO. 16

The person concerned will submit to the competent Administrative Entity a request for obtaining the necessary license to carry out the activity; the request may be filed electronically or in a hard copy using the form designated for this purpose; the applicant, through the submitted form, will affirm that all requirements have been fulfilled. Information contained in the submitted form and all enclosures is the responsibility of the person concerned. In all cases, whether the application is hand-delivered or submitted electronically or sent by certified mail with return receipt requested, or through a courier delivery services company, it must be

accompanied by the original documents, or certified true copies of the documents listed below:

- ① A recent certificate from the Commercial Register.
- ② Proof that the prescribed licensing fees have been paid, and a proof of receipt of the certified copy of the manual for carrying out an industrial activity.
- ③ The title deed for the land or building, whether an ownership contract, lease or a use agreement.

PROPOSED CHANGE

Omit the phrase “original documents” from the first paragraph of Article No. 16, and replace it with the following phrase: “copies of the documents”.

Add the following new paragraph: “In all cases, the Administrative Entity must review the original documents within a time period that does not exceed ninety days from the date of filing the license request; the photocopies deposited with the competent Administrative Entity must include a notation indicating that the original documents were reviewed.”

RATIONALE

In case of filing electronically or by mail, only photocopies of documents should be used. The review of the original documents by the Administrative Entity, within a time period that does not exceed ninety days from the date of filing the license request, should suffice. This change should facilitate the licensing process, and at the same time safeguard original documents against loss or damage if sent by mail.

ARTICLE NO. 21 BIS

PROPOSED CHANGE

Add a new article, Article No. 21 bis, to read as follows:

"The Administrative Entity will undertake awareness campaigns, using different mediums, including television, radio, and print media, to inform enterprises of the need to rectify their status during the grace period prescribed in the Executive Regulations.

RATIONALE

To demonstrate commitment to implementing the new law, it is essential to undertake media campaigns, using multiple platforms, including print, television and radio etc.; the awareness campaign should target industrial enterprises to raise their awareness about the new law and all requirements related to rectifying their status.

ARTICLE NO. 22

Established industrial enterprises, which do not meet the requirements stipulated in the law, and which have a temporary or a permanent license must submit to the competent Administrative Entity a request to rectify their status pursuant to the law and its Executive Regulations within at most two years from the date the Executive Regulations were issued, or within two months from the date their license expires, whichever occurs earlier, and after obtaining a certified copy of the manual for carrying out an industrial activity.

PROPOSED CHANGE

Amend Article No. 22 such that the grace period allowed to enterprises is five years instead of two years and omit the phrase “or within two months from the date their license expires”; **the revised article should read as follows:** “Existing industrial enterprises, which do not meet the requirements stipulated in the law, and which have a temporary or a permanent license must submit to the competent Administrative Entity a request to rectify their status pursuant to this law and its Executive Regulations within at most five years from the date the Executive Regulations were issued, and after obtaining a certified copy of the manual for carrying out an industrial activity.”

RATIONALE

Industrial enterprises should be allowed adequate time to rectify their status, pursuant to the Law and its Executive Regulations.

ARTICLE NO. 23

The industrial enterprises referenced in the above article must submit a request to the Administrative Entity to rectify their status pursuant to the law, its Executive Regulations, and the necessary requirements for carrying out the industrial activity within a grace period that does not exceed two years from the date of submitting the request for rectifying their status in the case of industrial enterprises which the notification licensing system applies to, and a grace period that does not exceed three years for enterprises that the pre-licensing system applies to.

PROPOSED CHANGE

Amend Article No. 23 so that it reads:

“The industrial enterprises referenced in the above article shall submit a request to the Administrative Entity to rectify their status pursuant to the law, its Executive Regulations, and the necessary requirements for carrying out the industrial activity within a grace period that does not exceed five years; fees will be reduced to the legal minimum amount; enterprises that rectify their status during the first three years of the grace period will be charged the reduced fees.

RATIONALE

The proposed amendment to Article No. 22 (above) renders the original language of Article No. 23 redundant; it is advantageous and reasonable to offer a financial incentive for enterprises that rectify their status during the first three years after the issuance of the Executive Regulations.

ARTICLE NO. 37

In the event that the grace period granted to the industrial enterprise ends without the enterprise rectifying its status, and a decision is issued directing the halting of the activity, the closure of the establishment, or the cancelation of the license, the competent Administrative Entity may take the following two actions:

- ① Warn the owner of the enterprise against using the canceled license; otherwise, he will bear the civil and criminal liability resulting therefrom.
- ② Request that all administrative authorities responsible for utilities disconnect all or some of the utility services from the enterprise.

PROPOSED CHANGE

Omit the following phrase from the Article No. 37:

“Request all administrative authorities responsible for utilities disconnect all or some of the utility services from the enterprise.”

RATIONALE

It is not appropriate to disconnect utilities from industrial enterprises; sanctions included in the law not only provide adequate deterrence but are severe and sufficient.

ARTICLE NO. 48

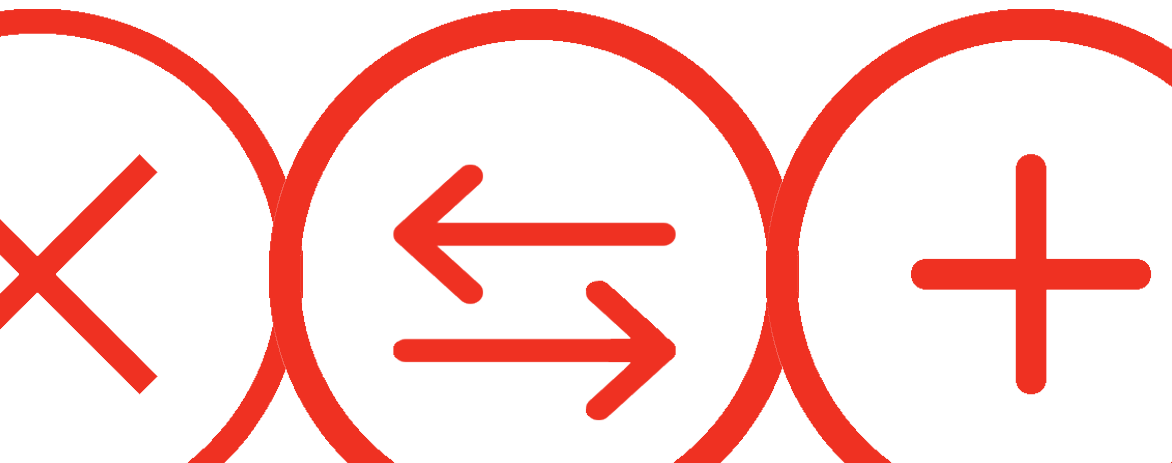
PROPOSED CHANGE

Introduce a new article, Article No. 48 bis, to read: "Consideration shall be given to implementing the Ministerial Decree regarding the requirements and conditions for granting accreditation offices their accreditation status. An accreditation office must be an engineering or contracting firm which enjoys a good reputation and credibility, or be among the faculties of engineering affiliated with one of the state universities; the fees charged by these accreditation offices must be comparable to those charged by the Administrative Entity, or not exceed the fees charged by the Administrative Entity for inspection and certification by more than 7%."

RATIONALE

It is necessary to expressly define the nature of accreditation offices. This matter was addressed in Decree No. 1355 of 2017 issued by the Minister of Trade and Industry, which regulated conditions and procedures for licensing accreditation offices.

PROPOSED REVISIONS
TO THE INDUSTRIAL
LICENSING FEES



CURRENT FEE STRUCTURE

INDUSTRIAL ENTERPRISES OCCUPYING AN AREA OF MORE THAN 500 SQUARE METERS: First issuance, renewal, amendment, rectification, relinquishment, follow-up	
Notification licensing system	EGP 5,000
Pre-licensing system	EGP 20,000
INDUSTRIAL ENTERPRISES OCCUPYING AN AREA OF UP TO 500 SQUARE METERS: First issuance, renewal, amendment, rectification, relinquishment, follow-up	
Notification licensing system	EGP 2,500
Pre-licensing system	EGP 10,000
LICENSING FEES FOR ACCREDITATION OFFICES:	
First issuance, renewal, amendment, rectification	EGP 20,000

PROPOSED FEE STRUCTURE*

INDUSTRIAL ENTERPRISES OCCUPYING AN AREA MORE THAN 2500 SQUARE METERS	
Notification licensing system	EGP 10,000
Pre-licensing system	EGP 20,000
INDUSTRIAL ENTERPRISES OCCUPYING AN AREA OF MORE THAN 1500 SQUARE METERS AND UP TO 2500 SQUARE METERS	
Notification licensing system	EGP 5,000
Pre-licensing system	EGP 10,000
INDUSTRIAL ENTERPRISES OCCUPYING AN AREA OF MORE THAN 500 SQUARE METERS AND UP TO 1500 SQUARE METERS	
Notification licensing system	EGP 2,000
Pre-licensing system	EGP 4,000
INDUSTRIAL ENTERPRISES OCCUPYING AN AREA UP TO 500 SQUARE METERS	
Notification licensing system	EGP 1,000
Pre-licensing system	EGP 2,000
*Licensing through authorized accreditation offices should take into account the fee structure set in the ERs, and should not exceed these fees by more than 7%	
LICENSING FEES FOR ACCREDITATION OFFICES	
License first issuance, renewal, amendment, rectification	EGP 15,000

FEE RENEWALS AND ADJUSTMENTS

- It is proposed that renewal fees be due every five years, and that they be equal to 25% of the initial license issuance fees.
- Fees should be periodically reviewed and adjusted; fees are to be increased by either 5% every five years, or a percentage commensurate with the official inflation rate released by the Central Bank of Egypt, whichever is less.

ANNEX 1

THE RATIONALE FOR THE PROPOSED AMENDMENTS

Compared to earlier legal and regulatory frameworks, the Simplification of Licensing Procedures for Industrial Enterprises Law, Law No. (15) of 2017 and its Executive Regulations represent major progress. This legislation is a paradigm shift, in that it seeks to foster a business environment conducive to industrial investment. The changes proposed in this report endeavor to make this a reality. FEDA has undertaken this project to fulfill its responsibility to the business community and society at large by improving the environment for investment and the industrial sector. These sectors are particularly fraught with difficulties for micro and small enterprises (MSEs), so these amendments are especially consequential for these business owners.

Because MSEs face greater challenges in this operating environment, it warrants consideration that MSEs require a separate legal framework that will create an environment which enables them to thrive. It is also worth considering establishing a fund that can incentivize and support MSEs. Towards this end, FEDA plans to initiate a community dialogue to develop an action plan on how to support MSEs.

ANNEX 2

FURTHER THOUGHTS ON LAW NO. (15) OF 2017

The consultation between FEDA and the IDA made it clear that the Executive Regulations of the Licensing Procedures for Industrial Enterprises Law need to be amended. Beyond this, the issues raised by these discussions make a strong case for revising the Law itself. Independently reviewing and assessing the Law itself could lead to a Law No. 15 of 2017, the Simplification of Licensing Procedures for Industrial Enterprises Law, should be amended to better serve industrial enterprises, which are a driver of the national economy. In some ways, the law is too rigid and does not go far enough to simplify and facilitate industrial licensing, which was the original intent of the legislators.

better environment for industrial investment. The following are a few recommendations regarding the Law:

- The traditional approach to regulating industrial licensing is unnecessarily punitive; it rushes to penalizing industrial enterprises when they commit an infraction. It would be better for all parties to adopt a more forward-looking approach that is grounded in cooperation between the competent administrative authority, in this case the IDA, and the business community—industrialists and investors. Thus, it is proposed that FEDA and the IDA establish a long-term protocol for cooperation to address challenges facing the industrial and manufacturing sector. Partnership is the only way forward and will facilitate the industrial licensing process while ensuring future compliance.
- Towards this end, FEDA proposes launching a dialogue initiative on the theme of “Enhancing Production and Advancing Development”. Additionally, FEDA proposes forming a standing committee with representatives from FEDA and the IDA to

advance dialogue. The committee will further examine the Law to gain a better understanding of its content and how it can be applied more productively. Hand in hand with this collaboration, government stakeholders should commit to approaching industrial licensing in a fundamentally different manner. Government entities should be obliged to finalize licensing procedures in a timely and efficient manner. These government entities should provide guidance, assistance, and resources to facilitate the licensing process and monitor compliance. In short, the role of the competent government entities must be changed, so that they are supporting industrial enterprises, rather than lurking behind them, waiting to record violations.

- While the original intent of the legislators in passing the Law was to facilitate the industrial licensing process, the Parliament did not ultimately formulate the Law in a manner that adequately reflects this intent. Moreover, the Executive Regulations (ERs) and the IDA-issued Decree No. 192 of 2018 have added administrative and financial hardships for manufacturers and investors, which is likely to undermine the positive impact of the Law and prevent it from bringing about the reforms intended.
- Many of the provisions of the Law and the ERs lack the flexibility to ensure their smooth and effective implementation. As noted above, the primary objective of the Law is to facilitate the licensing procedures. However, real-world implementation demonstrated that some aspects of the Law hinder this goal (e.g., the mandated inspection process entails numerous stages and is time-consuming). In this regard, it is important to shorten the time it takes to complete each stage of the licensing process. Indeed, championing a flexible approach in addressing and supporting industrial licensing is consistent with the collaborative attitude demonstrated by the IDA during many of discussions held with FEDA. This approach would reshape the role of IDA and transform

it into a collaborative partner and facilitator for businesses, rather than merely a regulatory body responsible for licensing industrial enterprises.

- The sanctions, both the financial and the custodial, prescribed by the Law are severe and excessive— an issue of major concern. Thus, it is recommended that imposing sanctions that entail deprivation of liberty should be limited to certain violations that result in, or could result in, irreversible risks to human life or the environment.
- The Law should explicitly stipulate that criminal proceedings shall be halted if the offender corrects the violation, reconciles with the Administrative Entity, and rectifies the status of the enterprise after the issuance of a final court judgment.

In brief, identifying and adopting pragmatic and flexible approaches to regulating industrial licensing serves the best interests of domestic industries, promotes the integration of the informal sector in the formal economy, protects intellectual property (including patents and registered industrial and commercial trademarks), and enables the success of domestic manufacturers. This promises to further productive development, help Egyptian industries restore their good reputation, and positively impact the national economy and the living standards of ordinary people.