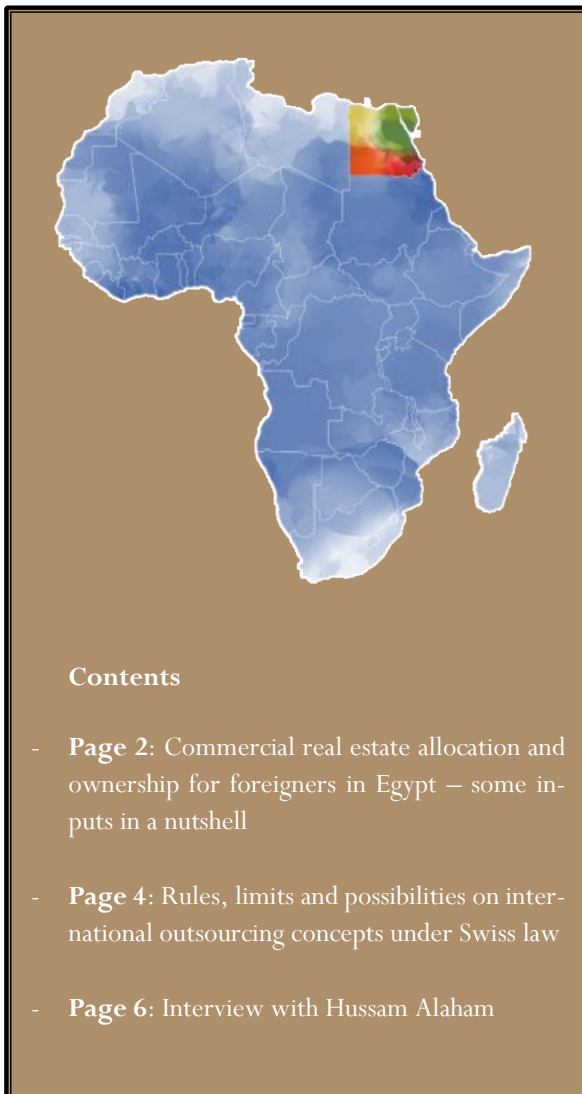


GHR *beyond* - Africa Edition

5th Issue - December 2023

Egypt

GHR beyond is our informative newsletter on inter-continental topics. In the Africa Edition, we provide concise information once a quarter on important key figures of a destination country in Africa and what entrepreneurs should consider from here to there and from there to here. In this edition, we take a journey to North Africa - to Egypt.



Overview

Economic relations between Switzerland and Egypt have been stable and diverse for years. While Swiss investments mainly enrich sectors such as infrastructure and energy in Egypt, Egypt opens strategic markets in Africa for Switzerland. Both nations benefit from a variety of joint initiatives and look forward to a solid future of their bilateral partnership despite global and internal challenges.

Switzerland and Egypt have an investment protection agreement, a double taxation agreement and a free trade agreement - a constellation that only exists with 3 other states in Africa. This privileged position finds its justification in figures: In 2022, Switzerland imported from Egypt about 25,500 tons of goods worth about CHF 84 billion, while it exported about 14,200 tons of goods worth CHF 1.3 billion to Egypt. Important import goods are foodstuffs, fertilizers, cotton clothing, while chemical and pharmaceutical products as well as dyes, cosmetics, machinery and watches stand out in exports. In addition, Egypt is a more and more popular provider of IT offshore services.

Around 1,350 Swiss nationals live in Egypt, while around 2,500 Egyptians live in Switzerland.

In this issue of GHR *beyond* we focus on the most important legal issues for Swiss direct investors in Egypt. In the Swiss section and with our interview partner, we want to shed light on the topic of international outsourcing, using the example of IT services, both from a legal point of view and to provide insights into real everyday life.

To Egypt from Switzerland

Real Estate Matters relevant for Foreigners in Egypt

Introduction

This article aims to briefly examine the issue of allocating land to establish projects of various types in Egypt, including tourism, industrial, services, utilities, and real estate projects, and the extent of the foreigner's right to own real estate in these projects.

In turn, this article does not aim to examine the issue of foreign individual ownership of real estate, intellectual property, diplomatic or military purposes, nor ownership in the Sinai Peninsula, which are all governed by special laws and provisions. The paper does not also address any tax issues.

It is worth clarifying that the ownership of real estate by Egyptian-incorporated legal persons (whether with Egyptian or non-Egyptian shareholders) or the granting of real rights to these persons (such as the usufruct right) is generally governed by investment laws, the laws governing the state's disposal of its private property, and the relevant terms, conditions, and requirements issued by the competent administrative authorities.

General Principles for Land Allocation

As a general legal principle, as far as investment projects are concerned, there is no minimum requirement for Egyptian ownership or nationality of board members. However, the law still requires the establishment of a commercial legal presence for the undertaking of such projects that takes one of the types of companies specified in the relevant law subject to the special conditions and requirements set by the competent authorities.

In distinction from the above rule, Law No. 230 of 1996 regulates the ownership of real estate and vacant lands by non-Egyptians (whether natural or legal persons). Under this law, a company whose majority of capital is not owned by Egyptians shall not be considered an Egyptian company even if it is established in

Egypt. These non-Egyptian companies may own real estate for establishing legal presence or otherwise while setting a maximum limit on the area that they may own subject to special exceptions to be set by the Council of Ministers. To prevent speculation on real estate prices, there is a lock-up period for not disposing of such real estate for a certain period during which a foreigner must complete construction. Otherwise, the period of the lock-up period will be increased subject also to exceptions.

On the other hand, with regard to investment projects and the treatment of foreigners in accordance with Investment Law No. 72 for 2017, note that under the law all investments established in Egypt enjoy fair and equitable treatment. The state guarantees the foreign investor similar treatment to that granted to the national investor, with the Council of Ministers having the right to decide preferential treatment for foreign investors in the application of the principle of reciprocity. Investment projects may not be nationalized or expropriated except for the public benefit and for fair compensation. New amendments to the existing law have been reported to be considered that could further facilitate foreign ownership of real estate in Egypt.

The law has approved several incentives for lands allocated for projects, including allocating free lands for some strategic activities in accordance with the legally established controls in this regard and an exemption from the fee for using lands allocated for the establishment of projects for a specific period. To facilitate the allocation of lands for investment projects, the government has developed the electronic investment system and has posted the investment map on the relevant portal. The map shows the available investment opportunities involving the allocation of lands in coordination between the General Authority for Investment and Free Zone (GAFI: the principal authority concerned with regulating and facilitating investments) and the competent administrative authority.

The law has also created several regimes to allow for special treatment such as free zones and special economic zones for special types of projects with certain objectives.

The state guarantees the non-Egyptian investor similar treatment to that granted to the Egyptian investor.

Competent Authorities for Different Sectors, with Different Roles and Powers

The allocation of land in Egypt shall be pursuant to a decision issued by the President of the Republic to the competent authorities, such as the New Urban Communities Authority, the General Authority for Tourism Development (which is currently affiliated with the Ministry of Housing instead of the Ministry of Tourism), the General Authority for Industrial Development, the General Authority for Reconstruction and Agricultural Development Projects, and others. Further, Law No. 177 for 2018 has recently allowed, among others, the transfer of parcels of real estate to the Sovereign Fund of Egypt with the purpose of considering the optimum investment in such parcels. In addition, Law No. 102 for 1986 (as amended by laws No. 135 for 2014 and 11 for 2022) has established the New and Renewable Energy Authority with the purpose of primarily undertaking the allocation of lands to investors for new and renewable energy (including, renewable, hydro, and green hydrogen projects as well) in collaboration with other relevant government agencies.

Each authority is responsible for managing and disposing of the lands that fall under its jurisdiction in relation to the prescribed project. Each of such authorities exercises the powers of the owner in everything related to such properties and carries out its duties in coordination with other relevant authorities in the State.

The sale price, rental value, or usufruct value shall be estimated primarily by the competent authority in accordance with the nature of the targeted activity and in accordance with the controls and procedures established in this regard.

According to the law, real estate privately owned by the state or other public legal persons is disposed of to investors for the purpose of investment in accordance with the provisions, controls, and

procedures stipulated in the law, taking into account the state's investment plan, the size of the investment project, the nature of its activity, and the value of the funds invested therein. Prospective investors must meet the technical and financial conditions determined by the relevant authority to be eligible to participate in this process. The provisions of the Public Procurement Law No. 182 for 2018 do not apply to such disposals.

The competent authority shall have the right to follow up the stages of implementation of the project and shall have the right, after the approval of its relevant board of directors regarding investment projects, to terminate the contract for a material breach thereof after warning the investor.

The investor shall have the right to resort to the Ministerial Committee for Resolving Investment Disputes in the event of a dispute with the administrative authority over any issue regarding contracting on land or anything else in accordance with the law so that the opinion of the committee is binding on the authority only without prejudice to the investor's right to resort to the judiciary.

Conclusion

Egypt offers various possibilities for foreign investors to own proper land for commercial and industrial facilities. However, the acquisition of land for commercial purposes in Egypt requires careful planning and a close collaboration with competent Authorities acting both as regulator and sparring partner.



From Egypt to Switzerland

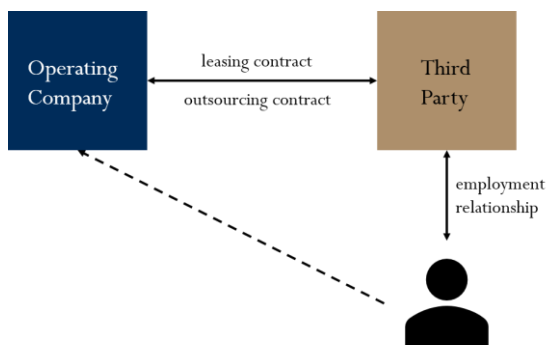
International Outsourcing – Rules Applicable to Swiss Companies

Introduction

Outsourcing means the redistribution of work and employees of a company. Instead of performing work itself or hiring employees, this is outsourced to a third party. The outsourcing does not represent a renunciation of work or employees. The service is merely provided at a different location, by different people or under different conditions.

Typically, individual tasks, sub-areas or business processes are outsourced. Outsourcing is also used primarily in the area of information technology (IT outsourcing), whereby the service of the third party can take place *onshore* locally or *offshore* abroad.

In any case, three parties are involved: an employer, an employee and an operating company. In Switzerland, such a constellation may constitute personnel leasing subject to authorization. In the area of offshore services, care must be taken to ensure that it is not a case of prohibited foreign personnel leasing.



Staff Leasing

The distinction between outsourcing and staff leasing is not always easy.

Staff leasing is characterized by the fact that an employer (lender) transfers the employee he has hired to another employer (company providing the services) for the performance of work. In the case of staff leasing, the transfer of an employee results in the transfer of the essential authority to issue instructions to the company

using the employee, but the employment relationship with the lender remains in place.

If staff leasing is done on a continuous, for-profit basis, a number of regulations must be complied with: If, in a specific case, the outsourcing qualifies as staff leasing, then, in particular, the licensing requirement, the written form requirement of the staff lease agreement, the prohibition of staff leasing from abroad to Switzerland and generally binding collective labor agreements must be complied with.

Staff Leasing Requirements

Geographically, personnel leasing is permitted within Switzerland and from Switzerland to other countries. Hiring from abroad to Switzerland is prohibited.

The hiring out of personnel can take three forms:

- Temporary work, whereby the activity is limited to an assignment at the employing company;
- temporary work, where the main purpose is the transfer of the employee and the employment contract is not limited to the duration of the assignment; and
- the occasional transfer of employees to the company of assignment.

The occasional hiring out of employees is not subject to authorization. However, a permit is required for temporary work and staff leasing if it is carried out as a commercial activity. Commercial activity requires regularity, i.e. more than ten assignments must be made within 12 months, and the intention to make a profit. However, a commercial activity can also exist if an annual turnover of CHF 100,000 is achieved with the rentals.

Distinction Criteria

The distinction between staff leasing and outsourcing is made on the basis of a case-by-case assessment. It depends in particular on the content of the contract, the job description and the specific working circumstances in the company where the work is performed.

The following criteria indicate the provision of work in the form of staff leasing:

- Relationship of subordination: the rights of instruction and control lie with the employing company;
- Involvement of the employee in the employing company in personal, organizational and temporal respects;
- Obligation to pay for the hours worked (no fixed or project price);
- Assumption of risk for work performance (poor performance) lies with the employing company;
- No liability of the staff leasing company for damage caused by its employees.

In a nutshell: IT-Outsourcing

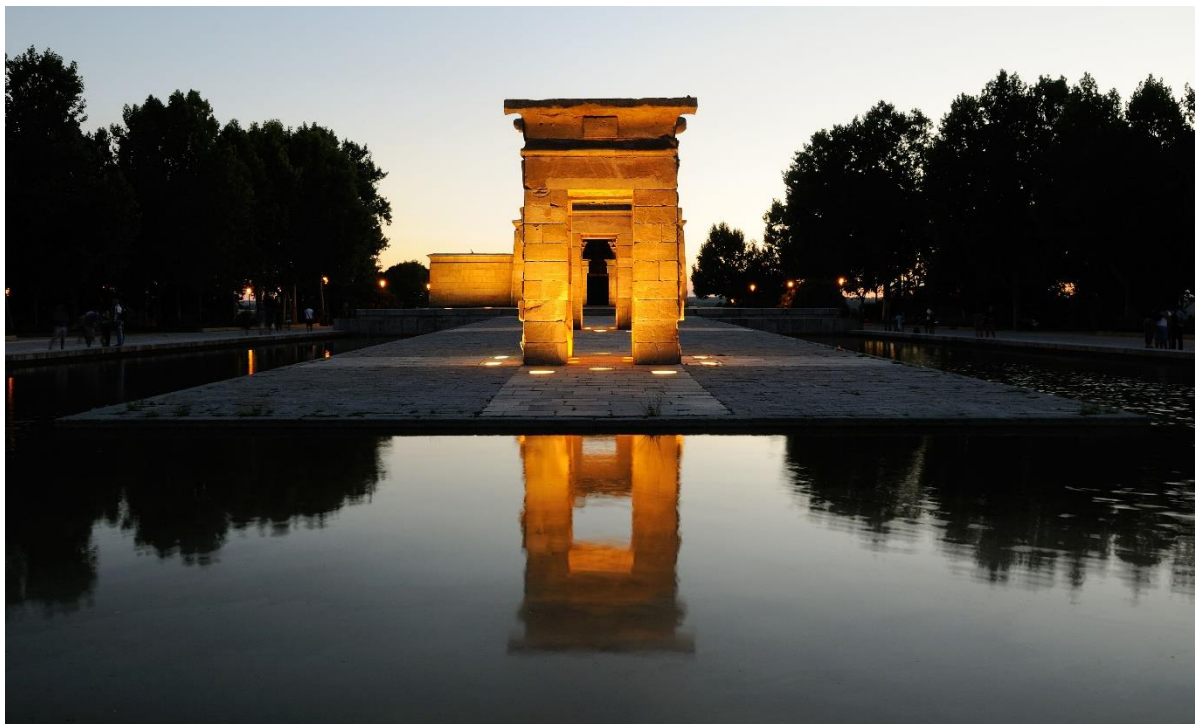
In information technology, many areas can be outsourced in an efficient and meaningful way. For example, a third party can take care of data storage, software development or the IT infrastructure.

If a company obtains technical support services from an IT specialist, the latter remains employed by his employer and is available to the company on site or remotely. As long as the IT specialist performs his or her work on his or her own authority, no significant au-

thority to issue instructions is transferred to the company. The IT specialist acts in fulfillment of an assumed order of his employer. If, on the other hand, it is stipulated that work is to be performed predominantly at the location and within the working hours of the target company the IT specialist is working for, and if further rights of direction and control are transferred to such company as a result, there is strong indication towards staff leasing.

Staff Leasing within the Group

If employees are hired out within a (legally and commercially connected) group of companies because they are implementing e.g. new software throughout the group, such does indeed constitute personnel leasing, but is not subject to approval. Reason for this is that the employees are mainly employed by a company within the group, which usually does not qualify as staff leasing due to task performance only for the purpose of know-how transfer in individual cases and for a limited period of time. In this case, no authorization is required even for cross-border intra-group personnel leasing if this takes place from abroad to Switzerland.

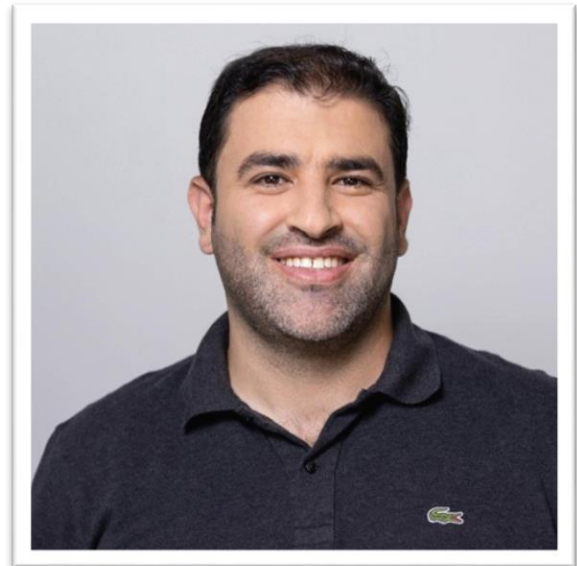


How it is in Practice

Knowing the legal requirements for intercontinental business relations is only one side of the coin. It is at least as important to get involved in local everyday life and to be able to deal with the particularities and customs.

It was in the ImpactHub Bern where we first got in touch with Christian Hirsig and Hussam Alaham, who told us about a project called "Remotecoders". We have learned from them that a remarkable number of refugees and women with IT skills are looking for working opportunities in Cairo, and that Remotecoders intends to make these talents available for Swiss companies with the need of additional offshore IT workforce.

Fascinated by the idea and the impact it generates, and admiring the team of Remotecoders to consequently address and mitigate with regularity, legal compliance and work quality matters, we are proud to have won Hussam Alaham for an interview in this edition of GHR beyond.



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May you introduce yourself to our readers?

I am originally from Syria, pursued studies in English literature but was always captivated by IT. Forced to flee Syria due to the war in 2013, I faced challenges in Lebanon but committed myself to helping others, co-built and led a local project to provide high-quality education for refugees, and volunteered for UNHCR and as a reporter for a local radio station. In 2015, I was resettled to Switzerland with my family. By 2017, I had graduated from Powercoders and soon after joined their team. Inspired during the COVID pandemic, I envisioned expanding Powercoders' reach remotely to aid those in dire need. With the support of the FDFA of Switzerland, Chris and I founded Remotecoders in 2022, recently completing a successful six-month pilot in Egypt, benefitting 25 individuals and collaborating with 10 IT companies. It is so much less harmful to migrate opportunities instead of human beings.

What do you do?

Remotecoders, as a not-for-profit association, was created to migrate European IT job opportunities to the Middle East and North Africa instead of forcing people to migrate the other way around. Together with the Swiss government and Swiss & EU IT companies, we provide internships, mentorships, and job opportunities for vulnerable individuals in the technology sector, helping them to develop their skills and integrate into the IT European and local markets.

How did it come about that you built the bridge between Switzerland and Egypt?

I was born in Syria and had to flee in the advent of the Syrian crisis. My co-founder Christian Hirsig was born in Switzerland and sold his IT company when he was 34 years old. In 2016 Christian and his wife started an NGO that teaches refugees how to code called Powercoders.

Our approach addresses migration and digitalization challenges to provide a win-win for all.

Hussam Alaham

I was a graduate of the first class in 2017 and eventually joined Powercoders as a team member. During the last years, we both supported the team to grow its impact to over 200 graduates, an internship placement rate of over 90%, and a job integration rate of 60%.

In 2021 we decided to try opening the doors of the European IT industry for IT talent from the MENA region. With the support of the Swiss government and several foundations, we started with Egypt, with a planned expansion later on to other countries.

What do you particularly like about this activity, where do you see the greatest opportunities?

Europe faces two major challenges - and they are two sides of the same coin.

Migration: Vulnerable people in the MENA region often don't have access to the remote IT job market. Therefore, many decide to migrate.

Digitalization: The European IT industry is short on talent on every level. At the same time, COVID-19 has established remote work as the new default for many businesses.

With our approach, we are providing a solution that is a win-win for all.

Where do you see the biggest challenges and potential for improvement?

Building a project in a different country and culture needs a lot of effort, dedication, and attention to detail to be able to bridge the gap in between. Here are a few challenges with potential improvement:

Each issue of *GHR beyond* is intercontinental, but also very local. We always prepare content with one of our local partners, with whom we collaborate on legal issues with local relevance. We sincerely thank our partners for this tremendous effort and the opportunity to build intercontinental bridges with local expertise on this side and the other.

Culture: There is already a culture gap because of the distance and work style. A potential improvement for this is to have a professional multicultural team and provide training.

Remote management: There are a lot of things to be handled when it comes to operations and being fully remote might slow down the progress.

A potential improvement is to be on-site for a few days every month.

Finding senior talents: Senior talents are in high demand by local and international companies which makes it challenging. A potential improvement to address this is by building an environment that increases employees' sense of ownership and belonging. We don't have this as a big challenge because our employees already enjoy working for a good cause and having a good job.

Remotecoders solves many challenges for many companies by providing all operations and legalities needed and by being the proxy by making sure the employees and clients are aligned.

What do you think is important to bear in mind when doing business between Switzerland and Egypt?

Having a good understanding of the local culture and employing people who have already worked for EU companies will help to provide high-quality output. Besides this, companies planning to do business in Egypt should check for Swiss organizations who operate locally similar to Remotecoders which already provides this support to IT companies so companies don't have to go through all the challenges that someone else has already solved and can provide all the infrastructure and staff needed.

This edition of *GHR beyond* - Africa Edition has been produced by the following authors and law firms. Please contact the authors at any time if you have any questions or require further information on a particular topic.

For content
related to Swiss law



For content
related to Egyptian law



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