EGYPT: A COMPARATIVE STUDY OF FOREIGN DIRECT INVESTMENT CLIMATES

SUBMITTED TO

U.S. Agency for International Development
Office of Economic Analysis and Policy
Cairo, Egypt

By the
Development Economic Policy Reform Analysis Project, Nathan Associates Inc.

Under
Contract # 263-C-00-96-00001-00

August 20, 1997

TABLE OF CONTENTS

	Page
Preface	4
1.0 Introduction	5
2.0 Executive Summary	7
2.1 Summary of Findings and Conclusions	7
2.2 Summary of Recommendations	9
3.0 Foreign Investment: Basic Concepts	23
4.0 Egypt's FDI Climate: The Business Climate	25
4.1 The Business Climate	25
4.2 Foreign Direct Investment	25
4.3 Government Economic Policy Reforms	26
4.4 Macroeconomic Trends	32
5.0 Egypt's FDI Climate: Legal/Regulatory Regime	36
5.1 Rule of Law/Legal Structure	36
5.2 Statutory Regime for FDI	37
5.3 Other Investor Concerns	55
5.4 Collateral Impacts on FDI	68
6.0 Country Comparisons: Turkey	72
6.1 Business Climate for FDI	72
6.2 Foreign Direct Investment	72
6.3 Government Economic Policies	73
6.4 Macroeconomic Trends	76
6.5 Legal Regulatory Regime	79
7.0 Country Comparisons: Israel	85
7.1 Business Climate for FDI	85
7.2 Government Economic Policies and Reforms	86
7.3 Macroeconomic Trends	89
7.4 Legal/Regulatory Regime	93

8.0 Country Comparisons: Morocco 98

8.1 Business Climate for FDI 98
8.2 Government Economic Policies 99
8.3 Macroeconomic Trends 104
8.4 Legal/Regulatory Regime 106

9.0 Country Comparisons: Tunisia 111

9.1 Business Climate for FDI 111
9.2 Government Economic Policies 112
9.3 Macroeconomic Trends 117
9.4 Legal/Regulatory Regime 120

10.0 Recommendations 124

11.0 International Ratings: How others see Egypt 137

11.1 Introduction 137
11.2 Country Classification 137
11.3 Category 1:Significant Investor Concerns 138
11.4 Category 2: Economic/Financial Areas of Interest to Investors 146

Tables

Table 1 - Economic Indicators 16
Table 2 - Country Rankings: Business Climate 18
Table 3 - Country Rankings: Legal/Regulatory Regimes 21
Table 4 - Structure of Egypt's Economy 27
Table 5 - Egyptian Investment Incentives Laws 45
Table 6 - Egypt's Investment Approval/Establishment Process - Time Factors 59
Table 7 - Egypt's International Investment Treaties 63
Table 8 - International Ratings: How Others See Egypt 141

Appendix A: Foreign Direct Investment: Basic Concepts 156
Appendix B: Basic Laws Affecting Business and Investment 166
Appendix C: Tunisia's One-Stop Shop Brochure 174a
Appendix D: Memorandum on the New Investment Incentives Law 175
Appendix E: Documents Reviewed 191
Appendix F: Background on Authors of the study 197
Appendix G: Scope of Work of the Study 198

PREFACE

This report is based on a study conducted by the Development Economic Policy Reform Analysis ("DEPRA") Project, under contract to the United States Agency for International Development, Office of Economic Policy and Analysis, Cairo, Egypt ("USAID/Egypt") (Contract No. 263-0233-C-00-6001-00).

The DEPRA Project is intended to encourage and support macroeconomic reform in Egypt through the provision of technical assistance and services to the Ministry of Economy, with particular focus on international trade and investment liberalization, deregulation, and financial sector strengthening

The instant study was conducted by a team of consultants comprised of James L. Kenworthy, Esq., of Nathan Associates Inc., Team Leader and International Trade and Investment Advisor to the DEPRA Project; Mr. Siegfried Marks, Sigmar International of Miami, Florida; Dr. Tewfik Shehata, Kemal Law Office, Cairo, Egypt; and Dr. Salah Zein El-Din, a Senior Economist at the DEPRA Project. This report was authored by Messrs. Kenworthy and Marks. The authors wish to express their appreciation for the assistance of Melinda Lord, U.S. Foreign Legal Consultant, of the Kemal Law Firm, Cairo, Egypt and to Ms. Fiona Moffit of the Economist Magazine/Economist Intelligence Unit.

The views expressed herein are solely those of the authors and are not intended as statements of policy or opinion of either USAID, the Ministry of Economy, or the authors' parent institutions.

1.0 INTRODUCTION

Foreign direct investment ("FDI") in Egypt has shown an average rate of growth of two to five percent per year since 1989 and, by 1995, total FDI in Egypt was approximately US$ 3.53 billion. In mid-1995, of total approved investment projects under all incentive laws, Egyptians themselves were responsible for 59 percent, while Arab and foreign direct investors accounted for about 20 percent each.

Egypt's policy on FDI has been liberalizing gradually since the initiation of the Infitah or "Open Door" policy of the 1970s, when it began to encourage FDI through the offering of tax and other investment-related incentives. Since commencement of the Second Phase of macroeconomic reforms in January, 1996, the GOE has been placing even greater emphasis on the catalytic role of FDI in generating economic growth and employment, and taking measures to realize the economic benefits of FDI. In January, 1996, President Mubarak declared that "Egypt is open for investment." Pursuant to his directive, the GOE announced that it was removing screening/approval requirements on all new FDI projects. Nonetheless, there appear to remain a number of legal restrictions placed in the way of prospective foreign investors, including constraints on land ownership and certain sectoral investments. Moreover, current foreign investors in Egypt have complained that impediments to FDI continue, notwithstanding the GOE's desire to attract new investment to Egypt. A major concern of foreign investors is the dichotomy between the GOE's official announcements about Egypt's openness to FDI and its actual record of implementation in its overall macroeconomic policies, FDI-related laws/regulations, and day-to-day bureaucratic practices.

Egyptian businesspeople have pointed out that, If Egypt is to realize its target of seven percent economic growth in 1997, it will need to generate investment of up to $ 10 billion, approximately half of which must come from FDI. This study was intended to (a) reassess current impediments to FDI in Egypt, and (b) to evaluate the overall attractiveness of Egypt in terms of its FDI-related macroeconomic indicators, and commercial and legal/regulatory climates in comparison to those of four countries believed to be its major regional competitors for new FDI, e.g., Israel, Morocco, Tunisia, and Turkey.

The climate for FDI in any country is made up of a number of elements that affect the chances for success of an investment. Decisions made by potential foreign investors about whether to invest abroad and where - or whether to expand existing investments - are based upon many factors relating to the nature of the investor's business, existing commitments in other countries, competition imperatives, available resources, budget allocations among divisions and regions, and other considerations that shape expectations of sales and profits. The overall business climate (as measured by economic and financial indicators and reflected in anecdotal experience and documentary resources) and the legal/regulatory regime governing investment, all significantly affect corporate perceptions of the opportunities and contra-indications for FDI, sales, and profits. The investment decision is determined in large part by the market potential of a

country, its resource endowments, the government's economic policies and reforms, and macroeconomic trends. It also involves an intensive investigation and assessment of the business climate and economic outlook as well as the legal/regulatory environment, any one of which can facilitate or reduce an investment's cash flow and profit prospects. The legal/regulatory assessment concerns itself with factors such as Rule-of-Law considerations; the country's FDI admission policies and practices; the rights and protections accorded private property and foreign investors; restrictions on investments; the post-admission treatment of investors and their investments; the ability freely to repatriate capital and remit profits in foreign currency; and issues of expropriation, dispute settlement, administrative transparency and due process.

This study was designed to investigate the FDI-related business/commercial climates and legal/regulatory regimes of the four countries mentioned with those of Egypt, in order to arrive at conclusions regarding Egypt's comparative competitiveness in attracting new FDI, and to develop recommendations for the GOE for enhancing that competitiveness in its continuing efforts to promote national economic growth and employment through increased foreign investment.

The study commenced in October, 1996 and involved on-site visits to Egypt and all Comparison countries. The study was delayed for medical concerns through December, 1996 and January, 1997 and, thereafter, to accommodate resolution of legislative enactment of a new Egyptian Investment Incentives Law, a process that did not conclude until 11 May 1997, with enactment of Law 8 of 1997. Information reported herein for the comparison countries is accurate as of December 15, 1996, while most information on Egypt is accurate as of April, 1997.

Methodology

The authors reviewed prior USAID, World Bank, IMF, AMCHAM/Egypt, and other studies or reports relating to the Egyptian economy that addressed, directly or indirectly, various impediments to FDI in Egypt as well as reviewed all current and some past laws and regulations directly or indirectly representing the legal regime for FDI in Egypt and the comparison countries. They visited all countries studied and interviewed officials and representatives of foreign investors and other businesspersons in them with regard to their perceptions of the impacts of economic policies, FDI laws, regulations, and practices, and the effectiveness of incentives offered foreign investors. In addition to identifying, weighting, describing, and comparing various issues and other matters that, in the aggregate, describe the Business Climate and the Legal/Regulatory Regimes in each of the countries studied, the authors obtained as many ratings produced by international rating agencies as possible for purposes of enlarging upon their five-country comparison. Finally, the authors offered their conclusions and recommendations for the Government of Egypt to consider in pursuing its efforts to reform and liberalize its economy and make Egypt more attractive for new foreign investment. The USAID/Egypt-approved scope of work for the study is found at Appendix G.

2.0 EXECUTIVE SUMMARY

2.1 Summary of Findings and Conclusions

This study examines Egyptian economic policies and reforms affecting foreign investment, macroeconomic results influencing the decision to invest in Egypt, and the FDI-related legal/regulatory regime and bureaucratic practices impacting upon FDI. These elements of the foreign investment climate of Egypt were analyzed from the foreign investor's point of view and compared with the FDI climates of Egypt's major regional rivals for attracting new FDI, namely Turkey, Israel, Morocco, and Tunisia. The study concludes that Egypt currently is at the low end in the comparative ranking of most of the components that make up a nation's FDI climate, but is committed to improving its comparative position.

Egypt's annual inflows of FDI ranged between US$ 160 million to $ 370 million in 1982-91, with a tendency to decline over the period. Total accumulated FDI in Egypt was about $ 11 billion in 1995, a figure well under what a country of its size should have compared to the four countries studied.

Egypt's overall market potential is substantial, smaller only than that of Turkey of the countries studied. It offers a very large, low cost, mostly unskilled labor pool, suitable for developing large, low-tech, labor-intensive industries within a favorable policy framework. Its infrastructure is moderately well-developed, but its operation is inefficient and costly, dominated by state management. In terms of its market potential, location, and historic leadership role in the region, Egypt should be a natural target for FDI, but it isn't--by most measures, it is the poorest of the countries analyzed and there remain a number of impediments to investment -- largely of its own making -- that retard rather than attract foreign investment. As a result, many foreign investors continue to view the business climate in Egypt as essentially unfavorable for FDI.

The GOE started a comprehensive economic reform program in 1991 with efforts to reverse declining foreign exchange reserves, accelerating inflation, stagnant exports, pressures on the exchange rate, rising unemployment, and a slow-down in economic growth. Foreign investors view positively Egypt's success in reducing the public sector deficit from 20 percent of GDP in 1986 to around 0.8 percent currently. But, while a degree of financial stability has been achieved with its emphasis on a tight monetary policy, the stability achieved has not been accompanied by an adequate rate of GDP growth, investment, and exports. Comparing the period of 1980-90 versus 1990-94, average annual GDP growth slowed from 5 percent to less than 2 percent; investment growth from a positive 2.7 percent to a negative 2.7 percent; and export growth from 6.1 percent to a negative 1.5 percent.

Moreover, until recently the GOE was slow to take decisive measures to rid the economy of excessive bureaucratic controls or to establish a competitive, entrepreneurially-driven, free market economy, opening it to dynamic trade and investment expansion and competition. The result has been a relatively low rate of economic growth, stagnant or declining per capita income levels, low and declining public and private investment, and failure to develop non-oil exports.

The present Government appears committed in principle to further reforms to achieve a faster rate of economic development, with the national and foreign private sectors playing a larger, more catalytic role. The major elements of the Government's structural reform plan are privatization, reduction of trade barriers, deregulation, and promotion of new FDI. Success is slow in coming, however, as some of its policy makers seem unable fully to abandon their prior socialist era orientation toward a centrally-controlled, command economy and apparently remain vaguely distrustful of private entrepreneurial market-oriented investment, unconvinced that a truly free market economy is in the national interest. This has led to some difficulties in implementation.

And so the economy appears still to be dominated by a tight monetary policy and inefficient, extensive State capitalism. The stable nominal rate of exchange to the dollar existing in Egypt, defended by high tariffs, non-tariff barriers to imports, and high interest rates (which have attracted large capital inflows), has allowed its currency to become economically over-valued since 1991 with respect to the currencies of most of its trading partners. This has occurred for two reasons, the main one being that the currencies of many of its trading partners have depreciated relative to the dollar (and thus relative to the Egyptian pound). Also, the difference in the rate of inflation in Egypt and that of its major trading partners has not been offset by higher levels of productivity in Egypt, although the difference in relative inflation rates has not been a major factor since 1991.

Moreover, private sector development remains constrained by restrictive regulations and bureaucratic procedures that are counterproductive for efforts to attract foreign investment. Many GOE policies are viewed as stifling private initiative and inconsistent with expressed Government intentions to move toward a market-drived economy. For example, State enterprises continue to dominate such key infrastructure industries as telecommunications, ports, roads, and railways which are inefficient, provide generally high-cost, low-quality public services and are in need of large investments and new, advanced, technology. Yet it is these State-owned entities most in need of FDI because of their need for modernization, large capital infusions, advanced technologies, that are of greatest interest to potential foreign investors. An adequate and efficient infrastructure is a key element for export growth and rapid economic development, and necessary for attracting other new FDI. Moreover, the GOE continues to own or substantially control many normally private commercial entities. Potential foreign investors are not attracted to sectors in which they will have to compete with Government-owned, subsidized entities.

While it professes to offer national treatment in its laws and rhetoric, discrimination and exclusion continue in many forms. Many major sectors of industry, particularly infrastructure, are State monopolies and closed to private investors. The GOE's guidelines for privatization accord foreign investors National Treatment, but public officials have indicated a preference for Egyptians, followed by Arab investors from other countries, and, only thereafter, other foreign investors, rather than opening the door to all foreign investors.

As a result, potential foreign investors with a real interest in the possibilities of Egypt feel discouraged by an economy characterized by an inefficient public sector, excessive regulatory discretion and red tape; a cumbersome, dilatory and costly investment approval process; and

excessive public intervention in the commercial and financial sectors. The Government's centrally-planned public "project based" approach to the promotion of foreign investment reflects a serious lack of understanding of the entrepreneurial, free-market-oriented economic and commercial motivations and security concerns of foreign investors. As a result, in terms of its public ideology and the roadblocks Egypt places in the way of potential foreign investors, it is well behind the other countries studied.

The investment admission/establishment/incentives procedures have discouraged FDI, imposing heavy and unnecessary costs in terms of time, money, and uncertainty for investors. A morass of as many as 20 different laws/decrees affect investment in Egypt, of which nine directly impact on FDI. These regulate the admission/establishment of FDI specifically, corporate forms of business and company formation generally, and incentives for investment, whether domestic or foreign. In addition to the two major statutes that relate to FDI approval, corporate law, and incentives rules, there are a number of sector-specific or regional-oriented incentives laws. Few of these contain clear criteria for approval, eligibility for incentives, or consistent, transparent procedures for their administration. This, in turn, leads to excessive discretion, and, often, arbitrary and capricious decisionmaking within the bureaucracy, with too many opportunities for red-tape obfuscation, delay, and possibilities for corruption. Notwithstanding real efforts of top Government managers to clarify and streamline requirements and procedures, an officious mid-level bureaucracy tends to discount or even ignore Government policy directives with this purpose. The result is that the foreign investment approval/ registration/establishment and incentives screening process takes longer in Egypt than in any of the other countries studied, undermining the GOE's goal of attracting increased FDI.

There have been some serious post-establishment instances of discrimination against foreign-owned firms in the area of land ownership, customs and tax administration, as well as problems relating to non-recognition of legal and treaty rights to investment protection, dispute settlement, judicial review, and international arbitration. Other areas of constraints include repatriation of capital/profits remittances; intellectual property rights protection and enforcement; and concerns for the adequacy and efficacy of the commercial law system.

For the moment, from a legal/regulatory standpoint, Egypt appears the least attractive for potential investors of the five countries surveyed, though it is taking some corrective action.

2.2 Summary of Recommendations

A. General Recommendations: Achieving a More Favorable Business Climate

2.2.1 Development vs. Stabilization

Egypt should begin implementing policies and reforms targeted directly on achieving a high enough rate of economic growth to reduce unemployment, elevate per capita income, and thus enhance its real market attraction for prospective foreign investors.

2.2.2 Exchange Rate Flexibility

Subsequent to a more vigorous implementation of trade liberalization and interest rate policy reforms, the GOE should begin to phase in a more flexible exchange rate policy in order to attract more FDI, stimulate production for export and achieve enhanced economic growth. At a minimum, it should measure the stability of its exchange rate on purchasing power parity calculations involving a trade-weighted basket of trading partner currencies, instead of solely on the nominal value of the U.S. dollar.

2.2.3 Trade Liberalization

Import tariffs should continue to be lowered (toward a single, across-the-board, low tariff rate on all imported items) and non-tariff trade barriers dismantled.

The GOE should complete negotiation of the Egypt-E.U. Partnership Agreement while closely following the evolution and impacts of the E.U. agreements with Morocco and Tunisia and its Customs Union with Turkey.

The GOE should continue to exert a leadership role in efforts to promote Inter-Arab economic integration and a regional free trade arrangement. It should also renew its request for observer status in the Arab Maghreb Union and aggressively pursue full membership thereafter.

2.2.4 Privatization

The GOE should accelerate the pace of its privatization program in all sectors of the economy, aimed at attracting large amounts of private foreign capital, advanced technology, and modern management and on cutting costs for the benefit of exporters and consumers. It should make clear that foreign investors are equally eligible with Egyptian nationals in acquiring and operating state-owned enterprises.

2.2.5 Pro-Business Policies

Reforms such as investment incentives, trade liberalization, privatization, regulatory reform, and non-discrimination—to be most successful in attracting FDI—should be applied within a general economic policy commitment toward encouraging competition, deregulating the economy, strengthening the private sector, removing all vestiges of a command economy, and establishing an entrepreneurial, investment-driven, free market economy.

2.2.6 Investment/Export Promotion and Training

Egypt's investment and export promotion efforts abroad should be reviewed and assessed and proposals developed as to how to make these efforts more effective and results-oriented.

Egypt's Foreign Commercial Representation sector should receive training and logistical support to enhance its effectiveness in promoting Egyptian trade and investment.

B. FDI-Specific Recommendations: Enhancing the Climate for Foreign Direct Investment

2.2.7 Sectoral Restrictions

Remove all restrictions focused on private investment generally—and FDI specifically—in industry sectors, except those directly related to production for or maintenance of national security and defense.

2.2.8 National Treatment

National Treatment should be accorded to foreign investment without reservations, exclusions, or discrimination.

Egypt's ambiguous laws relating to the rights of foreigners to acquire and use land incident to their commercial ventures should be clarified and FDI accorded enforceable guarantees in that regard.

2.2.9 Rationalization of Investment-Related Laws

The multiple and often inconsistent laws and regulations that govern FDI approval/ establishment in Egypt should be rationalized by repealing all current laws affecting FDI and enacting in their place laws that separately and specifically address the substantive aspects of: (a) Corporate organization/Company formation (whether for domestic or foreign investor purposes); (b) investment incentives (whether for domestic or FDI purposes); and (c) establishment and operation of Free Trade Zones, e.g., there should be:

* A single corporation law that addresses only the forms of business organization, their formation, legal requirements, powers, shareholder rights, and company registration and licensing to conduct business.

* A single investment incentives law that addresses only the goals of sectoral or regional development or technology enhancement and the criteria for, extent, and term of incentives; and

* A separate Free Trade Zones law that provides a comprehensive FTZ legal/regulatory customs regime integrated with Egypt's basic Customs Code and procedures, but which does not itself address incentives for investment therein.

2.2.10 Single Agency for Company Formation

Authorize a single GOE agency to regulate and oversee forms of business, and the corporate organization/company formation process and procedures. Such agency should confine

itself solely to company formation law and procedures and other corporation law concerns (approval of Statutes/Articles of Incorporation, public notices of organization, registration, etc..) and exercise no authority or responsibilities regarding approval of investment as such, the feasibility of investment projects, or the award or regulation of incentives.

2.2.11 Single Agency for Investment Incentives

Authorize a single GOE agency to administer and regulate all investment incentives under a single investment project/incentives approval/award process, utilizing a unified, uniform set of screening procedures applicable to all incentive applicants.

2.2.12 One-Stop-Shop

The agencies described in subsections **2.2.10** and **2.2.11** hereof should be established as subdivisions of the same ministry, which ministry should be delegated plenary authority to oversee their activities.

That ministry should establish a One-Stop-Shop—in the Office of the Minister—specifically to provide to prospective and current foreign investors:

* information, regarding FDI in Egypt;

* services to simplify and assist investors through the company formation and incentives application process; and

* follow-up services to approved foreign investment projects to assist them to comply with the laws, regulations, and procedures required for post incentives start-up operations such as local site approvals, registration, chamber memberships, expatriate visas and work permits, standards implementation and the like.

The One-Stop-Shop should have the authority from the Minister to coordinate and facilitate all aspects of company formation and incentive applications and sufficient backing from the Council of Ministers to command the cooperation and assistance of all relevant agencies.

The One-Stop-Shop should aggregate in a single site officials of all ministries and agencies relevant to the company formation/incentives approval process, who are authorized to issue any required permits, licenses, or approvals on-the-spot.

The one stop shop office should prepare and publish a simplified but accurate brochure describing in detail the company formation and investment incentives/award processes, indicating each step in such process, the authorities/agencies involved (with titles, addresses, and office telephone/fax numbers), and the maximum processing time for each such step, all in a “roadmap” form made available at the one-stop-shop, of the kind that appears in Appendix C.

2.2.13 Expedited Processing

In order to expedite the processing of company formation and investment incentive screening, both processes should be commenced at the same time and proceed contemporaneously, rather than sequentially, subject to the reservation that the due and timely formation and establishment of the corporate entity shall be a condition to the realization of incentives.

2.2.14 Follow-On Licenses, Approvals

The GOE should reduce to the bare necessary minimum (e.g., necessary for public health and safety), monitor, and rigidly control, all requirements, national or local, for approvals, licenses, E&O certificates and all other obstacles to the timely commencement of investment project operations.

2.2.15 Reduction of Bureaucratic Discretion and Red Tape

The GOE should undertake an aggressive campaign to require clear criteria in FDI-related laws and regulations; transparent procedures for their administration and implementation; reduction of unnecessary red tape, simplification of procedures; and reduction of arbitrary and officious intervention on the part of the bureaucracy.

2.2.16 Investment Incentives

The GOE should shift its focus away from income tax exemption incentives toward providing prospective investors with a comprehensive, enforceable set of guarantees for or against the following:

* National/Most Favored Nation Treatment.

* No limits on equity participation of foreign investors.

* No sectors closed to FDI (except for basic national security).

* Post-establishment performance requirements.

* Right to judicial review of administrative decisions and actions, and international arbitration of investment-related disputes with public authorities.

* Stable rates of income and other direct taxes.

* Free remittance of profits, repatriation of capital, and current account transfers, in foreign currency freely available at market rates.

* Protection and Enforcement of project-related property rights (including industrial and intellectual property).

2.2.17 Fiscal Incentives/Tax Regime

To the extent tax-related incentives are offered to attract potential foreign investors, such incentives should be made available in the form of tax credits, deductions, and accelerated depreciation of project-related capital assets, rather than income tax holidays or exemptions.

The GOE should terminate discriminatory income tax rate differences between "industrial" and "commercial" business entities.

The proportional annual stamp tax on share capital should be abolished as counterproductive to the concept of attracting and increasing investment.

2.2.18 Intellectual Property Rights

Egypt should adopt the draft Patent Law as soon as practical. As enacted, the law should provide protection for chemical products related to foods and pharmaceuticals.

Its Trademark and Industrial Design Laws should be amended to provide for publication and public examination.

The GOE should adhere to the International Convention for the Protection of New Varieties of Plants (UPOV).

2.3 Country Comparisons

The study authors have summarized their conclusions regarding comparative economic indicators, business climates, and legal/regulatory regimes in Tables 1,2, and 3. Of course, the importance attached to each issue of the FDI related business or legal/regulatory climate varies greatly among foreign investors, with wide differences, for example, between a foreign oil company versus a consumer goods manufacturer. For this reason, it was decided to concentrate on the broader issues that tend to affect all foreign investors and generally exclude sector specific issues. The tables in this section show a comparison of important economic indicators and rankings of key business and legal/regulatory issues for Egypt and the other countries analyzed.

2.3.1 Economic Indicators

Table 1 sets forth in comparative form the major economic indicators normally considered of significance by foreign investors in choosing where to make FDI. The indicators are considered as factual inputs for decision-making and, so, are not subjectively weighted.

2.3.2 Business Climate

Ten issues of importance to foreign investors that, in the aggregate, make up the business climate, were used in Table 2 for ranking Egypt in comparison to the other four countries analyzed. The higher the score shown on each line in the table the higher the ranking. Both an unweighted and a weighted overall average of the ranking of all ten issues are shown. Weights and rankings are subjective assessments by the authors based on information collected from in-country interviews with executives of foreign companies and from published sources.

2.3.3 Legal/Regulatory Regimes

Nine major areas of investor concern were analyzed and assessed in Table 3 on the basis of results indicated in the country sections, in order to compare and rank the countries studied for this report. In addition to absolute scores in each area analyzed, the areas were weighted to reflect the relative level of importance to potential foreign investors based on experience and interviews.

2.3.4 International Rating Agency Country Rankings

International rating agencies evaluate the "country investment risks", business environment", "economic freedom", "openness", "competitiveness" and sovereign credit risks of most developed and developing countries. Their country ratings/rankings, while often purely subjective, are relied upon as standard inputs for investment location decisionmaking. In Section 11 of this study, some 18 different country rating/ranking results are reported (see also Table 8) for the comparison countries, together with some of their forecasts for economic growth and business environment in the near future.

For example, Euromoney ranks Egypt 77th out of 178 developed and developing countries in terms of "country risk", while the Economist Intelligence Unit ranks it 43rd out of 58 countries and the Triangle Index ranks it 30th out of 35 countries (but 19th out of 35 with regard to "economic environment"). The Frazier/Cato Institutes ranks Egypt 79th out of 102 countries in terms of "economic freedom", while Independent Strategy ranks it 53rd out of 57 "emerging" countries in terms of "country success". In a 1996 World Bank study of "openness", Egypt ranked 108th out of 129 countries, while the UNDP Human Development Report ranks Egypt 106th out of 174 countries in terms of "human development". In nearly all of these "overall" rankings, Egypt lagged behind the comparison countries, although it sometimes compared favorably to them in certain specific sectors of the ratings criteria. Forecasts by the international rating agencies of likely economic growth in Egypt over the next year suggest GNP growth of nearly four percent and GDP growth of five percent.

Table 1: Economic Indicators

Issues	*Egypt*	*Turkey*	*Israel*	*Morocco*	*Tunisia*
Infrastructure	inefficient, high-cost, require opening state monopolies to provide investment/ management	Well-developed, except electricity, expansions offer foreign investment opportunities	Well-developed, except airports, expansions for electricity, highways, airport, rail, urban transport.	Rail, road network developed, Casablanca port overburdened, investment, with private participation, for electricity, rail, telecommunications	Well-developed, except-cost telecommunications, private investment to participate in telecommunication, electricity, road expansions.
Economic Growth	GDP growth slowdown from 5%/yr 1980-90 to 1.6 % 1991-95 with low investment and exports but over 4% growth in 1996	GDP growth 5%/yr. since 1981, and 7% in 1996 with export growth and investment 27%of GDP.	GDP growth 6%/yr. Since 1990 from high investment, exports, immigration .	Moderate GDP growth, depending on rainfall affecting agriculture.	GDP growth 4.2%/yr. since 1987, sparked by tourism and exports, held back by agriculture.
Inflation	Inflation slowed 21% in 1989/90 to 9.4% in 1994/95 to 7.2% in 1996; tight monetary, fiscal policies restrained economic growth.	Inflation 74%/yr. In 1996 80% since 1988, 126% after 1993, when government emphasized economic development over financial restraints.	Inflation 18%/yr. 1986-91, 11% since then, fiscal, monetary constraints.	Inflation 5%/yr. Since 1990, monetary policies keep budget deficits moderate.	Inflation from 9.5%/yr. In early 80's to average 5.8%yr. Since 1991, sound fiscal, monetary management.
Devaluation	After major devaluation, exchange rate kept stable by Central Bank, in nominal terms against the U.S.$	Devaluation rate follows inflation to keep exports competitive.	Exchange rate stable in 1995-96, adjusted to changes in trade-weighted basket of currencies.	Exchange rate stable after 9% devaluation in 1990, adjusted to changes in trade-weighted basket of currencies, dominated by French franc.	Basic rate fixed by Central Bank, daily rate allowed to fluctuate (between par and 15% premium to US$ since 1991).
Taxation	Maximum 40% corporate tax plus 2% excess profits tax (no remittance tax); 32% for manufacturing or exporting	Maximum corporate tax of 44%, including surtax and remittance tax.	36% corporate tax plus 25% dividend tax adds to 52% tax.	35% corporate tax plus 15% dividend tax adds to 44.75%.	35% corporate tax (10% on agriculture), employer social security contribution 19% of gross wages.
Tariffs	Average tariff about 24%, maximum 135%, but range mostly 10%-55%.	0% - 35%, but up to 300% converted from quotas agricultural in ports	Up to 100% disguised as "fees"	Max. basic tariff 35%, tariff bands on agricultural imports and replacement of quotes/licenses up to 300% on CIF value	Tariff 10%-43% plus up to 30% temporary tariff on some products.
Trade Liberalization	Tariffs reduced, but remain high, some non-tariff barriers eliminated, but customs show and arbitrary.	Tariff levels generally low and import licensing increasingly automatic.	Extensive non-tariff barriers, artificial inflating CIF value for duty calculation, import bans, violations of free trade agreements.	Conversion of quotes, licensing into high tariffs, non-tariff barriers reduced, customs procedures simplified.	Duties still high due to conversion of quotas, customs procedures streamlined.

Table 1: Economic Indicators

Infrastructure - Egypt generally has an inefficient, high cost infrastructure compared to the other four countries, except in electricity. Major investments are needed in modernizing, upgrading, and expanding railways, roads, urban transport, airports, seaports, and telecommunications.

Economic growth - Egypt's rate of economic growth has slowed in recent years and been the lowest of the five countries, while the other countries' economic growth has kept steady or accelerated. The determining factors for the level of growth have been the investment level and the rate of growth of exports.

Inflation - Egypt has been successful, like Morocco and Tunisia, in reducing inflation to moderate levels with the application of tight monetary and fiscal measures.

Devaluation - In recent years, Egypt has been as successful as the other countries in maintaining a stable rate of exchange at least in nominal terms against the US$. An exception is Turkey, which chose a regime of frequent mini-devaluation to track its high rate of inflation in order to maintain the competitiveness of its exports by keeping their costs of production stable in dollar terms.

Taxation - Egypt is on the low end within a narrow range of corporate taxation among the five countries, with Israel on the high side with 52%.

Tariffs - All five countries, including Egypt, continue protective policies with some very high tariffs. Generally, developing countries with the most dynamic rate of economic and export growth have reduced their maximum import tariffs below 20% and their average tariff level below 10%, while eliminating all non-tariff trade barriers.

Trade Liberalization - Although all five countries, including Egypt, have lowered their trade barriers somewhat, many protective tariff and non-tariff trade restrictions still prevail.

Table 2: Country Rankings: Business Climate**

Weight %	Issues	Egypt	Turkey	Israel	Morocco	Tunisia
5	Political Stability	4	1	2	3	5
15	Pro-Business Policies	1	4	2	5	3
11	Regulations/Red Tape	1	5	3	2	4
12	National Treatment	1	3	5	4	2
10	Investment Incentives	2	1	5	3	4
5	Taxation	2	3	1	4	5
15	Remittance Freedom	3	5	4	2	1
11	Exchange Rate Stability	5	1	2	4	3
8	Trade Liberalization	2	4	1	3	5
7	Market Size/Growth	3	5	4	2	1
	Unweighted Average Score	2.4	3.2	2.9	3.2	3.3
100	Weighted Average Score	2.25	3.34	3.06	3.22	2.98
	Ranking: 5 Best, 1Worst					

* The weights assigned to the issues used, in the aggregate, to evaluate the comparative Business Climates (Table 2) and Legal/Regulatory Regimes (Table 3) of the five countries assessed are based upon a carefully-considered consensus reached by the study authors, derived from their more than 25 years each experience with international investment issues, as reflecting the principal concerns–and the relative importance of those concerns–of multinationals and other investors in foreign countries. While any specific investment in any given country will have its own set of relative concerns given the particulars of market, sectoral, and country conditions, experience with companies investing abroad suggests that the relative weights adopted by the authors for purposes of this study are appropriate and useful.

Table 2: Ranking of Business Climate

Political stability - Tunisia is considered to have the best record and prospects. It had an orderly, non-violent transition from the previous presidency, free from political violence and terrorism, with a highly popular president, and has initiated steps toward a gradual transition toward a higher level of democratic government. Egypt is viewed by foreign investors a close second after Tunisia with similar aspects of political stability, affected only by occasional problems with extremist Islamic fundamentalists. Morocco is considered having a stable and popular government, but with some uncertainty about an eventual succession. Israel and Turkey both suffer from unstable, multi-party coalitions and risks of terrorism and potential insecurity.

Pro-Business Policies and Regulations/Red Tape - None of the countries have as yet moved far in establishing a free market economy with an open door for trade and investment. All have lowered somewhat trade barriers and corporate tax rates, abolished price and margin controls, introduced investment incentives, but the liberalization of the economy remains incomplete, with the least progress achieved with privatization, deregulation, and red tape. In these areas, Egypt has the poorest record. It has hardly begun to privatize and the customs administration continues to display arbitrary, discriminatory decisions, with no effective recourse to challenge in courts. Morocco has already greatly simplified customs procedures, Tunisia has set up an efficient One Stop Shop for investors which can serve as a model for all developing countries, and Turkey is increasingly liberalizing the business sector from bureaucratic controls in order to become eligible for admittance into the EU in the future.

National Treatment - Israel provides the most complete national, non-discriminatory treatment of foreign investors among the five countries. Morocco has a good record, but foreign investors are not permitted to own agricultural land and government procurement procedures are at times skewed toward nationals in an arbitrary, non-transparent manner. Turkey generally does not discriminate against foreign investors, but foreign mining companies have encountered interminable delays in obtaining the necessary permits to start operations. Tunisia requires prior authorization for investments with majority foreign equity participation to serve the domestic market and for such firms to remit profits abroad. Foreign companies are now, reportedly, refused foreign exchange by the Central Bank for payment for imports if they do not document why they could not purchase from local suppliers instead of importing. Egypt discriminates against or discourages foreign investors in a number of ways. It bars foreign investment from all commercial and most importing activities and allows foreign investment only in approved sectors, with arbitrary powers to charge such sectors. Egyptian-owned companies are given a 15% price preference in public tender bids over foreign-owned companies. In Privatization, the scope for foreign investor participation is limited by preferential equity sales to employees and to domestic investors through the local stock exchange, then to Arab investors, and only thereafter to other foreign investors. The companies Law requires an initial 49% share offering to Egyptians and a majority of the Board of Directors must be Egyptian nationals.

Investment Incentives - Israel offers the most generous foreign investment incentives, including a government grant of up to 35% of the value of the initial investment to “approved enterprises” or generous tax incentives. Tunisia offers 10-year corporate tax exemption and other incentives to companies that export at least 80% of their production and all other new investments an tax exemption on reinvested profits of up to 35% of taxable income plus other incentives. Morocco offers a 5-year corporate tax exemption to exporting companies or those willing to locate in economically depressed areas. Turkey offers new foreign investors guarantees of national treatment, no exclusion from any industrial sectors, up to 100% foreign equity ownership, and freedom to remit profits. Egypt offers qualifying foreign investors a 5-year corporate tax holiday that may be extended by another five years and some other minor incentives.

Taxation - Tunisia has the lowest and Israel the highest maximum corporate tax rate, with Egypt near the high side of this range. Egypt's maximum corporate tax rate of 40% is actually the highest of the five countries, but the other four countries have a dividend withholding tax on profits distributed and/or remitted abroad.

Remittance Freedom - In Turkey, foreign investors can freely remit their profits abroad without prior authorization. In Morocco, foreign investors can freely remit profits and repatriate capital, provided the initial foreign investment was registered with the Exchange Control Office. Israel permits authorized banks to make available foreign exchange to companies for profit remittances, provided the original investment was also made through an authorized bank. In Tunisia, freedom to remit profits and repatriate capital is limited to companies with at least 66% foreign equity; others require prior government authorization. In Egypt, profit remittances abroad are limited to the level of the company's foreign exchange bank balance. Capital can be repatriated also only up to the amount in the company's foreign currency bank balance and by applying the exchange rate prevailing when the original investment was made.

Exchange Rate Stability - Egypt's record since 1990 is the best, together with Morocco and Tunisia, although the exchange rate of all three countries is now overvalued from an economic perspective and a growing handicap for the competitiveness of new export development. Turkey and Israel have suffered from recurring exchange rate instability, tied to high rates of inflation.

Trade Liberalization - Tunisia and Morocco have dismantled major non-tariff trade barriers, reduced tariff rates, and simplified customs procedures, but high levels of protection for agriculture prevail. Turkey has lowered duty levels and made import licensing increasingly automatic. Israel maintains the most extensive non-tariff barriers, including outright import prohibition, and artificial inflating of c.i.f. prices for duty calculation in order to protect domestic producers. Egypt has reduced tariff levels, but many remain high, designed to protect domestic sectors from competition by imports.

Market Size and Growth - Turkey has the largest market among the five countries and probably the best growth potential. Israel's market is large due to the high purchasing power of its population and fast export growth, but prospects for long-term growth may become more limited. Egypt has a large potential market but one that continues to be limited by low purchasing power and government policy constraints affecting private investment and diversified export development.

Overall Ranking - The unweighted average ranking of all ten issues of the investment climate places Morocco and Tunisia in the best position and Egypt in the worst. But weighted ranking, that reflects the relative importance of each issue for foreign investors, places Turkey in first place, followed by Morocco and then Israel, with Egypt last. Egypt scores poorly in all categories for foreign investors, except exchange rate stability and political stability.

TABLE 3: COUNTRY RANKINGS: LEGAL/REGULATORY REGIMES*

Weight %	Legal/Regulatory Issues	Egypt	Turkey	Israel	Morocco	Tunisia
15	Basic Property Rights Protection Guarantees in Laws	7	7	6	7	4
15	Restrictions on Foreign Investors	6	9	8	7	6
10	FDI Admission/Approval Process	8	13	15	15	17
10	Treatment of Post-Adm. FDI	10	11	12	11	13
13	Investment Protection (Risks)	17	17	18	14	14
8	Taxation of FDI	8	8	4	5	7
12	Repatriation/Remittances	14	19	14	18	15
10	FDI Incentives Programs	9	10	17	13	17
7	Other Investor Concerns (IPR, Labor, Commercial Legal Systems)	5	8	7	6	6
	Absolute Totals	84	102	101	96	99
	Weighted Totals	953	1149	1133	1080	1080
	Ranking: High-Best, Low-Worst					

*The weights assigned to the issues used, in the aggregate, to evaluate the comparative Business Climates (Table 2) and Legal/Regulatory Regimes (Table 3) of the five countries assessed are based upon a carefully-considered consensus reached by the study authors, derived from their more than 25 years each experience with international investment issues, as reflecting the principal concerns–and the relative importance of those concerns–of multinationals and other investors in foreign countries. While any specific investment in any given country will have its own set of relative concerns given the particulars of market, sectoral, and country conditions, experience with companies investing abroad suggests that the relative weights adopted by the authors for purposes of this study are appropriate and useful.

Table 3: COUNTRY COMPARISON RANKINGS - L/R REGIMES

Property Rights/Protection addresses the nature and level of Property Rights and protection guarantees either within a host country's legal framework (e.g. constitutional, statutory, other provisions) or requirements or bilateral treaties or multilateral conventions.

Restrictions on Foreign Investors concerns the kinds of prohibitions or constraints that affect the rights of foreigners to invest in a host country, e.g. Sectoral, geographical, or majority or percentage restrictions on share ownership in locally-incorporated companies.

Admission/Approval Process relates to the nature and time factors involved in obstinacy. The entry of FDI, e.g. the processes for its screening and admission and approval for the award of incentives both in terms of (a) the complexity of the process, (b) the level of discretion exercised by bureaucrats in processing admission/ approval, and (c) the time period involved in both company formation and analysis of the investment in terms of feasibility and consistency with incentive goals and requirements.

Investment Protection addresses the record of a host nation in terms of its expropriation, nationalization, or other taking of foreign-owned property; the legal safeguards against uncompensated services; foreigners' rights to judicial review and/or local /or international arbitrations; actual instances of uncompensated takings or pending property seizure claims; and availability of investment insurance against expropriation, currency, or political risks.

Taxation of FDI investigates the basic corporate and effective rates of taxation, other taxes that impose costs on foreign investors, applicability of international tax treaties, and the rules and practices related to tax assessment collection, and reporting procedures.

Repatriation/Remittances relates to the overall freedom of foreign investors to repatriate capital and/or remit profits in foreign currency and to meet international current account or debt payments, and the nature and security of rules and restrictions imposed thereon.

FDI Incentive Programs addresses the nature of fiscal and financial incentives offered by the host country to attract foreign investment, their administration in terms of pre-conditions, and post-admission performance requirements, monitoring and enforcement, as well as special incentive requires such as operation of free trade zones (FTZs).

Other Investor concerns is concerned with special areas of investor concern not described above such as protection of intellectual property rights, anti-monopoly/competition laws, labor laws and relations, and the adequacy of the overall commercial legal regime in terms of enforcement of contracts and facilitating modern commercial and financial transactions.

3.0 Foreign Direct Investment: Basic Concepts

A more detailed treatment of the concepts and motivations underlying FDI may be found in Appendix A. Basically, whether originating domestically or from abroad, investment is divided into two major concepts: "direct investment" and "portfolio investment". "Direct" investment describes an investment made to acquire and generally to manage a long-term interest in a target entity. When the entity is located in one country and the investor in another, the investment is referred to as "foreign direct investment." FDI is generally defined as ownership of 10 percent or more of the shares or voting power of an incorporated entity. Both the International Monetary Fund (IMF) and the Organization for Economic Cooperation and Development (OECD) chose the 10 percent threshold as indicative of an ability effectively to influence, if not control, the management of the enterprise, a reporting practice adhered to in most nations' accounting for international investment. Ownership of less than 10 percent of an entity is referred to as "portfolio" investment, since it generally implies an essentially passive often speculative, short-term interest only in the earnings potential of stock held in the firm.

Direct investment may be made through: (1) receipt of shares in exchange for capital (whether cash funds or in-kind assets); (2) reinvestment of earnings; or (3) certain non-arms'-length financial transactions between affiliated firms.

The legal context or framework within which FDI is admitted and regulated in a country is known as the "FDI Regime" and includes the whole array of constitutional provisions, laws, regulations, policies, and practices that, in the aggregate, establish and define the rights and obligations of both the foreign investor and the host notion. This FDI regime may be supplemented by certain international conventions or treaties that confer special rights or impose special requirements on signatory countries that may expand, reduce, or otherwise vary the rights and obligations of foreign investors and the State established in its FDI regime. Additionally there nearly always exists a broad spectrum of laws, regulations, polices, or practices in a country that are not FDI-specific but nonetheless affect FDI and foreign investors, known as "collateral regulation."

Whether incorporated into investment codes or less formalized FDI regimes, the underlying scheme for FDI nearly always addresses four basic issue areas of investor concern: (1) admission, (2) treatment, (3) expropriation, and (4) dispute resolution. "Admission" (or "Establishment") refers to the legal process through which FDI is legitimized within a nation's sovereignty. "Treatment" refers to the manner in which FDI is received and treated within a country, e.g. the "standards" of treatment accorded foreign investors and their investments, generally an issue of "National Treatment", which implies that foreign investors will be accorded treatment similar to that accorded a host country's domestic investors. A particular area of concern for investors under the rubric of "Treatment", is the freedom extended or withheld to transfer to the investor's home country ("repatriate") capital and profits from the investment. "Expropriation" refers to the formal (by law) or informal taking of an investor's property and the investor's legal rights to judicial review or arbitration and compensation.

There are two principal types of FDI regimes: "Open" investment regimes and "Authorization" or "Approval" regimes. "Open" investment regimes contain no special restrictions on entity or special constraints beyond internationally-accepted public order considerations. "Authorization" regimes require all or much FDI to undergo screening and obtain specific approval/authorization for entry of the investment.

FDI generally occurs as a result of either market offense or market defense strategies, reflecting the international commercial maxim that "investment follows trade and trade follows investment." Motivations for FDI involve market considerations, its size in terms of potential sales and profits; and the comparative advantages of the target country in terms of resources and competitiveness in sectors of concern to the investor. General incentives that might attract foreign investors include: a stable, sound, growing economy; progress in macroeconomic reforms and restructuring; freedom from foreign exchange restrictions and of capital repatriation/protects remission; open, accessible local and regional markets; and a facilitating, fair, transparent, and predictable legal and regulatory regime with adequate property rights protection.

Unfortunately, nations sometimes use artificial incentives to cover up or offset serious disincentives to FDI. Disincentives may include: performance requirements; political instability; sectoral or geographical restrictions on FDI; a generally unfavorable business and investment climate; government resistance to macroeconomic reforms and restructuring; serious inflation; volatile foreign exchange rates; excessive restrictions on capital and profits repatriation/emission; poor public sector services; export taxes or controls; public or private sector monopolies; highly prejudicial labor/management regime; or a restrictive, repressive legal/regulatory regime and/or excessive bureaucratic intervention or widespread corruption.

Governments make available a broad spectrum of positive incentives to induce FDI in their countries generally or in specifically-targeted sectoral or geographical areas. Fiscal incentives are frequently employed including income tax holidays or exemptions and exemptions from sales or stamp taxes, import duties, or the availability of "off-shore" operations in free zones. Financial incentives offered may include direct government loans or loan guarantees, export financing or debt/equity conversion possibilities.

But the primary goal of any investor is to realize the highest possible return at the lowest necessary risk. Thus, any serious investor will consider all reasonable alternatives for greater or equal return and minimize risks before deciding whether and where to invest. The nations that capture such investment are those whose economic and legal/regulatory regimes most nearly reflect modern global standards for the treatment of foreign investment and meet investors' reasonable expectations for profitable investments.

4.0 EGYPT: THE BUSINESS CLIMATE FOR FDI

4.1 The Business Climate

4.1.1 Market Potential

Egypt's market potential is substantial, smaller only than that of Turkey among the five countries included in this analysis. With a total population of 62 million and a net population growth of 2% per year, the potential consumer market is expanding by about 1.3 million people per year. But the real size of the market for most products is, of course, substantially smaller. Total GDP measured in current dollars was about $62 billion in 1995, but on a per capita basis only $1050. Egypt's per capita GDP is the lowest of the five countries analyzed in this Report, and well below those of Israel, Tunisia, and Turkey. Although the economy has expanded, average real wages have declined almost steadily since the mid-1980's. In 1991, 75-80% of family incomes were at or below $50 per month, according to the World Bank's Trends in Developing Economies of 1993. A large labor pool (with unemployment roughly 10% of the work force, but under-employment much larger) and low wage levels, however, provide some incentive for investments in labor-intensive activities if within a favorable policy framework.

4.1.2 Resource Endowment

Egypt has moderate amounts of petroleum and natural gas reserves, which are important sources of foreign exchange income and foreign investment. Phosphate and other mineral resources are relatively minor, compared to those in other mining countries. Beaches and large banks of coral reef in the Red Sea constitute an important tourism potential that is being developed. Agricultural land is limited by scarcity of rainfall to the delta and to the banks of the Nile river and adjacent irrigation projects.

4.1.3 Infrastructure

Egypt's infrastructure is moderately well developed, but its operation is generally inefficient and high cost, dominated by state monopolies. Large future investments will be required for modernizing, upgrading, and expanding telecommunications, electricity, ports, airports, and roads and the government may invite private sector participation in a variety of ways – through concessions and management contracts, privatizations, and new investments on a build-operate-transfer or build-own-operate basis. But the government so far has not aggressively promoted private investments in infrastructure.

4.2 Foreign Direct Investment

In Egypt, annual inflows of direct foreign investment ranged between $160 million and $370 million during 1982-91, with a tendency to decline. By 1989, US companies had $1.8 billion invested in Egypt, mostly in the petroleum sector, but by mid-1994, this total had declined to $1.5 billion. By mid-1990, a total of 264 firms had invested $1.8 billion in free trade zones in Egypt,

according to GATT's Trade Policy Review of Egypt in 1992, published in 1993. Total accumulated direct foreign investment in Egypt was about $11 billion in 1995, half of it from Arab countries. US investors in Egypt include Esso, Mobil, Arco, Coca Cola, Proctor & Gamble, American Express, Citibank, Gillette, and Johnson & Johnson. There are 18 foreign banks with branches operating in Egypt.

In the petroleum sector, foreign companies invested $230 million in fiscal year 1995/96 for oil and gas exploration and development. Egypt signed 11 new exploration agreements in 1995, committing foreign companies to spend $320 million in future oil and gas exploration, and in 1996 another 13 contracts for new investments of $294 million. An agreement was signed by Amoco, Egypt's General Petroleum Company, and Turkey's Botas Pipeline Corporation to set up a $4 billion investment for exporting 10 billion cubic meters of liquefied natural gas per year from Egypt to Turkey starting in year 2000 as feedstock for new thermal power plants.

4.3 Government Economic Policies/Reforms

4.3.1 Government Economic Policy Reforms

The government started a comprehensive economic reform program in 1991 designed to reverse declining foreign exchange reserves, accelerating inflation, stagnant exports, pressures on the exchange rate, rising unemployment, and a slowdown in economic growth. The government's stabilization and reform program, supported by the IMF with a stand-by loan agreement, has been continuing at a consistent but slow pace.

The Egyptian Government's emphasis on a tight monetary policy has proven highly successful in reducing the budget deficit and with it the rate of inflation and in stabilizing the nominal exchange rate. Low inflation coupled with a balance of payments surplus and expanding exchange reserves enabled the Government to reduce exchange controls, lower import tariffs, eliminate some non-tariff import barriers, and maintain a stable exchange rate. While financial stability has been achieved, the government failed to rid the economy of excessive bureaucratic controls and to establish a competitive free market economy by opening it to dynamic trade and investment expansion and stimulating competition. The result has been a relatively low rate of economic growth, stagnant or declining per capita real income levels, high unemployment and poverty, low levels of public and private investment, and failure to develop non-oil exports.

Table 4 - Structure of Egypt's Economy

Egypt's lagging economic development efforts can be summarized by the following data:

Structure of the Economy			**Average Annual % Change**	
(% of Total)	**1980**	**1994**	**1980-90**	**1990-94**
Agriculture	18	20	1.5	1.8
Industry	37	21	2.6	0.1
Services	45	59	7.5	1.2
Exports (goods and services)			6.1	-1.5
Gross Domestic Investment			2.7	-2.7
Gross Domestic Product (GDP)			5.0	1.1

Source: World Bank, World Development Report 1996, quoted in Business Monitor International, Egypt 1996-1998.

Under prodding from the IMF and other creditor sources, the Government initiated further reforms geared to achieve a faster rate of economic development, with the national and foreign private sector playing a larger, more dynamic role. The GOE would like to raise saving and investment levels from currently 17% of GDP to 23-25% of GDP and to increase the labor and capital efficiency in order to accelerate annual GDP growth from the 3.2% level of 1995. Private investment, according to the World Bank, has been less than 10% of GDP and foreign direct investment has averaged only $670 million per year, or little more than one percent of GDP in the last five years. (By contrast, Chile, with a population of a little over 10 million, has attracted around $4.5 billion foreign investment annually, helping to achieve 6% to 10% GDP growth per year.) The major elements of the Government's structural reform plan are privatization, reduction of trade barriers, reform of the banking sector, and deregulation. More rhetoric than action and results have been evident thus far. Tax reform, particularly of the income tax system, is also planned, because rates are high, the taxpayer base is small, exemptions are widespread, and compliance minimal. The top marginal corporate tax rate was lowered in 1993 from 65% to 48% and then to 40% plus 2% excess profits tax. Manufacturing or exporting companies pay 32% after expiration of tax incentives.

But it is still not clear how far the Egyptian Government aims to go in shifting its emphasis from a closed to an open economy, that is, from protection against imports to export promotion and from impediments to an open door for foreign investment. Vigorous implementation of reforms would attract more foreign direct investment and technology, lower the cost of imports,

stimulate investment levels and employment, improve the efficiency and competitiveness of the economy and accelerate economic growth. The IMF has endorsed the Government's reform plans, but has conditioned its support on fulfillment of specific reforms.

4.3.2 Effectiveness of Government Economic Policies

The government thus far has achieved only partial success with its economic reform program -- financial stability, but not adequate rates of economic or export development – because it has not gone far enough, fast enough, in implementing economic reforms. Success in establishing and maintaining financial stability has yet to be followed by effectively stimulating dynamic export-led economic growth. The government's economic reform efforts have not followed the success of developing countries in East Asia and Latin America in targeting policies specifically to achieve FDI-intensive, export-led economic development. Two major factors underlie its problems in developing diversified exports:

- Egypt's policy makers have not yet fully abandoned their past orientation toward a centrally government-controlled command economy, primarily, it appears because they are not convinced that a free market economy is in the best national interest. But, when other nations are progressing forward, Egypt must also, because to stand still in a rapidly changing world is to fall backward. Egypt, will increasingly lose out in the global competition for the world's export markets and capital sources against those countries that are advancing more rapidly with trade and investment liberalization and perfecting their competitive free market economy.

- Egypt's relatively large sources of foreign exchange income from petroleum exports, Suez Canal tolls, tourism, workers' remittances, foreign aid grants, and short-term private capital inflows have enabled the country to afford to neglect development of diversified exports. Virtually all of these foreign exchange sources, however, have declined or stagnated in recent years and they cannot always be relied upon to finance the faster growing imports needed to support adequate economic growth.

The Egyptian economy remains dominated by a rigid form of monetarism and inefficient, extensive state capitalism. Private sector development is hampered by restrictive regulations and bureaucratic procedures that essentially serve the interests of the public sector. More wide ranging reforms are needed in Egypt to further liberalize foreign trade, reduce excessive red tape and regulations that hamper private investment, extend privatization to the major state companies in strategic infrastructure sectors - all of which, supported by increased FDI, would significantly improve the competitiveness of the Egyptian economy and contribute to achieving export-led economic growth.

Import barriers and non-tariff trade barriers still protect domestic industries by preventing competition from imports. Protection against imports perpetuates inefficiency because it does not force domestic companies to become globally competitive. High import barriers encourage an anti-export bias in the Egyptian economy, because they make it more profitable to supply the domestic market rather than entering competition abroad. High import barriers also raise the cost of production for potential export industries and thus prevent the development of new, non-

traditional exports. The failure to open the domestic market to competition from imports has greatly contributed to the decline of exports in real terms and to Egypt being one of the countries with the lowest per capita exports in the world.

4.3.3 Relationship with International Financial and Trade Institutions

The International Monetary Fund (IMF) recently endorsed Egypt's economic reform programs by agreeing to a 2-year, $400 million stand-by loan. IMF staff will monitor every three months progress in achieving reform targets, particularly relating to reduction of the public sector budget deficit. The IMF also supported Egypt's successful campaign for a substantial write-off of its external debt.

After a long, virtual absence from Egypt, the International Finance Corporation (IFC), a subsidiary of the World Bank, is now actively assisting the promotion of foreign investment in Egypt. The IFC now publishes daily the Egypt Index, an index of Egyptian stock market quotations, reflecting the interest of foreign portfolio investors and the growth of the Egyptian stock market. The IFC has helped establish and bought shares in the first Egypt Equity Fund. It is participating in several private investment projects via equity and loans, including the first private electric power plant. The IFC expects to expand further its activities in promoting private investment in Egypt as the Government's privatization program progresses, particularly in infrastructure sectors.

4.3.4 Government Trade Policies

Egypt's average tariff rate, according to the World Bank and UNCTAD, declined only slightly, from 31% in 1988 to 24% to 28% at present. The maximum tariff rate on imports was reduced from 160% in 1989 to 80% in 1993 to 70% and now to 55%, except for rates on imports of large cars which were reduced in October, 1996 from 160% to 135%. Tariff rates in lower categories were also reduced, but the tariff structure remains highly protective. The Government has lagged in fulfilling its commitment to GATT/WTO to further reduce the maximum tariff level to 50% by 1995. To partly offset tariff reductions, the Government maintains an import service fee of 3% on imports with duties up to 30% and 6% on imports with duties exceeding 30%. Despite an agreement with the World Bank to reduce this import service fee by 1994, the Government has not done so.

There is also a sales tax of 5% to 25% on the c.i.f. value of imports. Import licenses have been abolished. In order to engage in foreign trade, however, exporters or importers must be Egyptians or foreign companies authorized under Law 230 of 1989, the Investment Incentives Law. Importation for resale in the domestic market can only by done by an Egyptian company.

Customs procedures are cumbersome and arbitrary. Customs officials need not explain or justify their decisions and there is little opportunity for formal review of their decisions. A common practice of under-invoicing to minimize duties, which are assessed on the c.i.f. value, is being counteracted by the customs authorities by applying the so-called "Egyptian selling price."

The price of an imported product that appears on the accompanying invoice when the product was first imported is used as the minimum price for calculating duty on all subsequent shipments.

Quality control inspection prior to admittance is required for 126 listed items, including food stuffs, construction products, appliances, electronic products, spare parts, and various consumer products. Although authorities insist that the same inspection standards are applied to equivalent domestic items, importers claim that testing procedures are more strictly applied to imports, often with faulty equipment, and judgments concerning import quality by customs officials are often arbitrary and discriminatory. Standards are not always clearly defined or even published, and long delays in carrying out inspections add to the frustration faced by importers and investors.

Recent studies suggest an impact of trade on income per capita. Estimates imply that increasing the share of both exports and imports in GDP by a single percentage point raises income per person by 2 percent or more. Moreover, while trade policy does not usually figure among the common characteristics of a liberal FDI regime, the ability to import and export freely is an essential requirement for effective participation in intra-firm trade, one of the basic motivations for FDI in a globalizing, world economy. The relatively open trade regimes of a number of the smaller Asian economies encouraged export-oriented FDI based upon access to natural resources and cheap labor, but, the development of markets and the regionalization of sales to third country markets required for globalization is effectively frustrated by import-substitution based tariff and non-tariff barriers. Although Egypt has made noticeable progress in the reduction of its tariffs in compliance with international agreements, its tariffs and non-tariff barriers still operate to constrain significant FDI.

4.3.6 Opening to Foreign Investment

Prior to the revolution of 1952, most foreign investment in Egypt was concerned with operation of the Suez Canal and the financing, production, and export of cotton, although there were limitations on the proportion of capital in a joint stock company that could be owned by foreigners. At the commencement of the Revolution, Egypt's economic system was essentially one of private enterprise with little State involvement. Within 12 years, it had become a centralized, planned economy with government ownership of most of the means of production. In January, 1957, all foreign banks and insurance companies, and all branches of foreign trading companies were required to: (a) become Egyptian joint stock companies with at least 51 percent of their capital owned by Egyptians and (b) have a majority of Egyptians on their Board of Directors. In 1961, a series of laws known as the "Socialist Laws" was enacted, which nationalized all non-public sector banks and insurance companies and fifty of the largest companies remaining in the private sector, while in 83 other companies the State assumed 50 percent ownership. The then GOE took control of most of the large and medium-sized firms engaged in commerce and industry.

In 1974, however, a new policy of opening up the economy occurred, the so-called "Infitah" or "Open-Door" program. Law No. 43 of 1974 was enacted, the immediate predecessor to Egypt's current Investment Law (Law 230 of 1989), specifically focused on the encouragement

of foreign investment. The law was vague in its description of acceptable investment projects, continued tight controls on foreign exchange and repatriation/remittance of foreign currency, and was oriented predominantly toward investment in export industries, while still limiting investment opportunities in the then growing domestic market. Law 43 was amended in 1977 to liberalize its exchange control provisions, better describe acceptable sectors for FDI, and better organize the set of incentives designed to attract FDI.

In 1989, Law 230/1989 was enacted to respond to investor needs for flexibility in transferring profits, to remove the limits on foreign investment in qualifying projects, to permit foreign ownership of project-related real estate, to clarify and expand investment incentives, and, in general, to reduce discrimination against foreign investors.

Egypt's current legal and regulatory regime for FDI is described in detail in Section 5 of this report.

4.3.7 Areas of Discrimination and Exclusion

Despite the expressed desire of the Government to attract foreign investment and to offer it national treatment, discrimination and exclusion appear to continue in many forms. Most major, basic sectors of industry, particularly in infrastructure, remain state monopolies and closed to all private investors. Foreign companies are barred from most domestic commercial activities and from importing to supply the domestic market. While Privatization Guidelines purport to accord foreign investors national treatment, statements by public officials indicate a preference for Egyptians, followed by Arab investors from other countries, and only thereafter foreign investors. The Government still prefers to retain these public companies and try to make them more efficient and competitive. In some cases, it is ready to enlist help from experienced foreign companies through management contracts. But it prefers to offer minority shares for privatization through the stock market and to state employees in order to both to achieve widespread ownership of shares and to retain effective management control over companies it considers of strategic importance for the economy or for the military.

Currently, most foreign investors potentially interested in Egypt feel constrained and discouraged by the dominant role in the economy of an arbitrary and inefficient public sector, excessive red tape in a cumbersome investment and import approval process, complicated regulatory procedures, and a generally non-transparent, dilatory administration of laws and regulations affecting investments and operations of private companies. Problems and administrative delays arise in some areas, such as importing and port services, because several ministries and government entities have overlapping regulatory jurisdiction. Health and safety regulations are often unevenly applied. Unloading of vessels is routinely delayed for many hours by lengthy inspections and by testing for radiation of all vessels, even those from countries with no known exposure to radiation.

Although financial remittances have been ostensibly freed from restrictions, control is still exercised by the requirement to register all financial remittances with GAFI. Profits can be remitted abroad, provided "the amount remitted does not exceed the balance of the project's foreign currency account." Upon liquidation of a foreign-owned business, all invested capital can be repatriated in one installment, provided the company's foreign currency bank account is

sufficient to cover the amount; otherwise, the transfer has to be made in five equal annual installments. The transfer must be done at the exchange rate prevailing when the original investment was made.

There have been several disputes between US companies and GOE agencies over contract cancellation and takeovers. Government agencies consistently refuse to submit to arbitration even when the requirement to arbitrate a dispute is specified in the contract.

4.4 Macroeconomic Trends

4.4.1 GDP Growth

During the period 1974-85, Egypt's GDP growth averaged 8.5% per year. This impressive macro-economic performance was stimulated by large-scale economic aid, substantial investments and revenue from growing petroleum exports, remittances by Egyptian workers abroad, and income from the tourist sector and from Suez Canal tolls. Egypt's GDP growth rate slowed substantially to an average 2.5% per year after the mid-1980's and only to 1.4% annually during 1989-94 according to the World Bank, under the combined impact of import restrictions and lower investment levels resulting from the effects of large debt service payments, import substitution policies, budget deficits, an overvalued exchange rate, and protectionist policies. The IMF records real annual GDP growth of 2.1% in FY 1990/91, 0.3% in 1991/92, 0.5% in 1992/93, 2.9% in 1993/94, and 3.2% in 1994/95. For FY 1995/96, GDP growth is estimated at 4.2% by the IMF. While macro-economic performance visibly improved during certain periods in the past, microeconomic activities and job creation have consistently lagged and social conditions are perceived to have seriously deteriorated.

4.4.2 Sectoral GDP

Agriculture accounts for 17% of GDP and 36% of total employment. Rice, corn, wheat, cotton, vegetable, fruit, and other agricultural production grew by 2.5% in 1994. Export restrictions on some of these products were removed only recently. Industry contributed 33% to GDP in FY 1994/95. The share of private investment in the total of the industrial sector was nearly 60%. The oil and gas component within the industrial sector contributed about 10% to the GDP in FY 1993/94 and 52% of total export earnings. Oil production approached 900,000 barrels per day (22.7 million tons) and natural gas production 9.2 million tons oil equivalent. The Government approved the first private investment in an oil refinery in 1994 near the SUMED export terminal for a 2-stage total of $950 million.

Egypt's service sector is dominated by tourism and the Suez Canal activities. The tourist industry in Egypt has created more jobs than any other sector – more than one million directly and an estimated nearly five million indirectly by 1992.

4.4.3 Inflationary Trends

In Egypt, the rate of inflation was reduced from 21% in FY 1989/90 to 11% in 1992/93, 9% in 1993/94 and 9.4% in 1994/95. After declining further to 6.9%, some inflationary pressures appeared and the annualized rate of inflation reached 8.3% by mid-year 1996. This means that nominal rates of interest are unlikely to be reduced further and monetary policies will continue tight in the near term. Successful management of monetary policies and fiscal restraint have steadily reduced the government budget deficit from a high 20% of GDP in 1986 and 17% in FY 1990-91 to 3.5% in FY 1992/93, to 2.1% in FY 1993/94, to 1.3% in both FY 1994/95 and 1995/96. The Government aims to reduce the government budget deficit further to only 1.1% of GDP in order to lower the inflation rate further and ensure continued stability of the exchange rate.

4.4.4 Foreign Trade Trends

Egypt continues to register large trade deficits with no improvements in sight. Non-petroleum exports, at an estimated $1.7 billion for 1996, are low for the size of the economy. Total exports were $3.6 billion in FY 1991/92, $3.4 billion in FY 1992/93 $3.3 billion in FY 1993/94 and $5.0 billion in FY 1994/95, but declined to an estimated $4.6 billion in FY 1995/96. Both imports and exports have remained virtually stagnant in recent years, reflecting a lack of dynamism in the economy. Imports were slightly over $10 billion in each of the fiscal years prior to 1994/95. In that year imports rose to $12.8 billion and further to $13.7 billion in FY 1995/96. The annual trade deficit during the past four years has been above $7 billion, that is, generally twice as large as total export earnings.

Egypt's non-oil export development continues to be impeded by a combination of factors:

- inappropriate government policies, including high levels of protection against imports, which discourage competitiveness and encourage an entrenched anti-export bias within the private sector by making it more attractive to supply the domestic market;
- low capital and labor productivity and high costs of production, public services, and transportation, partly resulting from bureaucratic impediments, restrictive labor regulations, and the operations of inefficient state monopolies;
- an economically overvalued, artificially protected exchange rate, which steadily raises the cost of production in dollar terms for potential exporters as long as Egypt's domestic inflation rate is higher than that of its major trade partners;
- failure to attract foreign investors with global market outlets and access to low cost capital sources and to advanced technology; and
- absence of an aggressive, effective foreign investment and export promotion campaign by promotion offices and well-trained commercial officers at Egyptian embassies abroad.

4.4.5 Trade Patterns and Trade Treaties

Egypt's major trade partners are the US, Italy, Germany, France, and the UK, all of which run substantial trade surpluses with Egypt. The major imports of Egypt are wheat, vehicles and parts, chemicals, and corn. Its major exports are crude oil and products, cotton yarn, raw cotton, and clothing.

Egypt concluded in 1992 a bilateral investment treaty with the US [*]and an investment guarantee agreement with OPIC: A trade agreement reached in 1977 with the EU gives Egyptian industrial exports free entry into the European market. Some minor Egyptian exports enjoy GSP status in the US and the EU. Egypt is a member of the dormant Arab Common Market. An trade agreement with Israel signed in 1980 is not currently operative.

4.4.6 Balance of Payments Trends

Egypt's large trade deficit is normally converted into a current account surplus by large foreign exchange inflows from tourism, Suez Canal tolls, workers' remittances, and US and other foreign grants. The balance of payments surplus is even larger due to the net inflow of foreign direct investment and foreign loans and the effect of the recent write-offs of part of the external debt.

Egypt's gold and foreign exchange reserves have expanded every year since 1982 from a low of only $700 million to $5.3 billion in 1991 to nearly $19 billion in 1996, now covering an ample 18 months of imports. The growth of reserves was the result of increasing loans, grants, and other capital inflows, workers' remittances, and restrictions on imports. Reserves are adequate to overcome any short-term imbalance, but not a fundamental disequilibrium in the balance of payments.

The current account surplus declined from $3.7 billion in FY 1991/92 to only $0.2 billion in FY 1993/94, due mostly to a decline in annual workers' remittances from $5.5 billion to $3.2 billion and a decline in foreign grants from $1.4 billion to $0.8 billion. In FY 1994/95 increased income from tourism was the major factor in the improvement of the current account surplus to $1.6 billion. In FY 1995/96 the current account surplus virtually vanished again to a mere $0.2 billion, due to a further surge in imports and drop in exports and in workers' remittances. The trade deficit widened substantially to the equivalent of 14% of GDP.

In the foreseeable future, it can be expected that receipts from tourism will continue to increase, but foreign aid levels and income from workers' remittances, Suez Canal tolls, and oil exports are likely to stagnate or decrease. Economic growth of 4% per year rather than 2% will require faster import growth, which these other elements in the balance of payments will no longer fully offset.

[*] See Table 7 - "Egypt's International and Bilateral Investment Treaties" for its network of investment agreements.

4.4.7 Foreign Exchange Regime

After a major devaluation, the nominal pound/dollar exchange rate has been kept virtually unchanged since 1991 by interventions of the Central Bank, surpluses in the balance of payments, and Egypt's success in steadily reducing the rate of inflation and liberalizing interest rates. It is protected by the high tariff rates and non-tariff barriers to imports described above.

4.4.8 External Government Debt

Unable to meet its external debt service obligations in a timely manner due to the failure to develop dynamic export growth, the government of Egypt requested and was granted substantial external debt write-offs, mostly from international financial institutions, including the IMF and $4.2 billion from the Central Banks of the Paris Club creditor countries. Egypt's external debt shrank from $51 billion in 1989 to $38 billion in 1991 but then remained unchanged at $42 billion during 1992 till 1994 until mostly write-offs reduced it to less than $30 billion currently. Even after these substantial debt write-offs, Egypt's external debt service is still a substantial burden and the largest among Arab nations, absorbing half of total foreign exchange earnings from goods exports.

5.0 EGYPT'S FDI CLIMATE: LEGAL/REGULATORY REGIME

5.1 Rule of Law/Legal Structure

Egypt's legal regime and structure are founded in a mixture of jurisprudential influences carried over from the different constitutional systems of the old Ottoman Empire (ending in 1914), the British protectorate (1914-1922); the monarchy (1922-1953) (during which it was significantly influenced by European codes of law, particularly the French codes); and the period of Socialist law with its centrally-planned, command economy, out of which it is only now evolving slowly into an entrepreneurially-oriented, private investment-driven, free market economy. It's current legal system reflects all of the above-described legal traditions, plus the increasing influence of Islamic Law, the Sharia.

5.1.1 Basic Legal Structure

The recent constitutional history of Egypt involves a number of constitutions (1923, 1953 1956, 1964), each reflecting currents of jurisprudence predominant at the time of its adoption. The current constitution of Egypt is the Constitution of September 11, 1971, as revised in May, 1980. Article 1 of the Constitution proclaims that "The Arab Republic of Egypt is a socialist democratic state based on the alliance of the working forces of the people." Article 2, as amended 1980, states that the Sharia is "the principal source of legislation" - previously it was characterized only as a major source.

5.1.2 Rule of Law

The Constitution requires respect for the Rule of Law. Article 64 proclaims that the "sovereignty of the law is the basis of state rule", while Article 65 provides that the "independence and immunity of the judiciary are two basic guarantees safeguarding rights and liberties." Egypt's legal system, however, appears dated in terms of the areas of law and jurisprudence that impact on FDI. Its Commercial Code dates back to 1883, its Civil Code to 1948, the Code of Civil and Commercial Procedure to 1968, and its Maritime Code to 1883. Appendix B provides an itemization of Egypt's Basic Laws affecting Business and Investment - as of early 1997.

5.1.3 Property Rights Protection

Notwithstanding that the Constitution proclaims Egypt as a "socialist" state, it contains provisions contemplating and safeguarding the right to private ownership of property and against uncompensated expropriation. For instance, Article 29 provides for three kinds of property ownership: public, cooperative, and private. Article 34 provides that:

> Private ownership shall be safeguarded and may not be placed under sequestration except in cases defined by law and in accordance with a

> court decision. It may not be expropriated except for the public interest and against fair compensation as defined by the law. . .

Article 35 provides that "Nationalization shall not be allowed except for considerations of public interest and pursuant to legislation and against compensation." Article 36 of the Constitution provides: "General confiscation of funds shall be prohibited. Private confiscation will not be allowed except pursuant to a court decision."

A couple of articles in Egypt's Constitution, however, when read in tandem, appear to dilute its assurances on the rights and freedom of private property. Article 30, relating to "public ownership" states that:

> Public ownership is the ownership of the people and it is confirmed by the continuous consolidation of the public sector. The public sector shall be the vanguard of progress in all spheres and shall assume the main responsibility in the development plan. (emphasis added)

while Article 32 provides that:

> Private ownership shall be represented by the unexploiting capital. The law organizes the performance of its social function in the service of the national economy, within the framework of the development plan, without deviation or exploitation. It may not be in conflict, in the ways of its use, with the general welfare of the people. (emphasis added)

When read together, these two articles appear to subordinate private property ownership to the requirements of the development plan, thus diluting the assurances of the rights of private property found in Articles 34,35, and 36. This possibility reflects the underlying tension between an aggressively Socialist constitutional basis for all subsidiary law and the obviously tortuous efforts to craft a framework of laws, regulations, and policies designed to facilitate Egypt's transition to a private property/entrepreneurially-based, investment-driven, free market economy.

5.2 Statutory Regime for FDI

It has been said that there may be as many as twenty different laws (legislative enactments, decrees with force of statute) affecting private investment in general, of which at least nine significantly impact on FDI, e.g.,

- The Investment Law, No. 230 of 1989;

- The Companies Law, No. 159 of 1981;

- The Commercial Register Law, No. 34 of 1976;

- Income Tax Law, No. 157 of 1981;

- The Industrial Licensing Law, No. 21 of 1958

- The Hotels and Tourist Construction Law, No. 1 of 1973;

- The New Urban Communities Law, No. 59 of 1979;

- The Industrial Shops Law, No. 453 of 1954; and

- laws affecting land ownership and registration.

Of these laws, the two major ones directly affecting foreign investment are the Companies Law (159/1981) and the Investment Law (230/1989). Neither regulates or discriminates specifically in favor of or against foreign direct investment as such, though there are provisions within Law 230 that appear to apply only to foreign investors. The former operates basically as the country's corporate formation/establishment/registration law and company regulation law, but provides for certain investment incentives. The latter focuses specifically upon the granting of incentives for investment, whether domestic or foreign. In addition to these, there are other laws that are specific to industry sectors or to geographical development areas that also provide incentives for investment.

5.2.1 The Companies Law

This law supplements Articles 505 to 548 of the Civil code and Articles 19 to 65 of the Commercial Code to form the corporation law of Egypt. It establishes the forms of corporate organization - principally joint stock companies and limited liability companies as well as general and limited partnerships - and addresses requirements relating to capitalization, types of shares, shareholder rights, responsibilities of directors, management and labor, disclosure, taxes and fees, and issues of control. While not regulating foreign investment specifically, foreigners may choose to invest in Egypt under its provisions and receive some limited incentives. For example, 50 percent of income from stock exchange registered shares is exempted from personal income tax, while contracts for projects undertaken by companies organized under the law are exempted from stamp duties and related fees. On the other hand, the law contains certain requirements that discriminate, overtly, against foreigners. For instance, at least 49 percent of shares of companies established under the law must initially be offered - over the period of one month - to Egyptians, and, only if not subscribed thereby, may the company ultimately have greater foreign ownership. Even then a majority of directors must be Egyptian and workers must be represented on the board if there is a majority of foreign equity. More importantly, the law does not concede the right to foreign investors to own land and requires that ten percent of net profits must be distributed to employees up to a ceiling of one year's wages. The law does incorporate by reference, however, certain incentives actually provided for in other, more specific laws, such as income tax holidays offered under the New Communities Law or the Tourism Law, but investors desiring to avail themselves of such incentives must first meet the company formation requirements of Law 159 and then apply separately to administering agencies for the incentives of those laws. Companies established under Law 159 require approval of their organization and establishment by the Companies Authority of the Ministry of Economy and International Cooperation ("MOEIC"),

while their incentive eligibility and subsequent industrial activities must be approved by the General Organization for Industrialization ("GOFI"), also a part of the MOEIC.

5.2.2 The Investment Law

Certainly the principal and more attractive law for obtaining investment incentives, whether for a domestic or foreign investor, is Law 230/1989[†]. The law (a) provides incentives for investment and (b) in order to facilitate such investment, also governs the formation of companies through which investment projects will be realized (in effect, by incorporating the relevant provisions of Law 159), but subjecting approval of both the investor's corporate form and its investment project to the General Authority for Investment ("GAFI"), also a part of the Ministry of Economy and International Cooperation.

The Investment Law permits new projects to be undertaken via joint stock companies, limited liability companies. and partnerships. It's provisions focus on two main areas of investment activity according to which incentives are determined: (a) so-called "Inland Investment", essentially industrial investments in the domestic economy, and (b) investments in Egypt's Free Zones.

Inland Investments: Unlike Law 159, which authorizes "industrial" investments in most sectors of the economy, the Inland Investments System authorizes investment (whether domestic or foreign) only in certain areas prescribed by the Law itself e.g., reclamation and cultivation of barren and desert land, industry, tourism, housing, and real estate development - or as may be designated by the Council of Ministers "in response to the country's needs and economic activities requiring modern technologies or aiming at increasing exports or decreasing imports, or intensifying the use of manpower." Since its enactment, areas that have been added to the spectrum of permitted investments include: mining, industrial zones, new communities, heavy equipment, certain vehicles assembly/repair facilities, petroleum technical services, consultancies, transportation, management of stock portfolios, and medical services and hospitals. Some 16 industrial zones have been established in various governorates of the nation.

Under Article 3, Paragraph First of the Law, investments may be realized in the following forms: freely convertible currency; freely convertible currency used to purchase securities; Egyptian currency paid to settle obligations denominated in foreign exchange; machinery and equipment and other inputs in-kind; intangibles such as intellectual property (patents, Trademarks); and reinvested earnings or capital brought in to expand existing incentivated projects.

Inland investments receive certain guarantees and privileges under the law, including:

- unrestricted ownership of invested capital;

- guarantees against uncompensated, non-judicial seizure or confiscation;

[†] This law has been superseded by the just-enacted Law 8 of 1997 - see discussion at section 5.2.4 and Appendix D hereof.

- immunity from administrative attachment;

- the right to own such land as may be necessary for their establishment and expansion (but certain reclamation/barren/desert land may only be held by long-term lease except where title is held through a joint stock company).

- exemption from price controls and excess profits ceilings (except as to certain products that may be "excluded" from the exemption by the Council of Ministers).

- right to hold and draw upon foreign currency bank accounts; and

- the right to import and export inputs and outputs without required use of import/export agents and without need for export licenses.

- no public enforcement actions may be commenced against the project or its investors without prior consultation with GAFI (but doesn't apparently apply to private litigation); and

- joint stock company projects do not have to have worker representation on Board of Directors (others do).

In addition, investors may receive the following positive incentives:

- corporate tax holidays:
  Article 11 incentives:

  * 5 years for most industrial projects, subject to a 5 year extension;

  * 2 additional years if over 60 percent local machinery used.

  * 5 years for approved "expansions" of the project.

  * distribution of profits exempt from taxation.

  * exemption from stamp tax and notarial fees.

  * 10 years for projects in new industrial zones, new urban communities and remote areas, subject to a 5 year extension.

  * 2 additional years if over 60 percent local machinery used.

  Article 12 incentives:
  * 15 years for Housing projects, subject to a 5 year extension.

Additional incentives:

* Upon expiration of the income tax holidays, distributed profits of the project shall be exempt from the general income tax. at the rate of 10% of the original value of the investor's share in project capital.

However, these guarantees and incentives are accompanied by certain conditions or limitations that may be of concern to potential foreign investors, e.g.,

- while foreign investors may wholly own a project, the Prime Minister, under Article 5 of the law, may "specify certain fields" in which Egyptian capital participation shall be required.

- founders' shares are not transferable within the first two years of the project.

- income tax holidays are not operative if the income not taxed thereby is taxed by the foreign investor's home country or the country to which transferred.

- remittance of profits must be made within the credit balance of the project's foreign currency account.

- repatriation of capital requires the prior approval of GAFI and must be made over a five year period if the amount to be repatriated exceeds the current balance of the foreign currency account.

- there is ambiguous and confusing language in Article 8/p4 that suggests that local governorates (which initially have to approve locating a project within their jurisdiction) have the authority to cancel such authorization - albeit they are required to obtain GAFI's "opinion".

Although Government of Egypt promotion materials suggest that Law 230 also authorizes customs exemptions for inland investments, there is no language in the section of the law relating to such investments that provides for such exemption, nor does it appear incorporated by reference from any other statutory source. In fact, it appears that imported capital assets, construction materials, and components required to establish an approved project are subject to import duty at a flat rate of 5 percent of its CIF value under the Customs Exemption Law, Law No. 186 of 1986.

Free Zone Investments: Article 28 of Law 230 authorizes the Council of Ministers to establish public Free [Trade] Zones for the location of such projects as may be authorized therefor under the Law. The zones may be limited to a single project if its nature so requires. Whole cities may be declared a Free Zone, but only by law (either a statute or, presumably, a decree with force of statute). The Free Zones may be public or privately-owned (limited to a single privately-owned factory site) and overall regulatory direction is by the GAFI Board of Directors, although day-to-day management is by a Zone's individual Board of Directors. GAFI is charged with issuing

regulations governing operations within such zones. Projects are authorized to operate within a zone by means of an operating license issued by the Zone.

The concept of the Free Zones is that, for customs, taxation, and trade law purposes, they are treated as being outside of the country, while, in fact, they are treated as remaining within Egyptian sovereignty in all other respects. It should be noted that, although Law 230 authorizes certain customs-exempt operations, it does not, itself, establish a general organic authority and an operating structure for Free Zones or describe a Free Zone customs regime as such, but says merely that the implementing Executive Regulation "shall specify the procedures for moving and safeguarding goods from the time of unloading until delivery at the Free Zones and vice versa" (Art. 31/p3) and that "Import from Free Zones into the country shall be undertaken in accordance with the general rules governing import activity from abroad." It appears that, for the present, Egypt does not have a separate Free Zones law as such nor are all of the in-bond activities normally found within such a zone covered in its customs laws/regulations. However, it is noted that the Ministry of Trade and Supply is sponsoring the development of a Free Zones legislative initiative for Cabinet consideration and ultimate referral to the People's Assembly. Free Zones have been established and are operating in 14 locations in Egypt.

The provisions of Law 230 relating to Free Zones investments and incentives (Chapter Three) appear to operate independently of the guarantees/privileges and incentives contained in Chapter Two dealing with inland investments except for certain matters such as definitions, investment forms, mixed capital, public sector eligibility, the expropriation and price control guarantees, enforcement, and certain labor provisions that are incorporated by reference into Chapter Three. Thus, it appears, investors in Free Zones authorized under Chapter Three of the Law, receive the following guarantees/privileges:

- transactions carried out in Free Zones or between Free Zones and other countries are not subject to the exchange control laws.

- no expropriation or confiscation of property without compensation; and

- exemption from price controls/excess profits margins.

- general exemption from the Labor laws except for the minimum wage and benefit requirements which are the same as in Egypt.

And, investors in Free Zones benefit from the following positive incentives:

- tax holiday (e.g., not subject "to the provisions of tax and duty laws" - which presumably is interpreted as an exemption from income taxes) although subject to a "fee" of one percent of goods entering or leaving the Zone except for in-transit items. The tax holiday appears unlimited in duration and related only to the period of time a project endures in a Free Zone. If the activities carried on in the FZ represent services only and do not involve entry/exit of goods, the fee is calculated as one percent of gross revenues.

- imports and exports into and out of the Free Zone are exempted from any otherwise applicable customs regulations within Egypt.

- the same are also exempt from customs duties, consumption taxes, and other taxes and duties.

- all articles, supplies, machinery and necessary means of transport (except passenger cars) required for the licensed activity of Free Zone establishments are exempt from customs duties, consumption taxes, and other taxes/duties.

- temporary admission is permitted for local and foreign goods, materials, parts, and raw materials for repair or manufacturing and their return exempt from import rules - except that a customs tax shall be levied on the value added within the zone in accordance with customs laws.

- goods may be entered into Egypt and sold there for local consumption without restriction as to percentage of Free Zone production, but subject to applicable customs duties. If such goods include both local and foreign components, the duty is charged only on the value of foreign components.

- Free Zone shipbuilding activities are exempt from the nationality and crew provisions of the Mercantile Marine Law and vessel registration requirements[‡].

With regard to both inland investments and those in the Free Zones, GAFI performs both a regulatory and a facilitating role. In its facilitating role - described in Article 47 - it is authorized to:

- prepare lists of fields, activities, and projects in which capital may be invited to invest;

- familiarize international capital markets with the "privileges" accorded investment in Egypt and "launch" projects for investment and provide advice thereon;

- receive applications for its Board of Director's "decision" (presumably investment/project approval);

- develop systems to facilitate investment guarantees and insure investments;

- appropriate land for projects and conclude relevant projects "on behalf of the bodies concerned";

[‡] The regulatory and incentives provisions for investments in Free Zones in Law 230/1989 just described are essentially similar to those of the just enacted Law 8 of 1997 - see Appendix D.

- obtain from State bodies, on behalf of project owners, all licenses required under laws and regulations for establishing, managing, and operating the projects. [Note - this sub-section also specifies that GAFI "may establish within its premises, offices to represent all bodies concerned with granting such licenses" - presumably an effort a "One Stop Shop".]

- register incoming funds and evaluate shares in kind and intangible assets and "review evaluation of invested funds upon disposal or liquidation for subsequent re-export or transfer abroad."

- "Approve the transfer abroad of net profits after examining the documents which reflect the Project's financial position and after ascertaining, in particular, that reserves and allowances made pursuant to laws and approved technical and accounting practices have been duly set aside, and that taxes have been duly paid following the expiration of the exemption period provided for in this law."

As with Law 159, the provisions of Law 230 also raise certain concerns for foreign investors. These include:

- Notwithstanding that Article 38 provides that transactions carried out in the Free Zones shall not be subject to the provisions of the exchange laws and Article 22 relating to remittance of profits from inland investments does not specifically provide for approval of profits remittances, Article 47(I) requires prior approval of profits remittances by GAFI.

5.2.3 Other Investment Laws

There are other laws that address investment in certain economic development areas and in particular sectors. It is uncertain, however, exactly how they work and whether or not their incentives stand alone or are somehow incorporated into Law 230 and integrated with its incentives. Law No. 59 of 1979, the "New Urban Communities Law" encourages development of specific economic development regions of Egypt. A foreign investor may establish an Egyptian joint stock or limited liability company under either the Investment Law (Law 230) or the Companies Law (Law 159) upon the conclusion and approval of which he can apply to the New Communities Authority for a license to proceed under the New Communities Law. Under that Law's incentives, profits and dividends paid thereon are exempt from corporate income taxes for ten years. Projects located in the New Communities are also exempt from property taxes for ten years. Article 5 of the Hotels and Tourist Construction Law (Law No. 1/1973) provides a five year's exemption from corporate, commercial, or industrial profits taxes and from taxes on movable assets for licensed tourism projects. Sectoral-specific laws have been identified that apparently provide Law 159 companies with at least 50 employees with corporate tax holidays for cooperative fishing projects (10 years), bee keeping (permanent), and fishing, livestock, and poultry production (5 years).

Table 5: Egyptian Investment Incentive Laws

Categories Subcategories	*Law 159 of 1981 the "Companies Law":*	*Law 230 of 1989 the "Investment Law'*	*Law 59 of 1979 "New Communities Law"*	*Law 1 of 1979 "Tourism Law"*	*Other Laws*
1) Foreign investors Accepted?	Yes	Yes - but Prime Minister may designate certain sectors requiring Egyptian participation	Yes	Yes	
2) Government agencies involved	Companies Authority/MOEIC GOFI/MOEIC	GAFI/MOEIC	New Communities Authority	Ministry of Tourism	
3) Approvals required/time factors	GOFI/MOEIC entire process can take up to one year prior to commencing operations	Applies only to projects in sectoral and geographical areas approved for investment by Prime Minister	Investment in new urban communities	Tourism-related investment	
a) Investor approval required?	Non-Egyptian Investor background/security checks by commercial register office - up to 6 months.	Yes - 2 days	No - If approved under Investment Law by GAFI		
b) Investment project approval for incentives	Project establishment approval/GOFI if on "Negative List"	Yes - GAFI/MOEIC (GAFI decision requires Prime Minister's approval)-said to be automatic but takes up to 2 weeks.	Yes - New Communities Authority	Yes - Ministry of Tourism	
c) Company formation approval	Companies Authority/MOEIC	From Companies authority/MOEIC after GAFI review of statutes/articles of incorporation	Not stated but presumably requires approval under either Company Law or Investment Law	Requires approval under either Company Law or Investment Law	
d) Commercial Registration	Company statutes/articles of incorporation must be registered at Commercial Register	Company statutes/articles of incorporation must be published in Official Gazette then registered at Commercial Register.	Companies Law or Investment Law requirements	Companies Law or Investment Law requirements	
e) Local government approval	Local Government approval for siting of project	Not specifically required but implied from article 8/p4	New Communities Authority for Site	probably	
f) Other approvals/licenses	Establishment and operations (ERO) license from local governorate, and Registration Certificate from GOFI (approval for imports, local purchases	E & O license from local governorate	E & O license from New Communities Authority		

Categories Subcategories	*Law 159 of 1981 the "Companies Law":*	*Law 230 of 1989 the "Investment Law'*	*Law 59 of 1979 "New Communities Law"*	*Law 1 of 1979 "Tourism Law"*	*Other Laws*
4) Foreign investor land ownership	Companies with more than 49% foreign ownership must obtain prior permission of Prime Minister	Ambiguous but appears allowed for - inland investors and free zone investors	?	?	
5) Business forms eligible					
a) Joint stock company	Yes	Yes	Refer to Laws 159 or 230	Refer to Laws 159 or 230	
b) Limited liability company	Yes	Yes	Refer to Laws 159 or 230	Refer to Laws 159 or 230	
c) Partnerships	uncertain	Yes	NA	NA	
d) Joint venture	Yes - If formed under Law	Yes - If formed under Law	NA	NA	
6) Guarantees available					
a) National treatment/ non-discrimination	Not stated	Not explicit/implied in law	?	?	
b) Expropriation/ confiscation	Not Stated	Yes - Inland and Free Zone	?	?	
c) Foreign exchange availability	Not Governed	Yes - Inland investors can open foreign currency accounts, and free zone investors are exempt from exchange controls	?	?	Law 157 - Companies can have foreign currency deposits
d) Free remittance of profits	None stated	Subject to certain balance requirements	?	?	

Categories Subcategories	*Law 159 of 1981 the "Companies Law":*	*Law 230 of 1989 the "Investment Law'*	*Law 59 of 1979 "New Communities Law"*	*Law 1 of 1979 "Tourism Law"*	*Other Laws*
e) Free repatriation of capital	Not Governed	Yes - but Inland investments requires the prior approval of GAFI and may have to be in 5 annual installments; free zones exempt.	?	?	
f) Current account remittances	Not Governed	Nothing stated but normal commercial transactions apparently not regulated	?	?	
g) Price controls/excess profits	Not Governed	Exempts Inland investors and free zone investors			
h) Loss of license/ approvals without due process of law	Not Governed	Yes, but local governorates may have authority to cancel location approvals - Inland only			
i) Administrative/ judicial attachment	Not Governed	Subject to prior "consultation" with GAFI			
J) Access of binding arbitration for settlement of disputes	Not Governed	Guaranteed			
k) Other	Law 159 companies pay subsidized prices for energy and utilities	Inland investors free of requirement to use import/export agents (local). Freedom from law 159 requirement that 49% of equity be first offered to Egyptians. Does not impose law 159 Egyptian nationality requirements of directors and managers. Free zone investors presumably act for own account "outside" Egypt.			

Categories Subcategories	*Law 159 of 1981 the "Companies Law":*	*Law 230 of 1989 the "Investment Law'*	*Law 59 of 1979 "New Communities Law"*	*Law 1 of 1979 "Tourism Law"*	*Other Laws*
7. Corporate Income Tax Incentives/ Terms					
a) Corporate income tax holidays	See last column "Other Laws" - Re Law 157		10 yr. tax holiday regardless of whether a law 230 or 59 company	5 year tax holiday	
1) General industrial	But no local content tax holiday extension	5 yrs + 2 yrs if 60% local machinery/equipment used			Under Income Tax Law 157: 1) Law 59 Cos. - with 50 or more employees eligible for 5 year tax holiday for industrial activities. 2) Other sectoral tax exemption: Land reclamation 10 years Poultry production 5 years Livestock Breeding 5 years Fishing Cos. 5 years Coop. Fishing Projects 10 yrs. Bee keeping Permanent Private Ins. Funds Permanent (no worker requirements)
2) Other - free zones	Yes available also to project contractors	Permanent exemption (subject to 1% annual duty on imports/exports out of zone)			
3) New industrial zones/urban commu-nities/remote areas	NA		10 years + 2 yrs if 60% local inputs used		
4) Housing	NA	15 years			
b) Dividends	See Law 187/1993	Exempt for periods equal to income tax holidays			Under law 187/1993 all dividends from Egyptian - incorporated companies are exempted from income tax.

Categories Subcategories	*Law 159 of 1981 the "Companies Law":*	*Law 230 of 1989 the "Investment Law'*	*Law 59 of 1979 "New Communities Law"*	*Law 1 of 1979 "Tourism Law"*	*Other Laws*
					Under Capital Markets Law (No. 95/1992) distributed profits of certain publicly - held companies are exempt from personal income tax
c) Reduced corporate tax?	Not stated	Upon Expiration of tax holiday, distributed profits exempt from income tax up to 10% of original value of investor's share in project.			
d) Extensions available	Not stated	5 years			
e) Reinvestments	No tax holidays for reinvested earnings	5 years			
New industrial zones/urban communities/ remote areas		5 years			
Housing		5 years			
8) Other tax incentives					
a) Building/real property/ immovable assets	Exempt	No	10 yr. exemption	5 yr. exemption	
b) Stamp taxes, capital transactions	No exemption from stamp duties on shares	Inland only: 5 yrs from stamp duties on capital. Both inland and free zones: exemption from stamp taxes on documents applicable to project - related contracts			Under Capital Markets Law certain publicly held companies qualify for permanent exemption from stamp taxes on capital and share issues.
c) Registration/notarial fees	Not stated	Both inland and free zones: exemption from notarization & registration fees applicable to project contracts			
d) Sales/consumption/ VAT taxes	Not stated	Approved free zone investments			

Categories Subcategories	*Law 159 of 1981 the "Companies Law":*	*Law 230 of 1989 the "Investment Law'*	*Law 59 of 1979 "New Communities Law"*	*Law 1 of 1979 "Tourism Law"*	*Other Laws*
9) Customs tariffs/fees exemptions					
a) Full exemption		Full for FZ mach., equip., supplies necessary for FZ operations			Customs Exemption Law 186/1986 replaced all customs exemptions for investment activities with a single 5% customs duty on capital assets imported to establish projects.
b) Partial Exemption	See Law 186/1986 last column - "other laws"	See Law 186/1986 last column "other laws"			
d) Temporary admission/drawback	NA	For local repair/assembly/manufacturing and return to free zones			
e) Local sales from free zones	NA	Yes - for free zone investments subject to payment of standard duties/fees			
10) Other incentives			Exemption from interest taxes on loans to finance project		Soft loans for land reclamation and irrigation project from Ministry of Agriculture

5.2.4 The New Investment Incentives Law

GOE officials, private sector businesspeople, and lawyers alike appear to agree that the current array of ad-hoc laws and regulations governing company formation, public sector companies, foreign investment, and investment incentives is chaotic and counterproductive for achieving Egypt's goal of attracting increased FDI.

On 21 March, 1997, the Prime Minister forwarded a draft of new investment incentives legislation to the Peoples' Assembly for its consideration. The Peoples' Assembly approved the legislation on 05 May and, on 11 May, it was signed by the President, who issued a Presidential decree promulgating it and enacting it into statutory law as Law No. 8 of 1997 (hereafter, the "new Law").

Enactment of the new Law culminated, in part, three plus years of effort to develop a new investment incentives law as only one part of a broad GOE and private sector effort to rationalize the complex of laws affecting commerce and investment in Egypt. Coordination of the effort and drafting of new legislation was confided to the Technical Bureau of the Ministry of Public Enterprises. Early in the effort, there were at least five or six drafts circulated that would bring together the three major areas of focus it was hoped could be unified into a single comprehensive law - company formation, public sector companies, and investment incentives. But the effort to develop such a "unified law" collapsed in mid-1996 under the weight of the disparate sectoral interests and concerns asserted against each specific draft.

Thereafter, the effort regrouped with the hope of modernizing Egyptian laws in each of these sectors - company formation, public sector companies, and investment incentives - while effecting changes to update the Civil and Commercial Codes as well. The new effort relating to investment incentives was to "unify" the general investment incentives regime with the particular sectoral and geographical incentives offered in those, more specific laws (see Table 5 - Egyptian Investment Incentive Laws). From March, 1996, there were ten different drafts of a "unified investment incentives law". The tenth such draft was ultimately enacted into law as Law 8 of 1997, the new "Investment Incentives Law". The Final Report for this study was delayed for the purpose of seeing through to the eventual enactment of a new incentives law. While the many concerns raised by the private sector about the new Law are detailed in Appendix D, its major problems can be described briefly as follows:

* There are a number of Constitutional objections asserted against the new Law by well-known Egyptian lawyers.

* The legislation enacted as Law 8/1997 is so stripped of substantive provisions relating to incentives and their administration (no definitions, conceptual ambiguities, no specific criteria for eligibility) that it confers excessive discretion upon the Egyptian bureaucracy in its interpretation, application, and enforcement and provides no safeguards in the Law itself against arbitrary and capricious action in implementing it. As a result, there is no basis for assuring investors with respect to their concerns for transparency, consistency, or predictability.

* The new Law abolishes the General Authority for Investment (GAFI) but establishes no successor government entity to administer the Law, providing only that the President shall issue a decree appointing an organ to administer it. Potential investors for the moment have no idea of which agency will administer the law or the level of its substantive understanding of the subject matter and capacity to do so.

* While acquired rights of investors with regard to incentives authorized under prior incentives law are respected, the new Law's incentives are available only to companies formed after its effective date - thus, no existing companies can avail themselves of incentives under the new Law.

* The new Law lacks remittance/repatriation quarantees.

* The new Law continues investor concerns about the so-called "triggering" of incentives in terms of when such incentives become available - under the Law, as with its predecessor laws, incentives become available as of the year succeeding the first year of operation, not the year of first profits realized, such that, for investments whose realizable profits are delayed, the incentives may have run before profits actually accrue, rendering the tax exemptions essentially meaningless as an investment attracting device.

* The new Law continues to intermix responsibilities for investment incentives approval and administration with responsibilities for corporate formation and the regulation of companies.

* The Law is no less ambiguous about the rights of foreign investors to own property for their project activities than its predecessor law, Law 230/1981.

* While there remains controversy even about the utility and/or desirability of fiscal incentives in attracting new investment, Egyptian businesspeople note that the new Law reduces both the sectoral activities for which incentives are offered and the term and extent of such incentives.

* The new Law continues to employ a duplicative and possibly inconsistent Free Zones regulatory regime solely for the administration of incentives, even when the incentives could be made available under a unified Free Zones regime integrated into the nation's Customs Laws.

Upon an admittedly cursory review of the first available English translation of the new Law, the legislation actually submitted to the Peoples' Assembly, and subsidiary documents describing the new Law, the authors conclude that the new Law is not an improvement on Egypt's existing investment incentives laws.

5.2.5 The Commercial Legal Framework

Realization of the economic reforms initiated by the GOE is being undermined by an outdated commercial legal framework and an inadequate judicial system. Egypt's Commercial Code dates from 1883 while its Civil Code was last updated in 1948. The average commercial case takes at least six years to conclusion in the courts. The lack of a facilitating legal/judicial environment can impede, rather than support, private investment, business decisions, and job-creating activity. Modern, comprehensive, commercial laws that reflect global standards and best modern practices can provide the clarity, stability, and predictability needed to promote both domestic and foreign risked-based investment. A well-functioning, market-oriented commercial legal system promotes a market economy by reducing the costs and risks of entering into private business transactions and is an essential support element for the nation's FDI legal/regulatory regime. Among the reform initiatives indicated are: (1) thorough updating and modernization of the Commercial and Civil Codes to enable them to facilitate modern developments in the areas of financial transactions and securitization of property; (2) streamlining of the processes for companies registration, land title registration, and official publications; (3) development of adequate anti-monopoly and competition law and bankruptcy/creditors rights laws; and (4) enhancement of the management, processes, and infrastructure of the commercial courts to speed up litigation and improve the vindication of contractual rights and enforceability of judgments.

5.2.6 Privatization Matters

In Egypt, about half of overall GDP and two-thirds of non-agricultural GDP are produced by the public sector, by the nearly 300 major State-owned companies in diverse sectors. Interestingly enough, Egypt's new Prime Minister was quoted in the Egyptian Gazette of March 17, 1996, as having stated that "the primary objective of privatization is not the selling of State-owned assets, but rather to increase the volume of foreign investments in the country." But potential foreign investors, no less than domestic investors, are not enthusiastic about expending significant capital for investment in sectors that are essentially controlled by or subject to subsidized competition from State-Owned Enterprises (SOEs). This is especially so when a country's laws provide competitive advantages to SOEs that may be withheld from private firms. A significant aspect of economic reform programs of nations attempting the difficult evolution from centrally-planned, command, non-competitive economies toward investment-driven, entrepreneurially-oriented, free market economies is the reduction of government intervention (and certainly competition) in the ostensible commercial sector. As a result, privatization has assumed a significant role in structural reform in such countries, in large part because a truly private sector-focused privatization program is often the most significant generator of incremental FDI in an evolving economy. It follows as well that governments pursuing privatization of existing state-owned enterprises should stop investing in new commercial operations.

The GOE made a formal commitment to privatization in 1992 as part of its economic reform program. It set the legal framework for privatization with enactment of the Public Business Sector Law (Law No. 203 of 1991) that focused on the restructuring of public enterprises to allow them greater autonomy and profit possibilities and their alienation by sectorally-focused holding companies; and of the Capital Markets Law (Law No. 95 of 1992), that helped revitalize Egypt's stock market to serve as a channel for privatization through share subscription. Over the years since, the GOE has employed various methods of privatization,

including public share subscription through the stock market, direct sales to strategic investors (so-called “anchor investors”), competitive bidding, and sales to employees. In its initial stage, the GOE took a cautious approach by offering only minority shares in the local stock market or to employee shareholder organizations, effectively retaining control of offered companies and undermining its expressed commitment to real privatization. This was in part because of the mixed goals pursued by the GOE - in addition to meeting the privatization elements of its structural adjustment program, it also desired to expand the local stock market, encourage widespread stock ownership, and ensure that employees have a stake and, thereby, a voice in their employer company. Unfortunately, however, this approach had negative results as well: (a) it limited the scope for privatization by foreign companies; (b) it reduced the opportunity for experienced companies to achieve enough control to revitalize a company with new technology and modern managerial practices; and (c) it reduced the return to the Government from the sale of its interests in the companies.

As a result, until 1996, privatizations actually realized lagged far behind both the GOE’s public rhetoric regarding its commitment to privatization and its announced schedules therefor, and well behind the admittedly slow progress in privatization achieved by its competitor countries focused upon in this study. By the beginning of 1996, minority State equity in only 19 companies had been sold, mostly through the local stock exchange . But all this changed dramatically in mid-1996 as the Government breached the 10 to 40 percent limit previously set for strategic industries and thereby increasing the equity sold in privatized companies up to as much as 75 percent, resulting in the effective transfer of such companies from the State to the private sector. Moreover, in the heretofore hermetically-sealed public service/infrastructure sector, the GOE either has enacted or has under development new laws for private investment in power plants, roads, airports, and mobile telephone exchanges, through the Build/Operate/ Transfer (BOT) concept, which gives private investors concession rights that may run for as long as 99 years. By the end of 1996, majority shares in at least 15 important industrial firms had been sold although privatization consultants recently asserted that “effective governance” has passed in only a few of them. The Public Enterprise Office announced in late September, 1996, an ambitious privatization program for the next 21 months calling for sale of 91 companies, including 64 to anchor investors and 27 through public offers. Moreover, there has been a clear increase in the information available and greater transparency of process since the new Government took over. In February, 1997, Egypt’s Supreme Constitutional Court ruled that the country’s privatization program does not violate the Constitution.

But problems remain in the legal/regulatory area. Major legal/regulatory-related constraints to privatization that serve to impede foreign direct investment include:

- the lack of a coherent schedule for privatization as well as the unavailability of credible public information regarding the assets and balance sheets of SOEs scheduled for privatization;

- an occasionally-stated GOE preference for domestic private investment in certain sectors slated for privatization;

- a decision by the GOE not to include land in the selling package for a number of public sector companies. (The Government announcement indicated it would, in

some cases, hold onto the land of public sector companies - as in the case of the offering of Al-Ahram Beverage Company, with regard to which it said the land would revert to the ownership of the holding company after five years.)

- the GOE's emphasis on minimal worker dislocation to forestall social unrest over effective restructuring to eliminate redundant labor to achieve increased productivity and competitiveness;

- a share sale allocation system under which shares of a company for sale are subjected to volume quotas of sales to any single purchaser to meet increased demand therefor, thus fragmenting new ownership and preventing new management;

- concerns expressed about the rationality of the GOE's valuation of SOEs and their assets;

- the lack of a facilitative legal/regulatory framework to support privatization by remediating adverse tax, labor, and housing laws; protection of monopolies; and stifling levels of bureaucratic intervention and delays;

- inefficient securities settlement, registration, and custody regulations and facilities;

- the unsettled debt load and other liabilities accompanying many SOEs; and

- the GOE's inability adequately to restructure SOEs to make them more attractive for private investors due to scarce financial and human resources.

5.3 Other Investor Concerns

As indicated in Chapter Three and Appendix A, foreign investors have a number of concerns regarding a prospective country's FDI-related legal/regulatory regime and how it impacts or is likely to impact in terms of protecting and facilitating FDI. Key among these are: restrictions on foreign investors; the FDI admission/approval process; the post-admission treatment of FDI; investment protection; repatriation of capital and profit remittances; and intellectual property protection.

5.3.1 Restrictions on Foreign Investors

A threshold restriction on foreign investors is whether or not they can own land. Although there appears to be no Constitutional inhibition on the ownership of real property by foreigners, Egyptian statutes do impose constraints. Law 15 of 1963 provides that no foreigners- natural or legal persons - may acquire agricultural land (similar to laws in Morocco and Tunisia, although, like Egypt, they get around it by making long-term leases available in many cases). Law 56 of 1988, regulating the acquisition of urban land, limits foreigners to the right to purchase no more than one parcel of land for residential purposes. Law 143 of 1981 implicitly imposes a restriction on foreigners when it provides, with respect to the acquisition of desert land, that 51 percent-owned Egyptian companies may own such land even if they have significant minority foreign shareholders.

However, in an effort to reassure foreign investors, Article 6 of the Investment Law provided that "projects, whatever the nationality or domicile of their owners . . . shall have the right, upon the approval of [GAFI] . . . to own such land and other real properties as may be necessary for their establishment and expansion." The Companies Law, Law 159, does not have a similar provision.

It should be noted that the GOE recently has undertaken further to allay investor concerns in this area. Two laws were enacted in 1996 to deal further with the restrictions on the ability of foreign investors to acquire real estate. Law 230 of 1996 provides, "subject to the [Investment Law]", that foreigners may possess ("possession" being defined as meaning "complete ownership") certain vacant and improved land, but subject to major qualifications that the land be for purposes of no more than two residences and that each shall not exceed 4,000 square meters. A new law governing the Notarization and Registration Office establishes a separate department therein for the registration of foreign-owned property. More importantly, Law 5 of 1996 was enacted that states, among other provisions, that "State-owned Desert Lands . . . may be disposed of free, or rented with a nominal rental value, for the establishment of Investment Projects thereon or for their expansion." The land is subject to disposition by decree of the President of the Republic. However, Article two of that law states that "ownership of the land shall not be transferred to the alienee before completing the implementation of the project and starting actual production therefrom." This suggests the passage of fee simple title. But other language in the statute appears garbled in terms of real property concepts and is in dire need of clarification.

Some concerns remain about foreign investor real property rights in Egypt under the just-enacted Law 08 of 1997. They are discussed in detail in Appendix D. The bottom line is that, the lack of a clear, unambiguous, enforceable right to acquire in fee simple and use real estate for commercial ventures, either directly or through locally-incorporated entities, is a severe disincentive to and impediment for attracting FDI.

The Constitution itself imposes no inhibitions on foreign investment in terms of the sectors in which they may participate. The Companies Law, which regulates the formation of business entities whether domestic or foreign-owned, makes no reference to specific sectors in which investments may be made - foreign or domestic. Law 230, the Investment Law, specifies the sectors investments in which may receive the incentives provided for under the Law and gives the Council of Ministers authority to add to such sectors. However, the "positive" enumeration of sectors in which foreign investors may invest suggests, as a logical corollary, that there are sectors in which they may not invest. Clearly there are such sectors. In 1991, the Egyptian Government introduced a "negative list" of project areas which are prohibited to foreigners. For the moment the list apparently includes only (a) military products and security-related production and (b) tobacco and tobacco products. The U.S. Embassy's country profile for 1996 notes that "foreign investors may not engage in export/import activities, accounting services, and the local insurance market, while most infrastructure industries remain a state monopoly." It should be noted, however, that a recent decree of the Prime Minister apparently permits foreigners to engage in certain exporting activities. In 1996, a law was enacted that allows foreigners to own, in the aggregate, more than the prior 49 percent limitation in joint-venture banks, but, the new law also provides that no single shareholder may own more than 10 percent of such a bank.

5.3.2 FDI Admission/Establishment

"Admission" refers to the legal regime and administrative/regulatory process through which FDI is recognized and legitimated within a nation's sovereignty. Admission, when required, is effected when the host government's approval of a foreign investor's application for admission or for incentives is received. When the formalities of corporate formation are concluded, the approved investment is considered "established". The FDI admission/establishment process in Egypt is unnecessarily complicated, long, and costly for prospective foreign investors. It appears to involve no less than seven separate steps, at each of which bureaucratic discretion, arbitrariness, and delays can essentially undermine the process. These are: (1) approval of the investor - foreign investors must be given background checks by security authorities of the Egyptian Government; (2) approval of the corporate form of business entity through which the investment is to be realized, which includes a requirement for approval of its articles of incorporation and statutes (by-laws) as well as the "appropriateness" of the business form selected; (3) approval of the investment itself, in terms of its feasibility and viability and contribution to Egypt's economic development; (4) approval of the investment for incentives (which implies an examination of its "feasibility"); (5) approval of the investment's location by local governmental authorities; (6) approval for listing in the Commercial Register; and (7) approval for an Establishment and Operations ("E&O") license. Although the Government has introduced some reforms to speed up the system - such as "automatic" approval for de minimis projects (see subsection 5.3.3) - study sources indicate that these do not apply to most foreign investment and have been undermined, in any case, by an officious mid-level bureaucracy.

For instance, in the case of a Law 159 investment, there is an involved procedure in getting it going. Foreign investors opting to invest under Law 159 must receive a background/security check by the Office of the Commercial Register that can take up to six months. Assuming approval of the establishment of the corporate form of doing business by the Companies Authority, and of the investment itself by GOFI, the investor must still get a letter from GOFI authorizing the establishment of a new production facility. Armed with this letter, the investor must then obtain approval from the local governorate to locate a plant and construct buildings within its area. The scope of review by local governmental authorities for this purpose appears to extend well beyond the mere situs of the production facilities to a reexamination of the project's overall feasibility. After receiving the location approval, the investor must then receive the E&O license. Once the investor has commenced production, GOFI has to provide it with a registration certificate that evidences its right to operate which is essential for obtaining government approvals for the importation or local acquisition of necessary raw materials.

There is a similarly dilatory process required for Law 230 investments. Applicants for either inland or Free Zone incentives must be "screened" by security authorities as to their background. Then they must file "applications" with GAFI for the "decision" of its Board of Directors, presumably regarding approval of the investment and the incentives for which it qualifies. Promotional rhetoric implies that FDI in approved sectors is approved "automatically' within two days, but this does not reflect the provisions of Law 230 itself. Under Article 52 paragraph 2, the Board then has twenty days to issue a decision approving or rejecting the application. But, technically speaking, GAFI itself does not actually provide "approval" (as the promotional rhetoric indicates) but only renders a decision (Art. 47(d)) which decision is ad

referendum to the Prime Minister for his approval (Art. 48/p2) which is "assumed" in the event of passage of 15 days without any objection thereto. If an application is rejected, an appeal may be lodged within 15 days*. (The process and time required is set forth in detail in Table 6.)

On the other hand, Article 47(d) does provide that "the party concerned may initiate incorporation procedures promptly upon submitting the application. . ." So, totaling the application decision time (20 days) with the 15 days for Prime Ministerial approval results in a statutory period for processing of 35 days. However, Article 53/p1, provides that "GAFI shall be responsible for reviewing the project's articles of incorporation and statutes [by-laws] and approving them in accordance with the provisions of this Law" but does not indicate whether the time required to do so is part of GAFI's 20 day turnaround time on applications as described in Article 52/p2. Moreover, Article 53, paragraph 4 requires that, in the case of a joint stock company applicant, a decree must be issued by the MOEIC authorizing establishment of the company with - no time limit specified. Also paragraph 5 of the same article provides that the company's Articles of Incorporation and Statutes (by-laws) must be published and no time period is specified for that action. Nor is it certain from Law 230 itself whether the company can then begin to conduct normal operations, enter into contracts, or incur debt, pending the fulfillment of these requirements.

Despite official rhetoric to the contrary, study sources indicate it can still take upward of two months to get all of the approvals necessary to commence regular operations as compared with 1 to 3 days in Tunisia, "a few days" in Israel, 2 to 4 weeks in Morocco, and 4 to 6 weeks in Turkey. Of even greater concern now, with enactment of the new Incentives Law, Law No. 08/1997, is that none of the steps required for admission of FDI and award of incentives are detailed in the law, which leaves the process essentially unknowable in advance to prospective foreign investors and provides untrammeled discretion and to implementing bureaucrats with wide scope for arbitrariness and delay (see Appendix D).

*** This kind of provision is found in a number of countries and is often used to indicate the "speed" with which investments can be facilitated. However, it should be noted that Egypt is a Code Law country and the Code Law in developing countries often emphasizes form over substance. Bureaucrats in such countries are notorious for requiring some form of certificate or paper evidencing the right of an applicant whose approval has been "assumed" to proceed to seek licenses or company registration or commence contract-based operations, contract debt, etc. The problem presented by such a "sunset" provision is how the "assumption" of passive approval is, in fact, documented in fact and practice for such purposes. As with so many such provisions in other countries' laws, Law 230 does not address this issue and does not provide any requirement that such "assumed" approval receives some kind of external indiciae of its force and effect.**

Table 6: Egypt's FDI Approval/Establishment Process -Time Factors

Based on Investment Law #230 of 1989 and Executive Regulations
As Amended by Decrees Nos. 621/1991, 220/1994, 373/1995, & 495/1996

Phase One:
I.A Application for Project Approval CONCURRENT I.B Evaluation of Invested Capital
From Submission of Application

Step	Activity	Time (days)
(1)	Inscription in Application Register	3
(2)	Dept'l Examination of Application	
	a) Sufficiency Review of Docs.	NS
	b) Documentary Requests	Tolled
(3)	Submission of Findings to Agency Head	7
(4)	Agency Head Submits Findings to GAFI Board of Dirs. Within	30
(5)	GAFI Board Decision	
	a) Documentary Requests	Tolled
	b) Decision of GAFI Board	NS
	Denial/Negative Decision of GAFI Board	
	(a) Notification to Applicant of Denial	3
	(b) Applicant's Appeal of Neg. Decision	15
	(c) Dept'l Study of Appeal, Memo to Agency Head, Referral to Board	30
	(d) Final Decision (or assumed denial)	15
(6)	Positive Board Decision - Notification to Prime Minister for Approval	15
(7)	Prime Minister's Approval (or assumed)	15
	PM's Approval - Ends Process (Proj. App. Phase)	

Step	Activity	Time (days)
(1)	Referral to Eval. Comm.	NS
(2)	Review by Eval. Comm.	
	a) Sufficiency Review of Docs.	NS
	b) Documentary Requests	NS
	c) Information from Customs	NS
(3)	Eval. Comm. Prepares Report	NS
(4)	Notification of Report to Investor	NS
	Investor Objection to Report - Sequence	
	(a) Investor files written objections	7
	(b) Objections submitted to Agency Committee (#1)	NS
	(c) Agency Comm. Submits Report, Investor Objections, Comments	3
	(d) Agency Head's Final Decision	NS
	No Investor Objection - Ends Process	
	3rd Party Objection to Report - Sequence	
	(a) Notification to 3rd Party Assumed	
	(b) 3rd Party's Subm. of Complaint	30
	(c) Referral of Complaint to Ministerial Committee (#2)	NS
	(d) Consideration by Min. Comm.	NS
	(e) Min. Committee's Decision to Minister	NS
	(f) Minister's Approval of Ministerial Committee's Decision	NS

Time Factors for Phase One Process

40 to 100 days

Unstated, but
Without Objections/Complaints
Approx. 30 days
With Objections/Complaints
Up to 60 days

Table 6: Continued

Phase Two
CONSECUTIVE*
II. Corporate Organization Formalities

Step	Activity	Time (days)
(1)	Submission to GAFI of Draft Constitutive Documents (e.g., Contracts, Articles of Incorporation, Statutes [By-Laws]) Begins Process	
(2)	GAFI Verification of Company Documents	
	a) "Objective" Review (Compliance with Project Approval Conditions)	NS
	b) "Legal" Review (Compliance with Other Applicable Law)	NS
(3)	GAFI Approval of Company Documents	NS
(4)	GAFI Return of Approved Documents to Submitters (Investors)	NS
(5)	Publication of GAFI-Approved Documents	15**
(6)	Inscription of Company in Commercial Register	15**

*** NOTE:** Although Art. 47(d) of Law 230 says ". . . the [Applicant for Project Approval] may initiate incorporation procedures promptly upon submitting the application [for Project Approval]", Articles 41, 45, 47, and 48 of the executive regulation require Project approval prior to processing company formation through GAFI.

** Concurrent

NOTE: Article 53 of Executive Regulation states that "The judicial personality of the company shall be established from the date of its inscription in the Commercial Register, whatever the kind of company."
- Presumably this means that the company cannot act as a legal entity or enter into legally-enforceable contracts, or sue or be sued, etc. until its inscription in the Commercial Register.

Summary of FDI Approval/Establishment Process

A. Number of Steps Involved	**- Phase I. A & B**	**- 12 to 25**
	- Phase II.	**- 6**
	- TOTAL	**- 18 to 31**
B. Time Involved - Days	**- Phase I. A & B**	**- 40 to 100**
	- Phase II.	**- No Less Than 30**
	- TOTAL	**- 70 to 130**

1- The Director of the Commercial Register recently assured a study author that commercial register can now occur on the same day as receipt of the application therefore. However, the application file contains some 37 pages of forms 88 in Arabic to be filled out before the application will be received.

5.3.3 What Are the Approval Rules?

Sometimes GOE rhetoric appears to outpace its performance when it comes to its approach to the regulation of FDI. Certainly one such case relates to the issue of "approval" of FDI - or investments in general, whether foreign or domestic. According to the Egyptian Gazette of January 17, 1996:

> The President decided to exempt all investment projects from the 'Notifying System' for projects less than LE 50 million. Investors will only have to inform the General Investment Authority [GAFI] about their projects - after which the Authority will issue all directives to the concerned bodies to present [tax or customs] exemptions for those projects according to the laws.

Seven days later, the Egyptian Gazette reported on January 21, 1996, that:

> After a Presidential decision to exempt all investments from having to obtain permission from [GAFI]. . . the role of the Authority will be to market giant investment projects worldwide, attract Egyptian, Arab and foreign investments and capital, expand duty-free zones . . . and follow-up investment projects to eliminate obstacles facing investors. . . The Authority will also receive notifications from investors and then inform the authorities concerned to offer all needed facilities in accordance with the laws.

Thereafter, Al-Ahram's English edition of January 25-31, 1996, reported:

> The Cabinet approved a decree 'to take the necessary procedures to enact President Mubarak's decision to allow investors to set up projects, regardless of their capital, without having to secure the Investment Authority's (IA) permission. Now, investors only have to inform the IA of their desire to set up a project.' A related decree by the Cabinet also calls for the facilitation of the procedure necessary to secure investment licenses."

Shortly thereafter though, GOE officials indicated the de-minimis exemption of investment projects applied only to de-minimis Egyptian investments. Exactly how investment licenses differed from GAFI approvals of prospective investment was not clarified. As late as early1997, GAFI was still reporting investment "approvals", and at the end of the year, reported approvals of some 854 companies in the period July - November, 1996. Foreign investors interviewed indicated that the Government appeared to be processing substantive investment approvals notwithstanding these GOE announcements.

5.3.4 Treatment of FDI

Post admission treatment of FDI essentially questions whether foreign investors and their investments are treated the same in a foreign country as are that country's own domestic investors - neither better nor worse. Although the General Agreement on Tariffs and Trade ("GATT") has provisions in Article III requiring that the products of any member imported into the territory of another member country shall receive treatment no less favorable than that accorded to domestic products, the GATT, as such, did not apply to foreign investment. Nor does it appear that the

Egyptian Constitution assures the equality of treatment of foreign investors with that accorded domestic investors, as many national constitutions do. However, Egypt does have a number of bilateral investment treaties ("BITs") - including treaties with Belgium, France, Germany, Italy, Japan, the United Kingdom, and the United States of America - which typically require mutual promises by the contracting states for national treatment of the investments of citizens of the treaty partner. Egypt's various investment treaties are listed in Table 7. Moreover, the Investment Law, in Article 6 specifically provides that "projects, whatever the nationality or domicile of their owners, shall enjoy the guarantees, privileges, and exemptions provided for in this Law" (emphasis added). (Law 159 does not contain a similar provision.)

There are some problems noted regarding the treatment of FDI in Egypt. One area of concern for non-Arab foreign investors has been the distinction drawn by Egypt in its laws and policies between "Arab" and "other" foreign investors. However, the legal distinction, previously incorporated into its investment laws (Laws 65/1971, 43/1974, and 230/1989) has been dropped from the newly-enacted Investment Law (Law 8/1997), which represents a noticeable improvement in the legal/regulatory regime for FDI. Nonetheless, while the legal distinction between foreign investors has been dropped, there appear to be some remaining policy implications that need to be addressed. For example, the U.S. Embassy's Country Profile for Egypt for 1996 notes, with regard to eligibility to participate in privatization, that "privatization guidelines clearly state that there shall be no discrimination against foreign investors, but the sale of public sector assets to foreigners remains controversial. Government officials have announced that priority would be given to Egyptian, Arab, and finally, foreign, buyers." In addition, the Minister of Finance, in addressing a symposium in Kuwait, was quoted by the September 17, 1966 edition of the Egyptian Gazette, as saying that "foreign capital is now flowing to Egypt . . . [h]e added that Arab capital must take priority." If the distinction remains a part of Egyptian policies–as opposed to an aspect of law–such policies violate the spirit of both Most Favored Nation (MFN) and National treatment standards for FDI. Under MFN, a nation commits itself to treat all nationals of foreign countries and their investments the same as those foreign nationals accorded "most favored" treatment, while under National Treatment, a nation commits to treat all foreigners and their investments no different than it treats its own national investors and their investments–no better, no worse.

There is a related concern regarding treatment of foreign-owned real property in Egypt. Just after Law 230/1996 was enacted to expand the amount of residential (only) property foreigners can acquire in Egypt, another law was enacted relating to the Notarization and Registration Office that authorizes establishment of a separate department at the Notary Office for the registration of foreigners' properties, a matter for concern because such a separate office and register could provide the government a facile means for locating and targeting foreign-owned property for any reason. It also appears that foreign companies may be discriminated against in other commercial dealings with State-owned companies. For example, public sector companies may only confer "exclusive" distribution status on Egyptian companies but not on foreign companies. Egyptian law also gives national companies a 15 percent price advantage on all government tenders, presumably also those relating to sale of State-owned properties. Finally, in the area of post-admission treatment, as in most developing countries, there have been allegations that foreign-owned firms are frequently targeted and discriminated against in the administration of the nation's tax laws. Other instances of discrimination are detailed in subsection 4.3.7 hereof.

TABLE 7 - Egypt's International Investment Agreements

I. Multilateral Agreements

- Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1959)

  * Egypt * Israel * Morocco

- Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (Washington Convention) (1965)

  * Egypt * Israel * Morocco * Tunisia * Turkey

- Convention Establishing the Multilateral Investment Guarantee Agency (MIGA) (1985)

  * Egypt * Israel * Morocco * Tunisia * Turkey

- WTO/GATT '94 - Agreement on Trade-Related Investment Measures (TRIMS) (1995)

  * Egypt * Israel * Morocco * Tunisia * Turkey

- WTO/GATT '94 - Agreement on Trade in Services (TRIPS) (1995)

  * Egypt *Israel * Morocco * Tunisia * Turkey

II. Regional Agreements

- Agreement on Investment and Free Movement of Arab Capital Among Arab Countries (1970)

  * Egypt * [No Magreb Countries or Turkey]

- Convention Establishing the Inter-Arab Investment Guarantee Corporation (1974)

  * Egypt * Morocco * Tunisia

- Unified Agreement for the Investment of Arab Capital in the Arab States (1981)

  * Egypt * Tunisia

- Agreement on Promotion, Protection, and Guarantee of Investments Among Member States of the Organization of the Islamic Conference (1986)

  * Egypt * Morocco * Tunisia * Turkey

- Articles of Agreement of the Islamic Corporation for the Insurance of Investment and Export Credits (1992)

  * Egypt * Morocco * Tunisia * Turkey

Table 7: Continued

III. Bilateral Investment Treaties

With	Signed	Entered Into Force
Kuwait	May 02, 1966	August 09, 1966
Switzerland	July 25, 1973	June 04, 1974
Germany	July 05, 1974	July 22, 1978
France	December 22, 1974	October 01, 1975
United Kingdom	June 11, 1975	February 24, 1976
Romania	May 10, 1976	January 22, 1977 *
Morocco	June 03, 1976	September 07, 1978
Netherlands	October 30, 1976	January 01, 1978 *
Japan	January 28, 1977	January 14, 1978
Belgium/Luxembourg	February 28, 1977	September 20, 1978
Sudan	May 28, 1977	March 14, 1978
Yugoslavia	June 03, 1977	---------- **
Sweden	July 15, 1978	January 29, 1979
Finland	May 05, 1980	January 22, 1982
Oman	April 28, 1985	October 09, 1985
U.S.A.	March 11, 1986	June 27, 1992
United Arab Emirates	June 19, 1988	---------- *
Yemen	October 19, 1988	March 03, 1990
Italy	March 02, 1989	----------
Tunisia	December 08, 1989	January 02, 1991
Saudi Arabia	March 13, 1990	September 15, 1992
Libya	December 03, 1990	July 04, 1992
Ecuador	April 19, 1992	----------
Argentina	May 11, 1992	December 03, 1993
Spain	November 03, 1992	April 26, 1994
Uzbekistan	December 16, 1992	----------
Ukraine	December 21, 1992	October 10, 1993
Kazakhstan	December 24, 1992	----------
Albania	May 22, 1993	April 06, 1994
Czech Republic	May 29, 1993	June 05, 1994
Greece	July 16, 1993	----------
Indonesia	January 19, 1994	August 05, 1994
China (PRC)	April 21, 1994	----------
Romania	November 24, 1994	----------
Hungary	May 23, 1995	----------
Turkmenistan	May 23, 1995	----------
Uganda	November 04, 1995	----------
Netherlands	January 17, 1996	----------
Sri Lanka	March 11, 1996	----------
Korea, Rep. of	March 18, 1996	----------
United Arab Emirates	May __, 1997	----------

* See Subsequent Treaty ** Treaty Not Entered Into Force

III. Treaties for the Avoidance of Double Taxation Signed/Ratified:
Austria, Canada, Denmark, Finland, France Germany, India, Iraq, Italy, Japan, Libya
Norway, Romania, Sudan, Sweden, Switzerland, Syria, Tunisia, United Kingdom, US
Signed Only: Cyprus, Indonesia, Korea (Rep. of), Malaysia, Morocco, Oman, Pakistan

5.3.5 Investment Protection

As pointed out in subsection 5.1.3 hereof, the Egyptian Constitution contains provisions providing basic protections for private property against uncompensated expropriation for a public purpose and subject to judicial review. Moreover, Egypt's network of bilateral investment treaties (BITs) nearly always provide assurances against either country's expropriation of property unless with prompt, adequate, and effective compensation with the right of international arbitration with regard to disputes arising from such action.[§] Egypt's BIT with the United States, for example, guarantees U.S. investors: (a) National Treatment and most Favored Nation Treatment; (b) expropriation and compensation in accordance with accepted international standards; and (c) recourse to international arbitration for setting investment-related disputes. Article 8 of the Investment Law, Law 230, also provides that "projects may not be nationalized or confiscated" and that ". . . the assets of such Projects may not be seized, requisitioned, blocked, confiscated, placed under custody or sequestration except through judicial procedures." Moreover, the U.S. Embassy reports in its annual country profile that "there have been no expropriation actions by the Government [of Egypt] since the 1960s" and that there are not outstanding claims therefor not related to private sector litigation. Investment in Egypt are eligible for insurance under both the U.S. Overseas Private Investment Corporation (OPIC) and the World Bank's Multilateral Investment Guarantee Agency (MIGA).

5.3.6 Taxation

The Egyptian corporate tax regime applies to joint stock companies, limited liability companies, partnerships limited by shares, foreign companies and branches thereof whose head office is situated abroad. Companies are generally subject to a corporate income tax rate of 40 percent, except that special lower rates apply to companies engaged in export activities (32 percent) and industrial manufacturing (32 percent). Corporate income tax is based upon net taxable profits according to generally accepted accounting principles. Under Law 187 of 1993, distributions of profit (dividends) are not taxed. Egypt has concluded at least 20 treaties for the Avoidance of Double Taxation, including those with: Canada, France, Germany, Italy, Japan, Switzerland, the United Kingdom, and the USA (see Table 7).

Apart from corporate income taxes, there are: (a) an excess profits tax of two percent; (b) a real property tax levied on the assessed annual rental value of improved and agricultural land ranging from 10 to 40 percent; (c) a sales tax on specific goods and services which is, in most cases, ten percent; and (d) the usual array of stamp taxes on capital and transactions. Egypt's effective corporate tax rate and overall tax system compares favorably with those of the other countries included in this study.

A particular concern for foreign companies is that Egyptian businesspeople typically settle their taxes "unformally" with tax collectors who have arbitrary but limited authority to do so and whose pay is "incentive-based". There are no recognized accounting standards or effective tax appeal system. Foreigners find it difficult to understand and to manage the system and are sometimes subjected to corrupt practices.

[§] See Table 7

5.3.7 Repatriation/Remittances

Article 23 of the investment Law authorizes the repatriation of investor capital as follows:

> The transfer abroad of invested funds shall be effected in five equal annual installments, at the highest declared rate of exchange and shall be limited to the value of the investment at the time of liquidation or disposal as the case may be, provided that [GAFI] has approved the outcome of the liquidation. By way of exception to the foregoing, all the invested funds may be transferred in one installment if the foreign currency balance of invested funds in the account referred to in Article 18 of this Law [the project's foreign currency account] shall so permit, or if [GAFI] at its discretion, shall approve such one-time transfer.

Article 22 of the Law implicitly authorizes remittances of profits as follows: "The transfer of all or part of the net profits of invested funds shall be made within the credit balance of the Project's foreign currency account with the terms and conditions provided for in this Law and its Executive Regulations." In the case of profit remissions abroad, Article 47(I) of the Law provides that it shall be one of GAFI's responsibilities to: "approve the transfer abroad of net profits after examining the documents which reflect the Project's financial position and after ascertaining, in particular, that reserves and allowances made pursuant to law and approved technical and accounting practices have been duly set aside, and that taxes have been duly paid following expiration of the exemption period. " GAFI's regulations provide that such authorization is to be provided within three days, although the U.S. Embassy country profile indicates that "GAFI reports that the pro-forma authorization process takes no longer than 48 hours and is for statistical purposes only."

Law 159, the Company's Law, includes neither any authorization for repatriation of capital or remittances of profits nor any requirement for approval thereof. However, a 1994 amendment (Law 38/1994) to the Foreign Exchange Law, Law 79 of 1979, apparently relaxes restrictions on capital transfers and authorizes companies to transfer foreign exchange out of Egypt. Foreign exchange is freely available at banks and foreign exchange companies. There are apparently no restrictions under that law for current account remittances abroad in payment of suppliers, debts, or royalty or license fees, if the relevant patent, trademark, or licensing agreement has been approved by GAFI under Law 230. It should be noted that a withholding tax of 40 percent is levied on royalty payments unless an appropriate double taxation treaty has been entered into between Egypt and the source country.

The just-enacted Investment Incentives Law, Law No. 8 of 1997, contains no provisions guaranteeing foreign investors' rights to freely repatriate capital, remit profits, or make normal current account international transfers in freely convertible foreign currency. Unlike Law 230 of 1989, these matters are not mentioned in the new Law. The Promilgatory Decree, however, takes note of Law 38/1994 which generally relaxed foreign currency transfers out of Egypt. However, any certainty in this area must await the expedition of the implementing Executive Regulation. In the meantime, without a clear understanding of their rights under Law 38/1994, foreign investors may be rightfully concerned about the "rules-of-the-game" in this regard.

5.3.8 Intellectual Property Rights

Egypt's legal system provides a basis for protection of intellectual property rights ("IPR"), although enforcement appears weak. It is a member of the World Intellectual Property Organization (WIPO) and a signatory to the Paris Convention on Industrial Property and the Berne (Copyright), Paris, Madrid, and Nice Conventions (Trademarks). It is not a signatory to the Patent Cooperation Treaty.

Egypt currently does not have a modern patent law. Law No. 132 of 1949 on Patents and Industrial Designs is closely modeled on a much older British patent law. It allows inventors to obtain patent protection for 15 years with the possibility of another five year renewal. However the law appears to exclude certain categories of products, most significantly, pharmaceuticals and agricultural chemicals and contains compulsory licensing provisions. Egypt is in the process of drafting a new patent law to incorporate its obligations under the Uruguay Round TRIPS (Trade-Related Intellectual Property) Agreement. Trademarks are protected under Law 57 of 1939, but instances of trademark violations frequently have been alleged.

The country is believed to have made significant progress in improving its protection for copyrighted works, including passage of amendments in 1992 to its Law 354 of 1954, its Copyright Law. The amendments increased piracy penalties and extended copyright protection to computer software. In March, 1994, the Peoples Assembly passed additional amendments to treat computer software as a literary work, giving it a longer term of protection. In addition, the GOE issued a ministerial decree in April, 1994 that clarifies rental and performance rights and protections for sound recordings. According to the U.S. Government, the GOE has made considerable progress in enforcing the copyright law and new regulations although piracy is still widespread.

Rights acquired under the patent, trademark, copyright and industrial designs laws are enforceable by civil actions for damages and criminal prosecution. But, as indicated, important segments of Egypt's economy lack adequate IPR protection. Its industrial property offices - Patent Office, Trademark Office, and Industrial Design Office - are not providing services needed by Egyptian industry and foreign investors. It takes too long to register a mark or obtain a patent, and industrial designs are neither published nor available for inspection. The Trademark and Industrial Design offices conduct all operations by hand and lack basic tools and materials to perform their duties. Currently, a USAID/Egypt project is at work to enhance all of these areas. The legal framework for Egypt's IPR system needs further improvement. The draft patent law should be adopted as soon as practical. The Trademark and Industrial Design laws should be amended to provide for publication and examinations. A system of plant varieties is needed to protect and encourage development of Egypt's agricultural sector. The Patent, Trademark, and Industrial Design Offices should be combined under a single administration and located in a single facility.

Progress in enforcing IPR rights is crucial to Egypt's efforts to enter global markets. Once its producers are exposed to international competition with the reduction of import barriers, technology will become crucial to Egypt's competitiveness both in domestic and in global markets. But, since the technology for the most part will have to be imported through FDI, it is

unlikely Egypt will profit by the introduction of such technology if proprietary rights are not guaranteed and enforced.

5.3.9 FDI-Related Reform Initiatives

Notwithstanding problems regarding implementation of Egypt's FDI-related legal/regulatory regime, the GOE has introduced significant reforms in facilitating FDI. Laws were passed in 1996 allowing both Egyptians and foreigners to undertake the construction, operation, and maintenance of certain highways under Build-Operate-Transfer concessions for up to 99 years. Another law was enacted allowing the private sector (Egyptians and foreigners) to operate airports through concession leases up to 99 years. Investors would have to maintain the airport's buildings and equipment and transfer them back to the Government in good condition upon expiration of the agree-upon concession period. Of particular note with regard to the latter law, it apparently contains a provision that bans the confiscation of airport buildings and equipment "under any circumstances."

The GOE established an investment office in every governorate, chaired by the Governor, to advise regarding FDI opportunities therein and facilitate official investment procedures necessary to establish their enterprises. The new offices will be responsible for streamlining investment procedures and offering facilitating support for new enterprises. The Cabinet eased the procedures at the Commercial Register, adding facilities to benefit applicants and reducing the number of documents required. Anticipating inter-governmental coordination problems, the GOE set up (a) a Ministerial Committee to resolve investment-hindering disputes between governmental bodies, as well as (b) a Committee to receive and attempt to resolve investor complaints regarding governmental actions affecting their investments. A law was passed liberalizing most controls on the admission, residence, and departures of foreigners. And, finally, in the context of consideration of a new, "unified" investment law, the Government indicated it is committed to extensive consultation with the Egyptian business community, including foreign investors, before adopting FDI-related legislation to be submitted to the Peoples' Assembly[**].

5.4 Collateral Impacts on FDI

There are a certain number of areas that do not directly regulate FDI but which exert indirect impacts that can facilitate or constrain it in a country. The two that draw particular attention in Egypt are labor and worker rights and the commercial legal system.

5.4.1 Labor Law/Worker Rights

All Egyptians are required to obtain a work certificate and all work relationships must be evidenced by individual employment contracts specifying the terms and period of employment. Labor laws require dismissal of workers only for "grave faults" (incitement to strike, extremely poor work performance, chronic absenteeism, or willful damage of property) and requires prior notice of dismissal or compensation in lieu thereof. Prior to dismissal, an employer must submit

[**] Unfortunately, the Government failed in this regard with respect to the draft investment incentives legislation just as Law 8 of 1997, the final draft of which was not made available to business groups or private lawyers for review and comment prior to the submission to the Peoples Assembly for consideration (see Appendix D).

his dismissal decision to a tripartite administrative conciliation commission. Current Labor law requires a company to allocate 10% of all profit distribution to its work force, and requires that all private sector employees receive an annual raise of 7 percent. Current labor law does not authorize collective bargaining or strikes, but a new Labor Law is being drafted that may include such provisions.

Law 230, the Investment Law, contains a number of provisions relating to workers. Article 20, paragraph 3, provides that a percentage equal to no less than ten percent of a project's distributed profits must be distributed annually among project personnel. (This reflects the requirements of Article 26, paragraph 1, of the Egyptian Constitution, which provides that "workers shall have a share in the management and profit of projects.") A similar provision obtains with regard to industrial investments under the Companies Law, Law 159. Both Law 230 and Law 159 incorporate certain provisions of Egypt's labor laws to the effect that individual investment projects (in the case of Law 230, inland projects only) must have 90 percent Egyptian workers, unless otherwise exempted. However, Article 43 of Law 230 relating to Free Zone projects requires them to have no less than 75 percent Egyptian workers. Egyptian minimum wage provisions are applicable to investments under both laws and all required social benefits must be paid. Required benefits constitute approximately 26 percent of wages paid.

5.4.2 Commercial Legal System

As pointed out earlier, Egypt's commercial legal system, based on the 1883 Commercial Code, is outdated and, in its present state, incapable of facilitating Egypt's transition from a socialist economy to an entrepreneurially-drived, private investment-based, free market open economy. In an intensive 1994 study and assessment of the Egyptian Legal and Judicial Sector (Bentley Study**),** it was found that Egypt's commercial law system needs significant modernization. Among the major problems found that inhibit both domestic business enterprise and affect foreign investment were:

- outmoded commercial laws that do not reflect or respond to modern commercial concepts and forms of doing business;

- reliance on institutions such as the Commercial Register, Land Register, and Official Gazette characterized by antiquated procedures and out-of-date technology;

- inefficient, dilatory, and ineffective enforcement of commercial laws through the judicial system;

- difficulties and costs of enforcing judgments and undertaking asset discovery;

- lack of a modern, clear framework for local and international arbitration of commercial and investment disputes;

- problems and delays in gaining judicial enforcement of local and international arbitral awards;

- need to increase the commercial expertise of judges and insulate them from undue influence of outside political and corrupt influences;

- need to emphasize the independence of the judiciary from Executive Branch influence and demands;

- lack of adequate public and private institutional economic law and policy analysis;

- lack of modern, integrated, fully-indexed legal information systems;

- lack of adequate private sector review and input for economic aspects of legislative and regulatory initiatives;

- frequent failure in legislation to repeal prior inconsistent legislation or to protect rights acquired thereunder;

- outdated and inadequate commercial legal curricula at the university level.

- poor case management and inadequate physical and staff resources for the judiciary; and

- lack of systematic post-enactment monitoring of new laws and regulations in terms of the efficiency and efficacy of their operation.

Most of these findings were reiterated in a May, 1995 World Bank study of Egypt's Commercial Judicial System. Although the Commercial Code currently is undergoing significant legislative drafting to modernize it, few of these major concerns have been resolved as of the date of this study

EGYPT

"Pros" for FDI in Egypt

- Largest potential market in MENA region.
- Strategically located at the meeting point of the Middle East and North Africa and close to European markets.
- Large trainable, productive available labor base.
- After slow start, gradually liberalizing trade and investment.
- Leader in Middle-East regional economic integration initiatives and could become and industrial/sales platform for the region.
- Exchange rate and financial stability.

"Cons" for FDI in Egypt

- Retains Socialist policy mindset with Public Sector still dominant in many areas of economy.
- Pace of macroeconomic reforms and trade/investment liberalization well behind those of comparison countries.
- Confusing, multiple, inconsistent, and non-transparent legal regimes affecting foreign investment, incentives, and company formation with tedious and costly implementing procedures.
- Significant and effective bureaucratic, union, and sectoral opposition to privatization and trade liberalization.
- Huge bureaucracy that operates arbitrarily with excessive discretionary authorities, delays, and unnecessary red tape.
- Inefficient infrastructure.

6.0 COUNTRY COMPARISONS: TURKEY

6.1 Business Climate for FDI

6.1.1 Market Potential

Turkey's population of nearly 65 million is slightly larger than Egypt's, and growing at 2.2% per year. Turkey's total GDP was nearly $174 billion in 1995. The average per capita GDP of Turkey is about $2,680, more than twice as large as Egypt's. Income disparity is large within its both population and its regions. In the extreme northwestern and western provinces of Turkey, annual per capita income is $4,000 to $8,000, while in the eastern provinces it is less than $1,000. Thus the major market in Turkey as well as in Egypt for most products is highly concentrated in major urban areas of a small geographical part of the country.

6.1.2 Resource Endowment

Turkey has an easily trainable, reasonably educated work force. The total employed labor force was nearly 21 million and unemployment about 7%. There is a shortage of skilled workers in some economic sectors that have grown the fastest.

6.1.3 Infrastructure

Turkey's infrastructure in its major market area functions well in support of new foreign investments. Except for electricity, the infrastructure in Turkey is generally better developed than in Egypt. Turkey has an extensive highway network, five major seaports providing easy access to all inland markets, and a telecommunication systems that was recently upgraded to international standards by a substantial investment program. Substantial opportunities for foreign investment in infrastructure have resulted from plans to privatize and to offer private sector involvement on a BOT (build-operate-transfer) investment basis to build power plants, port installations, airports, and other infrastructure.

6.2 Foreign Direct Investment

Turkey has received little foreign direct investment relative to the size of its economy, geographical location, rate of development, and openness to foreign investment. The cumulative total received between 1980 and 1995 was only about $9 billion. There was a rapid acceleration of the annual inflow of direct foreign investment from $170 million in 1986 to an all-time high level of $1,242 million in 1992 and subsequent stagnation at a little over $1 billion per year, according to YASED, the Foreign Investors' Association. It shows a total of $5,256 million for the five years 1991-95.

About 60% of all foreign investments to Turkey originated in the EU countries and only $1.1 billion, or 11.6% from the US. The preferred sectors were automotive (14.8% of total), banking and finance (13%), and trade (11.4%). Foreign investment in the tourism industry

accounted for only 4.9% of total direct foreign investment. This low number does not reflect the importance of tourism in Turkey nor the position held by foreign companies. Many of them operate through franchises or management contracts rather than with equity investment.

State ownership in a wide range of industries is quite extensive, and is to be reduced by a new privatization program concentrated in the electricity distribution sector, while state-owned electric generating plants are to be offered on long-term leases to private operators.

There seems a contradiction between the low level of direct foreign investment and the openness and non-discriminatory treatment of foreign investment in Turkey. According to informed local sources, Turkish governments, in contrast to those of other countries, have never organized an ongoing, effective promotion campaign to attract foreign investment nor sent their Ministers on extensive missions to advertise the attractiveness of Turkey before foreign business audiences. Many foreign investors are put off by the unstable financial situation in Turkey which raises the risk of devaluations and interruptions of cross-border financial transfers eroding dollar profits. Weak protection of intellectual property rights, excessive red tape, administrative delays in granting permits, and frequent political changes and uncertainties affecting government laws and regulations are all viewed as negative elements in the business climate for foreign investors. In a survey of foreign investors conducted by YASED, 51% cited high inflation as the biggest operating problem for them in Turkey.

6.3 Government Economic Policies

6.3.1 Government Economic Policy Reforms

Since the early 1980's, Turkey has made substantial progress in implementing policies that have resulted in satisfactory economic growth and higher living standards. Governments have moved far in implementing policies of deregulation, liberalization from price and import controls and subsidies, and opening the economy to expanding trade and investment, but there has been considerably less progress with privatization and little progress in attaining financial stability. Turkey has taken steps to implement international standards in quality control, in banking and accounting practices.

6.3.2 Effectiveness of Reforms

The reform program has not been completed, however, and some reform legislation has not been implemented or enforced effectively. According to the Chairman of YASED, "the customs union with EU necessitates a new adjustment plan, which must go further and deeper than previous attempts to realign Turkey's public sector finances, cut spending, increase savings, widen and deepen capital markets, push privatization, and restore a level of investor confidence."

6.3.3 Relationship with International Financial and Trade Institutions

After Turkey's last standby-by arrangement of $730 million with the IMF expired in September 1995, the new government decided not to request a new loan agreement, presumably

because the government was not ready to meet the required conditionalities and discipline for a new economic stabilization program. A visiting IMF mission publicly expressed concern about the failure of Turkey's previous stabilization program, the expanding public sector budget deficit, and accelerating inflation. The mission urgently recommended applying a new austerity and economic reform program. The IMF's concern over Turkey's economic policies stands in sharp contrast to the IMF's praise of Egypt's progress with economic reforms.

6.3.4 Privatization Policies

State ownership of industries remains quite extensive in Turkey and very little progress has been achieved in privatizing them, despite widespread support among the various political parties. The iron and steel sector is about 75% state-owned, the financial sector 60% and even the textile industry is 10% state-owned. The Privatization Administration plans to privatize state companies in electric power distribution, petrochemicals, oil refining and product distribution, oil and other maritime shipping lines, shipyards, airlines, textiles, dairy products, meat and fish processing, fodder production, forestry products, tires, electronics, tin, lead, and copper mining, cement, cargo handling, and tourism. The plan calls for a flexible approach to privatization, that is, selling shares to the public and/or share blocs to investor groups and/or total company sales to private national or foreign companies. State monopolies, such as companies in telecommunications and electric power generation, will require special laws to be privatized. The government owns a number of important banks which it intends to privatize. The State Pension Fund is actively seeking to place its six hotels under private management. There are also hundreds of private companies with minority government equity participation.

In November 1994, the previous government reaffirmed its commitment to privatization by the enactment of the Privatization Law 4046. Subsequent government crises and changes, however, and legal challenges and effective opposition from special interest groups delayed further implementation. The new government of Islamist Prime Minister Erbakan has reaffirmed the government's commitment to privatization as part of an effort to obtain large scale stabilization loans from international financial institutions.

6.3.5 Opening to Foreign Investment

Turkey enacted a new Foreign Investment Incentive Decree in June 1995. It contains the following provisions:

- National treatment for foreign investors.
- No limits on equity participation for foreign investors.
- No sectors closed to foreign investors.
- Freedom to remit profits, fees, and royalties abroad and to repatriate capital.
- No requirement to return export proceeds and convert them to local currency.

- Approval of all foreign investments only by the General Directorate of Foreign Investment.

Investment incentives available include subsidized credit facilities and exemptions from value-added and corporate income taxes, customs fees and duties. Foreign companies that manage locally-owned hotels, for example, pay only a 21.4% withholding tax on profit remittances abroad, but no corporate income tax. There are no export or local content performance requirements, but certain investment criteria need to be met to qualify for tax and investment incentives. Major concerns for foreign investors are:

- the current high level of financial instability in the economy,
- uncertainty about legal and regulatory stability,
- delays and red tape in the administration of laws and regulations, and
- capacity constraints in some infrastructure areas that need to be removed, such as airports and seaports and electric power generation.

Despite uncertainties about the investment climate in Turkey, Renault plans to build a $362 million vehicle factory. Royal Dutch Shell, Mitsubishi, and MW Kellogg are jointly competing against other foreign investment consortia to invest $2.4 billion in a electric power project and associated terminal to import liquefied natural gas to be used as feedstock for power generation.

Most foreign investors in Turkey have already benefited from relatively fast economic growth and are attracted by the long-term opportunities offered by Turkey - strategically positioned as a bridge between the EU and the newly independent countries of Central Asia - based on their close cultural, linguistic, religious, and diplomatic ties. Some foreign investors have already established headquarters in Turkey for supervision of their operations in Central Asian countries and/or a production base in Turkey for marketing to Central Asia and are looking to development of special business relationships including twin-plant and joint marketing operations. Cultural affinity between these countries and Turkey facilitate such arrangements.

6.3.6 Areas of Discrimination

The government established an agency, the General Directorate of Foreign Investment, to streamline and speed up the processing of new foreign investments. Foreign investors, however, report delays in obtaining necessary permits and licenses from some Ministries. For example, several foreign mining ventures have not been able to start operations because they are waiting for mining and health permits to be issued. Some foreign mining investments have been halted by the Land Utilization Law, which prohibits the use of agricultural land for industrial projects. A so-called Olive Tree Law prohibits all industrial or mining activity within three kilometers from any olive orchard. Originally, the mining law of 1985 had encouraged 20 foreign mining companies to

seek permission to explore for and develop mineral deposits, but the majority of the 16 that have left "relinquished their projects due to the unstable investment climate" according to an article in YASED's monthly bulletin. A foreign owned casino company has decided to leave Turkey after a number of years of operation in the tourism industry, because it can no longer compete against private national companies that apparently do not comply with tax regulations that are not being enforced against them.

6.4 Macroeconomic Trends

6.4.1 GDP Growth

Turkey has attained generally somewhat faster GDP growth than Egypt in recent years, but at the cost of financial stability. Since 1981, Turkey's GDP growth rate averaged about 5.2% per year. Year-to-year performance has varied considerably however. For example, growth of 8.1% in 1993 was followed by a negative 6% in 1994 as part of a major financial crisis that has still not been brought under control. GDP growth, however, returned to 8.1% in 1995 and is expected to reach about 7% in 1996, fueled by a surge of spending and imports. The current over-heating of the economy is largely demand driven, thereby creating strong inflationary pressures. Gross fixed capital investment dropped by 16% in 1994, but still remained at a very high level of 27% of GDP. Private investment, responsible for nearly 80% of total investment, declined by 9%, while public investment was reduced by 35%.

6.4.2 Sectoral GDP

Agriculture accounts for 16% of GDP and a much large proportion of employment. There has been essentially no growth in agriculture 1994 and only 2% in 1995. Industry makes up 25% of GDP. It experienced an 8% drop in manufacturing in 1994, while mining production expanded by 8% and the energy sectors by 3%. In 1995, however, the industrial sector as a whole expanded by 12%. The service sectors account for 59% of GDP. As a group, they expanded by 6% in 1995.

6.4.4 Inflationary Trends

In contrast to Egypt, Turkey has not been successful in controlling inflation. In fact, inflationary pressures continue to be Turkey's chief economic problem. Consumer prices have risen by an average 74% per year since 1988 and reached an all-time high of 126% in 1994. Consumer prices during the twelve months ending in May 1995 were up by 82% and may approach 100% in 1996 and move still higher in 1997. Turkish governments have consistently opted for policies aimed at fast economic development, paying less attention to sound fiscal and monetary management.

The government's consolidated public sector budget deficit may expand to $18 billion in 1996, equal to 10% of GDP. Interest payments on the government's external and internal debt are the largest item in the budget (844 trillion TL), followed by public sector salaries and fringe benefits (496 trillion TL), together absorbing 99.5% of total tax revenue. External debt service

this year will reach $10 billion. The government's external debt amounts to $73 billion and the internal debt to $28 billion, together equal to 60% of GDP.

Turkey's high rate of inflation is a major constraint for new foreign investors. Companies operating in Turkey, however, plan for a predictable high rate of inflation. They operate free from price or margin controls and can adjust their cost structure and set their prices, limited only by competition. Some foreign companies report the fastest sales growth in Turkey compared to any country in Europe. In times of depressed domestic demand, they are able to reduce the work force and real wage rates and reorient marketing to export markets. High real interest rates provide an incentive for firms with cash balances to operate profitably in short-term financial markets. Despite a maximum corporate income tax rate of 46%, many firms report satisfactory bottom line results.

6.4.5 Foreign Trade Trends

In Turkey, a volatile relationship between rates of inflation and devaluation have significantly determined yearly overall export performance and the trade and current account balance. In 1993, a Central Bank policy of maintaining a strong lira by keeping the currency overvalued significantly cheapened imports and thus encouraged an unusually large expansion of imports, while exports were held back by the overvalued currency. The result was a huge trade deficit of $14 billion and a current account deficit of $6 billion. In a sharp policy shift, the lira was devalued by 18% in real terms in 1994. As a result, imports declined by 21%, exports expanded by 18%, the trade deficit narrowed to $5 billion, and the current account was converted into a surplus of $2.6 billion, helped by 10% larger receipts from tourism. In 1995, the rate of devaluation again lagged behind the rate of inflation, but exports continued to expand strongly. So far in 1996, import growth has accelerated further, while export growth has slowed. Thus, a trade deficit of about $10 billion may have been reached already by mid-year and could expand to $20 billion for the entire year.

Although Turkey continues to control imports, the approval process has become increasingly automatic. All importers must obtain:

- a general license to import, valid for one year,
- an import certificate for each type of product in order to obtain foreign exchange for payment by a bank, and
- a separate certificate to clear imports through customs.

6.4.6 Trade Patterns and Trade Treaties

Under the Customs Union agreement with the EU countries of January, 1996, Turkey is obligated to:

- phase out non-tariff import fees, such as contributions to a low-cost Housing Fund, and all other non-tariff barriers to foreign trade,

- eliminate its tariff barriers on imports from the EU,

- reduce its tariffs to third countries to the level of the EU external tariff, and

- align other trade, investment, and economic policies to those prevailing in the EU, such as the law protecting intellectual property rights.

These alignments have to be achieved at specified times during the next five years. Some exceptions will prevail, relating to trade in agriculture and textiles, for examples, which are governed by special EU or international agreements. Once these tariff reductions and those agreed at the Uruguay Round GATT negotiations are completed by Turkey, the average duty level on imports from EU and EFTA countries will drop from an average of nearly 6% to 0% and on imports from third countries from more than 10% to only 6%, but on products imported from the US by Turkey to as low as 2%. Turkey has gained free access to the rich EU market for all except agricultural products. The customs union thus presents an attractive opportunity for foreign investors that need a low cost export base for supplying the EU market.

As part of the customs union with the EU, Turkey agreed to align its trade policies with the Common Commercial Policy of the EU, to accept and participate in all existing international trade agreements of the EU, and to sign all future bilateral trade agreements with third countries or blocs of countries to be negotiated by the EU.

But Turkey is apparently already having difficulties implementing its initial commitments for a customs union. Indeed, it would be worthwhile for Egypt to watch closely and analyze Turkey's difficulties in adhering to its commitments for a customs union with EU, because this may have some applicability should Egypt negotiate a free trade agreement with EU.

6.4.7 Balance of Payments Trends

In 1996 the balance of payment deficit is estimated to reach about $10 billion due to the high growth of import demand resulting in a trade deficit of $20 billion. The payments deficit, however, appears to be offset by increased short-term borrowing and by an estimated $5 to $10 billion in so-called "suitcase trade", that is, consumer goods purchases by a large number of visitors from the countries of the former Soviet Union. An indication that this "suitcase trade" has assumed substantial proportions is the fact that the Turkish balance of payments is registering a surplus so far in 1996 because reserves have continued to expand (by $4 billion in the first six months) despite a widening trade deficit. Central Bank gold and foreign exchange reserves stood at $17.3 billion August 9th versus $16.2 billion one year earlier and total (incl. commercial bank) foreign exchange reserves at $26.8 billion versus $25 billion a year earlier. Revenues from tourism are estimated to expand from $4.3 billion in 1994 and nearly $5 billion in 1995 to $6.1 billion due to a record 9.5 million tourists expected this year. Workers' remittances are about $3.3 billion and foreign grants about $1 billion. The current account balance deteriorated sharply from

a surplus of $2.6 billion in 1994 to a deficit of $2.3 billion in 1995 to a much larger deficit in 1996.

6.4.8 Foreign Exchange Rate Regime

In Turkey, multiple exchange rates were abolished and partial liberalization of remittance and other adjustment policies were introduced together with a 49% devaluation in 1980, followed by the adoption of a "crawling peg" exchange rate regime. In 1984, commercial banks were allowed to set their own exchange rate within a band of 6% around the Central Bank exchange rate. In 1986, the exchange band was abolished. Since 1988, the Central Bank, after consultation with commercial banks, establishes and changes the exchange rate vis-à-vis the US dollar after which the rate of other currencies is aligned. Turkey does not keep its exchange rate fixed like Egypt to let its currency become overvalued. The annual rate of devaluation of the lira was about 50% at mid-year 1995 and 1996. In Turkey devaluation roughly follows the rate of inflation in order to maintain the competitiveness of Turkish exports by keeping the exporters' production costs constant in dollar terms. The Central Bank, after consultation with the commercial banks, adjusts the exchange rate of the Turkish lira to the US dollar. That rate automatically determines the rate at which all currencies are then freely traded. Thus the exchange rate is controlled but the exchange transactions are free. The Turkish government has adopted a policy of mini-devaluations in order to help exports remain competitive within an environment of high domestic inflation. Devaluation, however, has added to inflationary pressures.

6.4.9 External Debt

Turkey's external debt reached $74 billion in 1995 but it has not asked for any portion of its external debt to be written off (indeed, Turks point proudly to the fact that Turkey has never defaulted on foreign debts): Turkey's domestic public debt was about $25 billion, 110% larger by the end of July 1996 compared to the same period last year. About 44% of Government spending goes to meet interest payments on the external and internal debt. The government faces a serious debt service crisis currently, because about two-thirds of the debt is very short term and has to be frequently refinanced at real interest rates approaching 44% due to the perceived increased risk of default or forced re-scheduling. The government's large financing requirements leave little funding available for the private sector, which in any case cannot pay such astronomical interest rates.

6.5 Legal/Regulatory Regime

Turkey's legal structure is based on its 1982 Constitution. The Constitutions guarantees an independent judiciary. The country's basic commercial legal regime comprises the Commercial Code and the Code of Obligations [contracts], both of which are based on the Swiss codes.

FDI in Turkey is governed by Law No. 6224 of 18 January 1954, the Law Concerning the Encouragement of Foreign Capital, as thereafter amended from time-to-time, and the Foreign Capital Framework Decree of 7 June 1995 as interpreted and applied by various "Communiqués" [regulations], currently the Communiqué Concerning the Foreign Capital Framework Decree

(Undersecretariat of Treasury Decree No. 96/3 of June 1996). The 1954 Law is a relatively limited, sketchy law that addresses only basic aspects of FDI and leaves its administration and implementation to be elaborated through policies adopted by the Government and regulations explaining them. The Law applies to all foreign capital and credit provided they are: (a) beneficial to the economic development of the country, and (b) invested in a "field of activity open to Turkish private enterprise." Foreign capital is defined as including foreign currency, commodities in-kind, intellectual property rights and licenses, and reinvestment. A company with foreign capital must be either a joint-stock company or a limited liability company.

The Law originally established an interministerial Committee for the Encouragement of Foreign Capital with authority to approve investments meeting the above criteria and appraise the value of incoming investment, while the Ministry of Finance was given authority to grant applications for the transfer of shares, sale proceeds, loan repayments, and interest payments. Transferability of shares may be guaranteed by the Government upon request. The Committee's functions were transferred to the Undersecretariat of Treasury and Foreign Trade in 1980.

6.5.1 Basic Property Rights/Guarantees

The Constitution of 1982 guarantees the right of private property ownership, without any apparent conditions or limitations.

6.5.1 Restrictions on Foreign Investment

The Law for the Encouragement of Foreign Capital indicates that foreigners may not invest in sectoral areas foreclosed to the Turkish private sector. These relate mostly to national security and defense-related activities. Otherwise, FDI is permitted in most sectors but majority equity is prohibited for investments in aviation, broadcasting, and maritime transport, while investment in banking, insurance, and petroleum/minerals requires the special permission of the relevant sectoral ministries. Ownership of 100 percent is permitted in all other investments. Wholly foreign-owned insurance companies are allowed to operate but a separate company must be formed for each insurance activity.

6.5.3 FDI Admission/Approval

Article 8 of the Foreign Capital Framework Decree provides that "the permit, registration, provision of incentives to investors are executed by the General Directorate of Foreign Investment ("GDFI"), a subdivision of the Undersecretariat of Treasury. The investment approval is obtained by means of an application filed with GDFI and requires submission of the usual corporate documentation together with documents describing the investment activity to be undertaken. All IPR and technology licensing agreements must be specifically approved by GDFI. GDFI then issues a registration of the foreign capital and a permit certificate applicable to the investment. Corporate formation for the investment project is regulated by GDFI as well and subject to its approval. GDFI screening mechanisms appear routine and no processing complaints were noted. The entire process through to issuance of the permit certificate takes approximately four to six weeks. GDFI, aware of the time involved, recently established a One-Stop-Shop within

it to facilitate processing of investment approval applications and other licenses. Extensive delays, however, have been noted in the mining sector attributable to delays in obtaining health permits from the Ministry of health - sometime up to three years. There are no performance requirements specific to foreign investment approval as such, although there are certain conditions attached to the nature and location of the investment for purposes of conferring the various incentives provided.

6.5.4 Treatment of Foreign Investment

Article 10 of the Law Concerning the Encouragement of Foreign Capital provides for National Treatment of foreign investment. Additionally, Turkey is party to some 20 Bilateral Investment Treaties ("BITs") - including Germany, Japan, Netherlands, and the USA - that typically require extension of National Treatment to investments between the parties. Foreign investors receive National Treatment and have not been discriminated against in bidding for State-owned enterprises. Some complaints have been noted, however, about bureaucratic practices affecting foreign investors, especially what is perceived as discrimination against them in the administration of tax laws.

6.5.5 Investment Protection

Article 46 of the Constitution of 1982 authorizes expropriation of property, but only for a public purpose and upon payment of "real value." As indicated above, Turkey has signed some 20 BITs that also provide for some variant of "prompt, adequate, and effective compensation" for the taking of investor property. Expropriation is by public agencies and are subject to judicial review. Such as have occurred awarded compensation and there are no claims outstanding. Turkey participates in both the U.S. Overseas Private Investment Corp. ("OPIC) and the World Bank's Multilateral Investment Guaranty Agency ("MIGA") investment risk insurance programs. It is a signatory of the OECD Code on Liberalization of Capital Investments and Invisibles Operations, the Washington and New York investment dispute settlement conventions, and is a member of the International Center for the Settlement of Investment Disputes ("ICSID"). There are also effective means for enforcing property and contractual rights within Turkey's commercial legal system.

6.5.6 Taxation of FDI

Corporate taxation is imposed and governed by the Tax Procedures Code and the Statute Governing Procedures for the Collection of Public Claims. Partnerships and individual income are taxed under the Income Tax Code. The corporate tax rate is 25 percent of taxable profits plus a 10 percent surcharge on tax payable for an aggregate effective tax rate of 27.5 percent. Dividends to non-resident companies are not subject to withholding, but those payable to non-resident individuals are subject to a 30 percent withholding tax. There is a Value Added Tax ("VAT") payable on the purchase of goods and services which can be offset from the delivery of goods and services once made. The basic VAT rate is 15 percent, but varies for different commodities and services. Goods and services that are exported are exempted from the VAT. An annual real estate tax is imposed at .6 percent on land and .4 to .5 percent on buildings. Turkey has signed at least

22 treaties for the Avoidance of Double Taxation, including with France, Germany, Italy, Japan, and the United Kingdom ("UK"). It is still in negotiation of such a treaty with the USA.

6.5.7 Repatriation/Remission

Article 5 of the Foreign Capital Framework Decree provides that "the transfer or reinvestment of profits, dividends, and proceeds from sales and the liquidation, compensation payments, payments under license . . . are unrestricted." Non-resident shareholder profits can be remitted abroad through a commercial bank without prior authorization. Foreign currency accounts may be maintained in Turkish banks for these purposes. Payments for intangibles may be made if the agreement giving rise to them has been registered with GDFI. Guarantees of capital repatriation and profits remissions are also contained in most of Turkey's BIT treaties. Foreign exchange is freely available at market rates. No concerns were noted with regard to either remission of profits or repatriation of capital.

6.5.8 FDI Incentive Programs

Each year the Council of Ministers determines the conditions for an investment to receive incentives, as well as the type of benefits to be provided. These are set forth in an annual Communiqué issued each January by the Undersecretariat of Treasury. Incentives generally are regulated and implemented by the General Directorate of Incentives and Implementation except that incentives provided to foreign investors are administered by GDFI. Incentives are provided to support investments that: (a) confirm with Turkey's development plan and annual programs; (b) encourage employment and equalize national imbalances; (c) involve foreign currency generation; and (d) ensure implementation of advanced and competitive technologies. Incentives available include: (1) customs duties/fees exemptions; (2) investment allowances; (3) VAT support for purchases of machinery and equipment; (4) guarantees of foreign loans; (5) real estate procurement; (6) sharing of expenses for standards setting and quality improvements; (7) energy support; and (8) certain tax credits. Incentives from the above list vary depending on whether the investment is made in certain development regions or "special priority" sectors, and the amount of the investment. The final nature and term of incentives is set forth in the so-called "investment certificate" which also includes any conditions or other stipulations relevant to their administration.

Turkey currently also has eight Free (Trade) Zones. Free Zones were initiated to increase export-oriented investment and production and to accelerate the entry of foreign capital and technology. The Free Zones are deemed to lie outside the customs boundaries so that taxes, levies, customs, and foreign exchange obligations are not applicable therein. Income and revenue generated in the zones can be transferred freely to any country, including Turkey, without prior permission or being subject to any taxes, duties, or fees. Trade conducted between a Free Zone and any other region within Turkey is subject to the standard customs and foreign trade regime, except for transfers between such zones. Strikes and lock-outs are prohibited for a period of ten years from the start of operations. Although most zones are developed and operated by the Government, infrastructure development and management can be by private companies. As of December, 1995, there were some 900 companies established in the zones with a total volume of

trade of US$ 7 billion. As a result of its entry into the Customs Union with the EU, Turkey is under an obligation to conform its investment incentives to the EU's programs for such incentives.

6.5.9 Other Investor Concerns

There have been a number of concerns expressed about Turkey's IPR protection and enforcement. The U.S. Government in the past has cited Turkey for its failure to improve IPR legislation and enforcement. But, as a result of its entry into the Customs Union with the EU, it is required to make such changes as are necessary to meet EU standards for IPR protection and enforcement, which are generally similar to those of the USA. To that end, in 1995, Turkey passed new Patent and Copyright laws, which, however, do not fully meet some investor concerns - e.g., protection for pharmaceuticals and protection for pre-existing works. Moreover, Turkey's enforcement of IPR rights has been characterized by one U.S. government source as "dismal", as a result of which Turkey remains on the U.S. Government's "priority watch list". Turkey is a signatory of the Patent Cooperation Treaty ("PCT"), the Paris and the Berne Conventions and has accepted the Uruguay Round Trade-Related Intellectual Property agreement ("TRIPs").

TURKEY

"Pros" for FDI in Turkey

- One of the largest markets in the world-recently named by the USA as a "BEM", e.g., "Big Emerging Market", only one in the MENA region.

- Average per capita GDP only US$2,680 but as much as $ 15,000 in urbanized Western Turkey.

- Recent Customs Union with the EU provides access to the Euromarket.

- Commercial crossroads for the EU, Central Asia, and the Middle East and potential headquarters and operations center for all these markets.

- Euro-oriented human resources both in numbers and skills of workers with high productivity.

- Turkey has never defaulted on any of its debts.

- Dynamic economic growth averaging 5.5%/year since 1990.

- Favorable treatment of foreign investors, including remittance freedom.

"Cons" for FDI in Turkey

- Persistent political and economic instability, which contributes to unpredictable policies and an uncertain business climate.

- General perception of Government mismanagement of the economy:
- taxes evaded (US$60 billion in 1995) are three times more than taxes collected;
- continuing and growing government deficits;
- inflation between 70% and 100% annually; and
- Government economic and other statistics considered unreliable.

- Government has been slow to undertake legal/economic reforms required to harmonize with EU systems under the Customs Union.

- Commercial legal system considered outdated and dilatory with no effective alternative dispute resolution system in place. Continued widespread State ownership in industries.

- Privatization is proceeding slowly with an apparently inadequate basis in law and legislation.

- Some allegations that Government bureaucracy discriminates against foreign-owned companies in regulatory and tax enforcement.

- New BOT/BOOT law considered inadequate to accomplish Government's infrastructural development goals.

7.0 COUNTRY COMPARISONS: ISRAEL

7.1 Business Climate for FDI

7.1.1 Market Potential

Israel's population of 5.6 million produced a GDP of $85 billion, or $15,700 per capita in 1995 versus $10,600 in 1990. While purchasing power in Israel is considerably larger than in Egypt for most products, the long-term growth potential of Egypt is stronger due to its sizable population. Israel's population is growing at an annual rate of 2.7%, partly due to continued immigration from the countries of the former Soviet Union. The outlook is for 2.5% annual population growth, compared to about 2% for Egypt. Israel does not have as large an income disparity within its population or among geographical areas as, for example, Turkey or Egypt. About 25% of the population is concentrated in the Tel Aviv metropolitan area and virtually all foreign trade passes through the two ports of Haifa and Ashdod, with easy access to the internal market. More than 90% of Israel's population resides in urban centers.

7.1.2 Resource Endowment

A productive, highly skilled, well-educated work force of 2.1 million is Israel's prime resource endowment. People employed in academic, professional, scientific, and technical positions account for 25% of the total work force and skilled workers constitute an additional 24%. About 38% of the work force have more than 9 years of education, including 17% with more than 13 years of education. The literacy rate exceeds 90%. In sharp contrast to immigrants to most other countries, the Jewish immigrants to Israel are predominantly skilled workers, including scientists, engineers, and academics. Wages and salaries, on average about $1,500 per month, significantly higher than in Egypt and Turkey and fringe benefits are equal to 26% to 31% of wages. Productivity, however, is also much higher in Israel and it has risen steeply from an average $45,000 in sales per worker in 1985 to $90,000 at present.

However, Israel is poorly endowed with natural resources. It has virtually no petroleum or natural gas reserves and most of its energy has to be imported. Petroleum imports account for 10% of total imports and absorb 15% of all foreign exchange earned from merchandise exports. Israel's mineral resources are potash, magnesia, bromine, phosphates, and gypsum. Even its water resources are scarce and inadequate. Given its poor endowment of natural resources, Israeli's policy makers have concentrated generous investment incentives for Research and Development activities to use its high cost, technically skilled labor force to develop high value technology, and high quality exports which allow Israel to compete in world markets. The government's targeted investment incentives, its infrastructure development, and banking sector activities are all geared to further the realization of this policy goal.

7.1.3 Infrastructure

Although Israel's infrastructure is generally more developed than Egypt's, a series of major new investment projects are designed to further improve Israel's infrastructure. Some examples are:

- $10 billion investment program by the Israel Electric Corporation to expand electric power generation by about 6,000 MW or by 50%, as well as transmission and distribution;
- $850 million for construction of the new Ben Gurion International Airport;
- $350 million for expanding the capacity of the Ashdod seaport;
- $2 billion to build a new 270 km trans-Israel super-highway;
- $600 million to expand Tel Aviv's urban mass transit system and to better integrate the existing system of railway, lightrail, buses, and underground;
- $600 million to build new railroads to Eilat, Jerusalem, and elsewhere; and
- construction of 30,000 additional hotel rooms to accommodate a doubling of tourist arrivals in 10 years, from 2 million in 1994 to 4 million by 2004.

7.1.4 Foreign Direct Investment

Overall there is a generally receptive investment climate for foreign firms in Israel. Preferential incentives include fiscal and others even more generous than for national Israeli firms, with the goal of overcoming perceived political risks of investing in Israel and to counteract effects of the Arab boycott against firms doing business in or with Israel.

The annual inflow of foreign investment has expanded steadily with the demise of the Arab boycott. It rose from only $81 million in 1990 and $366 million in 1991 to $504 million in 1992 to $721 million in 1993 and then almost doubled from $604 million in 1994 to $1.1 billion in 1995. All forms of private capital inflow (including portfolio investment, private loans, real estate investments and security placements abroad by Israeli firms) combined amounted to $2.2 billion in 1995.

7.2 Government Economic Policies and Reforms

7.2.1 Government Economic Policy Reforms

The governments of Israel have traditionally pursued socialist-oriented policies with extensive government controls and ownership in the economy. State companies still dominate most sectors of the economy, except agriculture and manufacturing. Israel's policy makers do not

seem to have entirely abandoned the outworn socialist-oriented mentality in favor of a firm commitment to a free market economy.

Private investments suffer from very high levels of taxation, more comparable to those of Europe rather than the US or developing countries. The viability of some foreign investments in Israel may, therefore, depend on whether they qualify for generous tax incentives. Added to the corporate income tax rate of 36% is a 25% dividend tax on the remainder, resulting in an effective 52.75% corporate tax rate. There is also a 17% VAT tax on goods sold or imported and a purchase tax on some products. There are a variety of fees and surcharges levied for use of the ports, for mass housing, and other purposes. Some duties or taxes are calculated on artificially inflated reference values, rather than the actual cost or price of a product.

7.2.2 Effectiveness of Reforms

Israeli governments have made progress in liberalizing foreign trade, capital and foreign exchange markets, prices, and in implementing effective investment incentives. However, extensive government regulation and ownership remain in the economy. The current government of Prime Minister Netanjahu has reaffirmed a commitment to advance deregulation and privatization and lower the heavy tax burden, but so far action has not been taken. The overall tax burden in Israel, equivalent to 40.7% of GDP, is considerably higher than in Egypt and most other countries, including the US.

7.2.3 Relationship with International Institutions

Israel has succeeded in building a dynamic economy and in achieving very high living standards. Unlike other countries in this study, Israel has not needed or qualified for assistance from the IMF, World Bank, and other international financial institutions.

Relations between the US and Israel remain strong and highly beneficial for Israel, despite recurring disagreements over Israel's policy positions in the Middle East peace process. Economic and technological benefits have been increased for Israel in recent years by the formation of bilateral cooperative institutions, such as a Bi-national Industrial Research and Development Foundation, a Bi-national Science Foundation, a Bi-national Agricultural Research and Development Foundation, a US-Israeli Education Foundation, and a US-Israeli Science and Technology Commission.

7.2.4 Government Trade Policies

Israel has concluded free trade agreements with the European Union, the European Free Trade area, and the United States. It is a member of the WTO. Its internal market, like Tunisia's, is too small for most foreign investments, despite high purchasing power of the population. The government has recognized this and shaped its economic development policy orientation toward stimulating export growth. This effort has proven more successful in Israel than in the other countries studied in this report. Government promotion efforts have been increasingly directed toward private foreign investments in high tech industries, employing Israel's technically trained,

high cost labor, and supplying special market opportunities in the US and the EU within the framework of free trade agreements. Israel appears to accept that other countries can produce garments more cheaply and has not stopped the migration of investments in the textile industry from Israel to neighboring Jordan and Palestine. In Israel, the minimum total monthly labor cost is $1,000 per worker – considerably higher than in any of the other neighboring countries, including Egypt.

Importers face non-transparent, discriminatory treatment in violation of free trade agreements, bilateral trade treaties, and WTO guidelines by customs administrators on imports that compete with local products. Some of this discriminatory treatment is carried out be means of specific standards and certification and labeling requirements, fictitious reference prices applied in calculating duties, and other non-tariff barriers.

7.2.5 Privatization Policies

The government owns currently 162 companies with combined annual sales of about $12 billion, or 17% of total industrial sales. The privatization process started in 1986, but only $3.3 billion worth of assets were privatized by August 1995. Most enterprises owned by labor unions have failed and been subsequently privatized. However, like Turkey, Morocco, Tunisia, and Egypt, Israel has been slow in privatizing its extensive array of state companies.

In Israel, there are state monopolies in electricity, in shipping, water supply, telecommunications, and strong state participation in air transport, chemicals, construction, oil exploration, finance, Tourism, and banking. The government owns all three leading banks. All of these sectors are to be privatized. New private foreign investment is being solicited in infrastructure sectors to invest on a build-operate-transfer basis, the first one involving the construction of a major north-south highway. The government-owned military defense industries own wide ranging manufacturing operations and apparently intend to expand further, contrary to the government's privatization policy.

7.2.6 Opening to Foreign Investment

Israel strongly welcomes most foreign investment and offers very generous incentives to attract it. There are few sectors closed to foreign investment for national security reasons or to protect vested local interests, such as banking or some other services. Wholly or predominantly foreign-owned investments eligible for "approved enterprise" status under the Encouragement of Capital Investments Law of 1959 or the Encouragement of Industry Law of 1969 can get even more favorable investment incentives than national private firms, such as longer tax holidays and lower corporate tax rates. This preferential treatment was felt necessary to offset the high political risks to invest in Israel, including the Arab boycott. But the larger international companies heretofore have avoided Israel in order not to jeopardize more important investments in the Arab countries. No major US oil company, for example, owns or operates any service stations or other oil installations in Israel. The immediate concern for most foreign investors is security and the outlook for peace.

Foreign investment receives national treatment and can freely acquire up to 100% of existing Israeli firms. Foreign investors can bid to purchase state-owned companies offered for sale, without facing discrimination and preferential treatment of national private investors. Israel has not yet set up a One Stop Shop for foreign investors, such as Tunisia and Morocco, but the government is moving in this direction in order to facilitate documentation and approval procedures for foreign investors.

Both the Ministry of Finance and the Ministry of Industry and Trade are concerned with issues relating to unfair competition. Efforts are made to level the competitive playing field between private and government-owned companies. The 1988 Restrictive Trade Practices Law placed monopolies and oligopolies under official control in order to guard against unfair competition from abusive practices. Problems exist in several sectors, however. Government price controls are maintained for monopolies. If there are no restrictions on competing imports, then government price control over a local monopoly is limited to a requirement to give authorities 30-day prior notice of any planned price increase.

7.2.7 Areas of Discrimination and Exclusion

Government intervention and extensive controls over the economy and frequent changes in the regulatory environment have been negative factors in the foreign investment climate. Excessive bureaucratic regulation in the application of tax, labor, import, health, and safety laws is often a major impediment for foreign investors interested in pursuing business opportunities in Israel. While there is a policy commitment to deregulation, progress has been slow and spotty and a regulatory, socialist mentality is still widespread according to local contacts.

7.3 Macroeconomic Trends

7.3.1 GDP Growth

The Middle East peace process has had and will continue to have a decisive influence on the investment climate and economic performance of Israel. Progress in reaching peace agreements between the previous Israeli government and the Palestinian Governing Authority helped raise the level of investment and economic growth in Israel to record levels in 1995. Israel's GDP growth averaged 6% per year since 1990. Israel's GDP growth rates were 6.2% in 1991, 6.6% in 1992, 3.4% in 1993, 6.5% in 1994, and 6.8% in 1995. These high levels of growth were sparked partly also by the influx of 700,000 new immigrants, mostly from the former Soviet Union and many skilled workers. The annual level of new capital investment, particularly in housing and infrastructure, almost doubled during the past five years.

The rapid rate of economic growth can also be attributed importantly to the success in developing a diverse array of industrial exports. Export-led growth is essential also for the future prosperity of Israel, because, like Taiwan or Singapore, the modest size of Israel's domestic market limits the potential of inward oriented economic growth.

Extensive government regulation and ownership in the economy hampered economic growth and resulted in triple digit inflation during periods prior to 1990. To some extent, the negative effects of a socialist orientation of Israeli governments were offset by free trade agreements with the US, the EU, and EFTA, by large US government grants, donations from foreign Jewish organizations, and a steady influx of skilled, productive immigrants. The erosion of the Arab boycott and very generous foreign investment incentives stimulated an influx of foreign investment.

7.3.2 Sectoral GDP

Service sectors account for 56% of total GDP, industry 39%, and agriculture only 5%. Manufacturing industries grew 5% - 6% in 1995, led by the chemical and electronic sectors. The highest growth rates were registered by high tech sectors with advanced production techniques, but not exceedingly capital intensive. Foreign trade is very important for the Israeli economy, with imports equivalent to 33% of GDP and exports 20%.

Israel is self-sufficient in most food categories, although it imports some grains, meat, coffee, sugar, and oilseeds. Agriculture has benefited from generous government investment support and full use of advanced technology. After a financial crisis in agriculture in the 1980's, a policy change now emphasizes more reliance on private capital spending and less on government support for agricultural development. A measure of success in agriculture was achieved by a close interaction and quick responses between farmers and agricultural researchers who have helped farmers apply the most advanced and productive methods of cultivation. Almost all agricultural land is already under cultivation or used for pasture. Cultivation has shifted from citrus fruits to more profitable winter vegetables and flowers for European markets.

In recent years, the government has actively promoted the development of a dynamic tourist industry and offered preferential and generous incentives to private investors in the tourist sector. As a result, the number of foreign tourist arrivals has grown by around 10% per year, interrupted only by the Persian Gulf War and by the recent stalemate of the Middle East peace process.

7.3.3 Inflationary Trends

After average annual inflation of 18% during 1986-91, the rate dropped to 10% in 1992-93 and then accelerated to 14.5% in 1994. Inflation has risen from only 8.1% in 1995 to an annual rate of 14% by mid-1996. The government maintains a tight monetary policy by keeping the Central Bank's interest rate to commercial banks high at 15% in order to continue to attract private funds from abroad and to be able to finance the government budget deficit approaching 5% of GDP. The IMF has urged Israel to tighten its fiscal and monetary policy in order to limit the budget deficit to less than 3% of GDP. The largest three items in the budget are debt service, military spending (26.7% of the budget), and education (15.3%).

7.3.4 Foreign Trade Trends

Israel's high rate of economic growth has been export-led. Heavy dependence on imports due to a lack of natural resources has dictated a policy of encouraging export development. Israel's per capita exports are now the tenth largest in the world. Its success with export driven policies have been a major factor for attaining a high rate of overall economic growth. Free trade agreements with the US, the EU, and EFTA countries have been a major contributor to its success in developing a high level of trade and economic growth.

Total merchandise exports grew by nearly 50% in three years, from $13.1 billion in 1992 to $17.9 billion in 1995. Exports may, however, decline in 1996 due to the overvalued exchange rate and reduced investments. Imports also advanced by 50% from $18.8 billion in 1992 to reach $28.1 billion in 1995. An unprecedented large trade deficit of $11 billion is expected for 1996. Large trade deficits in the past were financed by foreign exchange inflows from foreign loans, grants, private transfers, and income from tourism.

7.3.5 Trade Patterns and Trade Treaties

Israel's leading trade partners are the US, Germany, the UK, and Japan. The US and the EU together import about two-thirds of Israel's products, but the EU alone supplies 54% of Israel's total imports. US exports to Israel amounted to $5.6 billion in 1995 and US imports from Israel were $5.7 billion. Israel's exports to Asia, particularly to the Far East, expanded by 86% during the past three years, despite an absence of a preferential or free trade agreement. Manufactured products make up about half of Israeli imports, with a US share of about 23%. Israel has concluded a free trade agreement with the US, Canada, the EU, EFTA, and the Palestinian Authority and proposed free trade treaties with Turkey, Jordan, Poland, Hungary, and the Czech Republic. Some foreign investments were attracted to Israel in recent years in order to take advantage of its free trade agreements with the US and the EU to supply these large markets from Israel on preferential entry terms.

Israel maintains extensive import barriers on agricultural products, including quotas, licensing restrictions, special fees, and outright import prohibition. The requirement to import agricultural products in multiples of half pound packages constitutes a formidable import barrier to many processed food products from the US. Imports of all non-kosher meat and meat products is prohibited. Israel applies a system, called "Tama", to add estimates of profits, insurance, and inland freight to the c.i.f. import value of products for calculating the purchase tax due, which causes higher taxes on imports than their domestic equivalent. For purposes of calculating import tariffs, customs inflate the c.i.f. value of imports under a system, called "Harama", to reduce under-invoicing, but in practice to raise the indirect taxes to be paid by importers and thus provide a measure of protection to domestic producers.

Importers are charged a fee equal to 1.3% of the c.i.f. value for the use of ports and stevedores, but exporters pay only 0.2% of the f.o.b. value. Israel requires that many household products be sold in package sizes using only metric weights and measures, which favors European imports. Exporters to Israel faces various fees, labeling requirements, certification, and other

impediments, whereas enforcement of mandatory standards on domestic producers is often spotty. Lack of transparency in applying some import regulations adds to the risks and uncertainty of exporting to Israel.

7.3.6 Balance of Payments Trends

Fast growth of imports – 12.7% in 1994 and an estimated 10.1% growth in 1995 – contributed to a current account deficit of $4.1 billion, or 4.8% of GDP, in 1995. The balance of payments deficit of $2.8 billion in 1994, more than doubled from 1993, and is estimated at $4.5 billion in 1995. Israel has no problems in securing offsetting financing. A five-year, $10 billion loan guarantee program from the US, which expires in 1997, has helped Israel to obtain low interest financing abroad. Foreign exchange reserves exceed $9 billion.

7.3.7 Foreign Exchange Rate System

Since 1986 the basic rate of exchange of the New Israeli Shekel (NIS), established by the Bank of Israel, has been adjusted in line with changes in a trade-weighted basket of currencies (US dollar, German mark, British pound, Japanese yen, and French franc). Supply and demand for foreign exchange is then allowed to determine the actual daily rate of exchange within a band of 7% around that basic rate. In this way, the ability of speculators to make the exchange rate volatile is greatly reduced. In addition, the Bank of Israel has adequate reserves and external borrowing power to deal with any temporary pressures on the shekel exchange rate. Since the rate of inflation in Israel has been persistently higher than the rates in its major trading partner countries, the shekel has become increasingly overvalued.

Aside from the controlled exchange rate, cross-border transactions are controlled indirectly through the banking system. The basic rule established by the Bank of Israel, is that foreign currency transactions are forbidden, unless otherwise permitted. However, the Bank of Israel has issued a general permit to commercial banks specifying which exchange transactions do not require a permit. The rest require individual authorization from the Bank of Israel. After-tax profits earned from foreign investment in Israel can be freely remitted through an authorized bank, provided the original investment was also carried out through an authorized bank. The same holds true for capital repatriation. Transfer of royalties and fees has to be made with prescribed documentation through an authorized bank. Profit remittance and capital repatriation from a branch of a foreign company require a special permit from the Bank of Israel which is usually readily obtained.

A general permit allows an individual company to use its export receipts to pay for its imports without first repatriating and converting the export proceeds into shekels. Israeli exporters are allowed to keep bank accounts abroad and to hold up to 10% of export proceeds in such accounts for up to one year. As part of the liberalization of exchange controls, foreign companies may be permitted in certain circumstances to raise capital on the Tel Aviv Stock Exchange and also to transfer abroad funds raised in this way.

7.3.8 External Debt

The total external debt has risen from $44 billion in 1995 to an estimated $47 billion in 1996, with a debt service ratio of approximately 18% of GDP.

7.4 Legal/Regulatory Regime

Israel, whose jurisprudence is largely based on the British Common Law tradition carried over from the pre-1948 British Mandate, does not operate with a written constitution in the manner of the other countries studied. However, certain so-called "Basic Laws" with limited amendability have been enacted which, together with Israel's Declaration of Independence, form the basis for Israeli law. All legal rights and obligations are based either in statute or in case law.

7.4.1 Basic Property Rights/Guarantees

For lack of a written Constitution, there are no "constitutional" bases for private property rights or against expropriation. Instead property rights, contractual obligations, and property protection issues are addressed in statutes and/or in case law.

7.4.2 Restrictions on Foreign Investment

There are basically no restrictions on the amount of equity foreign investors can acquire in an Israeli enterprise nor on the acquisition of real estate although payments must be made through an authorized bank. However, because of the fact that the Government owns 90 percent of Israeli land, it is difficult for foreigners to get access to land except through an investment incentive program. Apart from defense and security-related industries, there are no explicit sectoral restrictions on foreign investment, although investment in certain regulated industries, such as banking and insurance, require prior approval of the relevant ministries. It is noted that there are no foreign banks operating in Israel, presumably because they are not allowed, by regulation, to accept local deposits. There are no regulations relating to acquisitions, mergers, and take overs that differ for foreign investors.

7.4.3 FDI Admission/Approval

There are two basic FDI statutes - (a) The Encouragement of Capital Investments Law of 1959 and (b) the Encouragement of Industry Law of 1969. Other laws with some relevance are the Encouragement of Industrial Research and Development Law of 1984 and the Law for the Encouragement of Investments (Capital Intensive Companies) of 1990. Foreign investors who do not propose to apply for investment incentives do not need government approval for an investment in Israel. In order to benefit from the incentives, however, they must apply for "approved enterprise" status from the Investment Center of the Ministry of Industry and Trade. The Investment Center reviews the proposed investment from the standpoint of essential feasibility and its congruence with statutorily-based criteria for eligibility for incentives. The incentives qualification/award process has taken in the past up to two months, but recently has

been streamlined such that local sources indicated that it now takes only “a few days” or “no more than a week”.

7.4.4 Treatment of FDI

Other than the fact that Israeli residents are prohibited from making loans to foreign investors, Israel accords foreign investors National Treatment. The National Treatment, accorded foreigners and their investments, however, appears less based in law - in the absence of constitutional provisions or statutes specifically conferring a right to National Treatment - than in international treaties and in practice. Israel has some ten BITs (including treaties with France and Germany) which provide for National Treatment for their investors. It is negotiating BITs with a number of countries including Canada, Japan, Russia, Turkey and the UK.

7.4.5 Investment Protection

Again, there are no constitutional provisions relating to expropriation. However statutory provisions limit expropriation to that necessary for public purposes (for example, eminent domain to obtain property for a road or highway) and with payment of compensation. The law also allows expropriation if allowed in a contract. Compensation is made plus interest calculated from the date of expropriation until final compensation. The level of compensation can be negotiated or will be set by judicial review and order. Restrictions against uncompensated expropriations are also contained in Israel’s network of BITs. It is a participating country with regard to investment insurance in both OPIC and MIGA. It is a signatory to the New York Convention for settlement of investment disputes and is a member of the ICSID. There have been no instances of expropriation of private businesses reported in recent years.

7.4.6 Taxation of FDI

Companies, whether resident or non-resident in Israel, are liable for tax on income derived from, accrued, or received in Israel. The basic corporate tax rate is 36 percent, but dividends that are distributed by an Israeli company are subject to a withholding tax of 25 percent. Dividends paid to a non-resident shareholder are also subject to that withholding unless a lower rate is applicable under a tax treaty. However lower rates may apply to both profits and dividends to approved enterprises under the various tax incentives available.

7.4.7 Repatriation/Remittances

After-tax profits earned from foreign investment in Israel may be freely remitted through an authorized bank, provided the original investment was made through an authorized bank. Capital repatriation is permitted under the same rubric. Payments of royalties or license fees may be made upon submission of required documentation through an authorized bank. Profit remittance and capital repatriation from an Israeli branch of a foreign company must be approved in advance by the Bank of Israel, the nation’s central bank.

7.4.8 FDI Incentives Programs

Israel offers a wide array of generous incentives for investment in specified regions and in certain sectors, such as tourism and agriculture, alike to foreign or domestic investors. But there is specific legislation to attract foreign investment which extends foreign investors certain advantages over domestic investors.

In order to become eligible for incentives, investors must apply for "approved enterprise" status, which may be awarded to industrial and other projects that provide economic benefits to Israel. The basic criteria for this determination are whether the investment provides one or more of the following: development of production capacity; improvement in the balance of payments; absorption of immigrants; job creation; and regional development. Also, approved enterprises must have no less than 30 percent of their equity paid-in. Government approval will not be given if the target sector for the investment is considered "saturated". Approved enterprises may receive either tax benefits, grants or loan guarantees depending on the geographic location of the investment. The tax benefits include reduced rates of corporate tax, accelerated depreciation on fixed assets, and a reduced withholding rate on dividends distributed to shareholders (15 percent) for between two and 10 years. The amount of tax reduction depends on the percentage of foreign ownership of the investment project, e.g., from 10 to 20 percent tax rate. Grants vary according to the type of enterprise approved and nature of its investment, but they may, in the case of industrial enterprises reach up to as much as 30 percent in 1997 of the total investment in fixed assets. Foreign investors must choose between the tax benefits and grants, but either of the two incentives can also benefit from government loan guarantees.

To attract foreign companies into high technology industries, the Government offers special financial incentives to locate research and development in Israel. The Government has also signed international agreements to that effect and encouraged the creation of bi-national foundations with the U.S. The Israeli Ministry of Industry and Trade has an Office of the Chief Scientist, which offers grants of up to 66 percent of approved R&D expenditures to companies with approved start-up R&D programs or lesser amounts for investment instandard R&D programs or for hiring subcontractors. Overhead expenses related to R&D development are also reimbursed. Additionally, there are tax credits and other incentives available. Repayment of grants is usually required only if a project becomes commercial.

Israel has a Free Trade Zone at Eilat, three "free ports", and "free processing zones" authorized but not yet established. In Eilat, businesses and consumers are exempt from the VAT, while employers receive refunds of up to 20 percent of wages paid. Foreign investors are eligible for the same benefits. Companies located in the three free ports which export all of their production qualify for generous tax and investment incentives under the "authorized enterprise" rubric. New Free Zone legislation makes available a 20 year tax holiday and a flat 15 percent tax on distributed profits, with full exemption from import and export duties and fees. It provides full exemption from currency controls and allows free repatriation of profits in foreign currency available from the market. Companies that locate in the free processing zones will be able to qualify for the same tax and tariff exemptions, regardless of whether they produce for export or for the domestic market.

7.4.9 Other Investor Concerns - IPR:

Israeli law provides comprehensive protection of products and processes under its Patent Law of 1967, although the law contains provisions for compulsory licensing of patents. Its Copyright Law, however, is archaic, based on the United Kingdom Copyright Law of 1911. Trademarks are protected under an out-of-date Trade Marks Ordinance. Trade secrets are protected under criminal law. In addition to problems with archaic laws, enforcement is a major problem. In recognition of these facts, the Government of Israel has a number of IPR laws in the drafting stage with the goal of having all of its IPR-related laws reflect WIPO model legislation. Israel is a signatory to the Paris and Berne Conventions and is negotiating accession to the PCT. It has signed the Uruguay Round TRIPs Agreement and is preparing to implement its requirements in its law.

ISRAEL

"Pros" for FDI in Israel

- Market access possibilities under Israel's free trade agreements with the European Union, EFTA, and the United States.
- Strong industrial/financial complex with advanced technology base and infrastructure.
- Good physical infrastructure.
- Well-educated, technologically-skilled, highly productive, labor base.
- Geographically located in the center of the Middle East with a high degree of trade complementarities for regional integration.
- National treatment and generous incentives for foreign investors.

"Cons" for FDI in Israel

- Depressed investor confidence regarding Middle East peace prospects and regional economic integration.
- Strong Government intervention in the economy and control over key sectors (chemicals, shipbuilding, electricity, air transport, telecommunications, shipping, etc.).
- Small (though affluent) domestic market.
- High labor costs and benefits compared to other MENA nations.
- High tax structure (direct, indirect) unless investor qualifies for incentives.
- Very high non-tariff trade barriers protecting against imports, particularly food products.

8.0 COUNTRY COMPARISONS: MOROCCO

8.1 Business Climate for FDI

8.1.1 Market Potential

Morocco's total population of 28 million – only 45% urban -- is growing 2.2% per year. About two thirds are young people under age 25. It has a total labor force of about 12 million. The GDP will reach an estimated $36 billion in 1996, or $1,315 per capita. The GDP was $27.7 billion in 1991 and $28.6 billion in 1992, but only $26.8 billion in 1993, then $30.3 billion in 1994, and $32.4 billion in 1995.

Morocco is geographically close to Western Europe, with special economic, financial, trade, linguistic, and cultural ties to France. Morocco's free trade agreement with the EU opens this rich market for investors in Morocco employing low cost labor.

8.1.2 Resource Endowment

Morocco offers a large unskilled, but easily trainable labor force, that is inexpensive compared to European wage scales, but on the high side compared to African wage scales. The current minimum wage is about US0.90 per hour. Worker fringe benefits, including contribution to social security, add about 35% to total labor costs. A sizable number of Moroccan students attend universities abroad, mostly in France.

Morocco has 75% of the world's phosphate reserves and minor deposits of barytine, lead, iron, calcium fluoride, zinc, and other minerals as well as some crude oil reserves. Morocco is self-sufficient in food and its main agricultural exports are diverse fruits and vegetables. Extensive areas of arable land and a long growing season produce a wide range of crops and major Atlantic coast fishing areas jointly contribute around 20% to GDP, but annual performance fluctuates, depending on rainfall in the case of agriculture and prevention of depletion of fishing areas by fleets from Spain. Investment incentives encourage upgrading of the fishing fleet and deep-sea fishing. The growth sector in manufacturing is the clothing industry – assembly and finishing imported cloth and garments for re-export.

8.1.3 Infrastructure

Morocco has one of the best developed road networks in Africa; railways connecting the major cities; eight commercial seaports handling nearly 60 million tons per year; 10 international airports; and a rapidly expanding telecommunications network. The port of Casablanca alone handles about 80% of Morocco's total foreign trade.

Top policy priority is accorded to the continued development of the transportation and communication network. The government railway monopoly, the Office National Des Chemins de

Fer, is seeking about $500 million to expand and upgrade the rail network during the next four years. It may accept some form of private financing and participation. A bill to privatize the telecommunication sector, however, remains stalled in parliament. The country is expanding its electrical power capabilities with at least three new power plants. The government plans to build one large dam per year, with 13 currently under study, for irrigation of agricultural land to make crops less dependent on uncertain rainfall.

8.1.4 Foreign Direct Investment

There are few reliable statistics about the total size of foreign investment in Morocco but it is thought that the annual inflow since 1991 has been moderate and uneven. IMF International Financial Statistics of July 1996 show the following annual inflows of direct foreign investment: $317 million in 1991, $422 million in 1992, $491 million in 1993, and $601 million in 1995.

Investment from France has accounted for 20% to 25% of the total inflow, while new US investment has only been about 10% of the total. Investment from Spain and the UK has been prominent recently, but declined sharply in 1995. About 20% to 25% of total foreign investment went into the banking sector and a similar proportion went into diverse industries, but very little into textiles.

8.2 Government Economic Policies

8.2.1 Economic Reforms

The government's economic reforms have lowered import tariffs, phased out non-tariff import barriers, liberalized foreign exchange controls, stabilized the exchange rate, eliminated most price controls and subsidies, started to reform the banking sector, introduced private investment incentives, revised the tax structure, reduced the public sector budget deficit, opened the door to foreign investment, and begun privatization and restructuring of state enterprises. These reforms have had varying degrees of success and have improved the investment climate.

As part of a general economic liberalization program, the government of Morocco introduced after 1983 a number investment codes to encourage private national and foreign investment in several priority sectors. In October, 1995 a new unified investment law was enacted and procedures for review and approval streamlined and considerably shortened. Foreign exchange control was also liberalized for foreign investors and for foreign trade transactions. Authorization from the Exchange Office is no longer necessary for a new foreign investment. A decree guarantees the free remittance of profits and repatriation of capital of a foreign investment.

In 1992, the government introduced a simplified system of customs declarations to streamline customs procedures and make them more efficient. The reform includes computerization of depositing customs declarations, introducing a single import declaration, and reducing and simplifying the customs classification of import categories.

8.2.2 Effectiveness of Reforms

The Government has made slow, but steady progress toward deregulation of the economy, privatization, and free trade. Arbitrariness and lack of transparency sometimes leads to discrimination and corrupt practices. The legal and judiciary system is not well equipped to enforce commercial and property laws and regulations. Recently the government conducted a harsh anti-fraud, anti-corruption campaign against drug trafficking, contraband, corrupt customs procedures, and illegal business practices, which resulted in convictions, fines, and jail terms. Labor laws are a problem for private national and foreign companies, because firing of workers is difficult and costly even for companies in economic difficulties or facing bankruptcy.

The level of protection against imports remains high, particularly for agricultural products. Customs duties range from 0% to 35% of the c.i.f. value of imports. Most import licensing and quotas have been replaced by "equivalent" tariffs which on some imports, such as meat, flour, and refined vegetable oil, resulted in substantial increases of prevailing tariff levels to as high as 300% in some cases. The government has also slowed and stopped some planned import liberalization in the agricultural sector to continue protecting domestic producers. There is an additional 15% import tax. A value added tax ranging from zero to 20%, depending on the type of product, is applied equally to imports and to domestic products, but is not always paid on locally produced goods. Imports under free trade agreements are exempt from duties, but not from payment of the import tax and the value added tax. Prior import licensing has been eliminated for most, but not all, commodities.

A tariff band, a variable duty, is applied to a number of agricultural imports. The level of duty applied depends on the extent to which the c.i.f. import price is below the government's established threshold price. The lower the c.i.f. import price, the larger is the duty, in order to protect domestic producers from the effects of steep declines in international prices. If the c.i.f. price is above the threshold price, then only a flat 1% tariff is applied.

8.2.3 Relationship with International Financial and Trade Institutions

Both the IMF and the World Bank have fully supported the government's economic reform program and provided financial assistance to the success of the economic stabilization and development efforts. Morocco is a member of the World Trade Organization (WTO) and apparently has no record of trade problems with this organization.

8.2.4 Government Trade Policies

A free trade zone has been established in Tangier for foreign and national investors and trade companies. Free storage of goods is offered in public and private warehouses controlled by the customs administration. Companies locating in the free zone enjoy exemption from all taxes on production for export and exemption from duties on imports. All workers employed in the free zone must be paid directly in foreign exchange, which they are required to exchange for dirhams at Moroccan commercial banks located in the free zone. Altogether 65 companies are currently

located and operating for export in the free trade zone of Tangier. Three banks are doing offshore banking there under special incentives.

8.2.5 Privatization Policies

Currently, there are 800 enterprises that are state-owned or with government equity participation, but in 80% of these state ownership is not dominant. State companies contribute only 12% to the GDP, but hold a 93% share in water and electricity and 55% in telecommunications and transportation. One third of the 130 largest state companies registered losses in 1994, equivalent to 1.7% of GDP. The state sector as a whole showed a net operating loss equal to 0.3% of GDP and state enterprises paid corporate taxes of 0.6% of GDP.

The King of Morocco recently outlined the following economic, social, and political goals for the privatization program:

a) **"**reinvigorate the Moroccan economy,

b) to raise the standard of living,

c) to promote economic growth,

d) to reduce the burden on the government budget and to divert revenue to other uses,

e) to expand foreign trade,

f) to create employment,

g) to avoid concentration of private economic power, and

h) to provide opportunities for new entrepreneurs.

Three institutions guide the privatization process:

- the Minister of Privatization;
- a five-member inter-ministerial Transfer Commission; and
- a Valuation Authority.

Privatization is being conducted through sale of stock in the local stock exchange, public tenders offered on a bid basis, and negotiated equity sales.

In seeking to make privatization successful, blocs of shares of 26% to 51% of the total have been sold to a core consortium of private shareholders in some cases who could offer stability and management talent to the privatized company. In some cases, this was the old

management or an employee group, and the nature and transparency of such privatization procedure has been questioned. Employees with seniority in the company are allowed to purchase up to 10% of the share capital at a 15% discount of the offer price, but they must hold their shares for a minimum of 3 years. In terms of revenue generation from privatization, 39% came from public tender offers, 34% from share sales in the local stock exchange, only 2% from sales to employees, and the rest from sales to private equity partners of the joint ventures with the state and other forms of privatization.

Thus far, 48 companies have been wholly or partly (at least 51% private equity) privatized in a wide range of sectors: banking, cement, oil refining and distribution, steel production, minerals, and bus transportation. Also, 18 hotels were privatized. More state companies are planned to be offered for sale, including railways, power plants, and telecommunications. These sectors will also be opened to new private foreign and national investments.

As in Egypt, Turkey, and Israel, the privatization process has been slow in Morocco. Out of 112 state-owned firms that were supposed to have been privatized between 1993 and 1995 under a privatization law dating back to 1989, only 48 had been sold by September 1996. The deadline for the remainder has now been extended to 1998.

The government decided to privatize first the easiest companies that have no redundant workers, are profitable, operate well in a competitive environment, and are joint stock companies. The Minister of Privatization announced in November 1996, however, that the government wants to start a program of privatizing all state-owned companies, including those considered of "strategic" importance. Natural monopolies, such as telecommunications, will be privatized accompanied by the creation of a regulatory body overseeing the private monopoly. To encourage more foreign investors to participate in the privatization program, the government will soon float abroad convertible "privatization bonds", to be underwritten by Morgan Stanley, Nomura International, and Paribas Banque.

8.2.6 Opening to Foreign Investment

Morocco clearly welcomes foreign investment, because only foreign investors often have the large amounts of capital, the advanced technology, and the access to foreign markets vital for the success of an investment or a privatization project. Unlike Turkey, the government of Morocco does not own majority shares in manufacturing facilities, but only in infrastructure industries, banks, and hotels. Areas that are not state monopolies are open to both foreign and national private companies on a generally non-discriminatory basis. Mining of phosphate, the largest single export commodity, remains a state monopoly.

Most elements of a 1973 Moroccanization law, which limited foreign ownership in some sectors, have been abolished. There are no foreign investor performance requirements, such as minimum local content or export requirements. There are no major trade disputes with foreign companies and minor ones are mostly resolved by negotiation with the pertinent government department. Areas of major concern to foreign companies are :

- lack of transparency in applying duties on imports by the customs administration and delays in reimbursement for duties paid on imported inputs by exporters (duty drawback system);

- high port costs and inefficiencies in cargo handling at ports by state monopolies;

- insufficient reform of the labor laws that make firing of workers difficult and costly; and

- lack of a free trade zone at the port of Casablanca where most of Morocco's foreign trade is handled.

Morocco does not have an effective foreign investment promotion program. There is a One Stop Shop for foreign investors established by the Office for Foreign Investment in the Ministry of Finance. Foreign investors, however, cannot get all their paperwork done in one place, as in the case of Tunisia, when they form a company. They still need to deal with different Ministries, tax authorities, customs, and the Central Bank. There are no investment promotion offices abroad operating actively and separately from the Moroccan embassies.

- There is no specific requirement to register foreign investment. Foreign investment, however, need to register with the Exchange Control Office to be allowed to freely remit profits and repatriate capital. No authorization is required to liquidate a foreign investment. Foreign companies can freely open and maintain bank accounts in Morocco in local or in foreign currency. The dirham is essentially freely convertible. National and foreign private companies pay a 35% corporate income tax on profits generated, but only foreign companies pay additionally a 15% dividend withholding tax when profits are distributed and remitted abroad. Thus, the maximum total corporate tax rate on distributed profits for foreign companies operating in Morocco is 44.75%. Insurance companies operating in the country can be 100% foreign owned.

8.2.7 Areas of Discrimination and Exclusion

The customs administration sometimes applies tariffs and other restrictions in an arbitrary, non-transparent manner in order to protect local producers against competition from imports. Similarly, government procurement procedures are often applied without a transparent, equitable process. Government regulations and red tape have been simplified, but the administration and application remains often cumbersome, time consuming or problematic. Permits are sometimes delayed and difficult to obtain. Foreign investors complain that lower level government bureaucrats often delay necessary approvals or permits, because they are reluctant to take the initiative to make decisions, particularly where the regulatory process is not automatic and clearly defined.

8.3 Macroeconomic Trends

8.3.1 GDP Growth

On average, economic growth has been moderate during the past decade. Annual GDP growth rates have fluctuated widely, depending on the rainfall affecting the size of agricultural crops. After 11% growth in 1994, real GDP was negative 4.7% in 1995 due to the worst drought in 30 years, but ample rainfall will result in GDP growth of at least 7% in 1996. Unemployment is very high, around 20% of the labor force.

8.3.2 Sectoral GDP

Agriculture accounts for 15% to 20% of GDP, depending on the annual fluctuation in rainfall affecting crop size. Thus, for example, the annual level of wheat and barley production dropped sharply from 9.2 million metric tons in 1994 to only 1.6 million tons in 1995 due to drought, but is anticipated to reach 9.6 million tons in 1996. Over 90% of agriculture depends on uncertain levels and timing of rainfall, but increasing efforts are made and attractive incentives offered for irrigation investments in order to improve stability and predictability of agricultural production.

The fishing industry is also important to the Moroccan economy, employing some 300,000 people directly and indirectly and producing over $600 million foreign exchange earnings annually. Industry represents only 18% of GDP, composed primarily of phosphate processing into fertilizer and phosphoric acid, oil refining, cement production, food processing, garment finishing, paper, metals, rubber, and plastics manufacturing, and vehicle assembly. Although the tourist industry has been developing, a large untapped potential still exists. Morocco attracts 3 million tourists, but neighboring Spain 30 million. More effort is needed to enhance entertainment and recreational facilities, but above all aggressive tourism promotion abroad. Command of English in the tourist sector is still not well developed.

8.3.3 Inflationary Trend

Well managed fiscal and monetary policies have kept the inflation rate to an annual 5% in this decade and this trend appears to continue in the near term. The government budget deficit was reduced from a high 12% of GDP in 1982 to 2.4% in 1993, but it will rise to about 5% of GDP in 1996. Targets were also exceeded in 1994 and 1995 and deficits are becoming larger each year.

8.3.4 Foreign Trade Trends

Total merchandise exports expanded modestly from $5.1 billion in 1991 to $5.5 billion in 1994, but then dropped to only $4.6 billion in 1995, due to the effects of drought on export crops and lower prices for phosphate exports. Imports, however kept expanding from $6.9 billion in 1991 to $7.6 billion in 1994 to $8.3 billion in 1995. Both exports and imports are expected to be

about $1 billion larger in 1996. The export of phosphate and its processed derivatives, phosphoric acid and fertilizer, amounts to more than one quarter of total export earnings.

8.3.5 Trade Patterns and Trade Treaties

France, accounts for one quarter of Moroccan imports and one third of its exports. US trade with Morocco is very small. In 1995, US exports to Morocco were $545 million and imports a minuscule $155 million.

Demand for Moroccan clothing is expanding in the EU countries. European textile producers are sending cloth for finishing into clothing by low cost labor to Morocco and subsequent duty-free re-entry to Europe, a set-up similar to that between the US and its southern neighbors, Mexico, Central America and the Caribbean.

In 1995, Morocco concluded a “partnership” agreement with the EU for the gradual elimination of tariffs over 12 years on trade between Morocco and all EU countries. Some agricultural products are excluded from the agreement. The agreement commits Morocco to phase out its duties on imports of manufactured products from the EU countries. The EU had already eliminated restrictions on Moroccan manufactured products under an economic cooperation agreement signed in 1976. It covers trade, economic policy cooperation, technical and financial aid, and labor issues. The aim of this first agreement was to help Morocco promote exports to the EU countries and to improve and expand production and infrastructure. Trade restrictions on agricultural products are maintained by Morocco as well as the EU. The partnership agreement with the EU creates opportunities for foreign investors from the EU as well as from third countries to set up operations in Morocco with low cost labor to export duty free industrial products to the EU markets.

The EU now requires pre-certification of imports of fruits and vegetables from Morocco to ensure compliance with health regulations. The EU wants to reduce eligibility for GSP treatment to 10% of Moroccan exports to the EU compared to about 50% currently.

Morocco has concluded free trade agreements also with several African countries (Algeria, Tunisia, Senegal, Guinea, Mauritania, Niger, and Ivory Coast) as well as with Syria. It has also concluded conventional trade treaties with a number of countries in Africa, Asia, and Europe, including Turkey and Egypt. Regional economic integration with its four North African neighbors under the Maghreb Arab Union agreement remains dormant, probably for political reasons.

8.3.6 Balance of Payments Trends

Morocco’s current account deficit improved dramatically from an equivalent 12.2% of GDP in 1980 to only 1.9% by 1993. The annual trade deficit expanded from $1.8 billion in 1991 to $2.1 billion in 1994, but it was fully covered by foreign exchange earnings from tourism, workers’ remittances, and foreign investment inflows. In 1995, however, the trade deficit expanded to $3.7 billion, while workers’ remittances declined with the weakness and rising

unemployment in France and elsewhere in Europe where most overseas Moroccans work. The level of annual foreign investment inflow also shrank by 30% in 1995, probably reflecting the depressed economy in Morocco as well as in Europe and the slower pace of Moroccan privatization. The resulting balance of payments deficit triggered a loss of 25% loss of reserves. Total gold and foreign exchange reserves expanded from only $488 million in 1989 to $3.1 billion in 1991 to a peak level of $4.3 billion at the end of 1994, but then declined to $3.3 billion by March 1996, mostly due to the rapid expansion of imports.

8.3.7 Foreign Exchange Rate Regime

The exchange rate has been kept essentially unchanged in relation to the French franc since a 9% devaluation in 1990. The Central Bank adjusts the rate of the dirham according to a trade weighted basket of currencies. In practice, the rate appears to be tied to the French franc. In relation to the US dollar it fluctuated from 8.7 dirham to the dollar in 1991 to 8.5 in 1992 to 9.3 in 1993 to 9.2 in 1994 and appreciated in 1995 to the current rate of 8.5 per $1. The dirham has become overvalued somewhat, however, because Morocco's rate of inflation has been higher than that of its major trading partners.

8.3.8 External and Internal Debt

The total external debt has reached $21.9 billion.

8.4 Legal/Regulatory Regime

Morocco's legal structure is based on a Constitution and a Code Law-based legal regime derived significantly from the French Civil and Commercial Codes.

8.4.1 Basic Property Rights/Guarantees

Article 15 of the Moroccan Constitution, as revised 13 September 1996, provides that "the right of property and free enterprise are guaranteed," but also states that "The Law may limit their enjoyment and exercise for the economic development and social exigencies that may dictate such necessity."

8.4.2 Restrictions on Foreign Investment

There are no restrictions with regard to activities in which foreign investors may not invest. Foreign investors may invest in any sector available to the Moroccan private sector. The only major sectors reserved from private sector participation are public utilities, rail and air transport, and the phosphate industry. Foreigners may fully own companies or may form joint ventures with Moroccan partners. However, foreigners may not own agricultural land, although it is available for long term lease. And, a proposed new law would require at least 50 percent local equity in foreign-invested insurance companies operating in the country.

8.4.3 FDI Admission/Approval

Foreign investment as such does not require approval although it must be registered with the Central Bank's Exchange Control Office in order freely to remit profits and repatriate capital. There are no performance requirements specific to admission of foreign investment as such. In October, 1995, a new Investment Charter Law was enacted that replaced eight separate sectorally-focused incentive laws with a single incentive law. The sectoral codes replaced were for industries, tourism, exporting, mining, real estate, shipping, and handicrafts. The new Law applies to both domestic and foreign investors. Procedures for application and review of investment incentives application have been streamlined and the time periods for processing significantly reduced from at least two months to less than a month. The benefits provided appear to be more modest than before, but the approval process is said by the U.S. Embassy to be virtually automatic. (However, the Embassy's Country Profile also points out that even when regulations are favorable on paper, there are often practices encountered that are not transparent or efficient.)

8.4.4 Treatment of FDI

FDI generally receives national treatment. However, foreign investors are not allowed to own agricultural land. Moreover, while dividends received by domestic corporate shareholders are not taxed at all, the exemption does not apply to foreign investment income which is subject to a 15 percent withholding tax. Additionally, the new privatization decree allows the competent Ministry to accord "preference" to "local" buyers of state-owned company shares. Moreover, in practice, concerns have been raised about bureaucratic discrimination against foreign-owned firms in tax and customs administration. Morocco has concluded BITs with France, Germany, Sweden, Switzerland, the UK, and the USA, all of which require National Treatment (and/or Most Favored National or the better of the two).

8.4.5 Investment Protection

Article 15 of Morocco's revised Constitution provides, in part, that "Expropriation shall not occur except for the reasons and the forms provided for in the law." According to the U.S. Embassy Country Profile, there have not been any significant expropriations in Morocco since the early 1970s, nor is the Embassy aware of any instances thereof without process of law and in accord with established international principles (e.g., subject to judicial process, with prompt, adequate, and effective compensation). Morocco's network of BITs, described above, also routinely provide that there shall be no expropriations without compensation, due process of law, and opportunity for international arbitration. In this latter regard, Morocco is a signatory to the New York and Washington Conventions on investment dispute settlement and is a member of the ICSID. It participates in the OPIC and MIGA investment risk insurance programs and is a member of the Arab Investment Guarantee Organization.

8.4.6 Taxation of FDI

Subject to incentives, the basic corporate income tax rate is 35 percent but only foreign-owned companies pay a 15 percent withholding on dividends remitted abroad, for an effective tax

rate of 44.75 percent. Morocco has tax treaties with at least 17 countries, including Belgium, Canada, France, Germany, Italy, Spain, Sweden, the UK, and the USA. In addition, Morocco has a VAT imposed at a general rate of 19 percent, and a 5 to 30 percent business tax based on the rental value of business premises.

8.4.7 Repatriation/Remittances

The free transferability of profits remittances without prior approvals is guaranteed if the original investment was properly registered with the Foreign Exchange Office. Foreign exchange for such purposes is freely available from banks at market rates. Repatriation of Capital is guaranteed without prior approvals if registered originally with the Foreign Exchange Office. Payments of royalties and license fees are permitted but are subject to ten percent withholding.

8.4.8 FDI Incentive Programs

The new Investment Charter Law, which replaces the prior eight different investment incentives codes, provides financial incentives for new investments in the export sector, or for investors willing to locate in economically-depressed provinces. The law offers more modest incentives than the prior codes. Procedures for qualifying have been streamlined and made transparent. The law provides the following incentives for qualifying firms:

- guarantees free remittance of profits and repatriation of capital, provided they were registered with the Foreign Exchange Office.

- reduces duties from 2.5 to 10 percent on imports of machinery, equipment and raw materials;

- exempts such imports from the 15 percent import tax;

- exempts investors from the 35 percent corporate income tax for five years and reduces the tax by 50 percent thereafter - on profits from exporting;

- reduces the corporate income tax by 50 percent for five years on profits from firms located in designated depressed provinces or those producing handicrafts; and

- offers to finance part of the costs of locating in industrial zones.

Private investors can also negotiate additional benefits for investments the Moroccan Government considers of special importance because of the amount of capital involved, advanced technology required, or the specific location of the investment. In these cases, the Government would consider covering part of the costs of land acquisition, infrastructure development, and training. In addition, the contract with the foreign investor would stipulate that disputes will be settled “in accordance with international conventions ratified by Morocco in international arbitration matters.”

In order to accelerate the bureaucratic processing of applications for incentives, an application will be deemed "automatically" approved if the investor has not received a decision on his application within 60 days. However, interviewees indicated that, in practice, approvals are received within two to four weeks. The basic Investment Charter Law does not apply to investments in the agricultural sector, for which a separate incentives law is being drafted.

Morocco has a Free Trade Zone located at Tangier, which is open to both domestic and foreign investors. Companies locating in the Zone may import goods duty free and are exempt from other taxes. The only unusual requirement is that all workers must be paid in foreign exchange which they are then obliged to convert for local currency at local banks in the Zone at market rates. The Tangier FTZ also provides for an offshore banking facility under a special law for that purpose.

8.4.9 Other Investor Concerns

IPR - Morocco has a relatively complete legal and regulatory system for IPR protection. It is a member of the WIPO and is a signatory to the Paris, Berne, and Universal Copyright Conventions as well as the Madrid, Nice, and Hague Agreements for the protection of Intellectual Property. Computer software, however, is not covered by Morocco's copyright laws. While its general legal regime for IPR is considered modern and protective, enforcement remains a problem. Counterfeiting of trademarked goods is common as is copyright piracy.

Labor Laws - A new Labor Law is in the process of being drafted. Current law authorizes collective bargaining and strikes. Social benefits comprise approximately 35 percent of wages paid. Recruitment of workers is through State employment offices.

MOROCCO

"Pros" for FDI in Morocco

- Political stability and continuity, insulated from political and religious unrest.
- Progressive liberalization of economic and investor-related policies.
- Geographical proximity to Western Europe and possibilities as regional sales/service platform for North Africa and Sub-Saharan Africa.
- Well-developed public infrastructure including ports and inland transportation ("best road network in Africa").
- Continuing privatization program, open to foreign investors.
- National treatment for foreign investors and freedom to remit profits.

"Cons" for FDI in Morocco

- Outdated, non -transparent judiciary without effective alternative dispute resolution.
- Arbitrary and non-transparent Customs administration.
- "Sluggish" bureaucracy.
- Allegations of discrimination against foreign companies in tax administration.
- Application of protective tariff bands to agricultural imports and conversion of import licensing and quotas into tariff equivalents at up to 300%.

9.0 COUNTRY COMPARISONS: TUNISIA

9.1 Business Climate for FDI

9.1.1 Market Potential

Tunisia's population has reached 9.0 million, growing at 1.7% per year. About 60% of the population is classified as middle class (indeed, more than 50% of families own their homes). More than 20% of the government budget is allocated to education, one of the highest ratios in the world. The GDP was $18 billion in 1995. Per capita income increased sixfold, from only $300 in 1956 to $2,050 in 1995 and an estimated 2,115 in 1996. The average annual rate of increase in per capita GDP doubled from 1.15% during 1981-86 to 2.44% in 1987-94. The minimum wage is about $0.80 per hour.

The World Bank reports that Tunisia has made visible progress in reducing the level of poverty of its population, in improving income distribution, and in increasing life expectancy.

While Tunisia's domestic market is relatively small and there are few natural resources of interest to foreign investors, Tunisia is favorably located in the center of the Mediterranean and near enough to EU markets to become an attractive contender for serving as an export base and/or headquarters for nearby African and European Mediterranean markets.

9.1.2 Resource Endowment

Tunisia has limited natural resources, only some phosphate and petroleum deposits, but mainly extensive arable land and attractive beaches.

Tunisia has a relatively well educated labor force of 2.6 million, of which at least 16% are unemployed. The literacy rate currently is 68%, but 90% of the labor force under age 35 is literate.

9.1.3 Infrastructure

Tunisia has a relatively well-developed infrastructure with an extensive road and railway network, eight seaports and six airports, almost complete electrification, and expanding telecommunication. There are, however, only 5.8 telephones on average per 100 people and international call rates are expensive, the capacity for high speed data transmission is limited, access to the Internet is restricted, and costs are high for a business to install and maintain an advanced, complete communications system. Major infrastructure investments likely will be concentrated on developing a modern telecommunication system, greater power generating capacity, an expanded road network, and additional container terminals at the major ports. These developments will be linked in many cases to privatization in these sectors and to invitations for private investments on a build-operate-own and build-operate-transfer basis.

9.1.4 Foreign Direct Investment

Foreign investment accounts for around 20% of total private investment in Tunisia. The total inflow of foreign direct investment, according to the World Bank report on "Tunisia's Global Integration and Sustainable Development", ran from $166 million in 1991 to $393 million in 1994. The total accumulated by 1995 was $4.6 billion, of which $3.4 billion were invested between 1981 and 1995, according to the Ministry of Economic Development, as reported by US Embassy sources. About 78% of this total was in the oil and gas sector, but the largest number of foreign companies was in the clothing sector.

EU countries accounted for about two-thirds of total foreign investment, with the US share being less than 10%, mostly in petroleum. Major US investors are ARCO, Mobil Oil, Esso, Citibank, and RJR Nabisco. IBM recently established its headquarters in Tunisia for supervision of its operations in Egypt and the Maghreb countries. Among non-oil, export-oriented investments made in 1995, 38% came from France, 20% from Germany, 14% from Belgium, and 16% from Italy. About two-thirds of foreign investments in hotels came from Arab countries, mostly Saudi-Arabia and Kuwait.

9.2 Government Economic Policies

9.2.1 Economic Policy Reforms

The Tunisian government shifted the emphasis of its economic policies after 1987 from import substitution and extensive state regulation and ownership over the economy toward encouragement of export development and private investment. The government started a program of privatization. It decontrolled prices and imports, restructured banking and the other financial sectors, simplified the tax system, and reduced tax rates. The maximum corporate tax rate is now 35%, but only 10% on profits from agriculture, fishing, and handicrafts. The employer's contribution to social security is 19% of gross wages.

In 1991, a Competition Law was enacted that freed most prices from government control, except for some food, public utilities, oil products, medicines, and prices charged by monopolies. Sectors where price competition cannot prevail are subject to supervision and control under special anti-trust regulations.

The sources for Tunisia's economic growth in past years – agriculture, oil and gas, phosphate mining, and tourist development – have reached their peak and may decline in the future. Government policy reforms are now focused on stimulating new sources of economic growth for Tunisia. In view of the relatively small size of the domestic market, the focus of Tunisia's future economic reforms, therefore, are on how to achieve export-driven economic development. Currently, the government is committed to further reforms, but appears unwilling to implement them aggressively.

9.2.2 Effectiveness of Reforms

The government has taken a gradual approach to economic reforms and liberalization of the economy from government ownership and control. While progress has been made toward a full-fledged market economy, import tariffs are still up to 43% and consumption taxes on luxury goods as high as 500%. The government has set up a very effective One Stop Shop to facilitate new private investments and to speed up the paperwork process for setting up a business. Cumbersome bureaucratic procedures, however, still prevail in some areas. Privatization has advanced slowly, with the government still retaining control and/or ownership over telecommunications, crude oil production and refining, the national airline, banking, water and electricity distribution. Labor laws remain highly restrictive, requiring compensation payments to released workers even if the company is bankrupt.

Foreign investors in particular complain about the lack of transparency and delays in the administration of customs, the high level of import duties, the high cost of telecommunication services still under a government monopoly, and the inadequacy of the road system. Long delays are reported in obtaining building permits.

9.2.3 Relationship with International Institutions

The IMF and World Bank have strongly supported the structural economic reforms introduced by the government over the years since 1987. The European Investment Bank has financed a number of infrastructure projects as well as imports of capital goods from the EU countries.

9.2.4 Government Trade Policies

Tunisia is a member of the WTO. It is committed to gradual trade liberalization. Over 90% of its imports are free from prior licensing. Import licenses are required mostly for imports of consumer products, such as clothing, that compete against similar products manufactured locally.

The basic import tariff ranges from 10% to 43%. In addition, there is a temporary duty of up to 30% imposed on a selected number of products, replacing a previous import quota or licensing. Tunisia failed to meet its commitment to eliminate this temporary, substantial duty surcharge by the end of 1994. Instead, products removed from this import duty surcharge are replaced by other products on the list on which this surcharge is applied. Thus, the overall average tariff level remains high at 33%.

The value added tax imposed equally on imports as well as domestically produced goods ranges from 10% to 29% (luxury goods) and the consumption tax from 10% to as high as 500% (on luxury goods).

Tunisia maintains two free trade zones, managed by a private company, on state-owned land. Companies producing for export in these free trade zones enjoy exemption from customs

duties and most other taxes. They are granted reduction from those tax rates that do apply to them.

Companies that qualify for customs duty exemption are required to pay the salary and rent and provide office space for an "in-house" customs official who makes sure that all shipments of the company comply with customs regulations and the company's status regarding imports. The official's costs can be shared with nearby other companies, it he supervises also their shipments.

9.2.5 Pro-Business Policies

The government continues to emphasize pro-business policies, deregulating interest rates, allowing private commercial banks to enter long-term credit markets, and the Central Bank is increasingly retreating to a regulatory and supervisory, rather than controlling and interventionist role.

Tunisia has the elements of becoming an international corporate management and banking center for French speaking West Africa and part of the Arab world, if the government were to completely liberalize all aspects to trade and investment. Tunisia enjoys an exceptional geographical location in the center of the Mediterranean area adjacent to southern Europe and in the middle of North Africa. There is general confidence about continued political stability and moderate government in sharp contrast to its neighbors. It has an educated work force and attractive living conditions. The government has been successful in establishing and maintaining financial stability.

9.2.6 Privatization Policies

The government continues to own the basic and strategic sectors in industry. While the public sector share in the GDP has diminished from 48% in the early 1980's to 38% in 1995 and the government's share in total investment from 57% to about 50%, these levels are still well above those in most developing countries. The government is committed to a policy of gradual privatization. By 1994, 46 out of a total of 189 state-owned enterprises were completely or partly privatized via sales of shares on the local stock exchange or public tenders. By the end of 1995, a total of 65 firms had been privatized and a further 15 are scheduled to be sold in 1996. Most of the privatized firms, however, were relatively small – too small to play a catalyst role under private ownership and management to spark improvements in the efficiency and productivity of the economy.

Until now, the government has moved rather cautiously to avoid mass lay-offs and political opposition, if it privatized public monopolies with a large redundant labor force. The emphasis of government policy is on trying to modernize large, important public enterprises and make them more efficient rather than privatizing them. More state companies, many operating in competitive sectors, are to be privatized in the future. Although the preferred method was via the stock exchange, a flexible, pragmatic policy is expected to emerge in the future for selling also via public tenders or negotiated deals as larger state companies are offered for sale that will require major capital infusions and re-structuring.

The current preference by the government for selling state company shares in the local stock market and minority shares to a company's own employees, such as the 20% share sale of Air Tunis, dampens the interest of foreign companies to bid for state companies. Local sources indicate that the stock exchange will not soon become a major vehicle for private capital formation because the Tunisian government maintains too many restrictive regulations and companies do not seem to have sufficient incentives to be listed on the exchange. They have alternative cheaper sources of financing.

State monopolies in transportation, such as maritime transport and cargo handling, are providing inefficient and costly service to the vital export sectors, but they have not been privatized or otherwise made competitive with port services in nearby Mediterranean countries.

9.2.7 Opening to Foreign Investment

The Foreign Investment Promotion Agency (FIPA), within the Ministry of International Cooperation and Foreign Investment, collects and makes available information on investment opportunities in Tunisia for foreign investors. It can provide input for feasibility studies and preliminary assessments about eligibility for investment incentives. FIPA's objectives are:

- to contribute to the improvement of the investment climate,
- to attract foreign direct investment,
- to promote Tunisia as an attractive location for foreign investment through promotion campaigns abroad,
- to assist foreign companies with their investments in Tunisia,
- to make investment promotion effective through cooperative efforts with other public and private organization at home and abroad, and
- to assist foreign investors operating in Tunisia in their relations with public agencies and the bureaucracy.

FIPA is managed by a chairman and a managing director, assisted by a Board of Directors, composed of public and private sector representatives. FIPA is organized into six divisions:

- Promotion of investments from Europe.
- Promotion of investments from Asia, the Americas, and Africa.
- Information processing and distribution.

- Investment strategies and evaluation.
- Follow-up assistance.
- Financial and administrative division.

FIPA maintains promotional offices in Paris, Milan, London, Cologne, Brussels, Stockholm, Washington, and Johannesburg. These offices:

- distribute information about the investment climate in Tunisia;
- emphasize the benefits of Tunisian investment incentives for foreign firms;
- contact foreign companies that plan to expand their activities abroad;
- develop and implement a promotional strategy by country, by sector, and for potential investors; and
- identify potential joint venture prospects.

An important, efficient and effective effort to facilitate new private foreign and national investments is FIPA's One Stop Shop for investors, called "Guichet Unique." It is one of the most comprehensive efforts in the world designed to assist foreign investors in one, single, concentrated public office to conclude all the formalities for establishing an investment. FIPA's One Stop Shop houses in one building – mostly on the same floor -- representatives from every government ministry and agency - including the Central Bank, customs, and tax department - that investors need to contact for permits, licenses, authorizations, loans, foreign exchange and customs information, incentives, tax treatment, etc. The range of services offered and the operating procedure of the One Stop Shop are elaborated in the booklet of the Agency in Appendix C of this Report.

In one place, within two weeks, all of the paperwork is done for a foreign or local investment to be established in Tunisia. Separate booklets inform investors in specific sectors how to establish their business in Tunisia. These booklets are available in Arabic, French, English, German, Italian, and Spanish. A presentation on all issues relevant for a potential new investor is also available on Microsoft diskette in each of these languages. The One Stop Shop service helps foreign investors fill out correctly all necessary documents and application and thus avoid costly delays and misunderstandings. Fiscal incentives are awarded automatically upon receipt of the required supporting documentation. Financial incentives, upon application, are submitted to a special committee for authorization.

9.2.8 Areas of Discrimination and Exclusion

Foreign investors do not receive national treatment in all areas. For onshore investments exceeding 50% equity participation in any service sectors, prior authorization from the

government is required. Free remittance of profits and repatriation of capital without prior government authorization is limited to companies with at least 66% foreign equity that made the original investment with an inflow of foreign exchange. Foreign ownership of agricultural land is prohibited, but foreigners can lease such land for up to 40 years. Offshore banking can be 100% foreign owned and operate essentially free of controls. Onshore banking is restricted to less than 50% foreign equity (except in the case of Citibank's old investment) and requires prior government authorization to operate in the country. All Tunisian assets can be insured only by Tunisian insurance companies. Although foreign participation in the privatization process is permitted, the powers granted to the Ministry in charge are such as to make this process non-transparent and arbitrary.

As in Morocco, a large foreign investor is often able to negotiate a contract with specific additional guarantees and incentives not offered to smaller foreign investors. Occasionally, investment incentives are even extended for another term for foreign investments deemed important for the country, such as companies producing clothing for export in free trade zones.

9.3 Macroeconomic Trends

9.3.1 GDP Growth

Economic growth during 1987-94 averaged 4.2% per year and 5.4%, excluding agriculture. GDP growth for 1996 is estimated at 6% compared to only 2.6% in 1995. After two years of slow economic growth due to agriculture affected by extensive and prolonged drought, the economy is now returning to rapid growth, inflation is declining, and the trade deficit is shrinking. The rate of unemployment is relatively high at 16% and as high as 25% in some depressed southern areas. The tourist industry, which attracts 4 million visitors annually, is a major source of employment.

9.3.2 Sectoral GDP

The GDP is composed 13% of agriculture and fishing, 33% industry, and 54% services. Tourism makes up 9% of GDP within services.

In the manufacturing sector, the value added by the textile industry account for about $850 million or one-third of the 19% share of manufacturing in the GDP. The total gross value of exports by the textile and leather sector has doubled during the past four years, from $1.2 billion in 1991 to $2.4 billion in 1995. Most exporting firms finish clothing under contracts with European textile companies. Increasing competition from Turkey and Morocco in the European market is forcing the Tunisian companies to concentrate increasingly on designer and higher quality clothing, greater diversification away from dominant jean production, and to compete on the basis of "just-in-time" delivery. Tunisian firms can now deliver the product in France in two weeks from the date they receive the order.

9.3.3 Inflationary Trends

The average annual rate of inflation, as measured by the consumer price index, was reduced from 9.5% in the first half of the 1980's to 6.2% on during 1986-94. It slowed from 8.2% in 1991 to 4.0% in 1993, but then started to accelerate somewhat to 4.5% in 1994 and 6.3% in 1995. It is estimated at less than 5% in 1996. Sound fiscal and monetary policies brought down the government budget deficit from an equivalent of 5.5% of GDP in 1986 to 2.7% in 1994 and further to an estimated 1.5% of GDP in 1995.

9.3.4 Foreign Trade Trends

Tunisia's main exports are crude oil, minerals, and some agricultural and manufactured products. In 1994, clothing and leather goods exports were $2.1 billion and earnings from tourism $1.3 billion. Total merchandise exports expanded on average 8.8% per year during 1987-95. They increased from $3.7 billion in 1991 to $4.1 billion in 1992, then dropped to $3.7 billion in 1993, again increased to $4.7 billion in 1994, and further to $5.5 billion in 1995. These fluctuations mostly reflected the unstable impact of rainfall on agricultural output. Imports have similarly fluctuated reflecting changing purchasing power affected by conditions in the agricultural and related sectors. Total imports expanded from $5.2 billion in 1991 to $6.1 billion in 1992, then decreased to $5.8 billion in 1993, expanded again to $6.8 billion in 1994, and further to $7.9 billion in 1995. The trade deficit for 1996 is expected to shrink back to below $2 billion due to expanding exports.

The annual trade deficits are not fully covered by foreign exchange inflows from investment, tourism, and workers' remittances. The remaining deficit is financed by external borrowing and by keeping reserve levels relatively low. Total gold and foreign exchange reserves expanded from $790 million in 1991 to an all-time high of $1.8 billion in September 1995, but then dropped back to $1.4 billion in April 1996. This level covers only two months of imports.

9.3.5 Trade Patterns and Trade Treaties

The structure of exports of goods and services are composed of textiles and leather (29% of total exports), tourism (22%), agriculture and agro-industry (9%), petroleum (8%), phosphates and derivatives (8%), electronics and mechanical industries (8%), and all other goods and services (16%). Main trading partners are the EU countries which account for 75% of Tunisia's total foreign trade. In 1995, 28% of total exports went to France, 19% to Italy, 16% to Germany, and only 1.3% to the US.

Tunisia has concluded a "partnership" agreement with the EU, which entered into force January 1997. Similar to the one concluded with Morocco, Tunisia's tariffs on imports from the EU will be gradually phased out to zero over the next 12 years, which include an initial four-year grace period. Tunisia hopes to obtain financial and technical assistance from EU countries for its industries to adjust and become competitive during this transition period.

Under a 1969 preference agreement with the EU, Tunisia had already been able to exempt from tariffs and quotas its textile and other products to the EU and some fruits and vegetables during the fall and winter months. In exchange, Tunisia granted manufactured imports from the EU preferential access over other sources. Tunisia's agricultural exports to the EU have had no competitive advantage over those from Spain, Portugal, Turkey, and Morocco. Tunisia's manufactured products have fared better, with the EU currently importing 70% to 80% of Tunisia's global industrial exports.

9.3.6 Balance of Payments Trends

The balance of payments situation continues to be precarious with a persistent annual trade deficit of around $2 billion that is not fully offset by foreign exchange inflows from tourism, workers' remittances from abroad, and new foreign investments. The current account deficit narrowed from an average annual 8.5% of GDP in the early 1980's to 4.2% during 1986-93, but has now started to widen to 4.5% of GDP in 1995. Increased external borrowing may become necessary in the future or some devaluation to cope with a future balance of payments crisis, in view of the large trade deficit and low level of gold and foreign exchange reserves. Tunisia's good fiscal and financial management has earned it a Moody's Baa3 rating and successful long-term bond placement of $800 million in Japan's Samurai market and $360 million in Europe in 1996.

Tunisia's large trade deficit and low level of foreign exchange reserves make the balance of payments vulnerable to external shocks that may require government intervention, jeopardizing the progress achieved with trade and investment liberalization and the country's commitments under free trade agreements. Tunisia can attract foreign investment and engage it to help remove this vulnerability in the balance of payments with more vigorous export expansion and diversification, larger private capital inflows, expanding international banking services, rising tourism income, and agricultural development. The economic reforms and investment liberalization adopted by the government have been partial and cautious, however, and insufficient to achieve this strengthening in the balance of payments.

9.3.7 Foreign Exchange Regime

The Central Bank establishes a fixed exchange rate around which the daily rate is allowed to fluctuate. The exchange rate of the dinar vis-à-vis the US dollar has fluctuated between par and a 15% premium during 1991 and 1996.

9.3.8 External Debt

The total external debt currently stands at a relatively high $10 billion, compared to $8.4 billion in 1994. External debt service absorbs 20% of foreign exchange earnings from exports of goods and services. Tunisia, like Turkey, however, has never defaulted on external debt service nor requested any of its debt to be written off.

9.4 Legal/Regulatory Regime

Tunisia operates with a Constitution and an independent judiciary. Its laws are based essentially on the various French Codes of law.

9.4.1 Basic Property Rights/Guarantees

According to a Tunisian lawyer, while the Constitution does not accord a special right or protection to the ownership of private property, this is implied from a number of Tunisian laws and court decisions.

9.4.2 Restrictions on Foreign Investment

Foreigners are denied the right to acquire and own agricultural land, although such land may be available under long-term leases. Companies in the services sector with more than 50 percent foreign equity require prior authorization before doing business in Tunisia. Similarly, while offshore companies (Free Zones) can be 100 percent foreign-owned and operate free of controls, onshore companies that are not wholly exporting in their activities are restricted to less than 50 percent foreign equity in most cases and requires prior government authorization to operate in the country. Many important areas remain closed or restricted, such as telecommunications, transportation, some tourism sectors, most mining, some energy and financial services, and computers and information technology.

9.4.3 FDI Admission/Approval

Except as indicated in the foregoing section, apart from application for incentives, there are no approval requirements for admission of FDI in Tunisia as such. The applicable Investment Incentive Code is Law 93-120 of 27 December 1993 which replaced a number of previous sectorally-focused investment incentives laws to provide a single investment incentives code. It accords National treatment to foreign investment except for the acquisition of agricultural land which is reserved to nationals. However, investments in the petroleum, mining, and financial services sectors are not covered and remain subject to their separate legislation. National and foreign investors no longer need prior authorization. They merely register their investments for statistical purposes. The process of applying for and obtaining investment incentives has been considerably simplified and shortened by the institution of a very effective One-Stop-Shop within the Foreign Investment Promotion Agency ("FIPA") in the Ministry of International Cooperation and Foreign Investment, which is described in detail at section 9.2.7 hereof. As a result of the FIPA One-Stop-Shop activity, the entire process of investment application and award takes less than a week, the shortest period of time noted in all of the countries studied herein.

9.4.4 Treatment of FDI

The Investment Incentive Law accords National Treatment to all foreign investors. Nonetheless, as noted in section 9.4.2 hereof, there are certain departures from this rule. On-shore companies with more than 50 percent foreign equity require prior government authorization to

operate in the country. However, the U.S. Embassy reports "no evidence of discrimination against foreign investors either at the time of the initial investment or later."

9.4.5 Investment Protection

Expropriation is authorized for public purposes under an eminent domain statute but subject to compensation. Although there have been few instances of expropriation of foreign-owned property in recent years, a 1995 case occurred of the seizure of an American-owned commercial shipment that remains unresolved to-date. Tunisia has a BIT with the United States that provides that no expropriation will occur without due process of law and prompt and adequate compensation. Tunisia is a signatory to the New York Convention for the settlement of investment disputes and is a member of the ICSID. It is also a participating country in the investment risk insurance coverage provided by OPIC and MIGA.

9.4.6 Taxation of FDI

The basic corporate rate of income taxation is 35 percent except for agriculture, fishing, and handicraft industries which are taxed at a special 10 percent rate. Dividend distributions apparently are not taxed. There is a VAT whose basic rate is 10 percent generally, but six percent for priority sectors and their products and a rate of from 17 to 29 percent for luxuries. There is a consumption tax that varies for items from 10 percent to over 500 percent for luxuries. There is also the usual range of registration duties, municipal taxes, etc. Tunisia is has entered into tax treaties for the avoidance of double taxation with several countries including the USA (1985), Canada, Spain, Italy, and the UK.

9.4.7 Repatriation/Remittances

Free remittance of profits is limited to companies with at least 66 percent foreign equity that made the original investment in foreign currency. The Tunisian Government's BIT with the United States guarantees freedom to remit profits and repatriate capital, although such may require prior authorization. In early 1996, the U.S. Embassy reported that the Central Bank had started to deny foreign exchange to foreign firms to remit payments for imports of goods and services if these firms did not adequately document the necessity for such importation as opposed to local sourcing. Royalty payments must be approved by relevant ministries in consultation with the Central Bank on a case-by-case basis.

9.4.8 FDI Incentive Programs

The new unified Investment Code provides incentives for: industries producing totally or partially for export; investment in agriculture or fishing; projects promoting environmental protection and pollution control; and investment in socio-economic activities such as rural development, research and technology, and entrepreneurship development. The basic law provides a broad legal framework for investment and is supported by a series of implementing decrees. Under the code, incentives are divided into two categories: (a) those common to all investment activities; and (b) those directed toward specific goals and activities. The incentives

common to all investment activities include: (1) freedom to invest without prior authorization; (2) tax exemption on 35 percent of income and reinvested profits; (3) reduction of customs duty to 10 percent on imported capital goods; (4) exemption of capital goods purchases from the VAT and consumption taxes; and (5) the option to take accelerated depreciation for long-term capital goods. Businesses that produce entirely for export receive: (1) a 10 year tax holiday on all profits after which the exemption is reduced to 50 percent; (2) corporate tax exemption of all reinvested profits even after the 10 year period; and (3) tariff free importation of all products and material needed for their operations and may sell up to 20 percent of their production in the local market. Agricultural and fishing enterprises are considered "totally for export" if they sell at least 70 percent of their production abroad. Companies that export a lesser percentage of their total production receive incentives related to the export portion of their business, e.g., (1) total or partial exemption from income tax only on the income derived from exports; (2) exemption from the VAT and consumption taxes on imports of goods and services used in production for export; and (3) refund of duties (drawback) paid on imports of raw materials or semi-finished products used in production for export. Private national and foreign investments in agriculture, fishing, pollution control, research and technology, or in economically distressed areas may be eligible for additional subsidies. For example, a investment for the collection and treatment of household and industrial waste is eligible for a government grant of up to 20 percent of the whole investment.

Tunisia has two Free Trade Zones. The land is State-owned but managed by a private company. Companies setting up in the zones are exempt from most taxes and customs duties and benefit from special tax rates. Companies with non-resident status receive a flat income tax rate of 20 percent; are guaranteed transfer of foreign currency capital invested in the FTZ and income derived from it; and all payments made in the FTZ may be made either in foreign currency or convertible dinars.

9.4.9 Other Investor Concerns

IPR - Tunisia has comprehensive legislation protecting foreign patents, trademarks, and copyright. Infringements have been minor, affecting mostly consumer goods and computer software and they appear to have been handled in the courts effectively. Tunisia is a member of WIPO and a signatory to the UNCTAD agreement on protection of patents and trademarks. Revised patent legislation is pending. Its copyright law has been updated to cover modern techniques but is still considered not to conform with modern international expectations.

Labor Laws - Tunisia is considered to have rigid labor laws that favor workers. Workers may strike but must first await labor conciliation/arbitration. Social benefits are approximately 28 percent of wages paid.

TUNISIA

"Pros" for FDI in Tunisia

- Generally liberalized, market-based economy.
- Partnership with EU calls for free trade in 12 years and enhanced access to EU market.
- Stable political, social, and economic structure and society.
- Relatively affluent middle-class dominated economy (79% own their own homes).
- Adequate and improving physical infrastructure.
- Very effective One-Stop-Shop facilitation of company establishment and investment incentives applications.

"Cons" for FDI in Tunisia

- Rigid labor laws and a labor/management dispute system that favors labor.
- Exchange availability limited to with Central Bank approval required for current account transactions (must prove lack of local sourcing).
- Concerns expressed about level of IPR protection and enforcement.
- Judiciary not viewed as independent of Government pressures.
- Cumbersome bureaucracy with dilatory administrative decision making.
- Concerns about potential impacts of political/religious turmoil in neighboring Algeria and Libya.
- Weak banking sector.

10.0 RECOMMENDATIONS

10.1 General Recommendations - Achieving a More Favorable Business Climate

10.1.1 Development vs. Stabilization

Egypt should begin implementing policies and reforms targeted directly on achieving a high enough rate of economic growth to reduce unemployment, elevate per capita income, and thereby enhance its market attraction for foreign investors.

Some developing countries, like Turkey, emphasize policies of rapid economic growth at the cost of financial stability, while others, like Egypt, have recently emphasized financial stability first as a basis for, but perhaps at some cost of, economic development. An ideal approach would be to achieve both financial stability and more rapid economic development, as happened in some East Asian countries. Enhanced economic growth, even at the risk of some slightly reduced financial stability, would noticeably enhance Egypt's attraction to potential foreign investors.

10.1.2 Exchange Rate Flexibility

Subsequent to a more vigorous implementation of trade liberalization and interest rate policy reforms, the GOE should begin to phase in a more flexible exchange rate policy in order to attract more FDI, stimulate production for export and achieve enhanced economic growth. At a minimum, it should measure the stability of its exchange rate on purchasing power parity calculations involving a trade-weighted basket of trading partner currencies, instead of solely on the nominal value of the U.S. dollar.

Generally, the developing countries with flexible exchange regimes have been more successful in achieving a satisfactory rate of economic growth than those in which central banks have intervened with the objective of maintaining a relatively inflexible rate of exchange. Fixed rates of exchange are not even maintained by most advanced nations, such as the United States, Japan, or Germany, because fixed rates have a tendency to contribute to balance of payments and trade deficits, increased indebtedness, and loss of reserves by making the currency overvalued in times when domestic inflation rates are higher than those of their trading partners or competitors. An overvalued currency discourages not only exports, but also investments, particularly FDI which utilizes domestic factors of production, especially labor, by:

* making imported components of the initial investment less expensive in local currency terms, and domestic components more expensive in dollar terms, thus encouraging capital-intensive investments and reducing employment generation, and

* depressing profitability by raising the cost of production in foreign currency terms.

A number of countries have successfully attracted foreign investment and encouraged exports by allowing the exchange rate to adjust in line with the differences between the domestic rate of inflation and that of major trading partners.

10.1.3 Trade Liberalization

Import tariffs should continue to be lowered (toward a single, across-the-board, low tariff rate on all imported items) and non-tariff trade barriers dismantled.

The GOE should complete negotiation of the Egypt-E.U. Partnership Agreement while closely following the evolution and impacts of the E.U. "partnership" agreements with Morocco and Tunisia, and the Customs Union with Turkey.

The GOE should continue to exert a leadership role in efforts to promote Inter-Arab economic integration and a regional free trade agreement. It should also renew its application for observer status in the Arab Maghreb Union and aggressively pursue membership thereafter.

Import tariffs should continue to be lowered and non-tariff trade barriers dismantled in order to eliminate protection for the overvalued exchange rate and inefficient domestic industries (efficient ones do not need protection) and thus push companies to prepare for inevitable competition from imports under future free trade agreements. Import barriers should be lowered also in order to eliminate the anti-export bias in favor of production for the highly protected domestic market e.g., import barriers have the effect of skewing direct investments toward less efficient sectors by artificially distorting returns from investments. The range of tariff rate dispersion should also be reduced in order to lower the effective rate of protection. A single, relatively low uniform rate for all imports - as in Chile - would not only ameliorate concerns about effective rates of protection, but would greatly reduce the occasions for corrupt practices in the administration of customs. Reduction of import barriers forces companies to become more efficient. Some would be induced to reach a level of competitiveness at which they can start competing in global markets.

Currently, importers complain that Egyptian customs officials exercise extensive arbitrary powers to decide into which tariff category and under which rate a specific import item fits, and importers have no effective judicial appeal process to challenge arbitrary and discriminatory decisions. The process of customs inspections observed in the ports of Egypt is unnecessarily cumbersome, time consuming, and costly for importers, exporters, producers, and consumers. Valuable port areas are overcrowded and opportunities for theft are encouraged by these outmoded procedures. Other port service operations under state monopolies often result in delays of cargo or vessels passing through the ports, which is costly for Egyptian importers and exporters alike. Quality control inspections are applied not only to food imports, but to a wide

range of consumer goods imports and applied discriminatorily against imports as non-tariff trade barriers. These control measures should be confined to health and safety inspections applying basic global standards to safeguard the population from physical harm, while other decisions on what to import should be left to competitive market forces.

Egypt has been a natural political and economic leader in the MENA Region but it currently faces marginalization as a result of the drive among countries within the region to achieve trade liberalization and market access through preferential trade arrangements. Egypt, which has demonstrated steadying and calming influence in the Middle East peace process, should work to regain its leadership position for economic integration, continuing its efforts to revive the concept of inter-Arab regional economic integration based on common economic interests and trade/investment complementarities present among the nations of the region.

Egypt appears about to sign a "Partnership Agreement" with the E.U. that would provide for increased access over time for Egyptian exports to E.U. markets under a free trade regime to be phased in over a number of years. Entry into this preferential trade relationship would enhance Egypt's attractiveness to foreign investors who desire to find export "platforms" at competitive labor costs from which to access the E.U. market. An increase in FDI-based export sectors or in assembly/processing operations on items destined for export to the E.U. and other world markets could greatly assist in creating employment opportunities for Egyptian workers and in contributing to Egypt's economic growth. Both Morocco and Tunisia have signed such partnership agreements with the E.U. and these are just beginning to be implemented. Turkey has entered into a Customs Union with the E.U. effective this year, which will give Turkey preferential access to E.U. markets. Egypt should follow closely the developments regarding implementation of these agreements in order to develop a strategy for maximizing the benefits of its agreement with the E.U. The GOE needs to be very cognizant of the fact that these existing agreements and their implementation could put it in a relatively critical competitive position when it comes to accessing E.U. markets unless it takes aggressive action to conclude and implement its own partnership agreement in the very near future. It is also noted that Egypt is not currently a member of the Arab Maghreb Union, an admittedly dormant, yet still potential vehicle for North African economic integration that includes Algeria, Libya, Morocco, and Tunisia. Egypt applied for observer status in 1994 but has not pursued the matter. It should pursue observer status and then aggressively pursue full membership thereafter.

10.1.4 Privatization

The GOE should accelerate the pace of its privatization program in all sectors of the economy, aimed at attracting large amounts of private foreign capital, advanced technology, and management oriented to cutting costs for the benefit of exporters and consumers. It should make clear that non-Arab foreign investors are equally eligible with Egyptian nationals and Arab foreign investors in acquiring and operating state-owned assets.

Privatization is an effective way of improving the climate for foreign investment and a quick way for attracting substantial amounts of foreign investment. Egypt has not made full use of

this vehicle for encouraging FDI. On the contrary, Egypt only recently accelerated privatizations and it has shown a clear preference for minority sales, through local stock exchanges or to State employees, a policy clearly designed to discourage rather than encourage participation of foreign investors in privatization. Moreover, Egypt has up till now excluded the large State monopolies in infrastructure industries from equity privatization, the very companies most suitable for and in need for large capital infusions, new technologies, and modern management techniques, best suited to be supplied by large foreign companies. An efficient infrastructure, is essential for rapid export and general economic development as well as attracting further FDI.

10.1.5 Pro-Business Policies

Reforms such as investment incentives, trade liberalization, privatization, regulatory reform, and non-discrimination - to be most successful in attracting FDI - should be applied within a general economic policy commitment toward encouraging competition, deregulating the economy, strengthening the private sector, removing all vestiges of a command economy, and establishing instead, an entrepreneurial, investment-driven, free market economy.

Government officials in North African countries have complained about the reluctance of the private sector to participate in annual US$ 16 billion investments needed in the infrastructure sectors. The real problem lies in the fact that private foreign and local investors have been largely excluded by continuing State monopolies in telecommunications, electric power generation, container ports, railroads, and road construction, and governments have been reluctant to sell these companies to private national and foreign companies. Egypt should offer 100 percent of the equity of these companies in public tenders for bids by private national and foreign investors on non-discriminatory basis. This would bring considerable revenue to the government and new investment, technology, high levels of efficiency, better quality services, and lower costs for public services, benefiting consumers, producers, and exporters.

Government officials continue to decide in which sectors and even in which projects private investors should risk their capital. Thus, in a typical socialist command economy decision, Egypt's Ministries of Transport, Electricity, and Agriculture selected 52 specific projects for private investors to invest in, calculated the amount that private investors would be allowed to invest in each project, and announced it to the business attendees at the MENA Conference in Cairo last November. It appears the private sector was not even consulted in advance about these investments proposed by the public sector, which ranged from the production of flat steel products to the promotion of tourist areas specified by the government. In another instance, the Government, not the private sector, started the feasibility study of a project and then the Minister in charge announced that "Egyptian and non-Egyptian investors will be given chances to invest." While Egypt's Ministers may be comfortable with this sort of "take it or leave it" "command" investment decisionmaking, most foreign investors at least are not used to having their investments chosen for them, but prefer the freedom to decide where, when, and how much to invest and to develop their own feasibility studies that reflect their motivations for investing abroad.

Egyptian government officials should consider how they can withdraw from making decisions about what sectors private investors should invest in and where they should place their investment. A private investor should be left free to decide what it wants to produce, where it wants to produce it, how it will invest to do so, and what prices it wants to charge, whether it wants to export or import, purchase materials locally or from abroad, and whether it wants to reinvest or distribute its profits and when it wants to withdraw its capital. Instead of making enterprise oriented decisions for private investors, government officials should concern themselves with removing all remaining restrictions that impede freedom of choice for private investors and with enforcing only those regulations that protect open competition and protect consumers and the environment from abuse of private monopoly power.

10.1.6 Investment and Export Promotion and Training

Egypt's investment and export promotion efforts abroad should be reviewed and assessed and proposals developed as to how to make these efforts more effective and results-oriented.

Egypt's Foreign Commercial Representation sector should receive training and logistical support to enhance its effectiveness in promoting Egyptian trade and investment.

Targets should be set up in terms of specific dollar amounts of new foreign investment and new exports to be developed within a given time frame and then analyze subsequently the factors responsible for exceeding or failing to meet the planned targets.

The effectiveness of individual investment and export promotion centers abroad, their manpower, management, and programs should be studied and recommendations developed how to make these centers more effective - including the support from commercial officers at Egyptian embassies abroad. Periodic brief training programs should be organized for commercial officers at Egyptian embassies and for investment and promotion personnel with regard to how effectively to:

* collect information about potential foreign joint venture partners or technology licensers or specific Egyptian product market opportunities abroad and how to relay this information rapidly to the Egyptian businesses that would have the interest and capability to follow up such leads;

* set up a data bank of foreign business contacts, including potential foreign investors, importers, or distributors of products with export potential from Egypt;

* distribute information about opportunities to invest in Egypt, export from Egypt, benefit from incentives for FDI, participate in privatizations, or team up with local partners;

* get invited to meetings, conferences, and workshops by local business associations in foreign countries to speak about trade and investment opportunities in Egypt;

* write articles and get them published in the local press about such business opportunities in Egypt; and

* how to assist visiting Egyptian business people in foreign countries to arrange meetings and presentations with local foreign importers, potential investment partners, business associations, and government officials.

10.2 FDI-Specific Recommendations: Enhancing the Climate for Foreign Direct Investment

10.2.1 Sectoral Restrictions

Remove all restrictions focused on private investment generally - and FDI specifically - in industry sectors, except those directly related to production for or maintenance of national security and defense.

Egyptian law continues to impose a number of restrictions, direct and indirect, on foreign investors. Foreigners are not allowed to invest in agricultural, desert, or urban land (except for certain ambiguous authorizations in the Investment Law or recently enacted laws). Most major sectors of industry - particularly basic infrastructural services - remain State monopolies and are closed entirely to the private sector, whether domestic or foreign. Although the Investment Law specifies a number of specific sectors in which foreign investment is allowed, these may arbitrarily be enlarged - or reduced - by the Council of Ministers apparently without notice or input from foreign investors. Foreign companies are barred from acting as commercial agents in domestic commerce and from most importing activities. The scope for foreign investor participation in the Privatization program is limited by preferential equity sales to employees and domestic shareholders, thereafter to foreign Arab investors, and then only to other foreign investors. Among the countries compared, Egypt appears to restrict foreign investment more than Israel, or Turkey.

10.2.2 National Treatment

(a) National Treatment should be accorded to foreign investment without reservations, exclusions, or discrimination.

(b) Egypt's ambiguous laws relating to the rights of foreigners to acquire and use land incident to their commercial ventures should be clarified and FDI accorded enforceable guarantees in that regard.

Section 5.3.1 describes a number of instances in which foreign investment is directly prohibited or otherwise indirectly constrained, all of which violate the spirit of National Treatment

as a modern global standard as well as incorporated in a number of Egypt's bilateral investment treaties. The lack of a clear, unambiguous, enforceable right of foreign investors to acquire real estate for commercial projects, either directly or indirectly through locally-incorporated entities is a major disincentive to and impediment for attracting FDI. Indirect constraints against foreigners and their investments are contained in its company formation statutes, for example, the Companies Law still requires an initial 49 percent preferential public offering of shares to Egyptians and requires a majority of Egyptians on Boards of Directors. While the Investment Law indirectly guarantees National Treatment to foreigners, no other laws apparently do so, nor is such a guarantee contained in Egypt's Constitution, as in many other countries.

10.2.3 Rationalization of Investment-Related Laws

The multiple and often inconsistent laws and regulations governing FDI approval/establishment in Egypt should be rationalized to repeal all current laws affecting FDI and enacting in their place laws that separately and specifically address the substantive aspects of (a) corporate organization/company formation (whether for domestic or foreign investor purposes); (b) investment incentives (whether for domestic or foreign investment); and (c) establishment and operation of Free Trade Zones, e.g., there should be:

* **a single corporation law that addresses only the forms of business organization, their formation, legal requirements, powers, shareholder rights, registration, and licensing to conduct business;**

* **a single investment incentives law that addresses (1) the goals for sectoral or regional development or technology enhancement, and (2) the criteria for, extent, and terms of incentives;**

* **a separate Free Trade Zones law that provides a comprehensive FTZ legal/customs regime integrated with Egypt's basic Customs Code and procedures, but which does not, itself, address incentives for investment therein.**

Egyptian officials, businesspeople, and lawyers alike appear to share agreement that the current array of ad-hoc laws and regulations governing company formation, foreign investment, and investment incentives is chaotic and counterproductive for achieving Egypt's goal of attracting increased FDI. Serious efforts on the part of all of these sectors have been undertaken over the last two or three years oriented toward drafting legislation to replace the existing set of laws, but these efforts have been undermined by a conceptual approach focused on "uniting" essentially disparate substantive areas into a single law that mixes up (and confuses) corporate law (company formation), FDI approval/establishment, and the award of investment incentives for both domestic and foreign investment. Moreover, the existing process for entering FDI in the country involves at least six different steps (as described in subsection 5.3.2 hereof) that involve unnecessary and costly delays that, again, undermine Egypt's hopes for enhanced FDI. What

prospective foreign investors look for in the FDI legal/regulatory regime of a country is a clear, consistent, predictable, and basically transparent and fair set of laws and regulations affecting their investments. This does not characterize Egypt's current legal morass and, unfortunately, drafting efforts to-date do not appear promising for changing it. Both Morocco and Tunisia have recently enacted unified investment codes that simplify the law and the process of approval/establishment/award of incentives. Of the countries studied, Egypt appears to have the least coherent FDI regime.[††] Moreover, while some of the steps involved have been accelerated, Egypt still has the longest FDI processing/approval/incentives award time of all of the countries studied. The above recommendation and the following four recommendations are designed to rationalize and improve Egypt's regulation and processing of new FDI.

10.2.4 Single Agency for Company Formation

Authorize a single GOE agency to regulate and oversee the forms of business, corporate organization/company formation process and procedures. Such agency should confine itself solely to company formation law and procedures (approval of Articles of Incorporation/Statutes, public notices of organization, registration) and exercise no authority or responsibilities regarding approval of investment as such, the feasibility of investment projects, or the award or regulation of incentives.

10.2.5 Single Agency for Investment Approval/Incentives

Authorize a single agency to administer and regulate all investment incentives under a single investment project/incentives approval/award process, utilizing a unified, uniform set of screening procedures applicable to all incentive applicants.

[The investment incentive agency's project review/approval function could be delegated to a standing inter-ministerial review committee, chaired by the agency head, that would, as necessary, include representatives from all GOE ministries and agencies with substantive administrative or regulatory authority/responsibilities over specific sectors (e.g., housing, tourism, new communities, remote areas, Free Trade Zones, etc.) other than generalized industrial activities, but there should be only one single project approval/incentive eligibility decision required for the award and realization of incentives.]

10.2.6 One-Stop Shop

(a) The agencies described in subsections 10.2.4 and 10.2.5 should be established as subdivisions of the same ministry, which ministry should be

[††] The just-enacted Investment Incentives Law, Law no. 8of 1997, does not appear to improve the situation (see Appendix D).

delegated plenary authorities for and oversight of their operational responsibilities.

(b) That ministry should establish a One-Stop Shop <u>in the office of the Minister</u> specifically to provide to prospective and current foreign investors:

*** information regarding FDI in Egypt;**

*** services to facilitate FDI by simplifying and assisting foreign investors through the company formation and investment approval/incentives application process; and**

*** follow-up services to assist approved foreign investment projects to comply with laws, regulations, and procedures required for post-incentive start-up operations, such as local site approvals, registration, chamber memberships, expatriate visas/work permits, standards implementation the like.**

(c) The One-Stop Shop should have sufficient authority from the Minister to coordinate and facilitate all aspects of company formation and incentives applications within the two agencies described in 10.2.4 and 10.2.5 hereof and sufficient backing from the Council of Ministers to successfully invite the cooperation of other relevant ministries and agencies to command the cooperation and assistance of all relevant agencies.

(d) The One-Stop Shop should aggregate in a single site officials of all ministries and agencies relevant to the company formation/investment/ incentives approval process, who are authorized to receive all applications or requests and issue any required permits, licenses, or approvals on-the-spot.

(e) The One-Stop Shop should prepare and publish a simplified but accurate brochure describing the company formation and investment incentives award processes, indicating in detail each step in the process, the authorities/agencies involved (with titles, addresses, and office telephone numbers/faxes), the maximum processing time for each step, all in a "Roadmap" form made available at the One-Stop Shop, of the kind that appears in Appendix <u>C</u>.

10.2.7 <u>Expedited Processing</u>

In order to expedite the processing of company formation and investment incentive screening, both processes should be commenced <u>at the</u> <u>same time</u>

and proceed contemporaneously, rather than sequentially, subject to the reservation that the due and timely formation and establishment of the project's corporate entity shall be a condition to the realization of incentives.

The idea here is that there is no need to delay the screening of an investment project's application for approval and award of incentives in order to complete company formation and establishment. The study's investigation indicates that the company formation process takes a much longer time than the investment screening process, a delay that is not necessary and only discourages foreign investors and impedes their investments. Since most projects won't enter the start-up phase unless and until project approval for incentives has been received, it is more practical to approve the project in concept and award incentives subject to the project's accomplishing the company formation/establishment process. If that doesn't occur, then, in effect, incentives are unlikely ever to be triggered.

10.2.9 Follow-On Licenses, Approvals

The GOE should reduce to the absolute bare necessary minimum (e.g., necessary for public health and safety and national security), monitor, and rigidly control all requirements, national or local, for approvals, licenses, E& O certificates, and all other obstacles to the timely commencement of investment project operations.

A major complaint of many foreign investors in developing countries is that, regardless of the quality of the legal/regulatory regime as such, the endless follow-on requirements of approvals, licenses, certificates, etc., especially on the part of local or other authorities not involved in the investment screening/incentive award process undermine the desirability and even the feasibility of continued operations. The more such obstacles and the longer it takes to deal with them, the lesser is the attractiveness of a country for new FDI and the complaints of existing investors are easily transmitted to prospective investors. This study's results suggests that the GOE can do more to reduce such unnecessary requirements, especially at the local level.

10.2.10 Reduction of Bureaucratic Discretion and Red Tape

The GOE should undertake an aggressive campaign to require clear criteria in FDI-related laws and regulations; transparent and fair procedures for their administration and implementation; reduction of unnecessary red tape; simplification of procedures; especially the exercise of unchecked discretion and arbitrary, officious regulatory intervention on the part of bureaucrats.

The Middle East Times of July 24-27, 1996 quoted the departing U.S. commercial attaché as saying that some three dozen U.S. companies had recently investigated the Egyptian market and decided not to invest there, and that the number one reason for their decision not to invest was Egypt's "tangle of bureaucracy", or "in other words, the benefits they see in coming to Egypt are outweighed by the hassles of doing business here."

It is apparent that the Egyptian bureaucracy is significantly overstaffed for the necessary functions that are required to operate company formation/investment screening processes and procedures. And, as is typical around the world, an overstaffed bureaucracy feels a survival imperative to complicate and delay administrative and regulatory functions by arbitrary exercises of discretion and officious interventions beyond their real scope of authority and responsibility. And, when such a bureaucracy considers itself underpaid, as most do, their ability to complicate and delay official functions provides an easy incentive for the solicitation and acceptance of informal consideration. Where laws are unclear and procedural requirements are subject to excessive discretion, inducements to corruption proliferate. The logical complement to the recommendations preceding this one for rationalizing the FDI legal/regulatory regime and streamlining its implementation, is avoidance of such problems. Nonetheless, it is frequently also the case that, while ministers and senior officials understand and appreciate the need for new, simplified legislation and procedures, the mid and lower levels of the bureaucracy delay or even refuse to implement them. Investor complaints surveyed in this study indicate a noticeable failure of the mid-level bureaucracy in Egypt to implement reforms that the Government has attempted to introduce into the processing of FDI. When this occurs, a government–at its most senior level - must be prepared to ensure the consistency of bureaucratic action with policies introduced, and enforce worker ethic and responsibility requirements within its bureaucracy at all levels.

10.2.11 Investment Incentives

The GOE should shift its focus away from income tax exemption incentives toward providing prospective investors with a comprehensive, enforceable set of guarantees for or against the following:

*** National and/or Most Favored Nation Treatment whichever is better;**

*** No limits on equity participation of foreign investors;**

*** No sectors closed to FDI (except for basic national security);**

*** Post-establishment performance requirements;**

*** Right to judicial review of administrative decisions and actions and international arbitration of investment-related disputes with public authorities;**

*** Stable rates of income and other direct takes;**

*** Guaranteed remittance of profits, repatriation of capital, and current account transfers in foreign curency freely available at market rates; and**

*** Protection and enforcement of project-related property rights (including industrial and intellectual property).**

A number of studies - by the IMF, World Bank, UN/UNCTAD - have all concluded that fiscal investment incentives, principally tax holidays, do not play a significant role in the decisionmaking of multinational corporations as to their investments abroad. Vastly more important to MNCs are the overall business climate in terms of macroeconomic reforms, restructuring, and freedom from unnecessary government intervention in the economy and regulation of economic activity in a general sense, the reduction of non-business political risks, and the legal/regulatory guarantees of respect for property rights; fair, transparent, consistent, and predictable laws, regulations, and practices; and a facilitative commercial legal system. As can be seen by the weights established for the comparative analysis of the investment climates and legal/regulatory regimes of the countries included in this study (Tables 2 and 3 hereof) which ascribed a weight of only 5 percent in terms of investor concerns, unless a tax system is completely out of line with other countries, one would not expect taxes to be a significant determinant of investment. And that is not the case with Egypt, whose effective rate of taxation of FDI is already better than all of the countries studied, such that fiscal incentives are not really needed as a competitive investment attraction device. Moreover, to the extent that operation of fiscal incentive programs are based on performance requirements, it should be noted that the tide of global consensus on the regulation of FDI is to reduce, if not prohibit altogether, imposition of such requirements (as the Uruguay Round's TRIMs Agreement does for a number of performance requirements). Finally, maintenance of fiscally-based investment incentives complicates Egypt's efforts to catalyze regional economic integration, since one of the major impediments to integration negotiations relates to the competition in fiscal "subsidies" offered by nations to attract investment from foreign companies.

10.2.12 Fiscal Incentives/Tax Regime

(a) To the extent that tax-related incentives are offered to attract potential foreign investors, such incentives should be made available in the form of tax credits, deductions, and accelerated depreciation of project-related capital assets, rather than income tax holidays or exemptions.

(b) The GOE should terminate discriminatory income tax rate differences between "industrial" and "commercial" business entities.

(c) The proportional annual stamp tax on share capital should be abolished as counterproductive to the concept of attracting and increasing investment.

Tax holidays are often used to attract potential investors by "inducing" activity deemed critical to the economic development of a nation. Fiscal incentives may be "front-loaded", e.g., designed to reward commitment to desired investment, or "back-loaded", designed to reward performance. Whether front or back-loaded, however, there has to be a degree of certainty in the system of incentives for investors so they'll know, in advance for business planning purposes, the consequences of their actions. Potential investors need to quantify their likely tax liabilities in order to determine prospective profits and, thereby, the viability of a contemplated project. So

they need to know what they can expect from the tax system. Since it doesn't appear necessary for Egypt to "induce" FDI through front-loaded incentives, because its tax regime is apparently already preferable to those of the nations studied herein that are competing with it to attract FDI, such fiscal incentives as are considered useful should operate to reward performance. Incentives comprising tax credits and deductions, accelerated depreciation, do just that, reward activity considered essential to economic development that has taken place, and, generally, without as much of an impact on the fiscal base of the nation. There are uses for inducements in Egypt's tax system, however. Certainly, if Egypt wants to encourage new investment and reinvestment, it makes no sense to apply taxes imposed as a percentage of the amounts of such investment, since that only acts to discourage, rather than encourage, increased investment. Neither, in the modern world, do taxes that discriminate between industrial and commercial business entities make much sense either. They only cloud the attractiveness of the overall business climate for investment, domestic or foreign.

10.2.13 Intellectual Property Rights

Egypt should adopt the draft Patent Law as soon as practical. As enacted, the law should provide protection for chemical products related to foods and pharmaceuticals.

Its Trademark and Industrial Design Laws should be amended to provide for publication and public examination.

The GOE should adhere to the International Convention for the Protection of New Varieties of Plants (UPOV).

Adequate and effective intellectual property protection is a key factor in attracting foreign investment and promoting economic growth and development. Patents and copyrights promote the development of science, technology, art and culture by offering a limited period of exclusivity to inventors and authors. The broadest possible coverage of intellectual property and the flexibility to expand areas of coverage not only reflect global standards of best practices, support adherence to international obligations, but also offer the best opportunities for domestic industry and the public to benefit from economic growth. The GOE has expressed its goal of achieving a world-class intellectual property system, with modern, efficient infrastructure for its implementation. International assistance is available to pursue such goals and any program to attract foreign direct investment requires that their effective pursuit begin immediately.

11.0 RATINGS: HOW OTHERS SEE EGYPT

11.1 Introduction

As discussed in greater detail in Section 1 (Introduction) and Section 3 (Foreign Direct Investment: Basic Concepts) - and enlarged upon in Appendix A, decisions to invest in any given country are made by potential investors upon the basis of certain concerns relating to the country's overall business climate; recent economic performance, stability, and reforms; and legal/regulatory regime. The authors have "rated" these various aspects for the countries assessed herein in, Table 2 (Country Rankings: Business Climate), and Table 3 (Country Rankings: Legal/Regulatory Regimes).

However there exists a whole industry devoted to the assignment of comparative ratings to countries upon which prospective foreign investors depend to varying degree in making their investment locational decisions. These ratings emanate from public international institutions, financial organizations and credit agencies, political risk consultants, and economic analysis institutions. While they each employ some defined methodology in generating absolute scores and comparative ratings, their work clearly also involves a high degree of subjectivity that sometimes results in significant differences in ratings of individual countries for similar substantive areas.

Nonetheless, potential investors take these ratings very seriously and they have become standard inputs for the decisionmaking process. Investors are likely to be influenced, positively or negatively, by conclusions drawn from ratings organizations' sectoral analyses, quantified scores, and comparative ratings. Due diligence requires they be taken into account. And, so, presented herein are a number of important or useful ratings for the countries studied in this report. The reader should be cautioned, however, that the accuracy of such ratings at any given time depends on the currency of information upon which they are based. It appears that, as regards Egypt as of the end of 1996 or early 1997, some of the ratings are dated and may not accurately portray Egypt's real investment climate at the time of this report, even though they will influence prospective investors.

This section divides the ratings accorded Egypt and the comparison countries - which are summarized in Table 8 - into two categories: (1) those likely to be of significant concern to investors [Country Risk, Indexes of Economic Freedom] and (2) those relating to economic and financial areas of more general interest to investors [Sovereign and other Credit Ratings, "Openness", Financial Markets, and Economic Forecasts].

11.2 Country Classification

As of July, 1996, the World Bank classifies Egypt as a "Low-Income Country", while Israel is classified as a "High Income Country" and Morocco, Tunisia, and Turkey are classified as "Lower-Middle Income Countries". According to the Bank's International Economic Analysis and Prospects Division, "for operational and analytical purposes, the World Bank's main criterion

for classifying economies is gross national product (GNP) per capita. . . "Economies are divided according to 1993 GNP per capita, calculated using the **World Bank Atlas** method. The groups are: low-income, $695 or less; lower-middle-income, $696 - $2,785; upper-middle-income, $2,786 - $8,625; and high-income, $8,626 or more." [From "Globalization: A New Role for Developing Countries in an Integrating World", Shigeru Otsubo, The World Bank, International Economics Department, July, 1996.]

11.3 Category 1: Significant Investor Concerns

As pointed out in Section Appendix A, the a principal concern of investors is the risk confronted by their investment in any country. The primary goal of an investor is to realize the highest possible return on his investment at the lowest acceptable risk. The major risks confronting an investor that must be addressed in decisionmaking regarding the investment are political, financial, and economic. There are various rating systems that address those issues.

11.3.1 Country Risk

For comparison purposes, the study selected three major international country risk assessment/rating sources available to prospective foreign investors - the Euromoney Country Risk Ratings PRS (Political Risk Services), and the Economist Intelligence Unit.

The Euromoney Political Risk ratings essentially measure nine weighted specific sectors to develop an overall score on the basis of which it then comparatively rates a given country against a total of 178 nations. The sectors rated, with their weights, are: Economic Performance (25%); Political Risk (25%); Debt Indicators (10%); Debt in Default or Rescheduled (10%); Credit Ratings (10%); Access to Bank Finance (5%); Access to Short-Term Finance (5%); Access to Capital Markets (5%); and Discount on Forfeiting (5%). "Forfeiting" refers to the discounting of commercial bills of exchange or notes without recourse, as a liberalized method of export financing. The country risk categories dealing with political risk and economic performance are found in Category 1 of Table 8. On an overall ranking of 178 countries, Egypt was number 77 with an absolute total score of all sectors of 45.65 (out of a possible 100), while Turkey was 53rd (57.51), Israel 32nd (75.51), Morocco 66th (50.68), and Tunisia 50th (61.62). In terms of political risk itself, Egypt scored 10.51 (out of a possible 25), while Turkey scored 12.45, Israel 15.29, Morocco 11.37, and Tunisia 13.71. In terms of economic performance, Egypt scored 11.7 (out of a possible 25), Turkey 13.72, Israel 16.77, Morocco 13.45, and Tunisia 14.51.

Political Risk Services claims to have the world's first and largest network of country risk specialists. According to its material, it uses two systems for evaluating the risks faced by business in countries around the globe. The first is the Coplin-O'Leary system, which "forecasts the risks related to the general business concerns of: Regime Stability, Turmoil Risk, Financial Transfer Risk, Direct Investment Risk, and Export Market Risk. The second is the ICRG Risk Rating System, which rates political, economic, and financial risks, breaking each down into its key components, as well as compiling compost ratings and forecasts. Basically, Coplin-O'Leary forecasts Financial Transfer, Direct Investment, and Export Market risks, while ICRG rates current Political Risk, Financial Risk, and Economic Risk.

According to PRS, as of February, 1997, the composite country risk scores for the comparison countries are (100 is no risk, 0 is highest risk): Egypt (68.5); Turkey (57.0); Israel (68.0); Morocco (71.5); and Tunisia (73.0). PRS scored Political Risk as follows: Egypt (58.0); Turkey (55.0); Israel (60.0); Morocco (68.0); and Tunisia (70.0). Financial Risk was scored: Egypt (40.0); Turkey (33.0); Israel (40.0); Morocco (38.0); and Tunisia (38.0). Finally, Economic Risk was scored: Egypt (39.0); Turkey (25.0); Israel (36.0); Morocco (36.5); and Tunisia (38.0). In its forecast for the year ahead (to February, 1998), PRS gave the following Composite scores: Egypt (72.0); Turkey (63.5); Israel (76.0); Morocco (72.0); and Tunisia (76.0).

Economist Intelligence Unit - The Economist Intelligence Unit (EIU) is a sister organization to the Economist Magazine. The EIU each year publishes an extremely detailed analysis of the Business Environment in some 55 or so countries, developed and developing, upon the basis of which it ranks the countries with both an overall score and individual categories and sub-categories. The information upon which the business environment analysis is based comes from quarterly examinations of each of the countries and is aggregated on a yearly basis for purposes of the rankings. Ten major categories are assessed including: (I) Political Environment, consisting in turn, of two principal sub-sets, Ia - Political Stability and Ib - Political Effectiveness; (II) Macroeconomic Environment/Economic Stability; (III) Market Opportunities; (IV) Policy Towards Private Enterprise/Competition; (V) Policy Towards Foreign Investment/Investment Environment; (VI) Foreign Trade/Exchange Regime; (VII) Tax Regime; (VIII) Financing; (IX) Labor Market/Skills; and (X) Infrastructure. Overall, there are 66 sub-categories that are examined, "scored" on a 1 (least favorable) to 5 (most favorable) scale, weighted, and reported.

In addition to scoring these, the EIU applies a characterization of their score for each category and sub-category, using the scale: "Very Poor", "Poor", "Moderate", "Good", or "Very Good". For example, in sub-set Ib - "Political Effectiveness", the sub-categories assess: (a) government policy; (b) government efficacy; (c) red tape/bureaucracy; (d) legal system; (e) corruption; and (f) crime. In Category IV - "Policy Towards Private Enterprise/Competition", the sub-categories evaluated are: (a) protection of private property; (b) government regulation; (c) freedom to compete; (d) competition policy; (e) protection of intellectual property rights; (f) price controls; (g) lobbying [presumably the availability and efficacy of private sector - government dialogue on policy issues]; and (h) state control. In Category V "Policy Towards Foreign Investment/ Investment Environment", the sub-categories are: (a) foreign investors; (b) openness of the national culture; (c) expropriation risk; and (d) investor protection. Finally, in Category VII "Tax Regime", the sub-categories are: (a) corporate tax; (b) marginal tax; (c) social security contribution; (d) fiscal incentives for investment; and (e) fairness of the tax system.

The EIU Country Risk/Business Environment report assesses the countries for two major timeframes: (a) conclusions from their recent history, e.g., 1992 through 1996; and (b) a forecast of their performance in each category and subcategory for the period 1997 through 2001. The EIU rankings include only three of the countries compared in this study: Egypt, Israel, and Turkey. But their findings are significant and very useful for comparison purposes and Table 8-A indicates the ratings received in each of the ten primary categories. Table 8-B sets forth all of their comparative ratings in all categories.

For the period 1992 through 1996, the EIU ranks the countries (out of a total of 58) in each of the major categories as follows: Ia - Political Stability - Egypt (43), Israel (27), Turkey (38); Ib - Political Effectiveness - Egypt (37), Israel (26), Turkey (41); II - Macroeconomic Environment/ Economic Stability - Egypt (19) Israel, (45), Turkey (52); III - Market Opportunities - Egypt (51), Israel (29), Turkey (21); IV - Policy Towards Private Enterprise/Competition - Egypt (42), Israel (23), Turkey (41); V - Policy Toward Foreign Investment/Investment Environment - Egypt (20), Israel (1), Turkey (26); VI - Foreign Trade/Exchange Regime - Egypt (48), Israel (35-Tied), Turkey (35-Tied); VII - Tax Regime - Egypt (38), Israel (17), Turkey (35); VIII - Financing - Egypt (43), Israel (28), Turkey (31); IX - Labor Market/Skills - Egypt (46), Israel (17), Turkey (29); and X - Infrastructure - Egypt (38), Israel (19), Turkey (35).

EIU forecasts the following performance for the three countries during the period 1997 - 200l: Ia - Political Stability - Egypt (43-Tied), Israel (51), Turkey (43-Tied); Ib - Political Effectiveness - Egypt (43), Israel (28), Turkey (47); II - Macroeconomic Environment/Economic Stability - Egypt (29) [note, a ten story fall for Egypt], Israel (30), Turkey (58); III - Market Opportunities - Egypt (48), Israel (42) [a significant fall for Israel], Turkey (29); IV - Policy Towards Private Enterprise/Competition - Egypt (44), Israel (28), Turkey (45); V - Policy Towards Foreign Investment/Investment Environment - Egypt (22), Israel (1), Turkey (29); VI - Foreign Trade/Exchange Regime - Egypt (56) [note - a significant fall for Egypt], Israel (44), Turkey (9) [a dramatic rise for Turkey]; VII - Tax Regime - Egypt (42), Israel (21), Turkey (47); VIII - Financing - Egypt (39) [small improvement], Israel (38) [ten point fall for Israel], Turkey (33); IX - Labor Market/Skills - Egypt (52) [a six story fall for Egypt], Israel (19), Turkey (40) [a major fall-off for Turkey]; and X - Infrastructure - Egypt (42) [a four point fall for Egypt], Israel (22), Turkey (34).

Table 8: International Ratings:

*How others see Egypt**[*]

Categories	*Egypt*	*Turkey*	*Israel*	*Morocco*	*Tunisia*
I. World Bank Classification of Economies	Low-Income	Lower middle-income	High income	Lower middle-income	Lower middle-income
II. Country Ratings					
A. Category 1: Significant Investor Concerns					
1. Country Risk Ratings					
a) Euromoney (Sept.'96)					
i) Total Ranking - out of 178 countries	77	53	32	66	50
ii) Score-Political Risk (0-High, 25-Low)	10.51	12.45	15.29	11.37	13.71
iii) Score-Economic Performance (0 Low - 25 high)	11.7	13.72	16.77	13.45	14.51
b) PRS Country Risk Service (Feb' 97)					
i) Composite score (0 high risk - 100 low risk)	68.5	57	68.	71.5	73
ii) Political risk (0 high risk - 100 low risk)	58.	55.	60.	68.	70.
iii) Financial risk (0 high risk - 100 low risk)	40.	33.	40	38.	40.
iv) Economic risk (0 high risk - 100 low risk)	39.	25.	36.	36.5	38.
v) Composite forecast to Feb. '98 (0 high risk - 100 low risk)	72.	63.5	76.	72.	76.
c) EIU: Business Environment Rankings (1992-1996)					
i) Overall Country Rating (out of 58 countries)	43	38	26	NR	NR
ia) Political stability	43	38	27	NR	NR
ib) Political effectiveness	37	41	26	NR	NR
ii) Macroeconomic environment/stability	19	52	45	NR	NR
iii) Market opportunities	51	21	29	NR	NR
iv) Policy towards private enterprise/competition	42	41	23	NR	NR
v) Policy towards foreign Inv./Inv. Environment	20	26	1	NR	NR
vi)Foreign trade/exchange regime	48	35(T)	35(T)	NR	NR
vii) Tax regime	38	35	17	NR	NR
viii) Financing	43	31	28	NR	NR
ix)Labor market/skills	46	29	17	NR	NR
x) Infrastructure	38	35	19	NR	NR

[*] Based on Study Section 11.0 - Ratings: How others see Egypt

Categories	Egypt	Turkey	Israel	Morocco	Tunisia
A. Category 1:Significant Investor Concerns					
1. Country Risk Ratings					
d) Triangle Index (March '96)					
i) Composite ranking (out of 35 emerging countries)	30	24	4	31	26
ii)Economic environment (out of 35 emerging countries)	19	13	8	21	18
iii) Information exchange (out of 35 emerging countries)	32	24	2	30	29
iv) Social environment (out of 35 emerging countries)	29	21	10	31	14
2. Indexes of Economic Freedom					
a) Frazier/CATO Institutes ('96)					
i)Economic freedom rating (out of 102 countries)	79	74	70	81	69
ii) Economic freedom scores (0-1,10) App.	4.	6.	4.3	3.7	4.4
b) Heritage Foundation ('96/97)					
[Free 1.00-1.99; mostly free 2.00-2.99; mostly unfree					
3.00-3.99; repressed 4.00-5.00]					
i) Overall score	3.5	3.0	2.8	2.7	2.6
ii) Trade policy	5	2	2	4	5
iii)Taxation	4.5	5	5	4	3.5
iv) Capital flows/foreign investment	3	2	1	2	2
v) Property rights	3	2	2	2	3
vi) Regulation	4	2	2	3	2
B. Category 2: Econ./Financial Interest to Investors					
1. Sovereign Credit Ratings					
a) Moody's Investor Services ('96)					
i) Foreign currency/long-term	Ba[2]	Ba[3]	A3	NR	Baa[3]
b) Standard & Poor's (Jan '97)					
i) Foreign currency/Long-term	BBB-	B+	A-	NR	NR
ii) Foreign currency/short-term	A3	B	A1	NR	NR
iii)Local currency/Long-term	A-	-	AA-	NR	NR
iv) Local currency/short-term	A2	-	A-1+	NR	NR

Categories	Egypt	Turkey	Israel	Morocco	Tunisia
c) Euromoney (Sept. '96)					
i)Credit rating (1-low 10-highest)	NR	2.29	6.25	NR	4.38
ii) Debt default/rescheduled (1-low 10-highest)	7.27	10	10	9.32	10
iii) Debt indicators (1-Low, 10-high)	9.1	0.05	10	8.81	9.91
d) Institutional Investor					
i) Sovereign credit ranking (out of 135 countries)	62	57	39	59	50
ii) Credit rating (0-low 100-high)	36.7	40.8	52.2	39.7	46.3
e) Major Export Credit Agencies Terms-of-cover					
(Percentage of payment risk assumed by credit agency)					
i) Medium long-term (%)	60	75	NR	68	81
ii) Short-term (%)	60	88	NR	77	88
f) Export Credit Risk - Country Risk Averages 1987-93					
(Per Le Nouvel Economists - Guide des Risqués)	5.0	3.3	3.3	4.1	3.1
1-Low 6 high risk:					
2. IMD/ World Economic Forum-Competitiveness Index					
i) Overall ranking - out of 46 countries (1996)	28	36	24	NR	NR
ii) Overall ranking - out of 46 countries (1995)	29	42	24	NR	NR
3. Independent Strategy - Country Success Rating (Sept '95)					
i) Rating (out of 57 emerging countries)	53	47	38	42	15
ii) Score (out of possible 140)	52	60	70	63	83
4. World Bank "Openness" Rankings (July '96)					
i) Openness Ranking (out of 129 countries)	108	92	27	88	59
ii) Score (0.00-closed, 6.00-open)	0.3	0.4	1.4	0.4	0.7
5. IMF Article VIII, Arts. 2,3,4 Signatory	No	Yes	Yes	Yes	Yes
(Acceptance of Currency Convertibility/transferability obligations)	-	(1990)	(1993)	(1993)	(1993)

Categories	Egypt	Turkey	Israel	Morocco	Tunisia
6. Financial Markets					
a) WB/IFC Emerging Markets Global Composite Index ('97)					
i) Listed in global composite index?	Yes	Yes	NA	Yes	No
ii) Listed in investables composite index?	No	Yes	NA	No	No
b) Arab Monetary Fund Composite Index					
i) Listed in composite index Q1 '96/weight	90.41	NA	NA	112.57	98.06
ii) Relative size of financial markets	9.78%	NA	NA	7.54%	4.74%
iii) Value trade US$ millions Q1'96	169.19	NA	NA	46.31	78.37
7. UNDP Human Development Dept. ('96)					
i) Country ranking (out of 174	106	84	24	123	78
ii) UNDP characterization of human dev.	Medium	Medium	High	Medium	Medium
iii) Human development index (0-low, .999 high)	.501	.751	.957	.489	.657
8. Economic and Other Forecasts					
a) Euromoney GNP growth forecasts					
i) GNP growth ranking	76	62	43	64	59
ii) GNP growth forecast 1997 (% age)	3.67	4.35	5.	5.	4.50
b) Middle East Economic Digest ('97)					
i) GDP growth forecast 1997 (% age)	5.	3.	NR	5.	5.
ii) Inflation forecast 1997 (% age)	7.	82.90	NR	5.	5.20
c) EIU: Business environment Rankings-Forecast 1997-2001					
i) Overall country ranking (out of 58 countries)	45	41	30	NR	NR
ia) Political stability	43	43	51	NR	NR
ib) Political effectiveness	43	47	28	NR	NR
ii) Macroeconomic environment/stability	29	58	30	NR	NR
iii) Market opportunities	48	29	42	NR	NR
iv) Policy towards private enterprise/competition	44	45	28	NR	NR
v) Policy towards for. Inv./inv. Environment	22	29	1	NR	NR
vi) Foreign trade/exchange regime	56	9	44	NR	NR
vii) Tax regime	42	47	21	NR	NR
viii) Financing	39	33	38	NR	NR
ix) Labor market/skills	52	40	19	NR	NR
x) Infrastructure	42	34	22	NR	NR

11.3.2 Economic Freedom

FRAZIER/CATO Institutes-in January, 1996, the Economist Magazine reported on a study co-sponsored by the Frazier Institute of Vancouver, British Columbia (Canada), the Cato Institute (Washington, D.C.), and the Institute of Economic Affairs in London [Economic Freedom of the World: 1975-1995 by Gwartney, Lawson, and Block]. The study attempted to define and measure "economic freedom" and to rate it for some 102 countries over the period 1975-1995. According to the Economist, "Stripped to its essentials, economic freedom is concerned with property rights and choice. Individuals are economically free, if property that they have legally acquired is protected from invasions or intrusions by others, and if they are free to use, exchange or give away their property so long as their actions do not violate other people's similar rights." The Economist concludes that "the more economic freedom a country had in that period, the more economic growth it achieved and the richer its citizens became." The study authors chose 17 "measures" of economic freedom from four broad areas: Money and Inflation ("Does government protect money as a store of value and allow it to be used as a medium of exchange?"); Government operations and regulations ("Who decides what is produced and consumed?"); "Takings" and discriminatory taxation ("Are you free to earn, and to keep your earnings?"); and International Exchange ("Are you free to exchange goods and money with foreigners?"). The accompanying chart listed the 102 countries in terms of their "scores" (0 to 10 - least to most freedom) and their comparative rankings by score. The following are the approximate scores and rankings (out of 102 countries): Egypt - 4.2 (79); Turkey - 4.2 (74); Israel - 4.2 (70); Morocco - 3.9 (81); and Tunisia - 4.3 (69).

Heritage Foundation-United States investors are believed to be significantly influenced by the Index of Economic Freedom published each year by Washington's Heritage Foundation [The Index of Economic Freedom by Johnson & Sheehy, The Heritage Foundation]. Like the Economist, the authors of the Heritage index conclude that "most rich countries are . . . the most economically free. Conversely, . . most poor countries have economies that are unfree." The authors rated over 100 countries with regard to 10 "factors": Trade Policy; Taxation Policy; Government Consumption of Economic Output; Monetary Policy; Capital Flows and Foreign Investment; Banking Policy; Wage and Price Controls; Property Rights; Regulation; and Black Market. Utilizing as a measure that 1.00 to 1.99 equaled "Free"; 2.00 to 2.99 "Mostly Free"; 3.00 - 3.99 "Mostly Unfree"; and 4.00 to 5.00 "Repressed", the Heritage Foundation's latest report, dated 1995, rated each of the ten above-described "factors" (shown in Table 8) and the study countries scored as follows: Egypt - 3.5 ("Mostly Unfree"); Turkey - 3.0 ("Mostly Unfree"); Israel - 2.8 ("Mostly Free"); Morocco - 2.7 ("Mostly Free"); and Tunisia - 2.6 ("Mostly Free").

11.3.3 The Triangle Index

Described as the "World Times Wealth of Nations Index", the "Triangle Index" "combines and weighs equally the economic, social and information exchange foundations on which each country rests." According to the World Paper of April, 1997 (published locally in Business Today), "the index was developed in part to help money managers and other sources of capital make investment decisions with a greater appreciation of each country's relative strengths,

weaknesses, and potential." Overall, the index provides scores and rankings in three major ranking areas, "Economic Environment", "Information Exchange", and "Social Environment". Within those areas, there are apparently included subsidiary areas of concern such as the degree of commercial property rights protection, a country's "integration into the international economy", and four measures of "how efficiently businesses can operate in each country". Individual scores and rankings are listed in Table 8 hereof. In terms of overall "scores", out of 35 developing economies measured, Egypt ranked 30; Turkey - 24 (down 3); Israel - 4 (up 1); Morocco - 31 (down 1); and Tunisia - 26 (same as last year).

11.3.4 IMF Article VIII Obligations

As pointed out in Appendix A and Section 3 of this report, a major consideration for prospective foreign investors is the degree of flexibility a country shows in ensuring that invested capital may be repatriated, profits remitted, and current account transactions effected, in freely available foreign exchange without restrictions thereon.

Article VIII of the International Monetary Fund's Articles imposes certain obligations on member countries. Section 2 thereof prohibits members (except with approval of the Fund) from imposing restrictions on the making of payments and transfers for current international transactions. Article 3 prohibits (except with IMF approval) members from engaging in multiple currency practices or discriminatory currency arrangements. And Section 4 requires member countries, subject to certain conditions, to purchase balances of their national currency from other Fund members, which represent balances acquired from international transactions or which must be converted to make payment for current transactions. Article XIV of the Fund's Articles establish limited exceptions to Article VIII, Sections 2,3, and 4's requirements. Member countries may "accept" to be bound by the obligations of Article VIII, Sections 2,3, and 4 at any time, but, having done so, they may no longer avail themselves of the transitional exceptions of Article XIV, Section 2, and may not thereafter maintain any exchange measures inconsistent with Article VIII, Sections 2, 3, and 4. As of December, 1996, Egypt had not formally accepted the obligations of Article VIII, Sections 2, 3, and 4, although 137 countries have done so, including all of the comparison countries in this study, e.g., Turkey, Israel, Morocco, and Tunisia. It is believed, however, that Egypt is in de facto compliance with Article VIII, Sections 2, 3, and 4, but formal acceptance of such obligation would be reassuring to prospective foreign investors.

11.4 Category 2: Economic/Financial Areas of Interest to Investors

While "risk" is perhaps the predominant preoccupation of potential direct investors in essaying the desirability of investing in a country, or in that country as opposed to other countries, there are a number of other areas of interest to them as well. A country's economic performance to-date, its sovereign credit ratings (the "risk" to creditors and portfolio investors), competitiveness, and "openness" characteristics, policies for currency transferability, money markets, levels of human development, and economic prospects are all also of major interest. All of these are subjects for scoring and rating by international institutions and the following are some of the ones that compare Egypt with its major competitors for attracting foreign investment in the MENA region.

11.4.1 Sovereign Credit Risk

Sovereign risk ratings, although they technically only rate the long-term and short-term risk of debts incurred by nations as such, are important because they also constitute the benchmark by which most other borrowers in those nations are judged, and sovereign credit ratings are inevitably utilized in pricing debt issues, whether governmental or not. Sovereign risk ratings are essentially assessments of the relative likelihood that a borrowing country will default on its obligations. According to a recent study, 90 percent of sovereign credit risk ratings are based on six factors: per capita income, GDP growth, inflation, external debt, level of economic development, and default history ["Determinants and Impact of Sovereign Credit Ratings", Cantor and Packer, FRBNY Economic Policy Review, Oct., 1996]. Generally speaking, the sovereign credit risk rating given a particular country establishes, in effect, a rating "ceiling" for all debt issued by entities - public or private - domiciled in the country.

Four major sovereign credit risk ratings reporting sources: Moody's, Standard & Poor's, Euromoney, and Institutional Investor were reviewed for this study as well as the "Terms of Cover by Major Export Credit Agencies" reported by the World Bank.

Moody's - Late in 1996, Moody's Investors Service rated Egypt's sovereign credit risk. It received a Ba2 rating for long-term, foreign currency risk - the basic "benchmark" rating - a rating considered by the international financial sector to be "one grade below investment grade", in effect, a "speculative" debt. In comparison, the other countries studied in this report received the following long-term, foreign currency risk ratings: Turkey - Ba3; Israel - A3; Morocco - (not rated); and Tunisia - Baa3 (see Table 8). According to Moody's, their rating is " a measure of the ability and willingness of the country's central bank to make available foreign currency to service debt, including that of the central government itself" [Handbook of Country and Political Risk Analysis, edited by Coplin & O'Leary, Political Risk Services, International Business Communications, East Syracuse, NY, 1994]. According to Moody's,

> "in assessing a sovereign state's ability to repay, the analyst's attention focuses on two often interrelated ways in which a country may fail to meet international debt obligations. First, a nation may default because of chronically deficient foreign exchange earnings, most often due to ongoing vulnerabilities in the country's pattern of wealth generation. . . Second, a country's borrowers may default because of a short-term condition of illiquidity - for example, if it suffers a sudden cash flow interruption from foreign exchange earnings. In both cases, the process of evaluating the nation's ability to repay can be described as a search for structural problems, anomalies, or rigidities that may point to long-term vulnerabilities in a country's pattern of wealth generation. This involves a host of interrelated political, economic, social, and cultural facets of the nation . . ." (emphasis by Moody's)

In deciding upon a country's rating, Moody's looks at fundamental foreign currency repayment risks, structures of social interaction, social aspects, political dynamics, "economic fundamentals",

external debt load, its "comparative debt burden" [(a) external debt divided by GDP, and/or (b) external debt divided by total exports of goods and services, including earnings on the country's foreign assets and net unilateral transfers - when positive]. In examining "social interaction" it looks at "conflicts in society" and "class, status hierarchy, interest group etc."; "distribution of income and wealth; religious, ethnic, or linguistic differences; conflicts over lifestyle and ethical norms; or ideological splits reflected in struggles for control of institutions". . . "the strength of organizations such as labor unions, business federations, trade and professional associations, and single-issue movements". . ."the legitimacy" of established authority . . .and "psycho-cultural" factors such as "the deep-seated attitudes and norms that regulate everyday behavior." In the area of "social action", Moody's looks at "the strength of groups" and the part they play in the "state's policy arena". In assessing "political dynamics" it looks at "the Degree and Nature of Political Intrusiveness on the Cultivation of Wealth", "Depth and Experience of Government Bureaucrats", "Political Intrusiveness on Economic Management", "Political Links with Foreign Partners", "Past Behavior Under Stress" and "Regime Legitimacy". Among the "Economic Fundamentals" Moody's looks at are: "The Nation's Resources", "Resource Exploitation", "Quality of National Economic Management", "Structural Dependencies on Export/Import Sectors", "Export Mix", "International Capital Flows", and "Austerity Programmes".

Standard & Poor's - Standard & Poor's Ratings Group styles itself as "the world's leading debt-rating agency." According to S&P, its sovereign debt rating "reflects a government's ability and willingness to repay publically issued debt in a timely manner, and is based on the country's overall creditworthiness." Its rating methodology is forward-looking in nature, with ratings based on current analysis and forecasts of two basic risk areas, political and economic. Political Risk is said to address the "willingness of a sovereign to repay debt on time" and looks at a country's political system, social environment, and international relations. According to Standard & Poor's:

> "Evaluation of the political system's stability focuses on the orderliness of succession in political leadership, the system's responsiveness and adaptability to changing economic and social conditions, and the degree of consensus on major political, social, and economic issues. Other important aspects of the political system which are examined include the extent of public participation in the political process; the degree of centralization in decisionmaking; and characteristics of major political parties and coalitions.
>
> "The stability of the social environment is evaluated by examining a range of economic and other factors. Economic factors include living standards, wealth and income distribution, and labor market conditions, in particular the structure and degree of politicization of labor unions. Noneconomic factors include cultural and demographic characteristics of the population, such as its growth and density, literacy levels, urbanization trends, and the political significance of important regional, racial, religious, and other cultural differences within the country.
>
> "The impact of external relations on political risk is subdivided into two broad areas. The extent of integration with the multilateral trade and international financial systems suggests a government's incentives to honor its foreign obligations. The nature of and

> continuity of relations with neighboring countries indicate potential security risks. National security is of concern because the presence of potential military threats can burden budgetary balances and prices, deprive the economy of investment funds, and strain the balance of payments."

In the area of Economic Risk, S&P looks at: external financial position; balance-of- payments flexibility; economic structure and growth; management of the economy; and economic prospects. Its evaluation of a country's external financial position emphasizes the burden of external debt and the adequacy of international reserves. Its debt burden includes the direct and guaranteed debt of the central government, as well as obligations of other levels of government, and the nonguaranteed debts of other public entities, plus claims on the private sector. Although not measured as a part of external debt, S&P also estimates nondebt liabilities such as inward direct and portfolio equity investment. International reserves comprise the country's holdings of foreign currencies and gold, while S&P also looks at the country's "foreign assets", including public sector assets, overseas assets of its banking sector, and assets of the non-bank private sector including foreign securities and direct and portfolio equity investment abroad. In looking at Balance-of-Payments, S&P assesses "the adequacy and sustainability of current and possible future patterns of external payments." It examines merchandise trade and other current account transactions as well as the structure of trade in merchandise and services and other transfers. In the area of Economic Structure and Growth, S&P evaluates the: level of economic development; diversification of output; availability of natural resources; and the rate and composition of economic growth. For "Economic Management", S&P looks at the country's "willingness and ability to maintain economic balance in the face of potentially disruptive domestic and external forces", by assessing the country's fiscal, monetary, and structural policies. "Fiscal policies" evaluates trends in the public sector borrowing requirements, methods of deficit financing, and the public debt burden. Monetary policy focuses on the effectiveness of achieving policy targets, e.g., the impact on trends in prices, the exchange rate, and the growth and allocation of credit. Structural policy is evaluated for its implications for long-term economic efficiency and short-term stabilization, e.g., capital and money market reforms, which can increase economic efficiency by improving the process financial intermediation, consumer and investor access to credit, changes in the tax code, foreign trade and capital regimes, investment policy, and the regulatory environment.

In early January, S&P rated Egypt's sovereign credit risk for the first time. It gave Egypt a BBB- rating for long-term, foreign currency debt, and an A-3 rating for short-term foreign currency debt (it also received ratings of A- and A-2 for long-term and short-term local currency debt, respectively). Egypt's ratings are considered "investment grade" by S&P (any rating lower indicates a "speculative" grade). It notes that the BBB rating (the lowest of investment grade ratings) means the debtor "is regarded as having an adequate capacity to repay interest and repay principal. It goes on to say of a BBB debtor, that, "Whereas it normally exhibits adequate protection parameters, adverse economic conditions or changing circumstances are more likely to lead to a weakened capacity to pay interest and repay principal for debt in this category than in higher rated categories." A Minus (-) notation indicates a lower standing within a given rating as opposed to a (+) rating which indicates a higher standing therein. Egypt's long-term foreign

currency rating compares with the other countries studied for this report as follows: Turkey - (B+); Israel - (A-); Morocco - (not rated); and Tunisia - (not rated).

Euromoney - The Euromoney credit risk assessment uses nine categories of input in three broad weighted areas - analytical indicators (40%), credit indicators (20%), and market indicators (40%) - which are scored by 35 outside economists and political analysts. Scores for each sub-category are also weighted. The eight sub-categories and their weights are: The eight sub-categories and their weights are - (a) Analytical indicators: (1) political risk - 15%, (2) economic risk - 10%, (3) economic indicators (e.g., debt service/exports, external debt /GNP, balance of payments/GNP) - 15%; (b) Credit indicators: (4) payment record - 15 %, (5) rescheduling - 5%; and (c) Market indicators: (6) access to bond markets - 15%, selldown on short-term paper - 10%, and (8) access to discount on forfaiting - 15%. Credit ratings are the average of the sovereign credit ratings from Moody's and S&P, except that countries without credit ratings [in this study, for example, Morocco and Tunisia] or with a credit rating of less than "BB-", score zero.

As of September, 1996, Euromoney accorded Egypt a 0.00 credit rating (out of a possible 10) (meaning either "unscored" or its extensive rescheduling of debt after negotiations with the IMF and Paris Club). Of 178 countries, Egypt ranked 77th with an overall score of 45.65 (out of a possible 100.00), with a Debt/Default or Rescheduled figures of 7.27 and Debt Indicators figure of 9.1 respectively. This compares with the other study countries as follows: Turkey - Rank (53), Credit Rating (2.29), Total Score (57.51), Default/Rescheduled (10), and Debt Indicators (9.05); Israel - Rank (32), Credit Rating (6.25), Total Score (75.51), Default/ Rescheduled (10), and Debt Indicators (10); Morocco - Rank (66), Credit Rating (0.00), Total Score (50.68), Default/Rescheduled (9.32), and Debt Indicators (8.81); and Tunisia - Rank (50), Credit Rating (4.38), Total Score (61.62), Default/Rescheduled (10), and Debt Indicators (9.19). It is interesting to compare Egypt's September, 1996 score with its recent scores. For example, in terms of overall ranking, it fell from 72 in March 1993, to 73 in September 1993, then ranked 69th in March, 1994, only to fall again to 77 in the September 1996 rankings. But it appears that this fall reflects not so much an absolute decline in Egypt's credit fortunes, as a relative improvement in those of several other countries.

Institutional Investor - The financial magazine, Institutional Investor, measures and rates sovereign "creditworthiness" on a semi-annual basis, in March and September of each year. Its ratings are based upon information provided by some 75 to 100 "leading international banks." Bankers are asked to grade each of the countries in certain categories on a zero to 100 scale, with 100 representing least likelihood of default. The banks are not permitted to rank their home countries. The individual responses are weighted using a formula that gives more importance to responses from banks with greater worldwide exposure and more sophisticated country analysis systems. The magazine rates developed countries on somewhat different criteria than so-called "emerging countries" or "rest of the world." With the exception of Israel, all of the comparison countries in this study are considered emerging countries. They were rated by each banker according to a composite of zero to 100 individual scores for: (1) debt service; (2) political outlook; (3) economic outlook; (4) financial reserves and current account; (5) trade balance; (6)

foreign direct investment; (7) fiscal policy; (8) inflow of portfolio investments; and (9) access to capital markets.

The magazine's March, 1997 ratings marked the comparison countries as follows (ranking/credit rating): Egypt - 62 / 36.7; Israel - 39 / 52.2; Morocco - 59 / 39.7; Tunisia - 50 / 46.3; and Turkey - 57 / 40.8. Compared to six months previous, the September, 1996 rankings, Egypt remained in the same 62nd position; Israel went up a notch (from 40th); Morocco fell a notch (from 58th); Tunisia fell a notch (from 49th); and Turkey fell three places (from 54th). It is interesting to compare the countries' most recent ratings with those of three and a half years ago. In September, 1993, Egypt ranked 67th; Israel - 46th; Morocco - 54th; Tunisia - 48th; and Turkey - 42nd.

Major Export Credit Agencies/Terms of Cover - "Cover" refers to the percentage of total credit risk an export credit agency requires lenders to assume in return for its guarantee or insurance of an export credit. If a guarantee, the cover will be provided to banks and other financial intermediaries; if insurance, directly to the exporting firm. The higher the cover percentage of the risk guaranteed or insured by the credit agency, the lower the percentage of total risk the actual lender must assume, such that "cover" operates as a form of credit rating, e.g., the lower the cover, the higher the risk of non-payment, and, thus, the lower the borrower's credit rating. Thus cover is also intimately related to establishing the insurance premium. For example, France's official export credit agency, the Compagnie Francaise d'Assurance pour le Commerce Exterieur or "COFACE", scores credit risk (and, thereby, its cover policy) on the basis of three primary factors: claims experience; economic and political experience; and legal and judicial constraints. "Claims experience relates to the number of claims paid previously plus the experience of other national export credit agencies with the country involved. "Economic and political experience" reflects: (a) the relationship of foreign debt to GNP; (b) relationship of foreign debt to export earnings; (c) country risk assessments by other organizations; and (d) other political factors (such as serious internal or international conflict). "Legal and judicial constraints" reflects: (a) the nature of the legal system, the "rule of law", and transparency of administrative and judicial processes; (b) legislation on guarantees and insurance; and (c) the type of judicial system (Code versus Common Law) and its tendency to recognize or not, international or bilateral conventions and agreements as binding. Each nation's export credit agency has a range of similar inputs in determining its "cover policy."

According to the World Bank Quarterly's "Financial Flows and Developing Countries" of May, 1996, the following was the "Summary Measure of Terms of Cover by Major Export Credit Agencies" [percentage of risk assumed by such agencies]as of the end of September, 1995 (latest available figures): Egypt - Medium/Long-Term (60%)/Short-Term (60%); Turkey - Medium/ Long-Term (75%)/Short-Term (88%); Israel - not rated; Morocco - Medium/Long-Term (68%)/Short-Term (77%); and Tunisia - Medium/Long-Term (81%)/Short-Term (88%).

International "Competitiveness" Scores - Each year since 1989, the World Economic Forum and the International Institute for Management Development (IMD) have produced the World Competitiveness Report, characterized by IMD as "a unique tool for international business executives to evaluate the business environment of particular countries or to back up international

investment decisions." IMD defines "competitiveness" as "the ability of a country to create added value and thus increase national wealth by managing assets and processes, attractiveness and aggressiveness, globality and proximity, and by integrating these relationships into an economic and social mode." Based on a 72 question survey of over 3,000 international business executives, the 1996 report scores 46 countries using 230 separate criteria included in eight basic "competitiveness factor" categories, e.g., (1) Domestic Economy - 27 criteria; (2) Government - 34 criteria; (3) Internationalization - 34 criteria; (4) Management - 25 criteria; (5) Finance - 17 criteria; (6) Infrastructure - 29 criteria; (7) Science and Technology - 17 criteria; and (8) People - 42 criteria. The countries included in the survey are said to represent "95 percent of the world's total FDI, 94 percent of world economic output, and 93 percent of world exports of goods and services."

In its 1996 international competitiveness composite rankings, the IMD ranked Egypt 29th among the 49 countries ranked, with Israel and Turkey ranked at 24 and 42, respectively. Morocco and Tunisia were not rated. Egypt did surprisingly well, ranking above such significant developing countries as Indonesia (30), Mexico (33), China (36) and India (45) as well as above some "developed" countries such as Spain (32), Greece (39), and Italy (41). The publication, Egypt Focus, in its issue of March, 1997, reported on the various subset rankings among the various criteria used to rate countries in the report. In the area of overall economic growth, Egypt ranked 10th among the countries (developed and developing) ranked, four places above the USA. But when the economic growth index was combined with "market growth", which relates the economic size of each of the countries to their actual growth, Egypt ranked 33rd. In various criteria under the basic category of "Openness", Egypt scored first in terms of capital account restrictions; 6th in terms of export position as a policy priority; 7th with regard to the impact of exchange rates on exports; 13th for foreign investment protection; 16th in terms of tariffs and quotas (e.g., the "openness" of its markets); 35th for foreign investors' freedom to acquire corporate control; 36th for foreign access to local capital markets; 37 for investment incentives; 38th for cross-border ventures; 38th for both access to international distribution and for protectionism; and 47th for average tariff rate. In other important categories, Egypt ranked: 23 in Management; 24th in Civil Institutions and in Technology; 29th in Infrastructure; and 40th in Labor matters.

11.4.2 Other Ratings

"Index of Success" - The organization Independent Strategy has developed an "Investing in Success" rating analyzing for 57 emerging countries - "in qualitative and quantitative terms" - the key criteria in politics, society, and economics "that make for a successful economic take-off." They define "success" as meaning "sustainable long-term growth in output and per capita income." According to Independent Strategy, they use their criteria to tell "whether an economy meets the criteria to become an emerging market" as opposed to a "submerging market". The criteria for success are broken down into four major groups: cultural factors, public policy, state of the domestic economy, and external adaptability. "Cultural factors" relate to whether the people in the country "have a real desire to become rich through education, hard work, and entrepreneurial drive" and measure literacy, labor productivity, population growth, and a so-called "dependency ratio". "Public policy" relates to whether the government adopts policies that will

raise savings or investment or spends "unproductively" and measures the relationships of government expenditures to GDP, budgetary balances to GDP, and external debt to exports. "Domestic economy" asks the question "are savings and investment at a high enough rate to generate growth without overheating through inflation and without relying too much on inward investment from abroad" and measures the relationship of FDI to GDP, total trade to GDP, growth in exports, and wages per hour. The index also measures certain "social" factors, such as the relationships of education spending to GDP, health expenditures to GDP, the number of telephones per 1000 people, and overall income distribution. Finally, "external adaptability" asks the question "is the economy open enough to global trade and investment and are labor costs low enough to enable companies to compete in world markets?"

On the basis of the foregoing criteria, Independent Strategy rated 57 developing countries on a 1 to 140 score with rankings of each of the countries scored. According to their ranking, Egypt ranked 53 out of 57 countries with an approximate 50 score. Other countries in this study were ranked and received scores as follows: Turkey ranked 47th with a 60 score; Israel ranked 38th with an approximate 68 score; Morocco ranked 42nd with an approximate 63 score; and Tunisia ranked 15th with an 83 score.

"Openness" - A recent World Bank study entitled "Globalization: A New Role for Developing Countries in an Integrating World" undertook to rank 129 countries by "openness measures", e.g., taking an unadjusted ranking by the size of trade/GDP ratio, and adjusting it by (1) real (1987 US$) values of export and import of merchandise collected for the period 1990-92; (2) population data; and (3) outputs evaluated using IMF purchasing power parity (PPP) scales for 130 countries covering the same period. It then proceeded to rank countries by the ratio of their actual "trade/PPP-GDP Ratio" to an average "Trade/PPP-GDP Ratio" for economies of the same size measured in PPP. From these efforts, the authors arrived at an overall measure of "Openness" on a 0.00 to 6.00 scoring. The following are the rankings and scores of the countries addressed in this report: Egypt - Rank (108), Score (0.3); Turkey - Rank (92), Score (0.4); Israel - Rank (27), Score (1.4); Morocco - Rank (88), Score (0.4); and Tunisia - Rank (59), Score (0.7).

WB/IFC Global/"Investable" Composite Indexes - The World Bank's International Finance Corporation (IFC) has developed an Emerging Markets Data Base (EMDB) that is considered one of the world's primary sources for comprehensive information and statistics on the stock markets of developing nations. The EMDB tracks or "indexes" the stockmarkets in most developing countries (country or "global" indexes or "IFCG") and individual stocks in many of them in order to provide information thereon to prospective investors. Utilizing information in its EMDB, the IFC later developed its Composite Global Index that, since 1975, has measured the day-to-day performance of some 1,900 stocks in developing countries considered to have "emerging stock markets". The IFCG Composite Index is designed to permit country comparisons through a "composite" consistent across national boundaries, thus eliminating many inconsistencies between individual country indexes resulting from differing methodologies. One limitation of the IFCG and composite country indexes was that they included securities without regard to the stock's availability to overseas investors. In 1993, the IFC introduced "Investable Indexes" for individual countries, which essentially adjust information found in any given country index to reflect the accessibility or restrictions of markets and individual stocks for foreign

investors, as a service to both active (essentially FDI) as well as passive (portfolio and institutional) investors. And, similar to its Composite Global Index, the IFC also publishes a Composite Investables Index (IFCI). Currently the IFC Global and Investable Composite indexes include 44 and 30 country markets, respectively. A country's inclusion in the composite indexes is said to reflect the IFC's conclusion that there is such significant potential shareholder interest in its securities market that foreign funds that track the indexes may allocate higher percentages of their portfolios to stocks from such countries.

The comparison countries in this study have only recently begun to appear on IFC composite indexes. The IFC initiated index tracking of stockmarkets in Egypt and Morocco in September, 1996. On 02 January, 1997, the individual indexes for Egypt and Morocco entered the IFCG Composite Index.. Shortly thereafter, on 03 February, investable indexes for Egypt and Morocco also were produced on a stand-alone basis until such time as they entered the IFCI. But not all of the comparison countries appear in composite indexes. Tunisia, for example, is considered by the IFC to be a "Frontier" market - e.g., markets that "tend to be relatively small and illiquid even by emerging market standards, and information for which is generally less available than in other markets." Frontier markets are not included in the IFC Global Composite Index and are not considered "investable" under its definition even thought they may be open to foreign portfolio investment. Israel is not included in the indexes because it is considered a "developed" country market.

However, most Arab countries and all of the comparison countries except Israel are also included in the financial markets data base and Emerging Markets Composite Index developed by the Inter-Arab Rating Company, established in 1995 by the Arab Monetary Fund with the cooperation of the IFC.

UNDP Human Development Rating - Each year the United Nationals Development Programme (UNDP) publishes its Human Development Report which currently ranks some 174 countries on the basis of composite scores reflecting three major criteria: life expectancy, educational attainment, and "adjusted real income". The countries are characterized in terms of the ranking groups as follows: Score of 1 - 57: "High Human Development"; 58 - 126: "Medium Human development"; and 127 - 174: "Low Human Development". On the basis of its composite criteria, the UNDP report issued the following country rankings: Egypt - 106; Turkey - 84; Israel - 24; Morocco - 123; and Tunisia - 78.

Economic Forecasts - Twice a year, Euromoney undertakes an extensive forecast of the global economy and the 165 nations included in its country risk rating system. It projects each country's economic performance and GNP growth, in its most recent case, for the years 1996/97, using essentially the same indicators as it uses for its country risk ratings described above. In September, 1996, it published "Global economic projections" for Economic Performance scores for (a) 1996 and (b) 1997, deriving therefrom (c) an average for 96/97, (d) its forecast for change in 1997 over 1996, (e) its projections for GNP growth in 1997, and (f) a total ranking based on the foregoing out of 165 nations. In its September, 1996 forecast, Euromoney forecast a total ranking for Egypt of 76, a decline from its March 1996 rating of 70. It showed a projected improvement in economic performance in 1997 over 1996 of 3.29 and GNP growth in 1997 over

1996 of 3.67 (3.3 in 1996 over 1995). Although Egypt is forecast to slightly improve its performance in absolute terms between 1996 and 1997 (+3.29), it's ranking decline reflects that a number of other nations have bettered their performance relative to that of Egypt. However, the forecast for the comparison countries in this study does not appear as favorable as for Egypt. They received the following rankings and economic performance change forecasts: Turkey - ranking (62), forecast (-1.25); Israel - ranking (43), forecast (-2.23); Morocco - ranking (64), forecast (-2.67); and Tunisia - ranking (59), forecast (-2.07). All of the comparison countries, except Turkey, also fell in their rankings.

More recently, the publication Middle East Economic Digest, in its annual "Middle East in 1997" forecast GDP growth for all of our comparison countries except Israel. It shows expected percentage GDP growth of 5 percent for Egypt, Morocco, and Tunisia, with 3 percent GDP growth for Turkey.

Appendix A: Foreign Direct Investment: Basic Concepts

A.1 Definitions/Concepts

Investment, whether originating domestically or from abroad, is divided into two basic types: "direct investment" and "portfolio investment". "Direct investment" describes an investment made to acquire and manage a long-term interest in the target entity. When the entity is located in one country and the investor is located in another country, the investment is referred to as "foreign direct investment". FDI is generally defined rather arbitrarily as ownership of 10 percent or more of the shares or voting power of an incorporated entity or the holding of a right to 10 percent or more of the profits of an unincorporated entity. Both the international Monetary Fund (IMF) and the Organization for Economic Cooperation and Development (OECD) chose the 10 percent threshold as indicative of an ability at least effectively to influence, if not control, the management of the enterprise. Ownership of less than 10 percent of an entity is referred to as "portfolio investment". Portfolio investors generally buy and sell on a short-term basis, and have only a passive, often speculative, interest in earnings potential.

Direct investment may be effected through (1) receipt of shares in exchange for capital (whether in cash funds or assets in-kind); (2) reinvestment of earnings of the entity; or (3) certain "non-arms-length" financial transaction between affiliated enterprises. The "value" of FDI is generally determined by the actual capital contributed or the book value or recorded historical cost of contributed assets.

A.2 Legal Framework for FDI

The legal/regulatory framework within which FDI is admitted in a country is known as the " FDI Regime" and includes the whole array of constitutional provisions, laws, regulations, policies, and practices that, taken together, establish and define the rights and obligations of both the foreign investor and the State with regard to FDI. This FDI regime may be supplemented by certain international conventions or treaties (multilateral, like the Treaty of Cartagena, or bilateral, as in various bilateral investment treaties [BIT]) that confer certain rights or impose certain regulations on the signatory countries that may expand, reduce, or otherwise vary the rights and obligations of foreign investors and the State established under their FDI regimes. Additionally, there nearly always exists a broad spectrum of laws, regulations, policies, or practices in a country that are not FDI-specific but nonetheless affect FDI and foreign investors in ways that can facilitate or impede FDI and are referred to in the aggregate as "collateral regulation". Included in this term are laws and regulations relating to corporate formation and business establishment; foreign exchange; taxation; technology transfer; protection of intellectual property rights; labor and employment laws; agency/distribution and licensing arrangements; and environmental regulations. Similarly, "collateral" international treaties or other agreements, such as agreements for the avoidance of double taxation, may also affect FDI.

A.3 Basic Issues in Investment Regimes

In many countries, an effort has been made to codify and incorporate in a single body of legislation and implementing regulations the nation's basic provisions on the admission and treatment of FDI, known as "investment codes". The ostensible purpose of such codes is to encourage FDI by setting forth the legal and regulatory framework governing it; the right and obligations of both foreign investors and the host country, including guarantees or special incentives the state is willing to accord FDI; the criteria for admission; and the process and procedures for approval and/or admission.

Whether incorporated into investment codes or less formalized FDI regimes, the underlying scheme for FDI admission and treatment nearly always addresses four basic issue areas related to FDI: (1) admission, (2) treatment, (3) expropriation; and (4) investment-related dispute resolution.

A.3.1 Admission/Establishment

"Admission" refers to the legal regime and regulatory/ administrative process through which FDI that already has occurred, or is proposed, is recognized as such and legitimized within a nation's sovereignty, sometimes referred to as "Establishment." Admission may be either "formal" or "informal". Informal admission refers to the entry of FDI as an accomplished fact in countries that have no established, formal process for screening or regulating FDI. Formal admission refers to the process by which actual or prospective FDI is screened, approved, and/or regulated under legal norms and administrative procedures established in an investment code or other FDI regime.

Generally, the criteria for admission of FDI in a country with formal admission requirements will reflect the desire of the country to relate such FDI to its economic needs and priorities and to direct it to geographical areas or economic sectors considered to best serve the development policy of the State.

A.3.2 Treatment

"Treatment" refers to the manner in which FDI is received and treated within a country, in particular, the standards of treatment accorded generally to foreign investors. If specifically provided for, an investment code or FDI regime will accord FDI either "National" or "Most Favored Nation" Treatment or some variant of "fair and equitable treatment". National Treatment implies that foreign investors and their investments will be accorded treatment exactly similar to that accorded domestic direct investors, that is, they will receive the same treatment as citizens of the country, or as often stated, "treatment no less favorable than" that accorded nationals. Fair and equitable treatment constitutes a less specific standard that implies a broad range of possibilities but usually relates to treatment within a defined system of rules and regulations related to established constitutional and legal standards and internationally recognized considerations of due process. Most Favored Nation (or MFN) treatment means that the host

country will extend to investors from a particular foreign country, treatment no less favorable than the treatment it applies to foreign investors from any other country.

These standards of treatment may be expressed explicitly in constitutional form or in laws or may be established for nationals of signatory countries in multilateral or bilateral investment treaties or regional integration arrangements such as the European Community or the Andean Pact. For example, many bilateral foreign treaties guarantee "National Treatment or MFN treatment, whichever is more favorable." Frequently, however, foreign direct investors and their investments may, in fact, be accorded better treatment than nationals of a country, that is, accorded certain fiscal and other privileges not available to host country citizens under certain investment incentives programs designed to encourage and target FDI in the country.

A particular area of concern for investors in the treatment of FDI has to do with the rights accorded or withheld regarding freedom to transfer to an investor's home country (or repatriate) capital and profits from the investment. From the standpoint of foreign investors, the ideal treatment would accord completely unconditional, unregulated transfer rights without limitation of the percentage of investment that may be repatriated or restrictions on the access to and use of foreign exchange to effectuate such transfers in hard currencies. Some countries guarantee the unrestricted right of repatriation for either capital or profits, or both. Others frequently condition it on a degree of reinvestment or subject to the availability of foreign exchange or to other national priorities. Many specifically tax such transfers through withholding on the amounts transferred to ensure payment of applicable local income taxes on corporate profits. Even where repatriation transfers are explicitly or generally authorized, freedom to effect them may be diluted by collateral regulations imposed in unrelated or non-FDI-targeted laws and regulations.

A.3.3 Expropriation

"Expropriation" refers to a taking, formally or otherwise, by asserting ownership or a public right to control FDI for public purposes, either without color of law or under constitutional or legal provisions that specify the grounds for such action, procedures therefor, and legal rights of investors including, most important, compensation and the method of calculating the value of the investment. Most countries specify that such taking may occur only "in the public interest", and laws or other authorities therefor usually will specify the manner of valuation and the form of compensation, although only a few require that compensation occur before the taking. The standard for assessing value and quantifying compensation may specify "fair and equitable" (usually based in investment treaties) or simply "fair" or "just", with the determination in specific situations delegated to a host country court or administrative body.

A.3.4 Dispute Resolution

Unless otherwise explicitly governed under an investment code or international treaty, investment disputes between foreign investors and host country governments or their public or quasi-public agencies are subject only to adjudication in a local judicial or administrative system under the laws of the host country. When addressed in investment laws or regulations or in treaties, disputes may be subject to different types of arbitration, specific fora, local or foreign

laws and arbitral procedures, or other conditions. Often, codes or FDI regimes will specify that the dispute may be referred to local courts only if arbitration or conciliation has proved unavailing in resolving the dispute.

A.4 Types of investment Regimes

There are two main types of FDI regimes: "open investment" regimes and "authorization" or "approval" regimes. Within the second type are two identifiable subtypes.

Open investment regimes contain no stated special restrictions on entry and no special constraints beyond basic, internationally recognized, public order considerations. Open codes usually provide that investments may be "freely made", subject only to specific provisions intended to safeguard public health, morals, the environment, and standard requirements for business organization and establishment.

Authorization or approval regimes require all or most foreign investors and/or all or most types of FDI to undergo screening in order to obtain specific authorization or approval for entry of the investment. The granting of almost all types of investment "incentives" is premised upon screening and approval of the proposed investment. These requirements may be imposed generally on all investors or investments, or on a priority geographical or sectoral basis. Authorization or approval regimes can be divided into two basic subtypes, high discretion and limited discretion, reflecting the parameters of discretion accorded public officials to authorize and regulate FDI.

High discretion regimes provide little or no criteria to guide officials in screening proposed investment and thereby impose little constraint on the discretion of such officials in deciding whether to approve FDI or impose requirements or conditions precedent to such approval. Such regimes are often characterized by inconsistency and unpredictability in their administration as well as affording opportunities for corruption.

In many cases, however, unrestrained discretion may be limited in practice by a provision of law or regulation to the effect that if approval is not granted within a specified time period, it will be presumed; or by general principles of constitutional law or statutory due process that such discretion must be exercised in accordance with law. High discretion regimes typically involve provisions that restrict FDI to certain priority geographical or sectoral areas (or provide positive incentives therefor without excluding FDI from nonpriority areas) or impose certain performance requirements as conditions for authorization or approval, such as export, employment, or domestic content requirements.[‡‡]

Limited discretion regimes confer clearly defined criteria or limits to the exercise of discretion by public officials in administering investment regimes, for instance, specifying clean

[‡‡] In view of the lack of substantive criteria and procedural protections against arbitrary implementation of the newly-enacted Investment Incentives Law, Law No. 8 of 1997 Egypt would have to be characterized as a "high discretion" FDI Regime in terms of the administration of investment incentives.

criteria against which the proposed investment may be measured, or providing for appeals of preliminary decisions reflecting the exercise of discretion.

A.5 Motivations for FDI

It has been said that investment follows trade and trade follows investment, because the reality of international business is that FDI occurs as a result either of market strategies (either market offense of market defense) or of the need to develop and control assured sources of supply of raw materials or industrial inputs needed for the production of goods destined for global markets. Firms that try to participate in international trade generally follow a clearly defined scenario of foreign market penetration that begins with direct export sales from the home country, proceeds to contracting of foreign sales representatives (agents, distributors), and eventually blossoms into one or more forms of FDI, beginning with on-shore sales and service capabilities, thence on to warehousing and inventory stores, then on to assembly or processing operations, and ultimately, to vertically integrated manufacturing facilities.

The impetus and motivation for both trade and investment, and especially for FDI, relate to market penetration abroad, and therefor, to increasing and or protecting market share. Business decisionmaking underlying FDI relates either to creating new markets or expanding existing markets or market shares from current or likely competitors. When a firm confronts a decision whether to commit its resources to new FDI in a given country or to increase its existing FDI therein, it must address and resolve four basic criteria that together define the attractiveness of the investment and the extent of it. These critical decision making criteria are market size and possibilities; comparative advantages; the “climate” for business and for investment; general or real incentives; and its disincentives for investment.

A.5.1 Market Considerations

Market size or possibilities define the potential of sales and profits against which the cost of the investment contemplated must be weighed in order to project potential profits. Potential market size may be measured in both direct (population, disposable income, consumption, and level of economic growth of a country) or in indirect terms, for example, the number and size of third country markets that can be accessed and served through operations emplaced in the target country e.g., sales, warehousing, service, or manufacturing. Firms considering whether to attempt to penetrate a given country’s markets think about the country’s potential and may evaluate the size of the country in terms of the desirability to realize either a large share of a small market or a small share of a large market. Consequently, the size of market potential is appraised in terms of a potential volume of share, not only in terms of absolute size. New market opportunities in a country may occur because of population growth, growth of the economy and disposable income, macroeconomic reforms, and market-opening initiatives. An indirect market impulse may be a country’s proximity to unprotected or newly opened markets.

A.5.2 Comparative Advantage

Nations, like individuals, are not all equally endowed with natural resources and other factor inputs to produce goods and services, nor can they be isolated from the consequences of their history. In matters of international trade, which basically motivates FDI, the theory of comparative advantage can best be summed up in the saying that "nations should compete from their advantages and not from their disadvantages"; for example, a country should export what it can most efficiently and cheaply produce and import from other countries goods and services that it cannot produce as efficiently or cheaply. Whereas the ultimate judgment on the "if" and "where" of FDI is concerned with rate of return on investment, it is often comparative advantages - real (natural) or artificial (constructed) - that most often determine the bottom line aspects of rate of return.

According to a theory first proposed by David Ricardo in 1817, global economic exchange of goods and services based on comparative advantage increase the wealth and well-being of all nations involved. According to Ricardo, a country has a comparative advantage in the production of goods it can produce more efficiently than other nations. Modern trade theory holds that, regardless of the general level of a country's productivity or labor costs relative to those of other countries, the country should produce for export goods in which it has the greatest comparative advantage and import those in which it has the greatest (or a significant) comparative disadvantage. A country with few economic strengths will find it advantageous to its ultimate development to devote its productive energies to goods and services in which it has the fewest disadvantages while earning enough therefrom to support the costs of investment in innovation and technology required to enhance existing comparative advantages or develop new areas of such advantage.

The major areas of differentiation between countries being considered for investment tend to amount to aspects of comparative advantage, whether in local or international markets. A multinational corporation that finds it can more cheaply and efficiently produce locally for a given market as opposed to exporting to that market will choose to do so, absent other constraints. Similarly, a multinational corporation that can regionalize its production from a given locale through other markets more cheaply than producing in each of them will choose to do so. The elements for making these kinds of decisions include (1) comparative advantage and how it can be accessed and converted into competitive advantage - that is, the relative costs of inputs such as raw materials, labor, parts, supplies, transportation, and distribution; and (2) the degree of "openness" of a given country's markets, e.g. its tariffs, quotas, export taxes, etc.

It should be noted, however, that a country's comparative advantages are not static but can change over time as the country (or competing countries) changes and develops economically. Normally one of the first comparative advantages lost is labor costs, since it is most easily substituted for by advancing technology or other factors. Therefore, comparative advantage in the production of a specific good or service must be analyzed continually in order to determine that adverse impacts are not the result of temporary or transient factors such as rapidly changing labor costs, exchange volatility, or resource costs such as energy and petroleum, whose prices vary greatly for economic and, often, non-economic reasons.

A.5.3 "Real" or "General" Incentives for Investment

General incentives that might impel a foreign investor to commit FDI to a country, or to one country as opposed to another, include:

- a sound, stable economy;
- continuing progress in macroeconomic reform and restructuring (particularly the pace of Privatization);
- a realistically-valued national currency and limited foreign exchange restrictions, especially on profit remissions and capital repatriation;
- unrestricted use of expatriate managers and technicians;
- open, accessible, and GROWING local and regional markets;
- a fair, transparent, facilitative legal/regulatory regime for investment;
- adequate property rights protections including intellectual property rights enforcement;
- national treatment e.g., non-discrimination against foreign investors and their investments;
- and, ultimately, an overall favorable, supportive, business and investment climate.

A.5.4 Disincentives for Investment

Unfortunately, "artificial" incentives to attract FDI are frequently used to cover up or offset serious disadvantages to FDI. Among the disadvantages to FDI that may repel it are political instability; performance requirements; sectoral or geographical restrictions; sectoral or other restrictions on FDI; discrimination against foreign investors and their Investments; government resistance to macroeconomic reforms and restructuring; serious inflation; volatile exchange rates; poor public sector services and infra-structure; antiquated or overly legalistic laws and practices; lack of effective property quarantees; trade protectionism; pervasive government corruption or rampant criminal activity; export taxes or controls; public or private monopolies; lack of investment financing or an active financial services sector; an unfair or highly prejudicial labor-management regime; low industrial productivity; and poor management culture.

A.5.5 "Artificial" Incentives

Governments make available a broad spectrum of positive incentives to induce foreign investors to invest in their countries. Incentives are offered to attract investment to priority geographical or sectoral areas that would not otherwise meet investor demands or expectations in market size, comparative advantage, or resource mobilization. Sometimes, positive investment incentives are offered to offset perceived disincentives or to offset risks identified. Even when there might already be good business reasons to invest in a country, a menu of investment incentives may attract investment away from a similarly situated country to the offering nation, primarily by artificiality lowering the investor's cost of doing business in the offering country.

Tax incentives are frequently employed, especially to help develop burgeoning industries. For example, tax holidays-periods during which investing firms are either exempt from all

taxation or offered reduced taxation are frequently provided in specialized priority areas such as agribusiness, tourism, and various industrial or geographical areas. Exemptions from or reductions in excise, sales, value-added, or other taxes may be offered. Exemption from or reduced rates on profits remission taxes, tax write-offs, accelerated depreciation, or loss carry-forward provisions are often made available. There may also be exemption from import duties on imported resource inputs, especially in free trade zones or maquila-like assembly and processing operations, as well as export tax exemptions, usually in labor-intensive industries or in countries with unusually low wage rates. Incentives frequently include drawback or recapture of duties paid on imported inputs used in the manufacture, assembly, or processing of goods destined for export.

Some governments provide financial incentives, including direct government loans at below market rates or reduced fees or loan guarantees for capital investment; interest subsidies for investment financing loans; export financing, loan guarantees, or insurance; joint venture investments; or special debt-equity investment possibilities drawing on steeply discounted foreign debts in hard currency exchange. Some governments provide special exemption from foreign exchange restriction or guarantee the availability of foreign exchange for profits remission, capital repatriation, or current account payments abroad.

Countries may also try assure investors of a guaranteed supply of resource inputs at favorable prices or volume preferential rates. In a number of import substitution-oriented countries, governments will attempt to insulate investors from import competition in the domestic economy by imposing higher tariffs, quotas, or tariff rate quotas. some countries will enter into special incentive joint ventures to provide local financing or guarantees or contribute land, buildings, or other available resource inputs in return for a share of equity. Often, countries will undertake to ensure availability of foreign exchange at preferential rates for current account payments or even for repatriation of capital and profits. Countries occasionally will act to insulate FDI from rigid labor codes or high labor benefits requirements or from legal sanctions or requirements imposed on worker separation; some provide government-subsidized worker skills training programs. In countries without significant comparative advantages, offering an array of positive investment incentives may itself become a form of artificial comparative advantage.

A.6 Basic Investor Concerns

The primary goal of any investor is to realize profit, that is, the highest possible (reasonable) return on his or her investment at the lowest (acceptable) risk. Thus, any serious investor will consider all reasonable alternatives for equal or greater return and minimize risks before deciding whether and where to invest. For a multinational investor, the rate of return of compares the investment's share of the earnings of foreign affiliates (after foreign taxes), plus net receipts of interest on intercompany loans, to the net book value of its equity in, and net out-standing loans to, their foreign affiliates. It is sometimes figured as income receipts divided by the average of the beginning and year-end direct investment totals.

Risk, another element of investment, is inherent in free market economics and cross-border investing. There are business risks and non-business risks. Business and commercial risks are

always the most uncertain: downturns in the economy translate into higher costs or lower demand; bankruptcy or other impairment of suppliers or customers can sometimes occur without warning; new technology may be developed; competitors may make economic breakthroughs. Investors can accept an appropriate level of business risks. But they find it difficult to deal with non-business risks, which are, essentially political risks, because they are the result of governmental policies. An investor's options are simply to: (a) reduce risks to an acceptable minimum; (b) insure against them; or (c) forget the investment.

The possible impacts of some non-business risks can be insured. Political or currency convertibility risk may be insured through national (the U.S. Overseas Private Investment Corporation or "OPIC") or international (the World Bank's Multilateral Investment Guarantee Agency or "MIGA") agencies.

Certain intangibles constitute bases for concerns that must be confronted and assessed. An investor will be concerned, for example, with the level of the "Rule-of-Law" in the host country. This involves a number of factors that, in the aggregate, suggest whether the country's juridical system provides a degree of fairness, consistency, and predictability in structuring, establishing, operating, and protecting an investment there. Areas of interest include: respect for individual rights and personal safety; the clarity of laws and regulations; the level of bureaucratic discretion and arbitrariness in interpreting and applying them; the ability to get a fair hearing within the bureaucratic (administrative) and judicial systems with right of appeal to higher authorities; and, ultimately, the extent to which corruption within the system defeats all of the above. Other significant concerns will include the degree of respect for and protection of private property rights, including a foreigner's right to take fee simple title to real property; the right freely to transfer real and personal property or to pledge or mortgage it to satisfy security interests for project financing. Another important legal concern is the sanctity of contracts and their validity and enforceability within the country's commercial legal system, as well as the ability of that system to vindicate commercial rights through litigation.

Finally, other significant concerns for the potential foreign investor are the effects of local taxes on the parent company's tax liabilities and the capability for remittance without delay of profits and repatriation of capital and taxes or fees applied. Similarly, the foreign investor must consider the procedures for investing in a target country, as well as the collateral requirements for establishing a company, bottlenecks, and delays. For many investment projects, the availability and cost of local financing may be an important risk reduction or sharing concern.

A.7 <u>Guarantees As Incentives</u>

Apart from obtaining investment insurance from OPIC or MIGA, the way countries can reduce non-business investor risks is to afford GUARANTEES in the areas of most significant concern. What REALLY attracts new FDI is the presence of investor RISK GUARANTEES, rather than fiscal or other positive incentives.

Governments must realize that the global marketplace is an INVESTOR's [e.g., buyer's] market. There are nearly 200 countries around the world trying every day to attract new FDI.

Investors can afford to discriminate among countries (in most cases) and do so by demanding certain, at least, minimal, NON-BUSINESS risk guarantees for their investments. They include:

- freedom from unnecessary screening or performance requirements as the price of admission;
- provision of National Treatment or Most-Favored-Nation Treatment (with limited sectoral exceptions) for their investments, whichever is better for them.
  [National Treatment means a country treats foreign investors no better or worse than it treats its own citizen investors. Most Favored Nation treatment means it treats investors from one nation no differently than it treats investors from any other nation.]
- freedom from currency restrictions and the freedom to transfer profits, capital, interest, royalties, etc.
- protection of investor property and enforcement of property rights;
- adherence to global international law standards regarding expropriation and compensation therefor; and
- access to binding international arbitration of investment disputes.

Creating an open investment regime also involves strengthening the general role of private ownership by eliminating monopolies and oligopolies; progressive privatization of parastatals; well-functioning capital markets; and transparent, fair, consistent, and predictable regulatory regimes.

****

APPENDIX B

Arab Republic of Egypt:
Basic Laws Affecting Business & Investment

Focus:	Name and/or Cite to Law:		Date:	Implementing Form
Rule-of-Law Basis	Constitution of As Amended in		1971 1980	Implemented by Codes, Laws, Decrees, Regs. , & Court Decisions
Basic Legal Framework	Commercial Code (Gen'l Rules for: Business Transactions/ Contracts, Negotiable Instruments, and Bankruptcy)		1883	Implemented by Commercial & Sectoral Laws
	As Amended By	Law No. 388 of	1953	
	Civil Code (Gen'l Rules for: Civil Status/Rights, Torts, Gen'l Contracts, Basic Property Rights)	Law No. 131 of	1948	Same
	Civil/Commercial Procedure Code		1968	
	Penal Code	Law No. 81 of	1937	
	Amended by	Law No. 95 of	1996	?
	Criminal Procedure Code		1950	
Business Establishment And Forms	Companies Law	Law No. 159 of Min. Dec. #96/ Min. Dec. #408/	1981 1982 1987	Min. Dec. #7/1982
	Investment Law (Replaces Law No. 230 of 1989)	Law No. 8 of	1997	Min. Dec. #1/1990 Min. Dec. #495/1996
	Civil Code	Law No. 131 of	1948	
	Commercial Code		1883	
	Amended by	Law No. 81 of	1996	?
	Partnerships/Joint Stock Companies, etc.	Law No. 159 of	1981	?

	Cultural Societies	**Law No. 59 of 1979**		**?**
	Non-Profit Associations	**Law No. 32 of 1964**		**?**
Bus. Establ. & Forms Cont.	**Reorganization of Tourist Cos.**	**Law No. 38 of 1977**		**Dec. #222/1983**
	As Amended by	**Law No. 118 of 1983**		**Dec. #176/1990**
				Dec. # 31/1993

Commercial Activities	**Commercial Agents**	**Law No. 120 of 1982**		**Dec. #1815/1977**
				Min. Dec. #342/1982
	Commercial Register	**Law No. 34 of 1976**		**Dec. #946/1978**
	Amended by	**Law No. 98 of 1996**		**Min. Dec. #354/1996**
	Import/Export Law	**Law No. 118 of 1975**		**Min. Dec. #275/1991**
				Min. Dec. #396/1994
	High Committee for Export Promotion			**Dec. #975/1994**
	Export Development Permanent Committee			**Min. Dec. #202/1994**
	Export Procedures Simplification Committee			**Min. Dec. #274/1994**
	Commodity Export Restrictions			**Min. Dec. #288/1993**
	Commodity Export Price/Quantity Restrictions			**Min. Dec. #458/1993**
	Marketing Advisory Committee for Exports			**Min. Dec. #277/1994**
	Production for Export Committee			**Min. Dec. #275/1994**
	Export Licenses Abolished			**Dec. #315/1996**
	Importers' Register	**Law No. 121 of 1982**		**Dec. #343/1983**
	As Amended By	**Law No. 98 of 1996**		
	Production/Local Content	**Law No. 21 of 1958**		**Min. Dec. #229/1991**
	Amended by	**Law No. 24 of 1977**		**Min. Dec. #476/1991**
	Resource Allocation Rules			**Dec. #27/1986**
	Commercial Mortgages	**Law No. 11 of 1940**		**?**
	Creditor Arrangements	**Law No. 56 of 1945**		**?**
	Construction Works	**Law No. 101 of 1996**		**?**
	Industrial Licensing	**Law No. 21 of 1958**		**?**
	Financial Leases	**Law No. 95 of 1995**		**Min. Dec. #846/1995**
				P.M. Dec. #3561/1996
	Housing Law	**Law No. 04 of 1996**		
	Housing Cooperatives	**Law No. 14 of 1983**		**?**

	Landlort/Tenant	**Law No. 49 of**	**1977**		**?**
	As Amended by	**Law No. 136 of**	**1981**		
	As Amended by	**Law No. 04 of**	**1996**		
	Inherited Leases	**Law No. 96 of**	**1992**		**?**
	Industrial Shops	**Law No. 453 of**	**1954**		**?**
Commercial Activities Cont.	**Price/Profits Controls**	**Law No. 163 of 1950**		**?**	
	Weights & Measurements	**Law No. 1 of**	**1994**		**?**
	Fraud/Deception Law	**Law No. 48 of**	**1941**		**Min. Dec. #259/1996**
	As Amended by	**Law No. 281 of**	**1994**		
	Auditing Standards	**Law No. 144 of**	**1988**		**?**
	Professional Syndicates	**Law No. 100 of**	**1993**		**?**

Competition Policy/Anti-Trust	**[Comprehensive Anti-Monopoly Law in Drafting Stage]**				
	Local Product Distribution/Anti-Monopoly	**Law No. 241 of**	**1959**		**?**

Customs/Imports/Exports	**Customs Law**	**Law No. 66 of**	**1963**		**Pres. Dec. #304/1996**
	Amended by	**Law No. 121 of**	**1982**		**Min. Dec. #174/1983**
	Customs Organization/	**Law No. 186 of**	**1986**		**Dec. #193/1986**
	Exemptions - Amended	**Law No. 71 of**	**1996**		**?**
	Harmonized System				**Dec. #38/1996**
	Drawback Rules				**Dec. #893/1996**
	Ocean Vessels/Customs & Sales Taxes	**Law No. 94 of**	**1996**		**?**

					Min. Dec. #621/1991
Investment & Foreign Investment & Incentives	**Investment Law (Replaces Law 230 of 1989)**	**Law No. 08 of**	**1997**		**Min. Dec. #220/1994**
					Min. Dec. #373/1995
					Min. Dec. #495/199
	New Urban Communities	**Law No. 59 of**	**1979**		**Dec. #14/1994**
	As Amended by	**Law No. 72 of**	**1996**		**Dec. #10/1995**
	Hotels & Tourism Const.	**Law No. 1 of**	**1973**		**Min. Dec. #933/1988**
	As Amended by	**Law No. 102 of**	**1993**		**Min. Dec. #447/1988**

	Income Tax Law	**Law No. 157 of 1981**	**?**
	Amdt. to Income Tax	**Law No. 187 of 1993**	**?**
	Customs Organization/ Exemptions - Amended	**Law No. 186 of 1986** **Law No. 71 of 1996**	**?**
	ICSID Convention	**Law No. 90 of 1971**	
	Adm. Seizure Law	**Law No. 308 of 1955**	
	Law of Sequestration	**Law No. 69 of 1974**	**?**
Investment & Foreign Inv., Incentives Cont.	**Publ. Int. Exprop. of Real Property**	**Law No. 10 of 1990**	**?**
	Entry/Residence of Foreigners/Amended by	**Law No. 89 of 1960** **Law No. 99 of 1996**	**?** **Min. Dec. #8180/1996**
	Egyptian Employees of Foreign Companies	**Law No. 231 of 1996**	**?**
	Investor Complaints Committee		**Dec.# 64/1996, 344/1996**
	Governorate Investment Information Offices		**Dec. # 314/1996**
Restrictions on Foreign Investors	**Agricultural Land**	**Law No. 15 of 1963**	**Dec. # 1/1996 (Const.)** **Dec. #2603/1996 (“)** **Dec. #1433/1996 (disp.)**
	Urban Land Amended by Foreign Possession Law	**Law No. 56 of 1988** **Law No. 230 of 1996**	**?**
	Desert Land Amended by Desert Land Disposal	**Law No. 143 of 1981** **Law No. 5 of 1996**	**Min. Dec. #198/1982** **Min. Dec. #573/1983**
	Commercial Agents Law	**Law No. 120 of 1982**	
	Registration of Importers As Amended by	**Law No. 121 of 1982** **Law No. 98 of 1996**	**Dec. # 343/1983**
	Reconstruction/Consultants	**Law No. 62 of 1974**	
Arbitration	**Civil & Commercial Arbitration (Private Sector Arbitration) As Amended by**	**Law No. 27 of 1994** **Law No. 81 of 1996**	**Dec. #2105/1995**

	Cairo Regional Arbitration Center		**Pres. Dec. #458/1989**
	ICSID Convention	**Law No. 90 of 1971**	
	Publ. Sector Arbitration (Arbitration betw. Gov't Ministries and Public Sector companies -e.g., State-Owned Entities)	**Law No. 60 of 1971**	

Banking & Financial Services	**Banking Law**	**Law No. 163 of 1957**	**?**
	Amended by	**Law No. 73 of 1992**	
	Amended by	**Law No. 97 of 1996**	
	Bank & Credit Law	**Pres. Dec. # 163 of 1975**	**Pres. Dec. #187/1993**
	Amended by	**Law No. 50 of 1984**	
	Amended by	**Law No. 37 of 1992**	
	Amended by	**Law No. 101 of 1993**	
Banking & Financial Services Cont.	**Central Bank Organic**	**Law No. 120 of 1975**	
	Foreign Curr. Dealing	**Law No. 38 of 1994**	**?**
	Foreign Exchange Law	**Law No. 79 of 1979**	**Dec. #331/1994**
	Amended by	**Law No. 38 of 1994**	
	Amended by	**Law No. 228 of 1996**	**[Law 97/1976 - Status?]**
	Insured Deposits Law	**Law No. 37 of 1992**	**?**
	Bank Secrecy Law	**Pres. Dec. 205 of 1990**	**?**
	Capital Markets Law	**Law No. 95 of 1992**	**Min. Dec. #135/1993**
	Amended by	**Law No. 10 of 1995**	**Dec. #2602/1994**
	Amended by	**Law No. 89 of 1996**	**Min. Dec. #360/1996** **Min. Dec. #930/1996** **Min. Dec. #935/1996** **Pres. Dec. # 51/1997**
	Listing Rules/Egyptian Stock Exchange		**CMA Dec. #02/1994**
	Alexandria Stock Exchange		**Dec. #51/1997**
	Financial Leases	**Law No. 95 of 1995**	**Min. Dec. #846/1995** **P.M. Dec. #3561/1996**
	Investment Funds	**Law No. 146 of 1988**	**Min. Dec. #344/1988**
	Private Insurance Funds	**Law No. 54 of 1975**	**?**
	Insurance Law	**Law No. 10 of 1981**	**Min. Dec. #362/1996**

	Amended by	**Law No. 91 of**	**1995**	
	Tax-Securities/Cap. Gains	**Law No. 89 of**	**1996**	**?**
	Tax-Inv. Funds/Dist.	**Law No. 90 of**	**1996**	**?**
	Tax - Mutual Funds	**Law No. 222 of**	**1996**	**?**
Labor & Welfare	**Labor Code**	**Law No. 137 of**	**1981**	**[Law 113/1958 Status?]**
	Labor Unions/Syndicates	**Law No. 35 of**	**1976**	**?**
	Minimum Wage Law	**Law No. 125 of**	**1980**	**?**
	Repre. on Co. Bds/Dirs.	**Law No. 73 of**	**1973**	**?**
	Social Insurance Law	**Law No. 79 of**	**1975**	**Dec. #64/1989**
	Social Development Fund - Establishment			**Pres. Dec. #40/1991**
Environment	**Environment Law**	**Law No. 4 of**	**1994**	**Dec. #338/1995**
	Nile River/Water Courses	**Law No. 48 of**	**1982**	**Dec. #8/1983**
Natural Resources Energy/Power	**Egyptian Electric Auth.**	**Law No. 12 of**	**1976**	**?**
	Priv. Prov. of Electricity	**Law No. 100 of**	**1996**	**?**
	Mines & Quarries	**Law No. 66 of**	**1953**	**?**
	As Amended by	**Law No. 86 of**	**1956**	
	Egyptian Nat'l Petroleum Authority	**Law No. 20 of**	**1976**	**?**
	Petroleum Pipelines	**Law No. 4 of**	**1988**	**Dec. #292/1988**
IPR Laws	**Patent & Indus. Designs**	**Law No. 132 of**	**1949**	**?**
	Trademark Law	**Law No. 57 of**	**1939**	**?**
	Copyright Law	**Law No. 354 of**	**1954**	**?**
	Amended by	**Law No. 34 of**	**1975**	
	Amended by	**Law No. 38 of**	**1992**	
	Amended by	**Law No. 29 of**	**1994**	

Gov't Pro-curement	**Tender Law**	**Law No. 9 of**	**1983**	**Min. Dec. #157/1983** **Min. Dec. # 79/1996**
Local Government	**Local Administration**	**Law No. 43 of**	**1979**	**?**
	As Amended by	**Law No. 145 of**	**1988**	**?**
Public Health Standards	**Food Circulation**	**Law No. 10 of**	**1966**	**?**
	Product Fraud	**Law No. 48 of**	**1941**	**?**
	As Amended by	**Law No. 281 of**	**1994**	
Public Sector/ Privatization	**Publ. Bus. Sector Cos. (basic Privatization Law)**	**Law No. 203 of**	**1991**	**Dec. #217/1993** **Dec. #90/1995**
	Public Company Debts	**Law No. 97 of**	**1983**	**?**
	Civil Service Law	**Law No. 47 of**	**1978**	**?**
	Publ. Sector Workers	**Law No. 48 of**	**1978**	**?**
Maritime & Transport	**Ports/Territor'l Waters**	**Law No. 280 of**	**1960**	**?**
	Port Activities	**Law No. 93 of**	**1996**	**?**
	Maritime Trade	**Law No. 8 of**	**1990**	**?**
	Ship/Cargo Registration	**Law No. 84 of**	**1949**	**Min. Dec. #28/1963**
	Maritime Transport Org.	**Law No. 12 of**	**1964**	**?**
	Specialized Ports	**Law No. 1 of**	**1996**	**?**
	Authorizing Private Sector Involvement in Maritime Transport/Services	**Law No. 21 of**	**1996**	**?**
	Civil Aviation	**Law No. 28 of**	**1981**	
	Civil Aviation Services	**Law No. 119 of**	**1983**	**Min. Dec. #237/1985**
	Amended by	**Law No. 209 of**	**1991**	
	Amended by	**Law No. 107 of**	**1992**	
	Highways	**Law No. 84 of**	**1968**	**?**
	Amended By [BOT?]	**Law No. 229 of**	**1996**	**?**

Taxation	**Unified Income Tax**	**Law No. 157 of 1981**	**Min. Dec. #164/1982**
			Min. Dec. #678/1983
	Amended Re: Invest. Funds	**Law No. 187 of 1993**	**Dec. # 898/1994**
	Amended Re: Securities/Cap. Gains	**Law No. 89 of 1996**	
	Amended Re: Mutual Funds	**Law No. 226 of 1996**	
	Amended by	**Law No. 90 of 1996**	
	Dev. of State Financial Resources Duty	**Law No. 147 of 1984**	**?**
	Land Tax	**Law No. 113 of 1939**	**?**
	Improved Realty Tax	**Law No. 56 of 1954**	**?**
	General Sales Tax	**Law No. 11 of 1991**	**Pres. Dec. #655/1995**
	Amended by	**Law No. 91 of 1996**	**Pres. Dec. #305/1996**
	Stamp Tax	**Law No. 111 of 1980**	**?**
	Amended by	**Law No. 115 of 1980**	**?**
	Amended by	**Law No. 92 of 1996**	**?**
	Notarization Law	**Law No. 68 of 1947**	**?**
	Notarization Fees	**Law No. 70 of 1964**	**?**
	Amended by	**Law No. 225 of 1996**	
	Real Estate Notary Fees	**Law No. 114 of 1946**	**?**
	Amended by	**Law No. 223 of 1996**	**?**

Judiciary/ Litigation	**Supreme Constitutional Court**	**Law No. 81 of 1969**	
	Permanent State Security Courts	**Law No. 105 of 1980**	
	Amended by	**Law No. 50 of 1982**	
	Emergency State Security Courts	**Law No. 162 of 1958**	
	Amended by	**Law No. 60 of 1967**	
	and	**Law No. 37 of 1972**	
	Emergency Martial Law - Pres. Decree of 1981/From Time-to-Time Renewed, latest for 3 yrs. by Peoples' Assembly, February, 1997		
	Military Courts	**Law No. 25 of 1966**	
	Council of State (Administrative Courts)	**Law No. 47 of 1972**	
	Amended by	**Law No. 136 of 1984**	

Ordinary Courts (General Civil/Commercial Courts)	**Law No. 46 of 1972**	
Organic Law/Judiciary	**Law No. 35 of 1984**	
Penal Code	**Law No. 58 of 1937**	
Amended by	**Law No. 95 of 1996**	
Administrative Prosecution	**Law No. 117 of 1958**	
State Litigation Authority	**Law No. 75 of 1963**	
Lawyers' Syndicate [Bar]	**Law No. 71 of 1983**	
Socialist Public Prosecutor	**Article 179 of 1971 Constitution**	
Courts of Ethics	**Law No. 95 of 1980**	
Adm. Seizures Law	**Law No. 308 of 1955**	**?**
equestration Law	**Law No. 69 of 1974**	**?**
Pub. Int. Exprop. of Real Property	**Law No. 10 of 1990**	**?**

Prepared by:

James L. Kenworthy, Esq.
Nathan Associates Inc.
International Trade/Investment Advisor
USAID/Egypt-DEPRA Project
Cairo, Egypt - May, 1997

APPENDIX C

Tunisia's One-Stop Shop Brochure

(Please find Appendix C at the end of the file.)

APPENDIX D

DEVELOPMENT ECONOMIC POLICY
REFORM ANALYSIS PROJECT
A USAID/Egypt-Funded Project with the
Ministry of Economy & International Cooperation
Mecca Tower, 11th Floor
49 Nubar Street, Bab-El-Luq,
Cairo, Egypt
Tel/Fax: (202)356-1040

Memorandum

DATE: 18 May 1997

TO: Mark Gellerson, Ph.D., Project Officer
DEPRA Project, USAID/Egypt

Dr. Farouk Shakweer, First Under-Secretary/RIS
Ministry of Economy & International Cooperation

THROUGH: C. Stuart Callison, Chief-of-Party
DEPRA Project

FROM: James L. Kenworthy, Esq.
International Trade/Investment Advisor
DEPRA Project

SUBJECT: New Investment Incentives Law

On or about Monday, 05 May, the Peoples' Assembly approved the new Investment Incentives legislation forwarded to it for consideration by the Prime Minister on 21 March. The draft legislation was considered by first the PA's Economic Committee and then its Legal Committee, both of which approved it with only three minor amendments. The PA-approved legislation went to the President who signed it on Sunday, May 11 and issued a Presidential Decree promulgating it and enacting it into statutory law as Law No. 8 of 1997 (hereinafter referred to as the "new Law").

Background on the Legislation

Enactment of the new law culminates three plus years of effort to develop a new investment incentives law as only one part of a broad GOE and private sector effort to rationalize the

complex of laws that impact on private investment in Egypt. Principal among these are the: the Companies Law (Law No. 159/1981); the Public Business Sector Law (Law 203/1991); the Investment [Incentives] Law (Law 230/1989); the New Urban Communities Law (Law 59/1979 as amended by Law 72/1996); the Hotel & Tourism Establishment ["Tourism Law"] (Law 01/1973 as amended by Law l02/1993); and certain portions of the Income Tax Law (Law 157/1981 as amended by Law 187/1993). In addition there have been efforts to revise and update provisions of the Commercial Code of 1883 as amended by Law 388/1953 and the Civil Code (Law 131/1948) to modernize the general framework for commercial law in Egypt.

It has been estimated that there are as many as 20 laws and decrees with statutory effect that affect domestic and foreign investment in Egypt, directly or indirectly. This plethora of laws has created an exceptionally complex legal framework for business and investment in Egypt: business forms and company formation/incorporation procedures; regulation of corporate and partnership entities; the regime for public companies; regulation of investment, domestic and foreign, in the economy; general and sector-specific incentives for investment; legal effects of certain types of commercial transactions; general taxation of business and tax procedures/enforcement; and other aspects related, directly or indirectly to companies and to their investments. Basically, all of them can be reduced down into two primary categories: company formation and investment regulation/incentives applicable to both domestic and foreign investment.

GOE officials, private sector business people, local lawyers, and foreign investors alike have generally agreed that this current array of mostly ad-hoc laws and regulations is chaotic and counterproductive for achieving Egypt's goal of inducing private investment as a means of generating economic growth. In order to address the possibilities for revision of existing laws, a drafting committee was established in the Technical Bureau of the Ministry of Public Enterprises. Serious, good-faith efforts have been undertaken on the part of Bureau staff and all these sectors oriented toward drafting legislation to replace the existing amalgam of laws, but these efforts appear to have been undermined by an early and common conceptual goal of achieving a single "unified" law to replace those separate ones governing company formation/ regulation, both private and public, and investment incentives.

Early in the effort, a number of drafts were circulated within and without the GOE that would bring the three substantive areas of focus - company formation, public sector companies, and investment incentives - together in one place. For example, in March, 1996, what is believed to have been the last draft of a truly "unified" measure was circulated for comment. That draft (which collapsed under the weight of the disparate sectoral interests and concerns asserted against it), attempted to comprehend:

- rules for formation, structure, characteristics, powers, and obligations of private sector companies; shareholder rights, control, oversight; mergers/acquisitions; stock splits, public offerings, registrations; articles of incorporation/company statutes (by-laws); dispute settlement; regulatory oversight, etc.

- essentially similar rules in scope for State-owned public sector enterprises.

- rules governing establishment and operation of Free [Trade] Zones (FZ s);

- admission and treatment of FDI.

- investment incentives, privileges, guarantees, rules and regulations.

When the effort to develop a "unified" law collapsed in mid-1996, GOE officials and government and private lawyers began looking at the possibilities for separately-focused revisions of law in the areas of company formation and investment incentives. Since March, 1996, there have been at least nine different drafts of an investment incentives bill designed to bring together in a single measure both general and sectoral incentive laws. The penultimate draft of an investment incentives measure revising the various current investment incentives measures into a single law was circulated for comment outside the GOE in early November, 1996. I commented on our English translation of that draft bill in my memorandum to you dated 10 April 1997. The ninth such draft was approved by the Council of Ministers on 28 January this year. But a major complaint in the Egyptian private sector and among foreign investors and local lawyers is that yet a different draft (the 10th and now Law 8/1997) was forwarded by the PM to the Peoples' Assembly on 21 March this year without ever having been circulated for comment outside the GOE, although review after its referral to the PA indicates it was significantly different than the ninth draft. This is part of the reason for the climate of concern that has attended the process of its enactment. There are a number of areas of concern that the Egyptian private sector have asserted with regard to the measure which occasioned a desire on the part of businesspeople and lawyers to try to delay Presidential consideration and promulgation of the measure so as to give them the opportunity to submit advocacy briefs to the Office of the Presidency outlining their concerns. However, any possibility of addressing their concerns about the new Law now appears moot in view of the President's enactment of the new Law. Thus, efforts to remedy concerns regarding the bill have to be re-focused on influencing the drafting of its Executive Regulation, which must be issued by the Prime Minister within three months of its effectiveness, e.g., the day following its publication in the Official Gazette

Basic Structure/Provisions of the New Law

The new Law retains the basic tripartite structure of its predecessors, Law 230 of 1989 and Law 43 of 1974, e.g., "General Provisions; "Investment Guarantees/Incentives" (for what the prior law referred to as "inland investments", e.g., investments other than in FZ s); and Free Zones regulation/incentives. It is actually enacted by Presidential signature and issuance of a Promulgatory Decree that precedes the text of the specific Law but operates as a part of the total statutory package. This memorandum reflects the draft Presidential Decree submitted to the PA with the legislation - we have not yet had the opportunity to review the actual Decree to determine any differences between the draft and the operative decree. The new Law can be outlined as follows:

I. Promulgatory Decree - Basic Provisions:

A. Preservation of Acquired Rights (Art. 2).
B. Termination/Replacement of GAFI with a New Administering Authority (Art. 3).
C. Statutory Repealers/Conflict Rules (Art. 4).
D. Issuance of the Executive Regulation (Art. 5).

II. The Investment Incentives Law

Part 1: General Provisions (Arts. 1 - 7).

- Art. 1 - Application to companies/establishments engaged in: Reclamation/Cultivation of fallow and desert land; Animal/Poultry/Fish production; Industry and Mining; Hotels, motels, boardinghouses, tourist resorts and tourist transport; Goods' reefers (?), refrigerators for preserving agricultural and industrial crops, containers' stations and grain silos; Aviation and related services; Petroleum services, refineries, and gas pipelines; certain Housing projects; Infrastructure including potable water, sanitary drainage, electricity, roads, transports, and communications; Hospitals and certain medical and treatment centers; financing Leases; Guarantee of subscription in securities; Risk Capital; Production of computer programs and systems; and projects financed by the Social Fund for Development. Council of Ministers may add more fields.

- Art. 2 - Incentives Limited to Companies' Activities Described Above.

- Art. 3 - Protection of Acquired Rights (Provision No. 1)

- Art. 4 - Corporate Formation Requirements/Responsibilities of Administering Authority.

- Art. 5 - Access to Land/Licenses and Permits.

- Art. 6 - Criminal Penalties/Related Laws.

- Art. 7 - Dispute Resolution.

Part Two: Investment Guarantees

- Art. 8 - Nationalization/Asset Seizures

- Art. 9 - Sequestration/Administrative Seizures

- Art. 10 - Pricing Constraints

- Art. 11 - Cancellation/Suspension of Licenses; Grounds/Procedures.

- Art. 12 - Entitlement to "Possession" of Land/Buildings - "Regardless of Nationality"

- Art. 13 - Rights to Importation/Exportation

- Art. 14 - Company Formation: Requirements/Formalities/Oversight

- Art. 15 - Exemption from Certain Labor Code Provisions

Part Three: Investment Incentives

Chapter 1 - Tax Exemptions (Arts. 16 - 27)

- Art. 16 - Para 1: General Incentives - 5 Years

Para.2: Specific Incentives - 10 Years for
* "New Industrial Zones"
* "Urban Communities"
* "Remote Areas"
* Social Fund for Development Projects

- Art. 17 - Specific Incentives - 20 Years for "Outside the Old Valley"

- Art. 18 - Acquired Rights: Completion of Existing Incentives (Provision No. 2)

- Art. 19 - "Triggering" Year for Running of Exemptions

- Art. 20 - Exemptions from Stamp Duty & Notarization/Registration Fees

- Art. 21 - Tax Exemption for Joint Stock Trust Company Profits

- Art. 22 - Tax Exemption for Bonds & Financing Instruments/Securities

- Art. 23 - Exemption from Unified 5% Customs Duty

- Art. 24 - Exemption from Merger/Division/Change of Form Profits

- Art. 25 - Pre-Merger Tax Exemption

- Art. 26 - Tax Exemption for Proceeds of In-Kind Shares

- Art. 27 - Executive Regulation to Set Forth Conditions, Rules, & Procedures and Grounds for Cancellation of Exemptions.

Chapter Two - Designation of Land and Relending (Arts. 28, 29)

- Art. 28 - Designation by Council of Ministers of Public Lands for Free Use of Incentive Project Companies/Establishments

- Art. 29 - Relending of Soft Loans under Council of Minister's Decree

Chapter Three - Free Zones (Arts. 30 - 47)

- Art. 30 - Establishment of FZ s & Administration/Board of Directors

- Art. 31 - Competent Administrative Authority to Determine Policies for FZ s/ Conditions for Use Licenses, Rules of Entry/Exit

- Art. 32 - FZ Board of Directors to License Project Use of FZ; License Conditions, Assignment, Granting/Appeals

- Art. 33 - Exemption of FZ Goods from Import/Export Duties; Executive Regulation to Define Procedures; Temporary Entry for Repair, Assembly/Processing

- Art. 34 - Importation of FZ Goods into Egyptian Customs Territory: Duty Rules; Calculation of Value/Duties

- Art. 35 - Deviations from Shipping Document Quantities

- Art. 36 - FZ Tax Incentives/Exemptions (Total) Subject to 1% Annual Duty

- Art. 37 - FZ Companies Exempt from Companies & Worker Participation on Board/Directors Laws

- Art. 38 - Maritime Project Exemptions

- Art. 39 - FZ Insurance Requirements

- Art. 40 - Entry/Residence Subject to Terms/Conditions of Executive Regulation

- Art. 41 - FZ Activities Exempted from Labor Permits/Organization

- Art. 42 - Licensing of FZ Professional/Crafts Activities

- Art. 43 - FZ Employment Contracts

- Art. 44 - FZ Exemptions from Certain Labor Code Provisions

- Art. 45 - Social Insurance Requirements

- Art. 46 - Violations/Penalties/Conciliation

- Art. 47 - Application of Articles 8, 9, 10, 11, 12, & 20 to FZ s

Problems and Concerns Noted with the New Law

Because of the very short turn-around time for PA consideration of the measure referred by the PM to the Peoples' Assembly on 21 March, there was considerable activity within the private sector to examine the measure and comment on it, framing the various problems foreseen by Egyptian businesspeople and investors. Upon referral of the latest draft to the PA, the DEPRA Project had the bill translated by legal translators and I have reviewed it over the last two weeks. So, included herein, are both descriptions of the problems noted by various individuals in the Egyptian private sector and my own concerns with it based on my prior experience in representing foreign investors abroad.

A. Constitutional Objections

Since I am not licensed to practice law in Egypt, I am undertaking here only to paraphrase (and not to analyze the validity of) the Constitutional objections noted with regard to the bill as passed by the Peoples' Assembly:

1) Dr. Mahmoud Fahmy has raised the issue of the Constitutional validity of the measure passed by the Peoples' Assembly - should it be signed and enacted by the President - on the grounds that the draft approved by the PA on 21 March, prior to its referral to the PA, was not submitted to the Council of State for its review and comment

2) A memorandum submitted by the Egyptian Businessmen's Association to the GOE after its referral of the draft legislation to the PA on 21 March, asserts the Constitutional invalidity of the measure on the grounds that Article 27 Paragraph One of the measure approved by the PA provides that the implementing Executive Regulation to be issued by the PM "shall define and set forth the conditions, rules and procedures related to enjoying tax exemptions automatically without need for any administrative approval, provided such exemption shall be canceled in case of breach of any of these rules and conditions." Paragraph Two of Article 27 goes on to provide: "The Prime Minister shall issue a decree with cancellation of this exemption on the basis of the memorandum referred to him by the Competent Administrative Authority in this respect. . . ." The EBA article 189 of the Egyptian Constitution of 1971, as amended in 1980, that provides that "the establishment, modification or cancellation of general taxes may be made only by a law. No one may be exempted from payment of such taxes except in the cases specified in this Law (Constitution) [meaning by legislation]. No one can be required to pay any other taxes or duties except within the limits of this Law", upon the basis of which it asserts that the administrative authority/discretion conferred in the First Paragraph of Article 27 of the legislation upon the Administrative Authority violates the requirement of Article 189 of the Constitution that tax

liability or exemptions therefrom be enacted through the process of legislation rather than by bureaucratic procedures. The EBA also alleges a Constitutional infirmity in that provisions of the new law permitting the Administering Authority to make State-owned land available to projects violates the requirement of Article 123 of the Constitution requiring approval of the Peoples' Assembly for the alienation of public lands.

3) Another well-known Egyptian lawyer present at the AMCHAM/Egypt meeting to review the new incentives legislation approved by the PA, Dr. Ahmed Sharif El-Din of Ain Shams University, propounded yet another constitutional objection to the bill based on the "anti-expropriation" language of its Article 8 which states: "These companies and establishments [receiving incentives under the Law] may not be nationalized, and their funds and assets may not be seized, restrained, frozen, or confiscated." According to him, the legislation's unconditional statutory prohibition of "nationalization" violates a specific provision of the Egyptian Constitution authorizing expropriation for public purposes subject to the payment of adequate compensation.

B. Other Major Concerns Suggested by the Legislation

What follows is an effort to describe major non-constitutional concerns that have been suggested with regard to the legislation approved by the PA and promulgated by the President. Most of these are concerns I have with the legislation, but I also include herein with attribution, other concerns as well that have been raised either by the EBA or by Dr. Mahmoud Fahmy as described at the AMCHAM/Egypt meeting referred to above.

(1) Excessive Discretion/Abolition of GAFI - My first major concern with respect to the legislation is that it is so-stripped of substantive provisions relating to incentives and their administration, that it confers excessive discretion upon the Egyptian bureaucracy in its interpretation and application. Unlike its predecessors, Law 43 of 1974 and the current Law 230 of 1989, it contains hardly any criteria for eligibility for incentives. Nor does the Law establish a solid statutory foundation ordaining a transparent process for its administration, with the result that there are no safeguards in the law itself against arbitrary and capricious action on the part of the bureaucracy in implementing it. Indeed, it appears from Article 27 that there may be no process for determining eligibility for incentives, a representation that begs credibility given Egypt's regulatory history. That article states that: "(t)he Executive Regulation [to be issued by the PM three months after enactment as provided for in the Promulgatory Decree] shall define and set forth the conditions, rules and procedures related to enjoying tax exemptions automatically without the need for any administrative approval . . ." (underlining for emphasis). How then are investors to be assured of their eligibility for such incentives before making their investments?

One gets the impression that, after the extensive and heated debate among various constituencies over earlier drafts of the law, it was simply decided to strip it of any substance and leave it to the bureaucrats to figure out. The problem of excessive discretion is exacerbated by Article Three of the Promulgatory Decree (PD) which terminates, in effect, the General Authority for Investment (GAFI), which, at least, had experience in the administration of such a law, but establishes no successor government entity to administer the law, saying only that:

> "The Administrative organ concerned with the implementation of the provisions of the attached law shall replace the General Investment Authority, its Board of Directors and the Head of its Executive Organ. The President of the Republic shall issue a decree appointing this organ, specifying its competencies and organizing its work."

GAFI is authorized to operate in the interim until issuance of the Presidential decree in administering incentives under the current law, Law 230/1989. The effect is really to subject the entire law and its administration to the untrammeled discretion of an agency not yet known or, perhaps, even established. This suggests a GOE effort to finesse resolution of one of the contentious issues that surfaced in the early drafting history of the law, when it was still hoped to "unify" company formation under the Companies Law with the investment incentives provisions of Law 230/1989. But, the administering authority for the Companies Law is the Companies Authority [sometimes also referred to in English translations as the Companies "Agency" or "Department"], while the administering authority for Law 230 was GAFI. At various times during the drafting process, efforts were made to provide for a single administering authority, but both the Companies Authority and GAFI had constituencies that opposed such a result. Supporters of GAFI felt that it had over 20 years experience in administering incentives (it was established in Law 43/1977 for that purpose) while supporters of the Companies Authority were concerned that GAFI did not have requisite experience and sophistication in regulating the formation and operations of business firms under the Companies Law. At one point, consideration was given to abolishing the Companies Authority altogether and transferring its responsibilities to the Capital Markets Authority. Provisions of the new Law suggest that the Office of the Prime Minister decided not to force a resolution of the issue but to leave it to be worked out in the less transparent process of a Presidential decree or in the elaboration of the Executive Regulation. The results of these twin aspects of drafting the law are that, (a) the criteria-lacking, barely substantive provisions of the law must be interpreted and applied by an implementing agency, (b) whose identity is unknown and which may not even exist! This does not give prospective foreign investors the basic assurances of transparency, consistency, and predictability that they have come to expect in a global market in which some 200 nations are competing to draw new FDI.

(2) Limitation of Incentives to Companies Yet-to-be-Formed - Article (1) of the new law provides that "(t)he provisions of this Law shall apply to all companies and establishments to be incorporated after the date of its effectiveness regardless of the legal system governing them, once they actually exercise activity in one of the following fields" (underlining for emphasis). This statement essentially means that, except for companies locating in the Free Zones and receiving incentives under that portion of the law (Chapter 3, Articles 30-47 which don't distinguish between previously and subsequently-incorporated entities) no existing company can qualify for incentives under the Law. Nor could branches of foreign companies qualify for incentives under the law. There appears to be no public purpose set forth anywhere in the law or the accompanying explanatory memorandum from the Office of the Prime Minister justifying this limitation on incentives under the Law but one can reasonably conclude it was intended to vest the administering authority to-be-named-later with complete control over the incorporation procedures of companies formed to take advantage of the incentives. (See item (4) following.)

(3) Lack of Remittance/Repatriation Guarantees - Part Two of the new Law provides various guarantees for investment, e.g., against expropriation - Art. (8); against administrative seizure or sequestration - Art. (9); against pricing interference - Art. (10); requiring adequate frounds for suspension of licenses - Art. (11); "possession" of real estate for project activities - Art. (12); freedom of importation and export for project activities - Art. (13); and exemptions from certain company regulations - Arts. (14) and (15). These guarantees are also made available to investors in the Free Zones under Article (47) of the Law. But there remains a serious omission from the enumeration of investor guarantees. Nowhere in the Law are there guarantees for the remittance of profits, repatriation of capital, or the right to effect necessary current account transactions in freely-available foreign currency. Articles (22) and (23) of Law 230/1989 provided conditional guarantees of profit remittances and capital repatriation subject to GAFI approval and available foreign currency balances. Article (24) of Law 230/1989 also guaranteed the right to repatriate foreign currency proceeds from the alienation of investor interests in projects under that law. The new Law has no such provision. It may be that the absence from the new Law of these important guarantees is based on the view that foreign currency transactions in general were significantly liberalized under the Dealing in Foreign Currency Law enacted in 1994 (Law 38/1994) so that further assurances are no longer required given existing applicable law. Law38/1994 was, indeed, cited among the laws and decrees enumerated in the premises clause of the Promulgatory Decree of the new Law. But, assuming that Law 38/1994 meets all major foreign investor concerns regarding (a) repatriation of capital, (b) remittance of profits, (c) realization of foreign currency proceeds of sale of investor interests in a project, and (d) necessary current account transactions, it seems logical that, since the new Law is intended generally to regulate incentivated investment, it should have set forth guarantees of these concerns in Part Two of the Law. This is especially so since laws, and the regulations and practices implementing them, do change, and investors want some assurance that such changes will not prejudice their investments or rights subsequent to making their investments.

(4) Conceptual Ambiguities - A number of people have concluded the tax exemption structure is ambiguous and complicated. The income tax incentives are contained in Articles (16) through (18). Article (16), paragraph 1, establishes the basic income tax incentive of a five year tax holiday on commercial and industrial revenues presumably qualifying among the many described in Article (1) of the Law. Article (16), paragraph 2, provides that this tax holiday will be for ten years with regard to activities conducted in (a) the "new industrial zones", (b) urban communities, and (c) remote areas as decreed by the PM or for activities of Social Fund for Development Projects. These aspects of the incentives are relatively straight-forward. However, Article (17) reads [in our English translation] as follows:

> "The profits of the companies and establishments which exercise their activity outside of the old valley and the shares of the partners therein shall be exempted from tax on commercial and industrial activity revenues or tax on trust companies profits as the case may be, whether such establishment is actually outside this valley or has moved therefrom, for a period of twenty years . . ." (underlining for emphasis)

In Article (16) the terms "new industrial zones", "urban communities", and "remote areas" are not defined. Similarly, in Article (17), the term "old valley" is not defined. Some of these terms may

be defined in other legislation or may have entered legislative use as “terms of art” but their definitions do not appear to have been incorporated by reference in the new Law. The phrase “whether such establishment is actually outside this valley or has moved therefrom” does not have any obvious meaning and appears to subvert, rather than promote, the goal for such an incentive.

(5) Corporate Formation Regulatory Responsibilities - Article (4) of the legislation provides that “(t)he Competent Administrative Authority shall assume the auditing of the articles and certificates of incorporation and statutes of the Companies [mentioned in Article] . . .” (underlining added for emphasis). Our English translation uses the word “auditing”, but I am sure the more appropriate translation is either “regulation” or “review”, either one of which confers upon the administering authority-to-be-named-later authorities and responsibilities over the company formation process that are inconsistent with the apparent earlier decision to disentangle company formation from incentives administration. Article (14) of the legislation provides that the administering authority to-be-named-later shall supplant the Companies Department (which normally administers the Companies Law, Law 159/1981) with regard essentially to any provisions of Law 159 that relate to or might govern companies formed under Article (4) of the new legislation. While Article (4) applies only to companies formed to take advantage of the incentives provided for under the new legislation, it is still an unnecessary and, essentially, unrelated area of responsibility for incentives administration. The regulation of such companies should be left within the overall company regulatory framework. It makes absolutely no public administration sense and only inflicts unnecessary costs upon the private sector to divide similar regulatory burdens among two different agencies, especially when company formation is not affected by administration of incentives. The result can only produce needless duplication of effort and, potentially, inconsistent regulatory impacts on Egyptian companies and certainly on foreign investors and their Egyptian venture partners. Moreover, at the AMCHAM/Egypt meeting, Dr. Mahmoud Fahmy made the point that it also anticipates revisions to be made in the companies regulatory framework and in the Civil and Commercial Codes in a manner that may be inconsistent with the regulatory regime worked out in those revisions.

(6) National Treatment/Foreign Ownership of Real Property - For purposes of setting the context for this discussion it should be noted that, while there appears to be no Constitutional inhibition on the ownership of real property by foreigners, firms or individuals, Egyptian statutes have imposed such constraints. Law 15 of 1963 provides that no foreigners - natural or legal persons - may acquire agricultural land. Law 56 of 1988 regulating the acquisition of urban land, limits foreigners to the right to purchase no more than one parcel of land for residential purposes. Law 143 of 1981 implicitly imposes a restriction on foreigners when it provides, with respect of desert land, that 51 percent-owned Egyptian companies may own such land even if they have significant minority foreign shareholders. In an effort to reassure foreign investors regarding real property ownership, Article 6 of Law 230/1989, the current Investment Incentives Law, provided that “projects, whatever the nationality or domicile of their owners. . . shall have the right, upon the approval of [GAFI] . . . to own such land and other real properties as may be necessary for their establishment and expansion.” The current Companies Law (Law 159/1981) does not contain such a provision. But, even under Law 230, there were concerns as to the real meaning and extent of its provisions relating to foreign ownership of land. Article 5, paragraph 2, thereof, provided that “for considerations of public interest - and upon the proposal of [GAFI] - the Prime

Minister may specify certain fields where either Arab or foreign capital, or both, may not be invested without the participation of Egyptian capital and the proportion of such participation." The GOE took further action in 1996 to allay investor concerns in this area. Law 230 of 1996 provides that subject to the Investment Law [e.g., Law 230/1989], foreigners may possess certain vacant and improved land, subject to the major qualifications that the land be for purposes of no more than two residences and that each shall not exceed 4,000 square meters. "Possession" as used in Law 230/1996 is defined as meaning "complete ownership" though this latter term is not itself defined and "possession" normally does not equal "ownership" in the sense of "fee simple title" in most real property legal regimes. Of more direct relevance to project activities, Law 5 of 1996 was enacted that states, inter alia, that "State-owned Desert Lands . . . may be disposed of free, or rented with a nominal rental value, for the establishment of Investment Projects thereon or for their expansion."

So, although Law 230/1989 apparently conferred some arguable but still ambiguous rights to foreigners to hold certain land for incentive project purposes through some vague concept of "ownership", we now confront the fact that Law 230/1989 is repealed in its entirety by Article Four of the Promulgatory Presidential Decree accompanying the new Law. This could also moot the relevance of Law 230 of 1996, quoted above, relating to vacant and improved land for residential purposes, since it subjects foreigners' rights thereunder to Law 230/1989, now repealed.

The new Law contains three articles that relate, directly or indirectly, to foreign ownership of real property. The most important, Article (12) provides that "The Companies and establishments shall be entitled to hold in possession the land and the buildings constructed on such land for the purpose of assuming their activity and even expanding in it, regardless of the nationality of their owners [of the Companies and establishments], their place of residence or the percentages of their participation" (underlining for emphasis). A distinguished local attorney, Dr. Mohamed Hassouna of the law firm of Hassouna & Abou Ali, assured me at the AMCHAM/Egypt conference on the new investment legislation, that the original Arabic uses the term "own". However, it seems clear that, even within the legal fraternity in Egypt, conceptualization about parameters of real estate "ownership" is muddied. Again, "hold in possession" does not imply Western notions of fee simple ownership of real estate. It may, indeed, include fee simple title, but it may also include lesser forms of relationship to real estate, such as a lease, un-litigated adverse possession, easements, or usufruct (a real property right to the fruits of the land or production thereof). Concerns about the quality of relationship to the land are heightened by the other two articles of the new legislation relating to land for project activities. Article (28) provides that: "(t)he Council of Ministers may issue a decree, upon the proposal of the Competent Minister, with designation of the land owned by the State or by public corporate persons to the Companies and establishments to be constructed in certain areas, free of charge" (underlining for emphasis). The term "owned" is used in this article, but only in reference to the State, etc. while the term "designation" would not appear to be a normal way of describing a transfer of fee simple title to land, but of some lesser right. Article (5) of the legislation states that: "(t)he Competent Administrative Authority shall assume the designation of the land necessary for the Companies and establishments and conclusion of all the related contracts on behalf of any concerned organs" (presumably the State, etc. as described in Article (28). This issue of whether

the new Law actually authorizes the alienation of State-owned property also involves the Constitutional issue described above. Indeed, use of the term "designate" rather than "sell" or "give" may well have been designed to avoid Constitutional implications related to effective alienation of public property. None of the three articles quoted above provide any reliable basis, nor thereby any reliable assurance, for concluding that "ownership" in the form of fee simple title, is in fact accorded foreigners under the new law. Lack of access to the legal right to own real property is a significant disincentive to foreign investment in any country.

(7) Reduction of Incentives Offered - The EBA and a number of businesspeople and Egyptian lawyers have commented that the new Law both withdraws incentives altogether for certain sectors previously benefiting from incentives under prior laws, and reduces them for most investors eligible under the new law. There are at least three aspects to their concerns:

a) Withdrawal of Incentives: Egyptian members of the International Franchise Association note that the new law eliminates from eligibility a number of sectors previously eligible for incentives. In addition to completely repealing the existing Investment Incentives Law (Law 230/1989), Article Four of the Promulgatory Decree specifically excises and repeals two articles of the Tourism Law (Law 01/1973) incorporated by reference into Law 230 that has the effect of withdrawing incentives for travel agencies, restaurants catering particularly to foreigners, and certain retail stores purveying tourist souvenirs. This has especial concern for the United States since most Egyptian franchisees (MacDonalds, Roy Rogers, Pizza Hut, House of Donuts, Cheesecake Factory, etc.) have acquired these franchises from U.S. franchisers, who are thereby directly and negatively impacted in terms of their economic benefits from such franchises. Originally there was concern that tourism transportation firms were removed from the list of eligible project activities, but they are specifically mentioned in Article (1) of the new Law.

b) Supplementary Incentives: Both Law 43 of 1974 and the current Investment Incentives Law, Law 230 of 1989, provided additional fiscal incentives in the form of corporate income tax holidays equal to the initial number of years of tax holiday for the original investment for re-investment of project earnings or for wholly new investments in eligible projects.. Similarly, in the case of the original investment, investors were accorded reduced income taxation upon expiration of the original tax holiday. The new Law withdraws these supplementary incentives.

c) Notarization Fee Exemptions: Article 14 of the current Law 230 of 1989 affords exemption, inter alia from notarization and registration fees on contracts for the entire period through completion of the project. Article (20) of the new law reduces this exemption to the first three years of the project.

The above concerns may reflect a concern of the GOE to limit the number and extent of fiscal incentives made available to investors. At one point during the lengthy period of drafting of the new incentives legislation, "front-loaded" fiscal incentives were eliminated in favor of "performance-based" fiscal incentives. However, many foreign investors apparently successfully

made the point to drafters that, since "performance" was subject to a lot of business and non-business variables, investors required "front-loaded" incentives in order to be able to plan for their likely tax liabilities and, therefore, rate-of-return on investment and that, without such an ability, they would not consider investing without some advance understanding of incentives to be realized and their impacts on net tax liabilities, while "performance" was always subject to post-investment auditing to determine if they had met their incentive eligibility requirements. But this tightening up on incentives may also reflect the GOE's growing awareness that investors generally do not decide in which country to invest based solely or even significantly upon the fiscal incentives offered, but are much more attracted by effective guarantees against non-business risks.

(8) "Triggering" the Term of Incentives - I remain concerned that the GOE does not understand the problems and turnaround time for successful FDI. In all three of the investment incentives laws examined - Law 43 of 1974, its successor, the current Law 230 of 1989, and the Law just enacted, the "triggering" point in time for determining the running of the applicable term of the incentives begins "from the first fiscal year following the beginning of production or of assuming activity" [Article 16 of Law 43/1974, Article 11 of Law 230 of 1989, and Article (19) of the new Law]. This triggering provision appears not to recognize that the purpose of fiscal incentives is related to gross profits actually realized. An income tax holiday or reduced tax provision has no possibility of application in years in which profits are not realized. Yet FDI is essentially a long-term proposition and the investment may not, in fact, pay out immediately in the form of gross profit. The basic tax holiday period conferred in the new legislation is only five years. Especially in the case of so-called "greenfield" investments, e.g., those that start from scratch, it may actually take years before profits are realized even after the initiation of production. Presumably, "assuming activity" is considered an alternative to "beginning of production" such that it could actually be interpreted to cover even the initial emplacement of the investment even before "production" occurs, such that the term of the fiscal incentives may well have passed before "profits" are ever realized. It makes sense for the new Law to provide that the applicable term of incentives "begins with the first year in which gross profits are realized." Otherwise, fiscal incentives would be meaningless and of little utility to prospective foreign investors.

(9) Legal Framework for "Free Zones" - A major part of the new Law is devoted to incentives for operations in the Nation's "free zones" (FZ s). Most of the Law's provisions relating to FZ s are similar to those of Law 230 of 1981, whose provisions, in turn, substantially reflected the provisions of Law 43 of 1974. My concern with the emphasis on FZ s in the new Law is not about the incentives themselves, but to the fact that, although there are provisions in the Nation's Customs Law(s) that cover many of the same concepts and activities regulated under the incentives laws, there is no current free-standing, comprehensive Free Zones law. This means that the regulatory scheme for FZ s incentivated under the incentives law is largely duplicative of many of the regulatory provisions of Egypt's Customs Law(s) except that they are implemented by a different administering/enforcement agency, in the case of the Customs Law by the competent agency of the Ministry of Finance and, in the case of incentives law, by GAFI (formerly) or, in the case of the new law, the Administering Authority-to-be-named-later. Secondly, existing Customs law may not establish either a sufficient or a facilitative legal/ regulatory regime for the operation of FZ s reflecting the purposes for such zones and the modern

practices in which they engage At best, the new Law only provides a form of "backdoor" regulation that essentially duplicates and may well conflict with, the rudimentary regulation of FZ s in Egypt's existing Customs Law(s). For example, the new Law does not actually describe many of the activities that may be engaged in the FZ s, and, so, it is not certain public officials really understand the broad spectrum of uses for FZ s enough to avail themselves of them, let alone adequately regulate or facilitate them.

FZ s essentially are areas in or adjacent to ports of entry into or within a nation's custom territory that are treated as being "outside" such customs territory (a legal fiction). They have been developed for such activities as lading/unlading of vessels, sale (other than retail), storing, grading, labeling, cleaning, manufacturing, assembly or processing, packaging, and/or exhibiting of goods thereafter to be entered into the customs territory or exported to customs territories of other nations. The function of an FZ is to allow for foreign or domestic merchandise to be brought into a zone for storage or handling, with the zone operator legally responsible for the customs security of the goods while in the zone in accordance with the customs laws and regulations of the country involved. From the time the goods are entered into the zone, until they are removed or destroyed, the supervision of and accounting for them is accomplished through forms of secured inventory control.

The basic utility of an FZ is that it allows traders to deal in goods without having to pay either import or export duties or taxes until they are in a more desirable stage, or fit within a more desirable schedule, for entry or exit. For example, importers intending to develop a domestic market in a given country for foreign merchandise, may hold it "offshore" in an FZ for display or storage, until the market is favorable. By retaining the inventory offshore, they can avoid having to bear the cash flow costs of applicable tariffs until such time as its entry into the customs territory becomes commercially feasible. Merchandise subject to import or export quota (as for example, textiles/apparel under bilateral quotas negotiated under the Multifibre Agreement) may be stored offshore to avoid exceeding an applicable quota or to take advantage of more favorable quotas in the future. One of the most significant benefits of a FZ for a country's importers is to permit them to bring into the FZ manufacturing inputs the aggregate of individual tariffs on which may exceed the total single tariff applicable on final products manufactured from them within the zone. Indeed, one of the provisions of the new Law appears to permit this result [Article (34)/paragraph 3]. Importation of inputs into an FZ permits avoidance of drawback procedure for prepayment and subsequent refund of duties on inputs, an administrative process that rarely works well in any country. Moreover, manufacturing, assembly, or processing of products from imported inputs also allows the export marketing of final products under a new country-of-origin if the value added within the zone exceeds the original value of the inputs.

My concern is that the GOE, in practice, may not find it necessarily desirable to provide incentives for <u>all</u> of these possible uses for FZ s, nor should incentives administration officials be encumbered with what are essentially Customs regulatory responsibilities. The answer to both of these considerations is to enact a separate, comprehensive Free Zone regulatory regime integrated into the existing general Customs regime and administered by the Nation's Customs authorities. In November of last year, reports circulated in the media that the GOE was considering just such action. But it appears no action has been taken.

(10) Sectoral and Other Coverage Issues - Prior to enactment of the new Law, EBA members and other Egyptians noted a number of sectors or other economic activities that were not made eligible for investment incentives under the new law. Dr. Mahmoud Fahmy noted that the incentives do not induce any investment in newly-privatized State-owned companies; provides no special incentives for small or medium-sized firms (though they do not appear excluded by definition); and certain social infrastructure investments. Samir Ragab, writing in the Egyptian Gazette lamented that the law does not cover construction services or non-tourist, general real estate development. These concerns appear to have been rendered moot by enactment of the new Law.

(11) GATT/WTO Implications of Free Zone Regime - A legal consultant to the Egyptian Investment Guarantee Company, Dr. Ahmed Sharafeddin, was quoted in the Al Ahram English Weekly of April 10-16, 1997 ("MPs Slam New Investment Bill") as asserting that there is a customs distinction between imported and locally-produced goods in the FZ s authorized in the legislation that is a "clear violation of the GATT". The nature of his concern has not been elaborated, but a close review of the customs regime provisions for the FZ s contained in Articles (33) and (34) does not suggest any major deviations from standard FZ practices or provisions that warrant concerns under the GATT '94.

Conclusion

On the basis of an examination of the draft legislation that has become the new Investment Incentives Law, Law 8 of 1997, in lieu of the English text of the new law itself, and of subsidiary documents describing its provisions, I conclude that the new Law is not an improvement on existing incentives legislation.

APPENDIX E

Documents Reviewed

African Development Indicators (1995, 1996), World Bank, Washington, D.C.

Arab Republic of Egypt: Economic Policies for Private Sector Development, World Bank, May, 1995.

"Arab Republic of Egypt - Staff Report for the 1995 [and 1996] Article IV Consultation", IMF, Washington, D.C. 1995 & 1996.

"Arab Republic of Egypt: Trade Policy Review", GATT, Geneva, Feb., 1993.

Balance of Payments Statistics Yearbook, (for 1995, 1996), International Monetary Fund, Washington, D.C. May, 1996, 1997.

"Breaking New Ground in Egypt: Investment Legislation, 1995", Baker & McKenzie, Ministry of International Cooperation, 1995.

"Breaking New Ground in Egypt: Legal Aspects", Baker & McKenzie, General Authority for Investment, 1995.

"Building on Progress: Reform and Growth in the Middle East and North Africa", Middle Eastern Department, International Monetary Fund, Washington, D.C., 1996.

Business Law in Egypt, Michael H. Davies, Kluwer Law and Taxation Publishers, London, 1983.

Business Laws and Economic Prospects in the Middle East & North Africa, Feiler and Yisraeli, Federation of Israeli Chambers of Commerce, Tel Aviv, 1996.

Checklist: Starting a Business in Israel, Kesselman & Kesselman, Tel Aviv, 1994.

A Comparative Study of Egypt, Jordan, Syria, Lebanon, Palestine, and Israel, American Chamber of Commerce in Egypt, October, 1996.

Connaitre la Tunisie, Agence Tunisienne de Communication Exterieure, Tunis, Octobre, 1994.

"Country Commercial Guide: Tunisia-1996", U.S. Embassy, Tunis, July, 1996.

"Determinants and Impact of Sovereign Credit Ratings", Cantor and Parker, FRBNY Economic Policy Review, New York City, October, 1996.

Doing Business in Israel, Ernst & Young International, Ltd., Tel Aviv, 1995.

Doing Business in Morocco, Price Waterhouse, Casablanca, 1991.

Doing Business in Turkey, Erdikler-Eratalar YMM A.S., Arthur Anderson & Co., SC, Undated.

Doing Business in Tunisia, Economic/Commercial Section, U.S. Embassy,Tunis, Undated (app. 1994).

"Domestic Developments: Investment Opportunities in Egypt", National Bank of Egypt Economic Bulletin, Vol. XXXXVII, #4, 1994.

Draft Investment Guarantees and Incentives Law (English Translation), Federation of Egyptian Industries, November, 1996.

"Egypt", MarketLine International, Profound, Inc./Business Intelligence Online, June, 1996.

"Egypt 1996-1998: Annual Report on Government, Economy, the Business Environment, Capital Markets and Industry, with Forecasts through end-1998", Business Monitor International, Ltd., London, July, 1996.

"Egypt: Country Report", (1st. & 2nd Quarter 1996), Economist Intelligence Unit, London, 1996.

Egypt Economic Profile, Ministry of Economy and International Cooperation, November, 1996 (for MENA Conference).

Egypt Free Zones, General Authority for Investment and Free Zones, Undated.

Egypt: International Tax and Business Guide, Deloitte Touche Tohmatsu International, New York City, March, 1994.

Egypt - Into the Next Century (Vol. 1) - Egypt in the Global Economy - (Vol. 2) Country Operations Division, World Bank, May, 1995.

"Egypt: The Investment 'Jewel on the Nile'", Global Securities Research & Economics Group, Emerging Markets Research, Merrill Lynch, London, June,1996.

"Egypt's Investment Policy", General Authority for Investment, October, 1995.

"Egypt: Your Smart Investment Choice - Investment Environment", AMCHAM/ Egypt, November, 1996 (for the MENA Conference).

Egyptian Legal and Judicial Sector Assessment, (4 Vols.), John Bentley, for

USAID/Egypt, February, 1994.

"The Egyptian Taxation System and its Role in Encouraging the Private Sector to Invest: Problems and Recommendations", Hazem Hassan & Co., The Egyptian Businessmen's Association,

1995 Foreign Direct Investment Trends of U.S. Multinationals and U.S. Manufacturers, Institute for Manufacturing Research, Deloitte Touche Tohmatsu International, New York City, 1996.

"Foreign Economic Trends and their Implications for the United States - Report for the Arab Republic of Egypt", U.S. Embassy, Cairo, April, 1996.

"Foreign Investment Climate Statement, Turkey", AMEMBASSY/Ankara, U.S. Department of State, Washington, D.C. August, 1995.

"Foreign Investment in Israel: The Competition for Foreign Investments in the Middle East", German-Arab Trade, June, 1996.

"Foreign Investment Legislation and Application Forms", General Directorate of Foreign Investment, Undersecretariat of Treasury, Prime Ministry, Republic of Turkey, Anakara, 1995.

Foreign Investors Association Bulletin [YASED], January, March, July, September, 1996, Istanbul, Turkey.

Foreign Trade Barriers, 1996 National Trade Estimate Report, United States Trade Representative, Washington, D.C., 1996.

The Handbook of Country and Political Risk Analysis, Political Risk Services, IBC USA Licensing Inc., East Syracuse, N.Y., 1994.

Incentives and Foreign Direct Investment, UNCTAD Division on Transnational Corporations and Investment, Current Studies, Series A, No. 30, United Nations, New York and Geneva, 1996.

Incentives for Investment in Israel, Kost Levary & Forer, Ernst & Young International, Tel Aviv, 1996.

International Direct Investment Statistics Yearbook - 1995, OECD, Paris, 1995.

"Investing in Egypt: Challenges & Opportunities", a Conference co-sponsored by AMCHAM/Egypt and Merrill Lynch International, London, June, 1996.

"Investing in Egypt: Establishing a Business Presence", Arab Republic of Egypt, Ministry of International Cooperation, September, 1994.

"Investing in Egypt: Land of Opportunity", Arab Republic of Egypt, Ministry of International Cooperation, September, 1994 (Also November, 1996 by the ARE Council of Ministers).

"Investing in Egypt: A New Business Environment for a Great Country", Arab Republic of Egypt/Council of Ministers, November, 1996 (for MENA Conference)

Investing in Morocco, Groupement Professionnel des Banques du Maroc, Casablanca, 1994.

Investir en Tunisie, Guide d'Information, Groupe MTBF-CAF, Price Waterhouse, Tunis, 1996.

"Invest in Tunisia: The Computer Industry", Foreign Investment Promotion Agency, October, 1995.

"Investment Climate in Tunisia", Ministry of International Cooperation and Foreign Investment, Tunis, May, 1994.

"Investment Incentive Factors Influencing the Success of Egypt-USA Joint Ventures Doing Business in Egypt", Abouel-Enin, ICSCSA 97. 22nd Int. Conf., Statistics, Comp. Sci. & Appl., 1997.

"Investment Incentives Code", Republic of Tunisia, Foreign Investment Promotion Agency/Ministry of International Cooperation and Foreign Investment, Tunis, 1996.

"Investment in Turkey: Legislation and Application Forms", Undersecretariat of Treasury/General Directorate of Foreign Investment & Arthur Andersen & Co., Ankara, September, 1995.

"Investment Law No. 230/1989", A.R. Egypt, General Authority for Investment, Undated.

Investment Policies in the Arab Countries, Ed. Said El-Naggar, International Monetary Fund, Washington, D.C. 1990.

The New Investment Environment in Turkey, Turk Ekonomi Bankasi, Intermedia, Istanbul, March, 1996.

Israel Business and Taxation, Luboshitz, Kasierer & Co., Arthur Andersen & Co., SC, Tel Aviv, December, 1995.

Israel: Yearbook & Almanac, 1996, IBRT Documentation/Translation, Ltd., Jerusalem, Israel, 1996.

"Laws Relating to Foreign Trade, International Trade Companies, Non-Resident Financial and Banking Institutions", Republic of Tunisia, Ministry of International Cooperation and Foreign Investment, Tunis, 1996.

"Legal and Judicial Framework", (El Gamal Law Office), Conference on Private Sector Development in Egypt: Investing in the Future, Background Papers #2 A & B, The Egyptian Businessmen's Association, Cairo, October, 1994.

"Private Investment in Egypt", AMCHAM/Egypt, September, 1995.

"Privileges & Exemptions Granted by Investment Law No. 230/1989", A.R. Egypt, General Authority for Investment, Undated.

"Study on the Development of the Private Sector in Egypt: A Future Legislative Perspective", Mahmoud M. Fahmy, Egyptian Businessmen's Association, Cairo, October, 1994.

Towards a More Conducive Investment Climate in Egypt, Investment and Free Zones Authority, Undated.

Trends in Developing Economies (1995, 1996), World Bank, Washington, D.C.

"Tunisia, 1994: Trade Policy Review", GATT, Geneva, September, 1994.

"Tunisian Business Mission: Evaluation and Recommendations", AMCHAM/Egypt, June, 1996.

"Turkey, 1994: Trade Policy Review", GATT, Geneva, March, 1994.

"Trade-Related Investment Measures", Trade Laws and Institutions: Good Practices and the World Trade Organization, Hoekman, The World Bank, Washington, D.C., April, 1995.

"Trade-Related Investment Measures", The Outcome of the Uruguay Round: An Initial Assessment, Supporting Papers to the Trade and Development Report 1994, United Nations Conference on Trade and Development, United Nations, New York City, 1994.

"Tunisia: A Country That Works", FIPA, Ministry of International Cooperation and Foreign Invest (sic), September, 1996.

Tunisia: National Report on Environment and Development - 1992, Agency for the Promotion of Industry, Tunis, 1992.

"Tunisia: A Rich Past and a Commitment to the Future", Tunisian External Communication Agency, Tunis, Undated.

"Tunisia's Global Integration and Sustainable Development", World Bank, Washington, D.C., 1996.

Turkey, OECD Economic Surveys, OECD, Paris, 1996.

"Turkey: Banking, Finance", Special Advertising Section, The Wall Street Journal Europe, Friday-Saturday, November 15-16, 1996.

"Turkey: Country Commercial Guide", International Trade Administration, U.S. Dept. of Commerce, Washington, D.C. 1996.

"Turkey: The Opportunity", Privatization Committee, Foreign Investors' Association of Turkey [YASED], September, 1995.

"Turkish Monthly Economic Indicators: July-August, 1996 AMEMBASSY/Ankara, U.S. Department of State, Washington, D.C., 1996.

World Economic and Social Survey 1996 - Trends and Policies in the World Economy, United Nations, New York City, 1996.

World Investment Report - 1995: Transnational Corporations and Competitiveness, Division on Transnational Corporations and Investment/UNCTAD, United Nations, New York/Geneva, 1995.

World Investment Report - 1996: Investment, Trade and International Policy Arrangements, UNCTAD, United Nations, New York/Geneva, 1996.

APPENDIX F
Background of the Authors of the Study

James L. Kenworthy, of Nathan Associates Inc., is the International Trade and Investment Advisor for the DEPRA Project and served as Team Leader for this study. He is a lawyer and consultant with over 25 years' experience in international trade/investment, including on-site legal practice in developing nations, representing U.S. and other foreign direct investors. He has served as Assistant Director/Legal of the National Foreign Trade Council in New York City and as an attorney for the Foreign Claims Settlement Commission of the United States. During some 11 years as an attorney with the U.S. Department of Commerce in Washington, D.C., he served with the Office of Foreign Direct Investment and, later, as Counsel to the Office of Foreign Investment in the United States. For two years he served as Professor of International Trade and Investment Law at the Law School of the University of Missouri/Kansas City. He is the author of a reference text on Chinese foreign trade/investment law and of several articles in business and legal publications. Prior to joining the DEPRA Project team, he served for three years as Director of Nathan Associates' USAID-funded Latin American/Caribbean Trade and Investment Development Project.

Siegfried Marks is President of Sigmar International, a Miami-based consulting firm offering advisory services on economic policy reforms to governments and operating problems abroad to private companies. Mr. Marks is an international economist with thirty years work experience with foreign governments, major private companies, USAID, World Bank, and UNDP on a wide range of economic reform projects, including investment incentive legislation, customs, privatization, export and investment promotion, free trade agreements, private sector strengthening, and deregulation of investments, foreign trade, prices, and the energy sectors. His most recent projects include proposals to deregulate and privatize port operations in Egypt; a comparative analysis of impediments to foreign investment in Egypt, Turkey, Israel, Morocco, and Tunisia; and a proposed new investment incentive law for Haiti, based on a detailed study of existing investment incentive regulations and administration in Haiti and a dozen Latin American countries.

APPENDIX G

Scope of Work

EGYPT: Impediments to Foreign Direct Investment

Development Economic Policy Reform Analysis (DEPRA) Project
Cairo, Egypt
(Task Order 003-Contract No. 263-0233-C-00-6001-00)
June 23, 1996

1. BACKGROUND

Foreign investment in Egypt has shown an average rate of growth of 2 to 5 % per year since 1989, and by 1995 total foreign investment in Egypt was approximately US$3.53 billion. In mid-1995, of total approved investment projects under all incentive laws, Egyptians themselves were responsible for 59%, while other Arab and foreign direct investors accounted for about 20% each. By the end of 1995, U.S. direct investment in Egypt in all industries totaled approximately US$ 1.6 billion, making it the largest non-Arab investing country with 170 approved projects, compared to 126 for Great Britain, 79 for Switzerland, 67 for France, and 55 for Italy.

Egypt's policy on foreign direct investment (FDI) has been liberalizing gradually since the initiation of the "Open Door" policy in the 1970s, when Egypt began to encourage FDI through the offering of tax and other investment-related incentives. But, since the initiation of the Second Phase of macroeconomic reforms in January of this year, the GOE has begun placing special emphasis on the catalytic role of FDI for national economic growth and job creation, and taking a number of measures designed to realize the economic benefits of FDI.

This policy reflects the GOE's macroeconomic planning for its economy and its determination to realize 500,000 new jobs in this last year of the current Five Year Plan. Creation of 500,000 new jobs will require 5% growth in GDP over the next year. This target cannot be met using Egypt's domestic savings and investment alone. Egypt must attract no less than LE 3.5 billion (approximately US$ 1 billion) in new FDI. The GOE, however, is hoping to produce 7.0 % GDP growth in future years, which would require some LE 12.3 billion or approximately US$ 3.6 billion in new FDI in each such year (figures from the Ministry of State for Economic Follow-Up). That is approximately seven times the rate of new FDI realized by Egypt last year.

In January of this year, President Mubarak declared that "Egypt is open for investment." Pursuant to his directive, the Government recently indicated it was removing all screening/approval requirements on all new FDI projects in order to allow investors to set up projects without having to get the prior approval of the GOE's investment screening/promotion agency, the General Authority for Investments and Free Zones (GAFI), administratively located in

the Ministry of Economy and International Cooperation. According to the GOE, investors now need only to inform GAFI of their project so that it can issue the directives necessary for them to realize the tax and other incentives available to them under current Egyptian law.

Current law appears to make available fiscal incentives (mostly tax incentives) and certain customs exemptions to new investors. The incentive program appears to apply to all new investment, whether foreign or domestic, and provides an increasing level of incentives to channel new investment into either remote areas or new city industrial zones, as well as so-called "free zones" designed especially to attract export assembly/ processing operations. Nonetheless, there appear to remain a number of legal restrictions placed in the way of foreign investors, including, particularly, restrictions on investment in certain sectors and restrictions on the ownership of real estate. Moreover, current foreign investors report a number of impediments to FDI that continue, notwithstanding the GOE's desires to attract and increase FDI in the country. Among areas of concern alleged is the continuing dichotomy between the GOE's promotional rhetoric and characterization of its initiatives to attract FDI and its actual implementation thereof in terms of investment-related legislation, regulations, and practices; import impediments; labor laws/regulations and their implementation; performance requirements; and complicated company establishment/licensing procedures.

Over the past five years, USAID - Egypt has funded some twelve studies focusing on various substantive areas of the Egyptian economy, that have addressed, directly or indirectly, various impediments to investment in that economy, whether domestic or foreign. These studies have related to export strategy and services; the import system; transportation and ports; human resources/labor; small and macro enterprises; investment reforms; modernization of the investment-related legal/regulation framework; and improvements in the juridical sector. The proposed study will carefully review all of the reports and available documentation resulting from these studies to avoid duplication of effort or replication of study activity but will attempt to bring up-to-date the information contained therein that relates directly to current FDI in Egypt.

One of the focuses of the study will be the attractiveness of Egypt as a target for FDI in terms of its current FDI - related legal/regulatory regime relative to those of its major regional competitors for FDI, including Jordan, Morocco, Tunisia, and Turkey. The study will include an assessment of FDI regimes in neighboring countries in order to compare the "attractiveness" of those regimes in contrast to Egypt's.

2. OBJECTIVES

This study is intended to review and assess the current legal and regulatory climate of Egypt for FDI, with a particular focus on the impediments incorporated into its FDI-related laws and regulations or resulting from GOE practices in the administration and implementation thereof. It will also address and evaluate existing incentives for FDI afforded foreign investors under existing Egyptian laws and regulations and consider whether other incentives are indicated.

The goal of the study is to assess the Egyptian FDI legal and regulatory regime and the impediments to FDI that may result therefrom, identify inconsistencies therein that operate to

frustrate the GOE's goals for increasing FDI, and offer specific recommendations for improvements in that regime as a vehicle for enhancing the overall attractiveness of Egypt's investment climate.

3. TASKS

A. The consultants will carry out the following tasks in conducting this study:

1) Review relevant literature relating to FDI in general and FDI in Egypt in particular, with particular emphasis on recent studies on Egyptian FDI that have been undertaken in the past under funding of USAID/Egypt or other sources;

2) Review Current Egyptian laws and regulations directly or indirectly ("collaterally") impacting upon FDI as well as GOE official practices affecting the administration and application of such laws and regulations that also affect, negatively or positively, FDI and foreign investors;

3) Interview GOE officials responsible for the development, administration, and effective implementation of laws, regulations, or practices that directly or indirectly impact upon FDI and foreign investors;

4) Interview representative foreign investors in Egypt (or prospective investors) to elicit information regarding their perceived impact of GOE laws, regulations, and practices on their investments and/or investment plans and their concerns and recommendations for enhancement of the FDI regime, including, specifically, the effectiveness of FDI incentives offered foreign investors;

5) Review and comparatively assess the FDI regimes of neighboring countries that are Egypt's major competitors for attracting FDI;

6) Review and evaluate the effectiveness of the GOE's current FDI-related incentives and their impacts in producing new FDI;

7) Develop findings and conclusions elicited from the study and draft specific recommendations for the GOE for improving its FDI legal/regulatory regime and/or practices to enhance its attractiveness for new FDI;

8) Prepare a draft report of findings, conclusions, and recommendations for review by and discussion with appropriate officials of the GOE, USAID/Egypt, and representative foreign investors or private sector business advocacy organizations in Egypt; and

9) Produce a Final Report incorporating the study's final findings, conclusions, and recommendations to the GOE for enhancement of its FDI regime.

B. The study team shall submit a detailed Workplan for accomplishing the above-described tasks including the methodology to be employed and a schedule of activities. The detailed

Workplan shall be submitted for approval to the DEPRA Chief of Party within 10 working days of the arrival of the short-term expatriate consultants.

4. METHODOLOGY

The team leader and the Chief of Party shall determine the methodology to be employed in this study and will describe it as part of the Workplan. It is anticipated the team will work mostly in Cairo, reviewing relevant literature and documentation and interviewing GOE officials and representatives of the foreign investor community and academicians. However, the research effort may also require preliminary research in the United States and travel to Alexandria or other locations in Egypt in which foreign investment is located to interview local officials and representatives of foreign investors in such areas. As currently planned, the study will include brief visits to neighboring countries that are major competitors to Egypt in attracting FDI, such as Jordan, Morocco, Tunisia and Turkey (in particular to assess the relative use and impacts of FDI incentives).

5. DELIVERABLES

1) A detailed Workplan.

2) A draft report with findings, conclusions, and tentative recommendations for review by and discussion with GOE officials, staff of USAID/Egypt/EAP, and representative foreign investors or authentic private sector business advocacy organizations in Egypt.

3) Meetings or presentations to discuss the draft report with individuals described in 2) above to receive their comments, suggestions and take the same into account in preparation of the Final Report.

4) A Final Report within two weeks of final receipt of discussion comments.

The draft and Final Reports shall be written in English with an executive summary translated into Arabic. Along with the Final Report, there will be submitted a complete version of the Report in English on computer diskette (Word Perfect or MS Word for text files, Excel or Lotus 1-2-3 for tables and graphs). The report will be prepared in a format that presents findings, conclusions, and recommendations for GOE action to enhance its FDI regime.

6. LEVEL-OF-EFFORT AND STAFFING REQUIREMENTS

The study will require two short-term expatriate consultants and two local Egyptian consultants, both of whom shall be senior, experienced professionals, capable of conducting and completing the study within two person months over a three month period. The DEPRA Project's Chief of Party shall designate its Team Leader. Members of the Project staff shall not be chargeable to the study level-of-efforts or budget therefore.

Expatriates	Level-of-Effort
A lawyer with broad professional experience in representing foreign investors abroad and an understanding of FDI motivations and transactions as well as a well-developed familiarity with FDI legal/ regulatory regimes, issues, and FDI incentive programs and impacts.	Two person months
An economist with broad professional experience in macroeconomic policy reform and the distributive impacts of FDI within a developing nation economy in producing jobs and GDP growth as well as of the impacts of FDI incentive programs in attracting FDI.	Two person month
An Egyptian lawyer with prior experience representing foreign investors in Egypt and an understanding of FDI issues as well as a well-developed knowledge of the Egyptian legal/regulatory regime for FDI and GOE practices affecting FDI.	One person month
An Egyptian economist or other professional familiar With the General Authority for Investment's screening and approval process, the granting of incentives to foreign investors and their investments, and GOE practices for the application and enforcement of investment incentive conditions.	Two person weeks.

7. START AND COMPLETION DATES

The study team should be mobilized and the expatriate consultant(s) arrive in Egypt to begin work no later than October 5, 1996. The Final Report shall be submitted no later than December 5, 1996.

8. REPORTING PROCEDURES AND OTHER CONDITIONS

The team leader shall report directly to the DEPRA Chief of Party, who shall act as the Project's designated study coordinator. The consultants shall work closely with such GOE officials, USAID/Egypt personnel, and representatives of the foreign investor community in Egypt as may be designated or approved by the Chief of Party.

A six day work week is authorized for Expatriate short term consultants for work performed outside the United States.

The DEPRA Project shall provide necessary local logistical support, including local transportation, office space with basic furniture and access to a telephone for local calls, essential photo-copying, and basic secretarial support. A printer in the DEPRA office will be available to the study team for printing computer files. The Egyptian members of the team, in addition to their professional duties, shall be expected to act as translators and interpreters as needed for interviews, essential documents and reports, and to facilitate the activities of the expatriate consultants or study coordinator as indicated.

9. PROPOSED STAFFING

The individuals proposed for this study's level-of-effort are:

Expatriate Investment Lawyer:	James Kenworthy, Esquire, (Project Staff)
Expatriate Economist	Siegfried Marks
Egyptian Lawyer	Dr. Tewfik Shehata
Egyptian Economist	Dr. Salah Zein El Din

Mr. Kenworthy and Dr. Salah are part of the long term resident DEPRA staff. Mr. Marks and Dr. Shehata are short term experts whose participation will require use of DEPRA budgeted resources for short term advisors. Salary rates for each consultant are shown in Appendix A.

10. EMERGENCY LOCATOR INFORMATION

(to be supplied separately)

APPENDICES

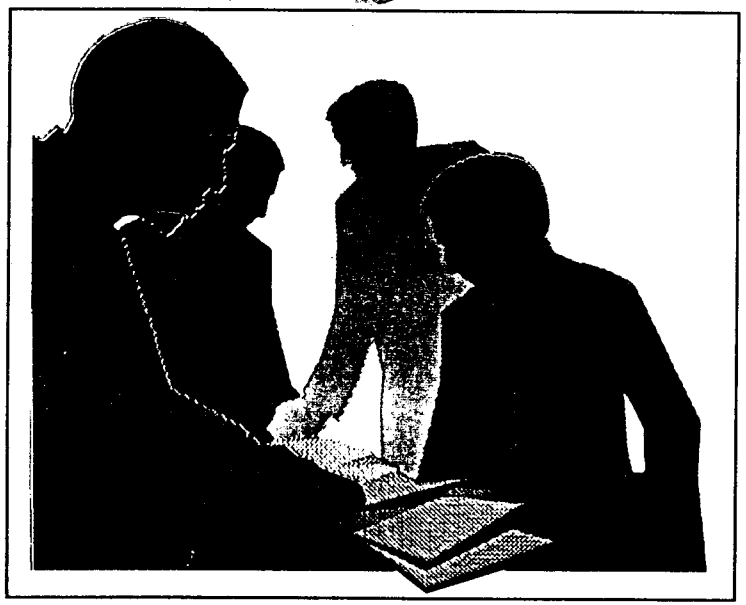
Appendix **A** - COTR approval pages, proposed salaries, and 1420 biodata sheets.

Appendix **B** - Resumes of proposal short-term consultants.

REPUBLIC OF TUNISIA
Ministry of Industry
AGENCY FOR THE PROMOTION OF INDUSTRY
63, Rue de Syrie 1002 Tunis - Belvédère.
Tél : 792.144 - Fax : 782.482

THE ONE-STOP SHOP

The Itinerary to follow in setting up your company



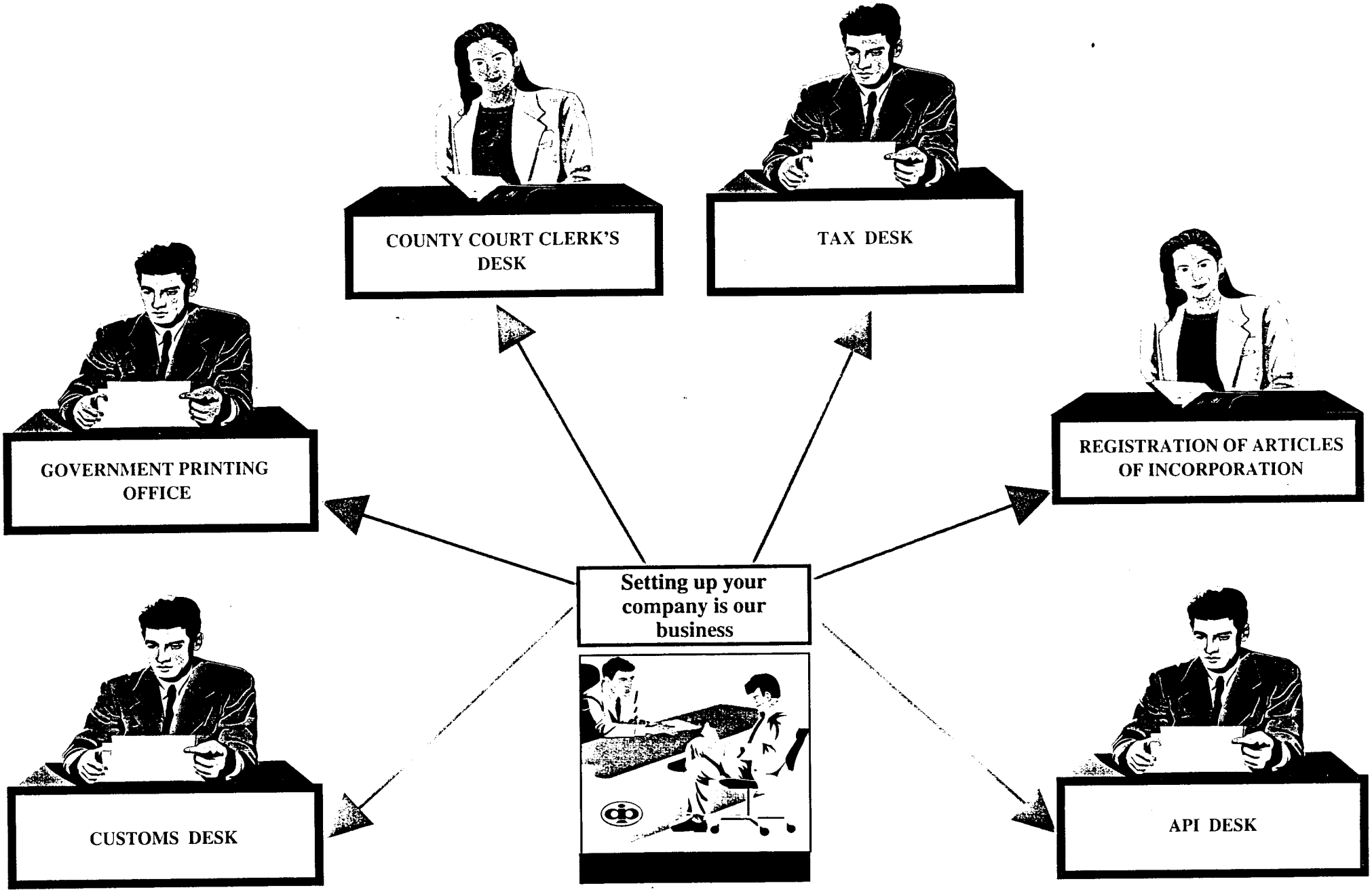
The one-stop shop : serving the promoter with a single formality

APPENDIX C

THE ONE-STOP SHOP PRESENTATION

For our foreign partners,

API proposes a personalized welcome and service at its one-stop shop


COUNTY COURT CLERK'S DESK
TAX DESK
GOVERNMENT PRINTING OFFICE
REGISTRATION OF ARTICLES OF INCORPORATION
Setting up your company is our business
CUSTOMS DESK
API DESK

The steps to follow

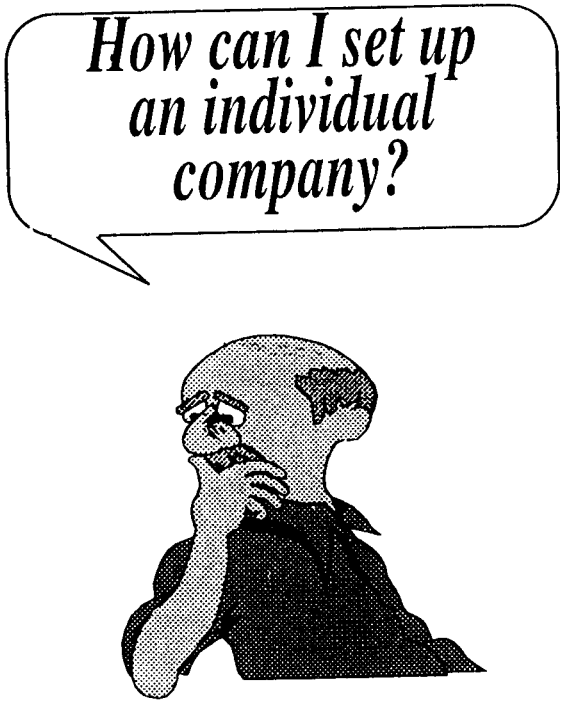
1. **API DESK**

2. **TAX DESK**

3. **COUNTY COURT CLERK'S DESK**

and, where applicable

4. **CUSTOMS DESK**



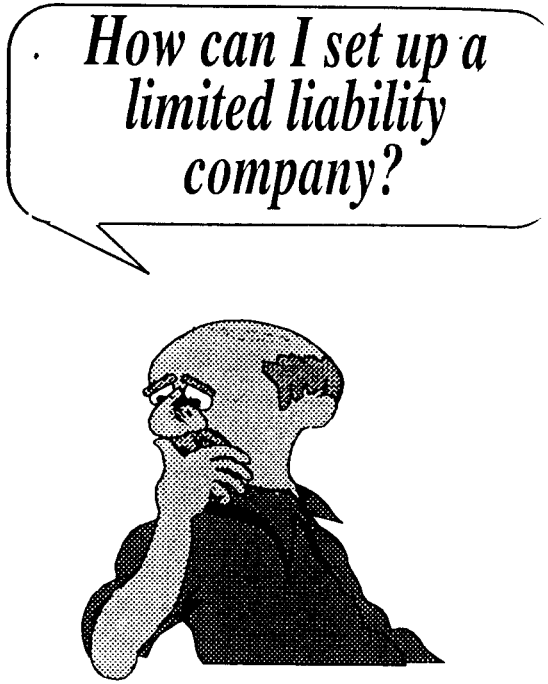
FORMALITY	DESK	DOCUMENTS REQUIRED
1 Certificate attesting that a declaration has been filed	API DESK within 24 hours	A form to fill out
2 Declaration of opening	TAXES Immediately	- A form to fill out on site - A copy of the national identity card or passport . - A document specifying the address of the site of activity (deed of possession) - Attestation that the project declaration has been filed - Attestation that authorization has been received for the activity (for activities in regulated sectors).
3 Registration with the Company Trade Register	COUNTY COURT CLERK'S DESK Immediately	- A form to fill out in 2 copies, with tax stamp affixed. - Signed declaration on the informant's honour. - 2 copies of the declaration of opening. - 2 copies of the declaration of the investment project - 2 copies of the registrant's national identity card - 2 copies of a document specifying the address of the activity (deed of possession)
4 Customs code number	CUSTOMS Immediately	- A form to fill out - 1 copy of the declaration of opening - 1 copy of the declaration of the investment project - The Company Trade Register number .

The steps to follow

1. API DESK
2. REGISTRATION OF ARTICLES OF INCORPORATION
3. TAX DESK
4. COUNTY COURT CLERK'S DESK
5. GOVERNMENT PRINTING OFFICE

and, where applicable

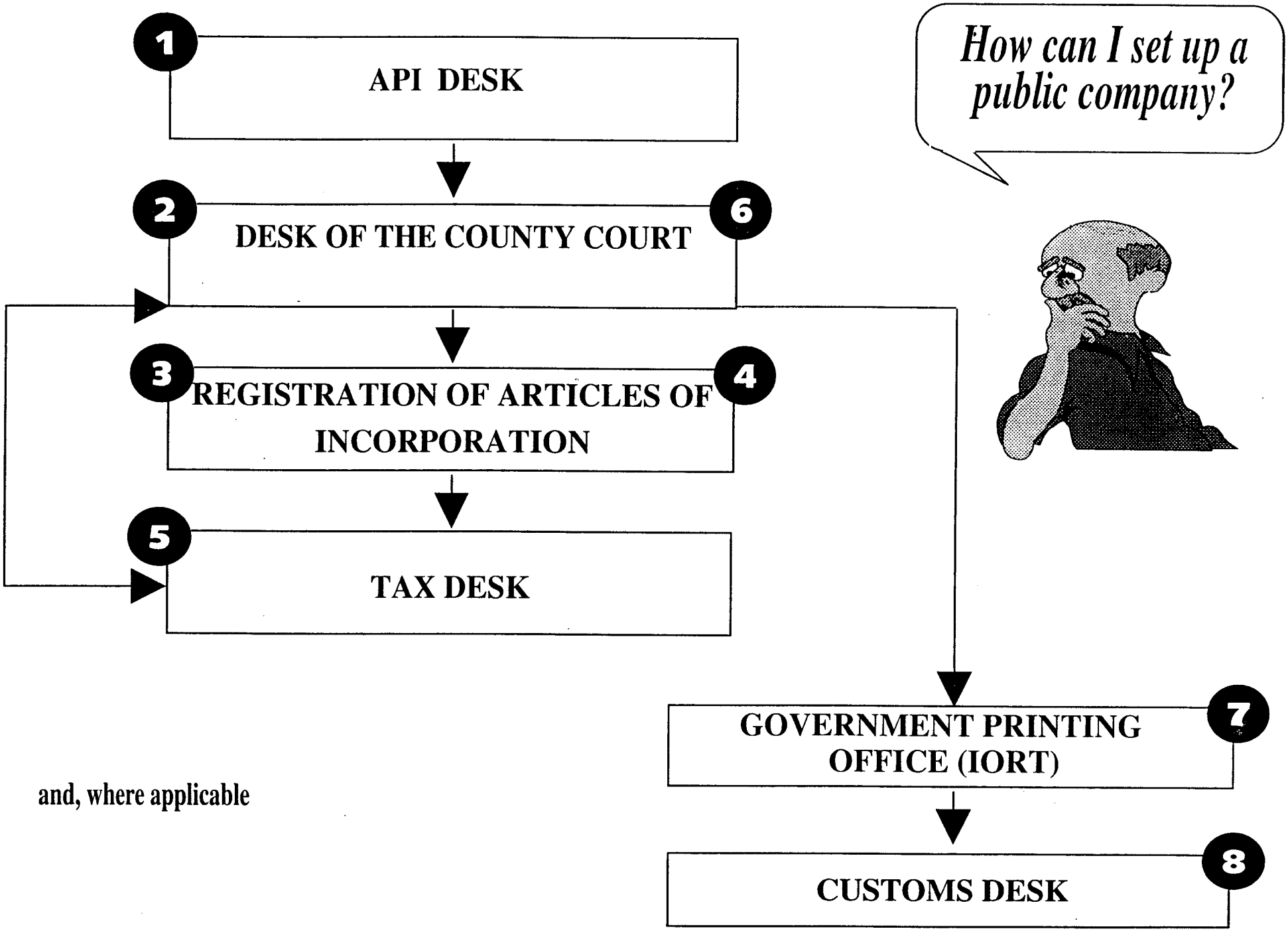
6. CUSTOMS DESK



FORMALITY	DESK	DOCUMENTS REQUIRED
1 Certificate attesting that a declaration has been filed	API DESK Within 24 hours	- A form to fill out.
2 Registration of articles of incorporation	REGISTRATION OF ARTICLES OF INCORPORATION Within 24 hours	- The articles of incorporation, in at least 6 copies - A note appointing the manager or managers, if this is not specified in the articles of incorporation. - One copy of the investment project decalaration
3 Declaration of opening	TAXES Immediately	- A form to fill out on site. - 1 copy of the declaration of the investment project. - 1 copy of the registered articles of incorporation. - 1 copy of the national identity card or passport of the manager(s) - A document specifying the address of the site of activity (deed of possession). - If appropriate, a certificate issued by the competent authorities for investments made in regulated sectors.
4 Filing of articles of incorporation, and registration with the Company Trade Register.	COUNTY COURT CLERK'S DESK Immediately	- A form to fill out in 2 copies, with tax stamp affixed. - Signed declaration on the informant's honour - 2 originals of the registered articles of incorporation. - Arabic translation of the main provisions of the articles. - 2 copies of the declaration of opening - 2 originals of the note appointing the manager. - 2 copies of the declaration of the investment project. - 2 copies of a document specifying the address of the activity (deed of possession).

FORMALITY	DESK	DOCUMENTS REQUIRED
5 Publication in the Official Gazette JORT	GOVERNMENT PRINTING OFFICE 5 business days for publication	- Form to fill in . This form is to be filled in on a typewriter in Arabic, and a French translation provided. - A copy of the publisher's identity card.
6 Customs code number	CUSTOMS DESK Immediately	- Form to fill in . - 1 copy of the declaration of opening. - 1 copy of the certificate attesting that a declaration has been filed. - Company trade register number

The steps to follow



and, where applicable

FORMALITY	DESK	DOCUMENTS REQUIRED
1 Certificate attesting that a declaration has been filed	API DESK Within 24 hours	- A form to fill out.
2 Provisional filing of the articles of incorporation	COUNTY COURT CLERK'S DESK Immediately	- Draft articles of incorporation signed by the founders, with Arabic translation.
3 Declaration of application and payment	REGISTRATION OF ARTICLES OF INCORPORATION Within 24 hours	-Certificate of provisional filing with the court clerk - 10 copies of the articles, signed by the founder or his authorized agent. - 10 copies of the list of applicants and list of payments made (unsigned). - 1 copy of each application form, signed by the applicant. - Bank letters. - A power of attorney with authenticated signature must be presented by an agent (notarized power of attorney, if it was issued abroad). - A copy of the certificate attesting that the investment project declaration has been filed. - Declaration of application and payment signed jointly by the founder and his authorized agent and by the applicant. - All relevant information concerning the promoter.
4 Registration of the minutes of the general sharedholders' meeting of incorporation and of the first board of directors	REGISTRATION OF ARTICLES OF IN-CORPORATION Within 24 hours	- 10 copies of the minutes of the general sharedholders' meeting of incorporation and of the board of directors appointing the members of the board and the auditor - Minutes of the second general shareholders' meeting of incorporation (in the case of contributions in kind to the capital, accompanying the report of the agent responsible for contributions in kind)

FORMALITY	DESK	DOCUMENTS REQUIRED
5 Declaration of opening	TAXES Immediately	- A form to fill out on site. - 1 copy of the registered articles of incorporation. - 1 copy of the certificate attesting that the investment project declaration has been filed - 1 copy of the declaration of application. - 1 copy of the list of applicants - 1 copy of the minutes of the first meeting of the board of directors. - 1 copy of the minutes of the general meeting of incorporation. - Document attesting to the address of the head office (deed of possession) - 1 Copy of the national identity card of the president and general manager or of his/her legal agent
6 Final filing of all documents and registration with the Company trade register.	COUNTY COURT CLERK'S Immediately	- 2 copies of a form to which a tax stamp has been affixed. - A declaration by the president and general manager or the general manager, signed on his honor. - 2 originals of the registered articles of incorporation. - 2 originals of the minutes of the board of directors' meeting. - 2 originals of the minutes of the general meeting of incorporation . - 2 originals of the declaration of application and payment. - 2 copies of the declaration of the investment project. - 2 copies of a document specifying the address of the head office (deed of possession). - 2 copies of the national identity card or the passport of the president and general manager or his authorized agent .
7 Publication in the Official Gazette (JORT)	GOVERNMENT OFFICE PRINTING (IORT) 5 business days for publication	- Text of the notification of the meeting of incorporation of the company, typewritten in Arabic and French - Copy of the national identity card of the individual responsible for this notification.
8 Customs code number	CUSTOMS Immediately	- A form to fill out - Company trade register number. - Copy of the declaration of opening

API ALSO MAKES THE FOLLOWING SERVICES AVAILABLE TO YOU

AN INFORMATION SERVICE ACCESSIBLE BY MINITEL, CODE 18-20 APITEL

This bilingual French and Arabic service provides economic, legal and technical information on the industrial environment in Tunisia, presented under three main headings : API Services, API Statistics, and API Information .

PERSONALIZED ASSISTANCE

Ready to act rapidly to help you solve any problems you encounter in carrying out your investment project.

Please do not hesitate to contact either of the following:

- The Regional Office in the governorate where your business is set up
- API headquarters : Mr Larbi Ben Youssef, Tel : 782.318 - Fax : 788.755

API OFFICES

Ariana : 6. Rue Omar Ibn Khattab - 2080 Ariana
Tél : 716.064 - Fax : 709.437

Béja : Av. Habib Bourguiba - Immeuble CTAMA
9000 Béja - Tél : (08) 451.264/451.265

Ben Arous : 59,Av. de France - 2013 Ben Arous
Tél : 388.755

Bizerte : 25, Rue Ibn Khaldoun - 7000 Bizerte
Tél : (02) 433.556/433.667

Gabès : Angle. Av. Farhat Hached, Rue El Tanima 6000
Gabès - Tél : (05) 272.855

Gafsa : 6, Rue Bagdad B.P.214 - 2100 Gafsa
Tél : (06) 221.535 - Fax : (06).221.535

Jendouba : Rue Khémaies Mèjri BP 195
8100 Jendouba - Tél : (08) 631.577 /630.012

Kairouan : Rue Monji Bali - Immeuble Belhaj - 3100
Kairouan Tél : (07) 221.283 - Fax : (07) 228.335

Kasserine : Rue Jebarai - Imm. Gasmi - 1200 Kasserine
Tél : (07) 474.772 - Fax : (07) 474.772

Kebili : Route de Gabés - 6034 Kébili
Tél : (05) 490.234

Le Kef : BP n° 210 - 7100 Le Kef
Tél : (08) 220.942 - Fax : (08) 210.276

Mahdia : Place du 1er Mai . Imm. Bt - 5100 Mahdia
Tél : (03) 680.527/695.756

Medenine : Av. H.Bourguiba - Imm. Hamrouni - 4100
Medenine Tél : (05) 640.102 - Fax : (05) 640.838

Monastir : Voie P2 n°,1 - 5000 Monastir
Tél : (03) 462.855/462.594 - Fax : (03) 462.594

Nabeul : 12 Rue Kherridine 8000 Nabeul
Tél : (02) 286.963/286.973 - Fax : (02) 286.973

Sfax : 1, Rue Bejaya - 3000 Sfax - Tél : (04) 224.320/
224.370 - Fax : (04) 210.704

Sidi Bouzid : 6, Rue Ibn El Jazzar - 9100 Sidi Bouzid
Tél : (06) 633.890 - Fax : (06) 630.962

Siliana : Rue de Bizerte 6100 Siliana
Tél : (08) 871.463 - Fax : (08) 871.463

Sousse : Rue de Nice - Imm. Boukadida - 4001 Sousse
Tél : (03) 222.404/227.809 - Fax : (03) 227.809

Tataouine : Av. Aboul Kacem Echabbi - 2150 Tozeur
Tél : (06) 452.919

Tunis : 67, boulevard 20 Mars - 2000 Le Bardo
Tél : 227.935/227.936 - Fax : 227.935

Zaghouan : Cité administrative 1100 Zaghouan
Tél : (02) 675.855/ 676.263

Vous êtes industriel, investisseur, opérateur économique .
Vous voulez approcher la Tunisie des affaires :

AGENCE DE PROMOTION DE L'INDUSTRIE
63, rue de Syrie - 1002 Tunis Belvédère - Tunisie
Tél. : (216) 01 792.144 Fax : (216) 01 782.482

TUNISIE, UN REGARD VERS L'AVENIR...

مشروع تحليل وإصلاح السياسات الأقتصادية والتنمية

مصر : دراسة مقارنة لمناخ الاستثمار الأجنبى المباشر.

مـــقـــدم إلـــى

الـــــوكـــــالة الأمريكية للتنمية الدولية
مكتب التحليل الأقتصادى والسياسة
القاهرة – مصر

من
مشروع تحليل وإصلاح السياسات الأقتصادية والتنمية
ناثان اسوسيتس إنك

بموجب
العقد رقم ٢٦٣-C-٠٠-٩٦-٠٠٠٠١-٠٠

٢٠ أغسطس ١٩٩٧

١. مقدمة الدراسة

اظهر الاستثمار الاجنبى المباشر فى مصر معدلا للنمو تراوح فى المتوسط بين ٢% الى ٥% منذ عام ١٩٨٩، حيث بلغ اجمالى هذا الاستثمار عام ١٩٩٥ حوالى ٣,٥٣ بليون دولار امريكى. وفى منتصف عام ١٩٩٥ نجد ان نسبة الاستثمارات المصرية قد بلغت حوالى ٥٩% من اجمالى مشروعات الاستثمار الموافق عليها، على حين بلغ الاستثمار العربى حوالى ٢٠%، وبلغ الاستثمار الاجنبى ٢٠% من جملة الموافقات.

وفيما يتعلق بسياسة مصر تجاه الاستثمار الاجنبى المباشر، نلاحظ وجود نوع من التحرر التدريجى بدأ مع تطبيق سياسة الانفتاح الاقتصادى فى السبعينات، وقد تم ذلك من خلال مجموعة من الحوافز الضريبية المرتبطة بأنشطة الاستثمار. ومنذ البدء فى المرحلة الثانية لإصلاح السياسات الاقتصادية الكلية فى يناير ١٩٩٦، تعطى الحكومة المصرية المزيد من التركيز على تنشيط دور الاستثمار الاجنبى المباشر فى تحقيق النمو الاقتصادى والتوظف، وتتخذ من التدابير ما يحقق المنافع الاقتصادية للاستثمار الاجنبى المباشر. وقد اعلن رئيس الجمهورية "الرئيس محمد حسنى مبارك" ان مصر بلد مفتوح امام الاستثمار. ولتنفيذ هذه التوجيهات اعلنت الحكومة عن إزالة كافة المعوقات والموافقات المطلوبة من جميع المشروعات الجديدة للاستثمار الاجنبى المباشر. وبرغم ذلك، فلا يزال هناك عدد من القيود القانونية امام المستثمرين الاجانب المرتقبين، ومثال ذلك بعض القيود المتعلقة بتملك الارض، او الاستثمار فى قطاعات معينة. علاوة على ذلك، فهناك شكوى من المستثمرين الاجانب الحاليين من استمرار معوقات الاستثمار الاجنبى المباشر بالرغم من رغبة الحكومة فى اجتذاب استثمارات جديدة الى مصر. فهناك نوع من التعارض بين تصريحات المسؤلين بشأن انفتاح مصر أمام الاستثمار الاجنبى المباشر، وتنفيذ السياسات الاقتصادية الكلية والقوانين والتشريعات المتعلقة بالاستثمار الاجنبى المباشر، بالاضافة الى الممارسات البيروقراطية اليومية.

ولقد اشار رجال الاعمال المصريون الى ان تحقيق مصر لمعدل نمو اقتصادى مقدارة ٧% عام ١٩٩٧ يحتاج الى استثمارات تبلغ١٠ بليون دولار امريكى، يأتى حوالى نصفها من الاستثمار الاجنبى المباشر. وتهدف هذه الدارسة الى ما يلى:

أ- اعادة تقدير العوائق الحالية امام الاستثمار الاجنبى المباشر فى مصر.

ب- تقييم درجة جاذبية مصر للاستثمار الاجنبى المباشر من خلال مجموعة من المؤشرات الاقتصادية الكلية، والمناخ القانونى والتجارى بالمقارنة بأربع دول يعتقد انها تمثل المنافسين فى جذب الاستثمارات الاجنبية المباشرة الجديدة، وهى اسرائيل، المغرب، تونس، تركيا.

ويتكون مناخ الاستثمار الاجنبى المباشر من مجموعة من العناصر التى تؤثر على فرص نجاح هذا الاستثمار. فالقرارت التى يتخذها المستثمر الاجنبى بالاستثمار فى مكان معين بالخارج أو بالتوسع فى استثمار قائم بالفعل، تكون مبنية على العديد من العوامل المرتبطة بنشاط المستثمر، والالتزامات القائمة فى الدول الاخرى وعوامل المنافسة، والموارد المتاحة، والميزانية الموزعة على الاقسام والاقاليم، وغير ذلك من اعتبارات تؤثر على توقعات المبيعات والارباح. فالمناخ الاجمالى للنشاط الاقتصادى (مقيساً بمجموعة من المؤشرات الاقتصاديى والمالية)، والنظام القانونى والتنظيمى الحاكم للاستثمار، كل ذلك يؤثر بشكل جوهرى على إدراك الشركة لفرص الاستثمار، ويدل على كيفية التعامل مع الاستثمار الاجنبى المباشر، والمبيعات، والارباح. فقرارات الاستثمار تتحدد بقدر كبير بآفاق سوق الدولة، ومدى توافر عوامل الانتاج، والسياسات الاقتصادية المطبقة، والاتجاهات فى المتغيرات الاقتصادية الكلية. ويتضمن ذلك ايضاً، بحثاً مكثفاً وتقييماً للمناخ الاقتصادى وآفاقه، بالاضافة الى البيئة القانونيةوالتنظيمية، والتى يستطيع كل واحد منها تيسير او تقليل حجم التدفق الاستثمارى، وتوقعات الربح. وينصب تقييم المناخ القانونى والتنظيمى على اعتبارات مثل سيادة القانون، سياسات السماح بدخول الاستثمار الاجنبى، وحماية حقوق الملكية الخاصة وحماية المستثمر الاجنبى، والقيود على الاستثمارات، ومعاملة مابعد السماح بدخول المستثمرين واستثماراتهم، والقدرة على حرية تحويل رأس المال والارباح الى العملة الاجنبية، وقضايا المصادرة، وتسوية المنازعات، والشفافية الادارية.

واستهدفت هذه الدراسة بحث المناخ الاقتصادى والنظم القانونية والتنظيمية المرتبطة بالاستثمار الاجنبى المباشر فى الدول الاربع المذكورة ومقارنتها بمصر من اجل الوصول الى نتائج تحدد الوضع التنافسى المقارن لجذب الاستثمار الاجنبى المباشر الجديد، وتقديم توصيات للحكومة المصرية لإثراء القدرة التنافسية من خلال جهودها المستمرة لدفع النمو الاقتصادى والتوظف عن طريق زيادة الاستثمار الاجنبى المباشر.

ولقد بدأت الدراسة فى اكتوبر ١٩٩٦، وتضمنت زيارة مصر والدول المقارنة المشار اليها. ولقد تأخرت الدراسة لأسباب صحية متعلقة بالباحث الرئيسى خلال ١٩٩٦، ويناير ١٩٩٧، وتأخرت بعد ذلك حتى يمكن الاشارة الى القانون المصرى الجديد لحوافز الاستثمار (القانون رقم ٨ لسنة ١٩٩٧). والمعلومات التى تتضمنها الدراسة صحيحة حتى ١٥ ديسمبر ١٩٩٦ بالنسبة لدول المقارنة، وحتى أبريل عام ١٩٩٧ بالنسبة لمصر.

المنهجية:

قام الكاتبان بمراجعة الدراسات والتقارير السابقة الصادرة عن الوكالة الامريكية للتنمية الدولية، البنك الدولى، صندوق النقد الدولى، غرفة التجارة الامريكية المصرية، وغيرها من التقارير عن الاقتصاد المصرى والتى تناولت سواء بشكل مباشر او غير مباشر العوائق المختلفة للاستثمار الاجنبى المباشر فى مصر، بالاضافة الى مراجعة جميع قوانين القائمة، وبعض القوانين السابقة التى تمثل النظام القانونى للاستثمار الاجنبى المباشر فى مصر، ودول المقارنة. ولقد قام الباحثان بزيارة جميع الدول المتضمنة فى الدراسة، وعقد مقابلات مع المسؤلين، وممثلين عن الاستثمار الاجنبى المباشر، ورجال الاعمال فى هذه الدول لمعرفة رؤيتهم لأثر السياسات الاقتصادية، وقوانين الاستثمار الاجنبى، والتنظيمات والممارسات، وفاعلية الحوافز المقدمة للمستثمر الاجنبى. وبالاضافة الى التعرف على، ووصف، وترجيح، ومقارنة الجوانب العديدة، التى تشكل فى مجموعها المناخ الاقتصادى والنظم القانونية والتنظيمية فى كل دولة تمت دراستها، وحصل الباحثان على العديد من معايير الترتيب التى أعدتها الوكالات الدولية المتخصصة، لتوسيع نطاق المقارنة بين الدول الخمس المعنية.

وأخيرا، عرض الكاتبان النتائج والتوصيات على المسؤلين فى الحكومة المصرية لأخذها فى الاعتبار فى جهودها لاصلاح وتحرير الاقتصاد المصرى، وجعل مصر اكثر جاذبية امام الاستثمار الاجنبى الجديد. ولقد وافقت بعثة الوكالة الامريكية للتنمية الدولية بالقاهرة على خطة عمل هذه الدراسة، وهى موجودة بالملحق (G) فى نهاية الدراسة.

ملخص الدراسة

٢-١ ملخص للنتائج التى تم التوصل اليها :

تبحث هذه الدراسة السياسات والإصلاحات الاقتصادية المصرية التى تؤثر على الأستثمار الأجنبى ، والنتائج الاقتصادية الكلية التى تؤثر على قرار الاستثمار فى مصر ، والنظام القانونى الخاص بالأستثمار الأجنبى المباشر ، والممارسات البيروقراطية التى تعوق وتصطدم بالاستثمار الأجنبى المباشر . وهذه العناصر الخاصة بمناخ الاستثمار الأجنبى فى مصر قد تم تحليلها من وجهة نظر المستثمر الأجنبى وتمت مقارنتها مع مناخ الأستثمار السائد فى الدول الرئيسية المنافسة لمصر فى الأقليم لجذب استثمارات أجنبية جديدة ، وهى تحديداً، تركيا واسرائيل والمغرب وتونس . ولقد انتهت الدراسة الى ان مصر تقع حاليا فى ذيل الترتيب المقارن لمعظم المكونات (العناصر) التى تشكل مناخ الاستثمار الأجنبى المباشر لدولة ما، الا ان مصر تتعهد بتحسين وضعها المقارن .

وتراوحت تدفقات الأستثمار الأجنبى المباشر الى مصر بين ١٦٠ مليون الى ٣٧٠ مليون دولار امريكى سنويا فى عامى ١٩٨٢ ، ١٩٩١ بميل نحو التناقص خلال تلك الفترة . وبلغ اجمالى الاستثمار الأجنبى المباشر فى مصر حوالى ١١ بليون دولار امريكى سنة ١٩٩٥ ، وهو رقم اقل بكثير من الرقم الذى يجب ان تحصل عليه بلد فى حجم مصر مقارنة بالدول الأربع الأخرى محل الدراسة .

ان إمكانيات السوق المصرية ضخمة للغاية ، وهى أصغر فقط من السوق التركية ، وهى توفر مصدرا كبيرا من العمالة غير الماهرة المنخفضة التكاليف ، ومناسبة لاقامة صناعات كبيرة تحتاج لعمالة كثيفة وتقنية منخفضة فى إطار سياسة إيجابية مرضية . ان البنية الأساسية للسوق المصرية متطورة لدرجة معقولة الا أن تشغيلها غير كفء وبتكاليف كبيرة وتسيطر عليها ادارة الدولة. وبمعيار حجم السوق والموقع والدور القيادى التاريخى فى المنطقة، ينبغى ان تكون مصر هدفاً طبيعياً للأستثمارات الأجنبية المباشرة ، الا انها ليست كذلك بكافة المقاييس ، فهى أفقر البلاد موضوع الدراسة ولازال لديها العديد من معوقات الاستثمار – التى تصنعها بنفسها – والتى تعوق الاستثمارات الاجنبية بدلاً من جذبها. ونتيجة لذلك ، لازال الكثير من المستثمرين الاجانب ينظرون الى مناخ العمل فى مصر على أنه غير

ملائم بدرجة كبيرة للأستثمارات الأجنبية المباشرة .

لقد بدأت الحكومة المصرية برنامج إصلاح إقتصادى شامل فى سنة ١٩٩١ بمجهود واضح لزيادة احتياطات النقد الأجنبى المتناقصة ، وعلاج التضخم المتسارع والصادرات الراكدة ، والضغوط على سعر الصرف الأجنبى ، والبطالة المتزايدة والنمو الاقتصادى البطىء . وينظر المستثمرون الاجانب نظرة ايجابية لنجاح مصر فى خفض عجز القطاع العام من ٢٠% من أجمالى الناتج المحلى سنة ١٩٨٦ الى حوالى ٠,٨% حاليا . وعلى الرغم من تحقيق درجة من الأستقرار المالى نتيجة تطبيق سياسة نقدية صارمة إلا أن الأستقرار الذى تم تحقيقه لم يصاحبه معدل نمو مناسب فى إجمالى الناتج المحلى أو فى الإستثمار أو الصادرات .

وبمقارنة الفترة من ١٩٨٠ - ١٩٩٠ بالفترة من ١٩٩٠ - ١٩٩٤ نجد أن معدل النمو السنوى للناتج المحلى الاجمالى قد انخفض من ٥% لأقل من ٢% ، وانخفض الأستثمار من ٢,٧% موجب الى (٢,٧%) سالب ، والصادرات من ٦,١% الى سالب (١,٥%).

بالإضافة الى ذلك، وحتى وقت قريب، فلقد فشلت الحكومة المصرية فى اتخاذ اجراءات حاسمة لتخليص الاقتصاد من تحكم البيروقراطية الزائدة ، أو فى تأسيس إقتصاد سوق حر تنافسى تحكمه آليات السوق وفتحه لتجارة نشطه والتوسع فى الأستثمار والمنافسة. وقد نتج عن ذلك وجود معدلات نمو إقتصادى منخفضة ومستويات ثابتة أو متناقصة لمتوسط دخل الفرد واستثمارات خاصة أو عامة منخفضة أو متناقصة ، مع الفشل فى تنمية الصادرات غير البترولية .

الا ان الحكومة الحالية تبدو ملتزمة من حيث المبدأ بعمل المزيد من الإصلاحات لتحقيق معدل أسرع فى التنمية الإقتصادية ، يلعب فيه القطاع الخاص الوطنى والأجنبى دوراً أكبر واكثر فاعلية .

وتتكون خطة الحكومة للإصلاح الهيكلى من العناصر الاساسية التالية : الخصخصة ، تقليل العقبات التجارية ، التحرير الاقتصادى ، وتشجيع الاستثمارات الأجنبية المباشرة الجديدة. والى الآن لازال النجاح بطيئاً، حيث لازال بعض صانعى السياسة غير قادرين على

ترك التوجهات التى خلفتها حقبه الأشتراكية السابقة بشأن الأقتصاد الموجه الذى يدار مركزيا، ويبدوا ان الشكوك لازالت تراودهم بشأن الاستثمارات الخاصة التى تفرزها آليات السوق ، ولازالوا غير مقتنعين بأن أقتصاد السوق الحر الحقيقى يحقق المصلحة القومية وقد ترتب على ذلك بعض الصعوبات فى التنفيذ.

وهكذا يبدوا ان الأقتصاد المصرى لايزال خاضعا لسياسة نقدية تقييدية ولرأسمالية الدولة غير الكفء وواسعة الانتشار، إن سعر صرف الجنية المصرى المرتبط بالدولار، والذى تدعمة القيود التعريفة وغير التعريفية المرتفعة، ومعدلات الفائدة المرتفعة (التى جذبت قدرا كبيرا من التدفقات الرأسمالية)، كل ذلك ادى الى ارتفاع قيمة العملة الوطنية منذ عام ١٩٩١ فى مواجهة عملات الشركاء التجاريين الرئيسيين ويرجع ذلك لسببين اساسيين، أولهما ان عملات الشركاء التجاريين انخفضت فى مقابل الدولار الامريكى (ومن ثم مقابل الجنية المصرى). وثانيهما أن الفرق فى معدل التضخم بين مصر وشركائها التجاريين الرئيسيين لم يعوضها مستويات مرتفعة للانتاجية فى مصر، بالرغم من الفارق فى معدلات التضخم النسبى لم يكن عاملا رئيسيا منذ عام ١٩٩١.

علاوة على ذلك ، فأن تنمية القطاع الخاص ظلت تعوقه القوانين المقيده والاجراءات البيروقراطية التى لعبت دورا معاكسا ضد الجهود الواجبة لجذب الاستثمارات الأجنبية .

وينظر الى العديد من سياسات الحكومة المصرية على انها تعوق المبادرات الخاصة ولاتتطابق مع نوايا الحكومة المعلنة للتحرك نحو اقتصاد السوق . وعلى سبيل المثال نجد أن احتكارات الدولة لاتزال تسيطر على صناعات البنية الأساسية الرئيسية مثل الأتصالات اللاسلكية والموانىء والطرق والسكك الحديدية التى لاتعمل بكفاءة وتقدم خدمات عامة ذات نوعية رديئة بأسعار مرتفعة، وتحتاج لأستثمارات ضخمة وتكنولوجيا حديثة ومتقدمة . ان تلك الشركات المملوكة للدولة هى التى تحتاج اكثر للأستثمارات الأجنبية المباشرة وذلك بسبب احتياجها للتحديث ولضخ رأسمال ضخم وللتكنولوجيا المتقدمة والتى تعتبر جميعها موضع اهتمام المستثمرين الأجانب . ان البنية الأساسية الملائمة والفعالة تمثل عاملا رئيسيا لتنمية الصادرات ولنمو أقتصادى سريع، وضرورية لجذب الاستثمارات الأجنبية المباشرة الجديدة علاوة على ذلك فأن الحكومة المصرية لاتزال تملك أو تدير العديد من الشركات التجارية التى من الطبيعى ان يمتلكها القطاع الخاص . ان المستثمرين الأجانب المرتقبين غير مهتمين

بالقطاعات التى يجب عليهم أن يتنافسوا فيها مع الشركات المملوكة للدولة أو التى تدعمها.

وبينما تدعى الحكومة تقديم معاملة وطنية فى قوانينها وخطاباتها فأن التفرقة والأستثناءات لازالت مستمرة فى اشكال عديدة. فالكثير من القطاعات الرئيسية فى الصناعة، خصوصا فى مجال البنية الرئيسية، تحتكرها الدولة ومغلقة بالنسبة للأستثمارات الخاصة. وتقوم الخطوط العريضة للخصخصة على اعطاء نفس المعاملة الوطنية للمستثمرين الاجانب، الا ان المسؤلين قد أظهروا تفضيلهم للمستثمرين للمصريين ثم للمستثمرين العرب من الدول الأخرى ، بعد ذلك فقط يأتى المستثمرين الأجانب ، وذلك بدلا من فتح الباب لكل المستثمرين الأجانب .

نتيجة لذلك ، فإن المستثمرين الأجانب ذوى الأهتمام الحقيقى بالفرص المتاحة فى مصر لايشعرون بأى تشجيع من اقتصاد يتصف بوجود قطاع عام متعثر غير كفء، وبالقوانين الكثيرة والتعديلات المتلاحقة والروتين الحكومى ، وباجراءات مرهقة وطويلة ومكلفة للحصول على الموافقات الخاصة بالأستثمار ، وبالتدخل الحكومى المتزايد فى القطاعين التجارى والمالى . إن منهج الحكومة العام "القائم على فكر التخطيط المركزى" لتشجيع الاستثمار الأجنبى يعكس عدم فهم تام لمعنى أقتصاد السوق الحر وآلياته وحوافزه واهتمام المستثمرين الأجانب بالدوافع التجارية وبعوامل الامان. نتيجة لذلك ، وبلغة الايديولوجية العامة، تضع مصر العوائق فى طريق المستثمرين الاجانب المرتقبين، وبالتالى تخلفت كثيراً عن الدول المنافسة لها التى كانت محلاً للدراسة.

ان اجراءات قيد وتأسيس وحوافز الاستثمار قد اعاقت الاستثمار الاجنبى المباشر ، وتفرض تكلفة عالية وغير ضرورية بلغة الوقت والنقود وتخلق عدم اليقين لدى المستثمرين. إن مجالاً يحتوى على اكثر من ٢٠ قانون/وقرار يؤثر سلباً على الاستثمار فى مصر ، منها (٩) تؤثر مباشرة على الاستثمار الأجنبى المباشر ، وهى تنظم عملية قيد / تأسيس مشاريع الاستثمار الأجنبى ، وعلى وجه التحديد : أشكال الشركات، وتكوين الشركات بصفة عامة، وحوافز الأستثمار الوطنى والأجنبى . وبالاضافة الى القانونين الرئيسيين الخاصين بالموافقة على الاستثمار الأجنبى : قانون الشركات وحوافز الاستثمار فإنه يوجد عدد من قوانين حوافز الأستثمار الموجهة لقطاعات معينة أو لمناطق محددة. والقليل من هذه القوانين هو الذى يحتوى على معايير واضحة للموافقة وللأحقية فى الحوافز أو على اجراءات تتسم بالاتساق

والشفافية عند تطبيقها. يؤدى ذلك الى المزيد من الاحكام التقديرية المتقلبة فى إطار الروتين الحكومى ووجود وفرص للتعتيم والتأخير واحتمالات الفساد .

وعلى الرغم من الجهود الحقيقية التى يبذلها كبار المسؤلين الحكوميين لتفسير وتسهيل المتطلبات والاجراءات ، فان الروتين الذى تمارسة الادارة الوسطى فى الجهاز الحكومى تميل الى تخفيض أو حتى تجاهل التوجيهات الحكومية الخاصة بهذا الغرض . وينتج عن ذلك ان عملية الموافقة/تأسيس/تسجيل الاستثمار الأجنبى تستغرق فى مصر وقتاً أطول مما تستغرقه فى اى من البلدان الأخرى موضوع الدراسة ، مما يقوض هدف الحكومة الموجه نحو جذب المزيد من الاستثمارات الأجنبية المباشرة .

هناك بعض الأمثلة الخطيرة على تفرقة تمت ضد مؤسسات مملوكة لأجانب (بعد ان تم تأسيسها) فى مجالات ملكية الأراضى والجمارك والضرائب المفروضة ، بالإضافة الى المشاكل المتعلقة بعدم الأعتراف بالحقوق القانونية والمعاهدات والاتفاقيات الخاصة بحماية الاستثمار ، وتسوية النزاعات والاحكام القضائية والتحكيم الدولى . يضاف الى ذلك، المعوقات الأخرى فى مجالات إستعادة رؤوس الأموال الى بلادها الأصلية وتحويل الأرباح ، وحماية حقوق الملكية الفكرية وتطبيقها ، والأهتمام بملائمة وفاعلية نظام القانون التجارى .

وحتى الان – من وجهة النظر القانونية والتنظيمية – فأن مصر تبدو أقل الدول جذبا للمستثمرين المرتقبين من بين الدول الخمس التى تمت دراستها ، وذلك على الرغم من اتخاذها بعض الإجراءات التصحيحية .

٢-٢ ملخص التوصيات :

أ – توصيات عامة

خلق مناخ عمل اكثر ملائمة

٢-٢-١ التنمية أم الاستقرار:

يجب على مصر ان تبدأ فى تنفيذ سياسات وإصلاحات تهدف مباشرة لتحقيق معدل

عال للنمو الأقتصادى لخفض معدلات البطالة ، وزيادة متوسط دخل الفـــرد ، وبـــذا تحســـن جاذبية سوقها الحقيقى للمستثمرين الأجانب المرتقبين .

٢-٢-٢ مرونة سعر الصرف:

بجانب المزيد من تحرير التجارة، واصلاح سياسة سعر الفائدة، ينبغى على الحكومة المصرية أن تنتهج سياسة سعر صرف اكثر مرونة حتى يتسنى لـــــها جـــذب المزيـــد مـــن الاستثمار الاجنبى المباشر، وتشجيع الانتاج بغرض التصدير، وتحقيق معدل مرتفـــع للنمـــو الاقتصادى. وكحد أدنى، يجب ان تقيس درجة استقرار سعر صرف عملتها بمعيـــار تعـــادل القوة الشرائية من خلال سلة عملات شركائها التجاريين المرجحة بالاهميـــة النســـبية لكـــل شريك، بدلا من ربط عملتها بالدولار فقط.

٢-٢-٣ تحرير التجارة:

يجب الأستمرار فى تخفيض التعريفة على الواردات (بغرض الوصول الى تعريفـــات موحدة ومنخفضة على كافة السلع المستوردة) والتخلص من كافة المعوقات غـــير التعريفيـــة الأخرى.

ويجب على الحكومة المصرية ان تستكمل المفاوضات الخاصة باتفاق المشاركة بيـــن مصر والاتحاد الأوربى ، على ان ترقب عن كثب التطورات والآثار المترتبة على اتفاقيـــات الاتحاد الأوربى مع المغرب وتونس واتحاده الجمركى مع تركيا .

ويجب على الحكومة المصرية ان تمارس دوراً قيادياً لدفع التكامل الاقتصـــادى بيـــن الدول العربية والاعداد لتجارة أقليمية حرة . كما يجب عليها تجديد طلبـــها للحصـــول علـــى عضوية مراقب فى اتحاد المغرب العربى على ان تتبع ذلك بجهود جاده لتصبح عضوا كاملا.

٢-٢-٤ الخـــصـــخصة:

يجب على الحكومة المصرية الاسراع فى برنامج الخصخصة فـــى كـــل القطاعـــات

الأقتصادية ، بهدف جذب مبالغ ضخمة من رأس المال الخاص الأجنبى، وجذب تقنية متقدمة وادارة حديثة ، وخفض التكاليف لصالح المصدرين والمستهلكين . ويجب ان تعلن الحكومة بوضوح ان المستثمر الأجنبى يتساوى قانونا مع المواطنين المصريين فى حيازة وتشغيل المؤسسات المملوكة للدولة .

٢-٢-٥ السياسات المؤيدة (المشجعة) للأنشطة التجارية:

الإصلاحات مثل حوافز الاستثمار ، وتحرير التجارة ، والخصخصة ، والاصلاح القانونى ، وعدم التفرقة، والتى تعتبر أنجح العوامل لجذب الاستثمار الاجنبى المباشر - يجب ان يتم تطبيقها فى إطار التزام بسياسة إقتصادية عامة بغرض تشجيع المنافسة وتحرير الأقتصاد وتقوية القطاع الخاص ، وازالة كافة آثار الاقتصاد الموجه وإقامة إقتصاد سوق حرة يحركة الأستثمار وتحكمة آليات السوق .

٢-٢-٦ تشجيع الاستثمار والتصدير والتدريب:

يجب مراجعة وتقييم الجهود التى تبذلها مصر فى لتشجيع الاستثمار والتصدير ، ووضع اقتراحات بخصوص كيفية جعل مثل هذه الجهود اكثر فاعلية وتحركها النتائج.

ويجب على العاملين فى قطاع التمثيل التجارى الأجنبى لمصر ان يتلقوا تدريبات ومعونة فنية لتحسين فاعلية هذا القطاع فى مجال الترويج للتجارة المصرية والاستثمار .

ب - توصيات خاصة بالاستثمار الاجنبى المباشر :

تحسين المناخ للأستثمار الأجنبى المباشر

٢-٢-٧ القيود المتعلقة بهذا القطاع:

ازالة كافة القيود بالتركيز على الأستثمار الخاص بصفه عامه وعلى الأستثمار الأجنبى المباشر فى قطاعات الصناعة ، بأستثناء تلك التى ترتبط مباشرة بالانتاج والصيانة لأغراض الأمن القومى والدفاع .

٢-٢-٨ **المعاملة الوطنية:**

يجب تطبيق نظام المعاملة الوطنية على الأستثمار الأجنبى دون أى تحفظات او أستثناءات او تفرقة .

ويجب توضيح قوانين مصر الغامضة المتعلقة بحقوق الأجانب فى الحصول على واستخدام الأراضى الضرورية لمشاريعهم التجارية ومنح المستثمرين الأجانب ضمانات قوية بهذا الخصوص.

٢-٢- ٩ **ترشيد القوانين الخاصة بالأستثمار:**

ينبغى ترشيد وتنقية القوانين المتكررة والمتضاربة التى تحكم الموافقة على/تأسيس الاستثمارات الأجنبية فى مصر وذلك بالغاء كافة القوانين الحالية التى تؤثر على الاستثمار الأجنبى وتطبيق قوانين بديلة تهتم وتركز وبالتحديد على النواحى الأساسية الاتية : (أ) تنظيم الشركات/تكوين الشركات (سواء لأغراض المستثمر المحلى أو الاجنبى) ، (ب) حوافز الأستثمار (سواء لأغراض الأستثمار المحلى أو الأجنبى) ، (ج) إقامة وتشغيل مناطق تجارة حرة ، أى يجب ان يتوافر، على سبيل المثال، ما يلى:

* قانون واحد للشركات ويركز فقط على أشكال المؤسسات التجارية ، وكيفية تكوينها والمتطلبات القانونية والسلطات وحقوق المساهمين وتسجيل الشركة والترخيص الخاص بمزاولة العمل .

* قانون واحد لحوافز الأستثمار ويركز فقط على أهداف التنمية القطاعيه أو الاقليميه أو لتعزيز التكنولوجيا والمعايير الخاصه بتقديم الحوافز ومداها.

* قانون خاص منفصل لمناطق التجارة الحرة يوفر نظاماً جمركياً قانونياً للمناطق الحرة، يتكامل مع قانون واجراءات الجمارك الاساسى لمصر ، لكن لايقدم فى حد ذاته حوافز الأستثمار فى مناطق التجارة الحرة .

٢-٢-١٠ إنشاء وكاله خاصه لمراقبه تكوين الشركات:

ينبغى تفويض وكالة حكومية خاصة لتنظيم ومراقبه انواع الشركات وأيضا عملية وإجراءات تنظيم وتكوين الشركات . ويجب على مثل هذه الوكاله ان تحصر عملها فقط فى قانون واجراءات تكوين الشركات وفى الاهتمامات الأخرى لقانون الشركات (الموافقه على القوانين/عقد تأسيس الشركه والاعلانات الخاصه بالتنظيم والتسجيل .... الخ) ، ولاتمارس أى سلطات او مسئوليات بخصوص الموافقه على الأستثمار ، أو جدوى المشروعات الاستثماريه، أو منح أو تنظيم الحوافز .

٢-٢-١١ إنشاء وكاله خاصه لحوافز الاستثمار:

ينبغى تفويض وكاله حكوميه خاصه بادارة وتنظيم كافه الحوافز الاستثماريه طبقا لقانون استثمار واحد يتعامل مع الموافقه على الحوافز وعمليه المنح ، باستخدام مجموعه اجراءات موحدة يتم تطبيقها على كل الطلبات المقدمه للحصول على حوافز .

٢-٢-١٢ توحيد جهة التعامل:

يجب تأسيس الوكالات المشار اليها فى البندين السابقين كأقسام فرعية تابعة لنفس الوزارة ، مع تحديد الوزارة التى يجب اعطائها سلطه كامله للأشراف على هذه الأقسام .

ويجب على هذه الوزارة ان تنشىء هذه الجهة الوحيدة للتعامل – فى مكتب الوزير – ليقدم على وجه التحديد للمستثمرين الاجانب المرتقبين والحاليين ما يلى:

* المعلومات الخاصه بالاستثمار الأجنبى المباشر فى مصر .

* خدمات للتيسير ومساعدة المستثمرين اثناء تأسيس الشركه وتقديم الطلبات الخاصه بحوافز الاستثمار .

* خدمات المتابعه للمشاريع الأستثمارية الأجنبية الموافق عليها لمساعدتهم

على الالتزام بالقوانين واللوائح وتعريفهم الاجـــراءات المطلوبـــه للعمليـــات التـــى تبدأ بعد الموافقه على منح الحوافـــز ، مثـــل الموافقـــات علـــى الموقـــع المحلـــى والتســـجيل وعضويـــه الغرفـــه التجاريـــة والصناعيـــة وتـــأشيرات الوافديـــن وتصاريح العمل والألتزام بالمواصفات القياســـية .... الـــخ .

ويجب ان تحصل هذه الجهة الوحيدة للتعامل على تفويض من الوزير لتنسيق وتسهيل كافه اجراءات تكوين الشركه وطلبات الحصول على حوافز الاستثمار وأن تحصل على التأييد الكافى من مجلس الوزراء لتقديم التعاون والمساعدة لكافة الوكالات المعنيه.

ويجب أن تجمع هذه الجهة الوحيدة موظفى كافة الوزارات والوكالات المعنيه بتكوين الشركات ومنح الموافقات فى مكان واحد ، وتفويضهم لإصـــدار أى تراخيـــص مطلوبـــه او موافقات بصوره فوريه .

ويجب أن تقوم هذه الجهـــة بـــإعداد ونشـــر كتيـــب مبســـط لكـــن دقيـــق يوضـــح بالتفصيل خطوات تكوين الشركـــات وكيفيـــه منـــح حوافـــز الاســـتثمار ، موضحـــا كـــل خطوه فى هذه العمليه والسلطات والادارات المعنيه (مـــع ذكـــر الأســـم والعنـــوان ورقـــم الهاتف ورقم الفاكس) والزمن الذى يستغرقه الانتهاء من كـــل خطـــوة ، كـــل ذلـــك علـــى شكل "خريطه مسار" يتم توفيرها لـــدى هـــذه الجهـــة، والمثـــال علـــى ذلـــك يظـــهر فـــى الملحق "ج" .

٢-٢-١٣ <u>التعجيل فى الأجراءات:</u>

لكى نسرع فى عمليه تكوين شركه وفرز طلبات حوافز الاستثمار ، فأنه يجب البـــدء فى كلتا العمليتين فى نفس الوقت واستكمالها فى وقت واحد بدلا من الانتهاء منـــهما واحـــدة وراء الأخرى ، الا انه يجب مراعاة ضرورة تكوين وانشاء كيان الشركه بـــالشكل القـــانونى والوقت المحدد وان يكون ذلك شرطا للحصول على حوافز الاستثمار .

٢-٢-١٤ متابعة التراخيص والموافقات:

يجب على الحكومه المصريه ان تقلل الى ادنى حد ممكن كافه الشروط الاساسية (بحيث تقتصر على الشروط الضرورية للصحة العامة والسلامة) وأن تراقب بشكل صارم، كافة المتطلبات القومية والمحلية للحصول على الموافقات والتراخيص على الموافقات والتراخيص والشهادات، وأن تقلل كذلك كافة المعوقات الاخرى حتى يمكن البدء فى تشغيل المشروعات الاستثمارية فى الوقت المحدد.

٢-٢-١٥ تقليل الممارسات البيروقراطية والروتين الحكومى:

يجب على الحكومه المصرية البدء فى حمله نشطه لطلب وضع معايير واضحه فى القوانين واللوائح المتعلقه بالاستثمار الأجنبى المباشر ووضع اجراءات واضحه لتنفيذها ولتقليل الروتين الحكومى غير الضرورى ، وتبسيط الاجراءات ، وتقليل التدخل التعسفى غير الضرورى من جانب اصحاب النفوذ من موظفى الحكومه .

٢-٢-١٦ حوافز الاستثمار:

يجب على الحكومه المصرية أن تنتقل من التركيز على حوافز الاعفاء من ضريبه الدخل وتتجه نحو اعطاء المستثمرين المرتقبين مجموعه شامله قابله للتنفيذ من الضمانات لأجل أوضد الآتى :

* المعامله الوطنيه طبقا لشروط الدوله الأولى بالرعاية .
* عدم وضع حدود لمشاركه المستثمرين الاجانب فى حقوق الملكية .
* عدم اغلاق أى قطاع فى وجه الاستثمار الأجنبى (بأستثناء مايتعلق بالآمن القومى) .
* عدم اشتراط أية متطلبات بعد التأسيس.
* الحق فى المراجعه القضائيه للقرارات والاجراءات الاداريه والتحكيم الدولى للنزاعات المتعلقه بالاستثمار مع السلطات الحكوميه .

* معدلات مستقرة للضريبه على الدخل والضرائب المباشرة الأخرى .

* حرية تحويل الأرباح واعاده رأس المال الى وطنه ، وتحويلات الحسابات الجارية وذلك بالعمله الأجنبيه المتوفره بحريه وبسعر السوق .

* حماية وتنفيذ حقوق الملكية الخاصة بالمشروع (بما في ذلك الملكية الفكرية والصناعية) .

٢-٢-١٧ **الحوافز الماليه والنظام الضريبى:**

فى النطاق الذى تقدم فيه الحوافز الضريبية لجذب المستثمرين الأجانب المرتقبين ، فانه يجب اتاحه مثل هذه الحوافز فى شكل ائتمانات ضريبيه وخصومات ، وإهلاك سريع للأصول الرأسمالية الخاصة بالمشروع بدلا من التفضيلات والاعفاءات الضريبيه .

ويجب على الحكومه المصرية أن تلغى الاختلافات القائمة فى نسب ضريبة الدخل التى تفرق (تميز) بين الشركات الصناعية والشركات التجارية .

كما يجب الغاء ضريبة التمغة السنوية النسبية على اسهم رأس المال، حيث انها تمثل عائق أمام جذب وزيادة الاستثمار .

٢-٢-١٨ **حقوق الملكية الفكرية:**

يجب على مصر تطبيق مشروع قانون البراءات فى اسرع وقت ممكن، وكما صدر، فأن القانون يجب أن يوفر الحمايه للمنتجات الكيماوية الخاصة بالأغذية والأدوية .

كما يجب تعديل قوانينها الخاصه بالعلامات التجاريه والتصميمات الهندسية لتنهض بأعباء النشر والفحص العام .

ويجب على الحكومة المصرية الالتزام بأحكام المعاهدة الدولية لحماية الأنواع الجديدة من النباتات .

٢-٣ المقارنه بين الدول:

لقد لخص محررا الدراسه نتائج دراستهم الخاصة بالمؤشرات الاقتصادية المقارنة، وبمناخات الاستثمار المختلفة والأنظمة القانونية / التنظيميه فى الجداول ٢،١ و ٠٣ وبالطبع، فان الأهميه المتعلقة بكل مسأله خاصه بالأعمال المرتبطه بالاستثمار الاجنبى أو بالمناخ القانونى / التنظيمى تختلف بدرجه كبيره بين المستثمرين الأجانب ، وباختلافات كبيره – على سبيل المثال – بين شركة بترول اجنبية وشركة منتجة للسلع الاستهلاكية. ولهذا السبب ، فلقد تقرر التركيز على القضايا الأشمل التى تؤثر على كافه المستثمرين الاجانب ، واستثناء القضايا المتعلقه بقطاع معين .

الجداول الموجوده فى هذا القسم تعرض مقارنه للمؤشرات الاقتصادية الهامه وترتيب الأعمال الرئيسية والمسائل القانونية / التنظيمية لمصر وللدول الأخرى موضوع هذه الدراسه.

٢-٣-١ المؤشرات الاقتصادية:

يوضح الجدول رقم ١ – فى شكل مقارنة – المؤشرات الاقتصادية الرئيسية التى يراها المستثمرون الأجانب ذات أهمية لكى يختاروا اماكن توطين الاستثمارات الاجنبية المباشرة . وتعتبر المؤشرات معلومات حقيقية لصنع القرار ، لذا لايتم ترجيحها بالمعايير الشخصية.

٢-٣-٢ مناخ الاستثمار:

عشر نقاط هامة للمستثمرين الأجانب تشكل – اجمالا – مناخ الأستثمار ، قد تم استخدامها فى الجدول رقم ٢ لتقييم مصر بالمقارنة مع الدول الاربع الأخرى موضوع الدراسة . وكلما كان مجموع النقاط المسجل فى كل مؤشر عاليا كلما كان الترتيب أوالتصنيف عاليا. ويوضح الجدول المتوسط الكلى المرجح وغير المرجح للتصنيف فى النقاط العشر المذكورة . إن الترجيح والترتيب هى تقديرات شخصية لكتابى هذه الدراسة ، قائمة على المعلومات التى تم تجميعها من المقابلات مع المديرين التنفيذيين للشركات الاجنبية العاملة فى البلاد بالاضافة الى المصادر المنشورة.

٢-٣-٣ الأنظمة القانونية والتنظيمية:

تم تحليل وتقييم (٩) قضايا رئيسية تهم المستثمر فى الجدول رقم ٣ على اساس النتائج المشار اليها فى الاجزاء الخاصة بكل دوله وذلك لتقييم وتصنيف البلدان موضوع الدراسة لهذا التقرير .

وبالإضافة الى النقاط المطلقة المسجلة فى كل دائرة تم تحليليها ، فلقد تم ترجيح المؤشرات لكى تعكس مستوى الأهمية النسبية من وجهة نظر المستثمرين الأجانب المرتقبين على اساس الخبرة والمقابلات الشخصية.

٢-٣-٤ هيئات التصنيف العالمية وترتيب الدول:

تضع هيئات التصنيف العالمية تقييما "لمخاطر الاستثمار فى الدولة"، "ومناخ الاستثمار" "والحرية الأقتصادية"، "ودرجة الانفتاح"، "والتنافسية" وأخطار الائتمان السائدة فى معظم الدول المتقدمة والنامية .

ان تصنيفهم وترتيبهم للدول ، غالبا مايكون شخصيا، الا أنه يعتمد عليها كمعلومات قياسية لصنع القرار الخاص باختيار اماكن الاستثمار .

تحتوى هذه الدراسة فى القسم رقم (١١) على جزء خاص يتناول نتائج ترتيب حوالى (١٨) دولة مختلفة (انظر الجدول رقم ٨) للدول موضوع المقارنة ، مع بعض التنبؤات عن نموها الاقتصادى ومناخ الاستثمار فى المستقبل القريب .

وكمثال ، فأن مؤسسة اليورومنى Euromoney تضع مصر فى المرتبة الـ ٧٧ من بين ١٧٨ دولة متقدمة ونامية من حيث "مخاطر الدولة"، بينما تضعها وحدة استعلامات الايكونوميست فى المرتبة ٤٣ من بين ٥٨ بلد ، ويضعها مؤشر ترايانجل Triangle Index فى المرتبة ٣٠ من بين ٣٥ دولة (وفى المرتبة ١٩ من بين ٣٥ دولة فيما يتعلق بالمناخ الأقتصادى) . ويضع معهد فرايزر/كاتو

Fraizier/Cato مصر فى المرتبة ٧٩ من ١٠٢ دولـــة مـــن حيـــث "الحريـــة الاقتصاديـــة"، بينما تضعها الاندبندنت ســـتراتيجى Independent Strategy فـــى المرتبـــة ٥٣ مـــن بيـــن ٥٧ دولة "صاعدة" من حيث "نجاح الدولـــة"، وفـــى دراســـة البنـــك الدولـــى لســـنة ١٩٩٦ عن "الانفتاح" جاءت مصر فى الترتيب ١٠٨ من بيـــن ١٢٩ دولـــة بينمـــا يضـــع تقريـــر التنمية البشرية الصادر من برنامج التنمية للأمم المتحـــدة مصـــر فـــى المرتبـــة ١٠٦ مـــن بين ١٧٤ دولة من حيث "التنميـــة البشريـــة" .

وتقريبا فـــى معظـــم هـــذه التصنيفـــات ، نجـــد أن مصـــر تتخلـــف وراء الـــدول الأخرى موضوع المقارنة ، على الرغم مـــن ان المقارنـــة كـــانت لصالحـــها احيانـــا فـــى بعض القطاعات المعينة طبقا لمعـــايير الـــترتيب.

وتتوقع وكالات التصنيف العالمية نموا اقتصاديا محتملا فى مصر خلال السنة القادمة يصل لـــ ٤% فى الناتج القومى الاجمالى ونموا بنسبة ٥% فى الناتج المحلى الاجمالى.

جدول ١ : المؤشرات الاقتصادية

البنية الأساسية : تمتلك مصر بنية اساسية غير كفء عموما وبتكلفة عالية بالمقارنة للدول الاربع الأخرى ، باستثناء الكهرباء . ومطلوب استثمارات ضخمة لتحديث وتطوير وتوسيع خطوط السكك الحديدية والطرق والنقل البحرى والمطارات والموانىء والمواصلات اللاسلكية .

النمو الاقتصادى : تباطأ النمو الأقتصادى فى مصر خلال السنوات الأخيرة وكان الأقل فى الدول الخمس بينما ظل النمو الأقتصادى فى الدول الأخرى ثابتا أو سريعا. إن العوامل التى حددت مستوى النمو كانت مستوى الاستثمار ومعدل النمو فى الصادرات .

التضخم : نجحت مصر – مثل المغرب وتونس – فى خفض معدلات التضخم لمستويات معقولة عن طريق تطبيق سياسات نقدية ومالية تقييدية.

تخفيض قيمة العملة : نجحت مصر فى السنوات الاخيرة . مثلها مثل الدول الأخرى فى المحافظة على سعر صرف إسمى مستقر مقابل الدولار، باستثناء تركيا التى اختارت نظام لخفض عملتها بنسب صغيرة متتالية بحسب معدل التضخم العالى فيها لكى تحافظ على درجة تنافسية صادرتها وذلك بالحفاظ على ثبات تكلفة انتاجها مقومة بالدولار .

الضرائب : تأتى مصر فى المؤخرة من حيث فرض الضرائب على الشركات من بين الدول الخمس وإن كانت فى نطاق متقارب، بينما تفرض اسرائيل أعلى نسبة، والتى تبلغ ٥٢%.

الرسوم الجمركية : تستمر الدول الخمس ، بما فى ذلك مصر ، فى تطبيق سياسة الحماية عن طريق فرض تعريفة جمركية عالية .

وعموما ، فأن الدول الآخذة فى النمو التى تحقق معدلات عالية فى النمو الأقتصادى وتنمية الصادرات ، قد قامت بتخفيض الحد الأقصى للتعريفة الجمركية على الواردات لأقل من ٢٠% ، ومتوسط مستوى التعريفة الجمركية لأقل من ١٠% وفى نفس الوقت أزالت كافة القيود غير التعريفية.

تحرير التجارة : على الرغم من ان كل الدول الخمس ، بما فيها مصر قد خفضت القيود على تجارتها إلى حد ما ، الا انه لايزال هناك العديد من القيود الجمركية وغير الجمركية باقيا بغرض حماية تجارتها .

جدول ٢ : تصنيف مناخ الاستثمار

الأستقرار السياسى : تحظى تونس بأفضل سجل وأفضل توقعات . لقد أنتقلت بطريقة منظمة وبدون عنف من النظام الرئاسى السابق ، ولاتعانى من أى عنف سياسى أو ارهابى ، ورئيسها محبوب شعبيا وبدأت تخطو نحو الانتقال التدريجى لمستوى عال من الحكومة الديمقراطية . ويعتبر المستثمرون الأجانب مصر فى المرتبة الثانية مباشرة وبفارق ضئيل بعد تونس حيث انها تتمتع بأستقرار سياسى مماثل وتتأثر فقط بمشاكل عارضة مع الأصوليين المسلمين ، وتتمتع المغرب أيضا بحكومة مستقرة ومحبوبة مع وجود بعض الشك حول مايعقبها من حكومات . وتعانى كل من اسرائيل وتركيا من عدم الأستقرار ومن تحالفات الأحزاب العديدة ومن أخطار الأرهاب وعدم الشعور بالأمن .

السياسات المشجعة للنشاط الاقتصادى واللوائح / الروتين الحكومى : لم تقم أى من البلدان المذكورة حتى الان بأى خطوة لتأسيس اقتصاد سوق حر يقوم على الانفتاح للتجارة والأستثمار . لقد قامت جميعها بتقليل العقبات الى حد ما وخفض نسب ضرائب الشركات والغاء التحكم فى الأسعار وهامش الربح وقدمت حوافز للاستثمار ، الا ان تحرير الاقتصاد لازال غير كامل مع تحقيق أقل تقدم فى مجال الخصخصة والتحرير الأقتصادى والروتين الحكومى . وفى هذه المجالات فأن لمصر سجلا متواضعا للغاية ، لقد بدأت بالكاد فى الخصخصة ولازالت ادارة الجمارك مستمرة فى اتخاذ قرارات تعسفية غير عادلة ، دون حق اللجوء للمحاكم للتظلم من مثل هذه القرارات . لقد قامت المغرب بتبسيط اجراءات الجمارك بدرجة كبيرة فعلا ، كما انشأت تونس "جهة وحيدة للتعامل" بصورة فعالة لخدمة المستثمرين ، والذى يصلح كنموذج لكافة الدول النامية . كما تقوم تركيا بتحرير قطاع الاعمال من تحكم الموظفين الحكوميين لكى تصبح مؤهلة لعضوية الاتحاد الأوربى فى المستقبل .

المعاملة الوطنية : تقدم أسرائيل معاملة وطنية أقرب الى الكمال دون اى تمييز للمستثمرين الأجانب ، من بين الدول الخمس، وللمغرب سجل جيد ، الا ان المستثمرين الاجانب ليس لهم الحق فى تملك الأراضى الزراعية ، كما ان اجراءات المشتروات الحكومية توجه احيانا للمواطنين بطريقة تعسفية غير واضحة . لاتوجد فى تركيا عموما تفرقة ضد المستثمرين الأجانب ، الا ان شركات التعدين الاجنبية انتظرت طويلا لدرجة تبعث على السأم لكى تحصل على التراخيص اللازمة لبدء عملياتها . وتشترط تونس الحصول على تراخيص

مسبقة للاستثمارات التى يشكل الأجانب غالبية المساهمين فيها لكى تبدأ فى خدمة السوق المحلى وأيضا حصول مثل هذه الشركات على تراخيص مسبقة لتحويل ارباحها للخارج . وتفيد التقارير الحالية ان البنك المركزى يرفض تحويل عملات اجنبية للشركات الأجنبية والتى تطلبها لسداد قيمة وارداتها ، مالم تقدم هذه الشركات المستندات الدالة على عدم استطاعتها شراء ما تحتاج إليه من موردين محليين بدلا من الاستيراد ، كما تمنع مصر الاستثمار الأجنبى من كافة الانشطة التجارية ومعظم أنشطة الاستيراد وتوافق على الاستثمارات الأجنبية فقط فى القطاعات المسموح بها ، مع وجود سلطة تقديرية لفرض الرسوم على هذا القطاع . وتعطى الشركات التى يمتلكها مصريون ١٥% أفضلية سعرية فى عروض المناقصات العامة تمييزا لها عن الشركات المملوكة لأجانب وفى مجال الخصخصة، فأن نطاق المشاركة للمستثمر الاجنبى محدود بسبب تفضيل بيع الاصول الراسمالية للعاملين اولا ثم للمستثمرين المحليين عن طريق البورصة المحلية، ثم يأتى المستثمرون العرب بعد ذلك فى الترتيب ، وبعد ذلك فقط يأتى المستثمرون الاجانب . ان قانون الشركات يشترط عرض حصة اساسية لاتقل عن ٤٩% للمصريين ، ويشترط ان تكون غالبية اعضاء مجلس الادارة من المواطنين المصريين

حوافز الاستثمار : تقدم أسرائيل حوافز اكثر سخاءا للاستثمارات الأجنبية ، بما فى ذلك منحة حكومية تصل لـ ٣٥% من قيمة الاستثمار الأصلى "للمشاريع الموافق عليها" أو حوافز ضريبية سخية . وتقدم تونس اعفاءات ضريبية للشركات لمدة ١٠ سنوات ، وحوافز اخرى للشركات التى تصدر مالايقل عن ٨٠% من انتاجها ، كما تمنح كل الاستثمارات الجديدة الأخرى اعفاء ضريبى على الأرباح المعاد استثمارها لغاية ٣٥% من الدخل الخاضع للضريبة بالإضافة الى حوافز أخرى . وتقدم المغرب أعفاءً ضريبياً مدتة ٥ سنوات للشركات المصدرة أو للشركات التى ترغب فى العمل فى المناطق التى تعانى من الكساد . وتقدم تركيا للمستثمرين الأجانب ضمانات بالمعاملة كمواطنين دون استثناء من أى قطاع صناعى وأمتلاك أسهم أجنبية بنسبة تصل ١٠٠% ، وحرية لتحويل الأرباح للخارج ، وتمنح مصر المستثمرين الاجانب أعفاء (٥) سنوات من ضريبة الشركات يمكن تمديدها لخمس سنوات أخرى ، وبعض الحوافز البسيطة الأخرى .

الضرائب : تفرض تونس أقل نسبة ضرائب على الشركات بينما تفرض اسرائيل أعلى نسبة ، فى حين تفرض مصر ضرائب اقل قليلا من اسرائيل ، وفى الواقع فأن أقصى

حد لضرائب الشركات التى تفرضها مصر والتى تبلغ ٤٠% تعتبر الأعلى مقارنة بالدول الخمس ، الا أن الدول الاربع الأخرى تفرض ضريبة على ارباح المساهمين التى يتم توزيعها و/أو التى يتم تحويلها للخارج .

حرية التحويل للخارج : فى تركيا ، يستطيع المستثمرون الأجانب ان يحولوا ارباحهم بحرية للخارج بدون موافقة مسبقة ، وفى المغرب ، يستطيع المستثمرين الاجانب تحويل الأرباح وإعادة رأس المال للخارج بحرية تامة بشرط ان يكون الاستثمار الأجنبى الأصلى قد تم تسجيلة لدى مكتب مراقبة التحويلات الأجنبية .

وتسمح اسرائيل للبنوك المرخصة بأن توفر النقد الأجنبى للشركات لتحويل أرباحها للخارج ، بشرط ان يكون الاستثمار الأصلى قد تم من خلال بنك مرخص . وفى تونس ، فأن حرية تحويل الأرباح واعادة رأس المال مقصوره على الشركات التى تشكل حصة الأسهم الأجنبية فيها مالايقل عن ٦٦% ، بينما ينبغى على الشركات الأخرى الحصول على موافقة الحكومة المسبقة . وفى مصر ، فأن تحويل الأرباح للخارج محدود بمقدار رصيد الشركة من العملات الأجنبية الموجود بالبنك : وايضا يمكن اعادة رأس المال للخارج فقط فى حدود رصيد العملات الاجنبية الموجود فى حسابات الشركة لدى البنوك وبتطبيق نفس سعر الصرف السائد وقت تحويل مبلغ الاستثمار الأصلى .

إستقرار سعر الصرف : سجل مصر منذ سنة ١٩٩٠ هو الأفضل مع المغرب وتونس ، الا أن سعر صرف عملات الدول الثلاث مقوم بأكثر من قيمتة الحقيقية حاليا من الناحية الاقتصادية وأصبح عقبة متنامية فى طريق درجة تنافسية الصادرات الجديدة ، ولقد عانت تركيا واسرائيل من عدم استقرار متكرر فى سعر الصرف، وربطه بمعدلات تضخم مرتفعة .

تحرير التجارة : قامت كل من المغرب وتونس بتحرير التجارة من كافة العوائق غير التعريفية، كما قامتا بتخفيض معدلات التعريفة الجمركية، وقامتا بتبسيط الاجراءات الجمركية ، لكن لاتزال معدلات الحماية المرتفعة للزراعة سارية.

وقامت تركيا بتخفيض معدلات التعريفة وجعلت الترخيص بالأستيراد مسألة

أتوماتيكية بصورة متزايدة . تحتفظ اسرائيل بأعلى قيود غير تعريفية بما فـــى ذلـــك حظـــر الاستيراد نهائيا وتضخيم أسعار (سيف) بصورة مصطنعة عند حساب التعريفية الجمركية لكى تحمى المنتجين المحليين . قامت مصر بتخفيض نسب التعريفية الجمركية، الا أن العديد منها لازال مرتفعا بغرض حماية القطاعات المنتجة المحلية من منافسة الواردات .

- **حجم السوق ونموه** : تحظى تركيا من بين الدول الخمس بـــاكبر ســـوق وبـــأفضل التوقعات لنموه . والسوق الاسرائيلية كبيرة بسبب القوة الشرائية المرتفعة لســـكانها وبســـبب النمو الكبير فى الصادرات ، الا ان تـــوقعات النمو على المدى الطويل تشير الى انـــه قـــد يصبح محدودا . وتتمتع مصر بسوق محتمل كبير الا انه لازال محدودا بسبب ضعف القـــوة الشرائية ، وبسبب القيود الحكومية التى تؤثر على الأستثمارات الخاصة وتنمية الصـــادرات المتنوعة.

التقييم الشامل : ان التقييم العام غير المرجح للنقـــاط العشـــر التـــى تشكـــل منـــاخ الاستثمار، يضع المغرب وتونس فى أفضل مكانة وتضع مصر فى أســـوأها . الا ان التقييـــم المرجح الذى يعكس الأهمية النسبية لكل نقطة بالنسبة للمستثمر الأجنبى ، يضع تركيـــا فـــى المركز الأول ، تليها المغرب واسرائيل ويضع مصر فى المرتبة الأخيرة .

ان ترتيب مصر ضعيف للغاية فى كل النقاط الحيوية التى تهم المستثمرين الأجانب ، باستثناء استقرار سعر الصرف والأستقرار السياسى .

جدول ٣ - التصنيف المقارن للدول حسب النظم القانونية والتنظيمية

حقوق الملكية والحماية : من حيث طبيعة وحدود حقوق الملكية وضمانات الحماية سواء داخل الأطار القانونى للدولة المضيفة (دستورية ، قانونية ، أو أى قوانين أخرى) أو متطلبات الاتفاقيات الثنائية او الاتفاقيات متعددة الأطراف .

القيود على المستثمرين الأجانب : من حيث أنواع الحظر والقيود التى تؤثر على حقوق الأجانب فى الأستثمار فى الدولة المضيفة ، مثلا فى قطاع أو منطقة جغرافية معينة أو بالقيود الخاصة بأغلبية أو نسبة ملكية الأسهم فى الشركات المحلية .

اجراءات القيد والموافقات : من حيث طبيعة وعوامل الوقت الذى تستغرقه الاجراءات عند قيد مستثمر اجنبى مباشر ، أى أجراءات الفرز والقيد والموافقة لمنحة حوافز، من حيث:
(أ) تعقيد أو صعوبة الاجراءات ، (ب) مستوى القرارات التقديرية التى يمارسها الموظفون الحكوميون فى القيد والموافقات ، (ج) فى الزمن المطلوب لتكوين الشركة وتحليل الاستثمار من حيث الجدوى واستيفائها لمتطلبات وأهداف الحوافز .

حماية الاستثمار : من حيث سجل الدولة المضيفة من حيث قيامها بالمصادرة أو التأميم أو الاستيلاء على ممتلكات مملوكة لأجانب ، والحماية القانونية ضد عدم تعويض أو سداد اتعاب الخدمات ، وحقوق الأجانب فى المراجعة القضائية و / أو التحكيم الدولى والمحلى ، والأمثلة الحقيقة على عمليات المصادرة التى لم يتم تعويضها ، أو قضايا الحجز على الممتلكات ، ومدى توافر التأمين على الاستثمار ضد المصادرة وتقلب سعر صرف العملة أو الأخطار السياسية .

الضرائب على الأستثمار الأجنبى المباشر : تحديد نسب الضرائب الأساسية والفعلية والضرائب الأخرى التى تفرض أعباء على المستثمرين الأجانب ، وإمكانية تطبيق اتفاقيات الضرائب الدولية ، والقوانين والممارسات المتعلقة بتقدير الضرائب وتحصيلها والاجراءات الخاصة بالإقرارات الضريبية .

اعادة الاستثمارات والتحويلات : تتعلق بالحرية الكاملة للمستثمرين الأجانب بشـــأن اعادة رأس المال و/أو تحويل الأرباح بالعملة الاجنبية والوفـــاء بســداد الديــون وحســاب المعاملات الدولية الجارية، وطبيعة وضمان القواعد والقيود الخاصة بها .

- **برامج الحوافز الخاصة بالاستثمار الأجنبى المباشر** : من حيث طبيعة الحوافز المالية والتمويلية التى تقدمها الدولة المضيفة لجذب الاستثمارات الأجنبية وادارتها من حيث الشروط المسبقة ، والمطالب الخاصة بمتطلبات الأداء بعد التسجيل ، والمتابعة والتنفيذ – بالاضافة الى طلبات الحوافز الخاصة مثل تشغيل مناطق تجارة حرة .

اهتمامات المستثمرين الأخرى : تتعلق بالمناطق الخاصة التى تهم المستثمرين والتى لم يتم الاشارة اليها آنفا ، مثل حماية حقوق الملكية الفكرية ، والقوانيــن الخاصــة بمكافحــة الأحتكار وضمان المنافسة، وقوانين وعلاقات العمل، وكفاءة النظام القانونى التجارى ككل من حيث تنفيذ العقود وتسهيل المعاملات المالية والتجارية الحديثة .

جدول رقم ١ : المؤشرات الاقتصادية

نقاط المقارنة	مصر	تركيا	اسرائيل	المغرب	تونس
البنية الاساسية	غير فعاله - عالية التكاليف تحتاج فتح احتكارات الدولة للاستثمار والادارة.	متطورة - باستثناء الكهرباء ، التوسعات ، تخلق فرص للأستثمار الأجنبى.	متطور - باستثناء المطارات - جارى التوسع فى خدمات الكهرباء والطرق السريعة ، المطارات ، السكك الحديدية ، النقل البرى.	تم تمديد شبكة خطوط سكك حديدية - ميناء الدار البيضاء يعمل بأكثر من طاقته ، الاستثمار مع المساهمات الخاصة فى مجال الكهرباء والسكك الحديدية والاتصالات اللاسلكية	متطورة ، باستثناء الاتصالات اللاسلكية المكلفة ، الاستثمار الخاص للمساهمة فى الاتصالات اللاسلكية والكهرباء والتوسع فى الطرق .
النمو الاقتصادى	أنخفض نمو الناتج المحلى من ٥% خلال الأعوام من ٨٠ - ١٩٩٠ الى ٦ر١% فى الفترة من ٩١-٩٥ مع انخفاض الاستثمار والصادرات ، وارتفع معدل النمو لـ ٤% سنة ١٩٩٦.	نمو الناتج المحلى بنسبة ٥% سنويا منذ عام ١٩٨١ ، وبنسبة ٧% سنة ١٩٩٦ مع نمو الصادرات والاستثمارات بنسبة ٢٧% من اجمالى الناتج المحلى.	نمو الناتج المحلى بنسبة ٦% سنويا مند عام ١٩٩٠ من الاستثمارات الضخمة والصادرات والهجرة.	نمو الناتج المحلى بصورة معتدلة ويتوقف النمو على المطر الذى يؤثر على الزراعة	نمو الناتج المحلى بنسبة ٤،٢ % منذ عام ١٩٨٧ تنشط بالسياحة والصادرات وتعرقل بالزراعة
التضخم	انخفضت معدلات التضخم من ٢١% سنة ٩٠/٨٩ الى ٤ر٩ سنة ٩٥/٩٤ ثم الى ٢ر٧% سنة ١٩٩٦ ، تقييد النقد والسياسات المالية عرقلت النمو الاقتصادى.	نسبة التضخم ٧٤% فى سنة ١٩٩٦ و ٨٠% منذ عام ١٩٨٨ ، ١٢٦% بعد عام ١٩٩٣ عندما شددت الحكومة على النمو الاقتصادى بدلا من القيود المالية.	نسبة التضخم ١٨% سنويا فى الفترة من ٨٦-١٩٩١ و ١١% من ١٩٩١ وحتى الان وهناك قيود نقدية ومالية.	التضخم ٥% سنويا منذ عام ١٩٩٠ السياسات النقدية تحافظ على معدل معتدل للعجز فى الموازنة.	انخفضت نسبة التضخم من ٥ر٩% سنويا فى اوائل الثمانينات الى ٨ر٥% سنويا منذ عام ١٩٩١ ، ادارة مالية ونقدية سليمة
تخفيض العملة	بعد تخفيض جوهرى فى سعر الصرف فأن البنك المركزى يحافظ على استقرار السعر حاليا.	نسبة الخفض فى سعر الصرف تتناسب مع نسبة التضخم لكى تستمر الصادرات فى المنافسة.	سعر الصرف مستقر فى سنة ٩٦/٩٥ وتم تعديلة طبقا للتغييرات فى سلة العملات المرجحة.	سعر الصرف مستقر بعد تخفيضة بنسبة ٩% سنة ١٩٩٠ وتم تعديلة طبقا للتغييرات فى سلة العملات المرجحة التى يسودها الفرنك الفرنسى.	تم تثبيت السعر الأساسى بواسطة البنك المركزى ، التسعير اليومى يسمح بتقلب الاسعار (بعلاوة تصل ١٥% عن السعر الرسمى بالنسبة لسعر الدولار منذ عام ١٩٩١)
الضرائب	ضريبة شركات بحد أقصى ٤٠% + ٢% ضريبة ارباح اضافية (لاتوجد ضرائب على التحويلات) ، ٣٢% ضرائب على التصنيع والتصدير.	ضريبة شركات بحد أقصى ٤٤% تشمل رسوم اضافية وضريبة تحويل العملات.	٣٦% ضريبة شركات بالاضافة الى ٢٥% ضريبة على أرباح الأسهم لتصل الضريبة لـ ٥٢%	٣٥% ضريبة شركات بالاضافة الى ١٥% ضريبة ارباح الاسهم لتصل لـ ٧٥ر٤٤%	٣٥% ضريبة الشركات (١٠% على الزراعة) حصة صاحب العمل فى التأمينات الاجتماعية ١٩% من إجمالى الأجور
التعريفة الجمركية	متوسط التعريفة الجمركية ٢٤% بحد أقصى ١٣٥% ، الا انها تتراوح غالبا بين ١٠% - ٥٥%.	من صفر الى ٣٥% لكن تصل ٣٠٠% محولة من الحصص الزراعية فى الموانىء.	ضرائب مقنعة تصل ١٠٠% فى صورة رسوم.	تعريفة جمركية بحد أقصى ٣٥%، حظر جمركى على واردات الزراعة واستبدال الحصص (كوتا) والتراخيص بنسبة تصل ٣٠٠% على القيمة تسليم (CIF).	تعريفة من ١٠% - ٤٣% بالاضافة الى نسبة تصل ٣٠% تعريفة مؤقتة على بعض المنتجات
تحرير التجارة	تم تخفيض التعريفة الجمركية ، الا انها لاتزال مرتفعة ، كما تم ازالة بعض القيود التى ليس لها علاقة بالجمارك التى تقدر احيانا بصورة تعسفية.	معدلات التعريفة الجمركية منخفضة عموما ، رخصة الاستيراد اتوماتيكية بصورة متزايدة.	قيود شاملة غير تعريفية. قيمة (CIF) متضخمة بشكل غير طبيعى عند حساب الجمارك . حظر الواردات وإنتهاك اتفاقيات التجارة الحرة.	تحويل الحصص والتراخيص الى تعريفة مرتفعة، تخفيض القيود غير التعريفية، تبسيط اجراءات الجمارك.	لاتزال الرسوم الجمركية مرتفعة بسبب تحويل الحصص ، اجراءات الجمارك مبسطة وميسرة.

جدول رقم ٢ : ترتيب البلاد بالنسبة لمناخ الاستثمار

الـــــوزن الترجيحى %	نقاط المقارنة	مصر	تركيا	اسرائيل	المغرب	تونس
٥	الاستقرار السياسى	٤	١	٢	٣	٥
١٥	السياسات المشجعة للنشاط الاقتصادى	١	٤	٢	٥	٣
١١	اللوائح / الروتين	١	٥	٣	٢	٤
١٢	المعاملة الوطنية	١	٣	٥	٤	٢
١٠	حوافز الاستثمار	٢	١	٥	٣	٤
٥	الضـــــرائب	٢	٣	١	٤	٥
١٥	حرية التحويلات	٣	٥	٤	٢	١
١١	استقرار سعر الصرف	٥	١	٢	٤	٣
٨	تحرير التجارة	٢	٤	١	٣	٥
٧	حجم ومعدل نمو السوق	٣	٥	٤	٢	١
	المتوسط غير المرجح للنقاط	٢ر٤	٣ر٢	٢ر٩	٣ر٢	٣ر٣
١٠٠	المتوسط المرجح للنقاط	٢ر٢٥	٣ر٣٤	٣ر٠٦	٣ر٢٢	٢ر٩٨
	الترتيب : ٥ الأفضل ، ١ الأسوأ					

* إن الاوزان الترجيحية التى تم استخدامها لتقييم المناخ المقارن للنشاط الاقتصادى (جدول رقم ٢)، والنظم القانونية والتنظيمية (جدول رقم ٣) فى الدول الخمس مبنية على الانتقاء بعناية والاتفاق التام بين كاتبى الدراسة، ومشتق من خبرتهم الشخصية التى تزيد عن ٢٥ عاما فى مجال الاستثمار الدولى، الامر الذى يعكس الاهتمام الاساسى – والاهمية النسبية لهذه الاعتبارات – بالشركات متعددة القوميات وغيرها من المستثمرين فى الدول الاجنبية. وعلى حين يكون لكل استثمار معين، فى دولة معينة، اعتباراتة النسبية الخاصة التى يوليها بحسب الاعتبارات السوقية، والقطاعية، والقطرية، والخبرة مع الشركات التى تستثمر فى الخارج تشير الى أن الاوزان الترجيحية النسبية التى وضعها الكاتبان لهذه الدراسة ملائمة ومفيدة.

جدول رقم ٣ : ترتيب البلاد حسب الانظمة القانونية والتنظيمية

الـــوزن الترجيحى %	النقاط القانونية / التنظيمية	مصر	تركيا	اسرائيل	المغرب	تونس
١٥	حقوق الملكية الاساسية وضمانات الحماية فى القانون	٧	٧	٦	٧	٤
١٥	القيود على المستثمرين الاجانب	٦	٩	٨	٧	٦
١٠	القيد والموافقة على الاستثمارات الاجنبية	٨	١٣	١٥	١٥	١٧
١٠	معاملة مابعد القيد للمستثمرين الاجانب	١٠	١١	١٢	١١	١٣
١٣	حماية الاستثمار (ضد المخاطر)	١٧	١٧	١٨	١٤	١٤
٨	الضرائب على الاستثمارات الاجنبية	٨	٨	٤	٥	٧
١٢	اعادة الاستثمارات وحرية التحويل	١٤	١٩	١٤	١٨	١٥
١٠	برامج حوافز الاستثمار	٩	١٠	١٧	١٣	١٧
٧	اهتمامات المستثمرين الاخرى (النظم القانونية العمالية والتجارية وحقوق الملكية الفكرية)	٥	٨	٧	٦	٦
	الأجمالى المطلق	٨٤	١٠٢	١٠١	٩٦	٩٩
	اجمالى المرجح	٩٥٣	١١٤٩	١١٣٣	١٠٨٠	١٠٨٠
	الترتيب : الأعلى – الأفضل ، الأقل – الاسوأ					

* إن الاوزان الترجيحية التى تم استخدامها لتقييم المناخ المقارن للنشاط الاقتصادى (جدول رقم ٢)، والنظم القانونية والتنظيمية (جدول رقم ٣) فى الدول الخمس مبنية على الانتقاء بعناية والاتفاق التام بين كاتبى الدراسة، ومشتق من خبرتهم الشخصية التى تزيد عن ٢٥ عاما فى مجال الاستثمار الدولى، الامر الذى يعكس الاهتمام الاساسى – والاهمية النسبية لهذه الاعتبارات – بالشركات متعددة القوميات وغيرها من المستثمرين فى الدول الاجنبية. وعلى حين يكون لكل استثمار معين، فى دولة معينة، اعتباراتة النسبية الخاصة التى يوليها بحسب الاعتبارات السوقية، والقطاعية، والقطرية، والخبرة مع الشركات التى تستثمر فى الخارج تشير الى أن الاوزان الترجيحية النسبية التى وضعها الكاتبان لهذه الدراسة ملائمة ومفيدة.

APPENDIX C

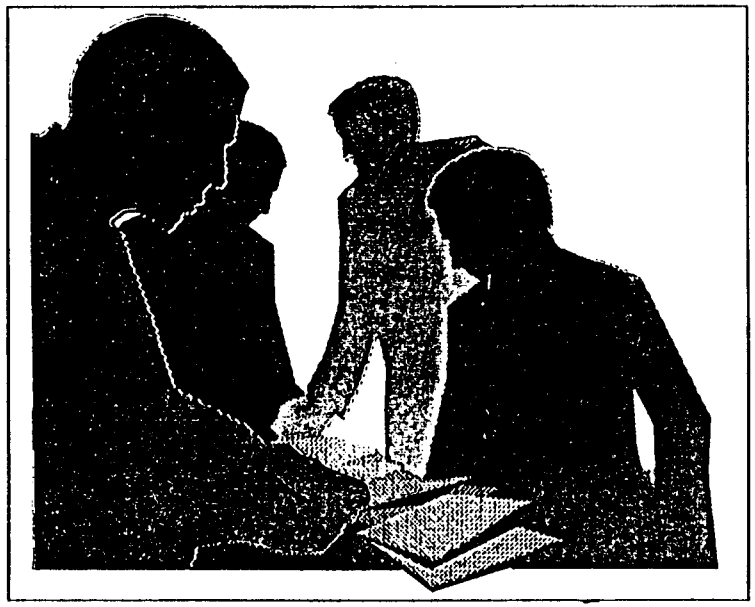
الجمهورية التونسية

وزارة الصناعة

وكالة النهوض بالصّناعة

الشبّاك الموحد

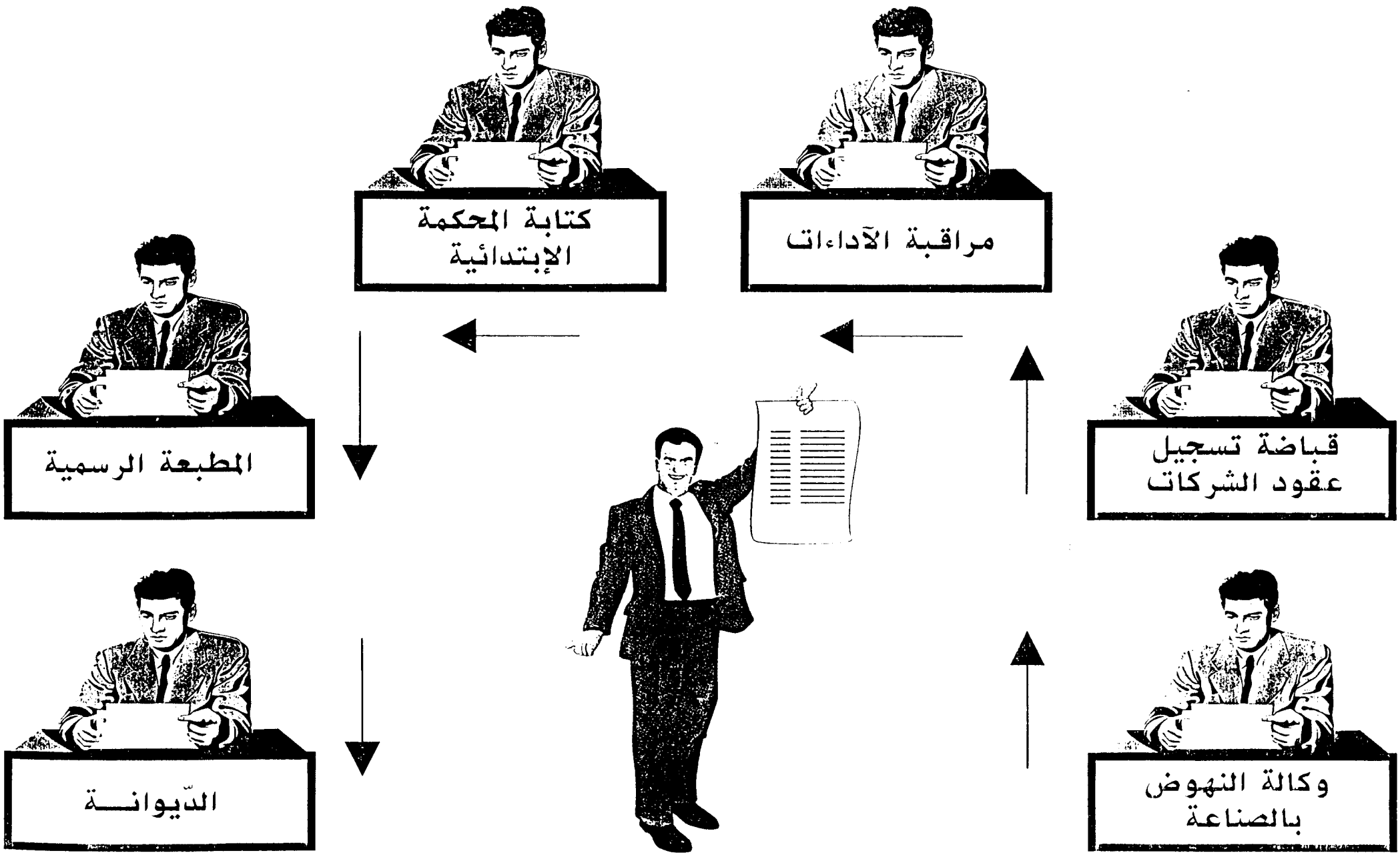
مراحل تكوين الشركات



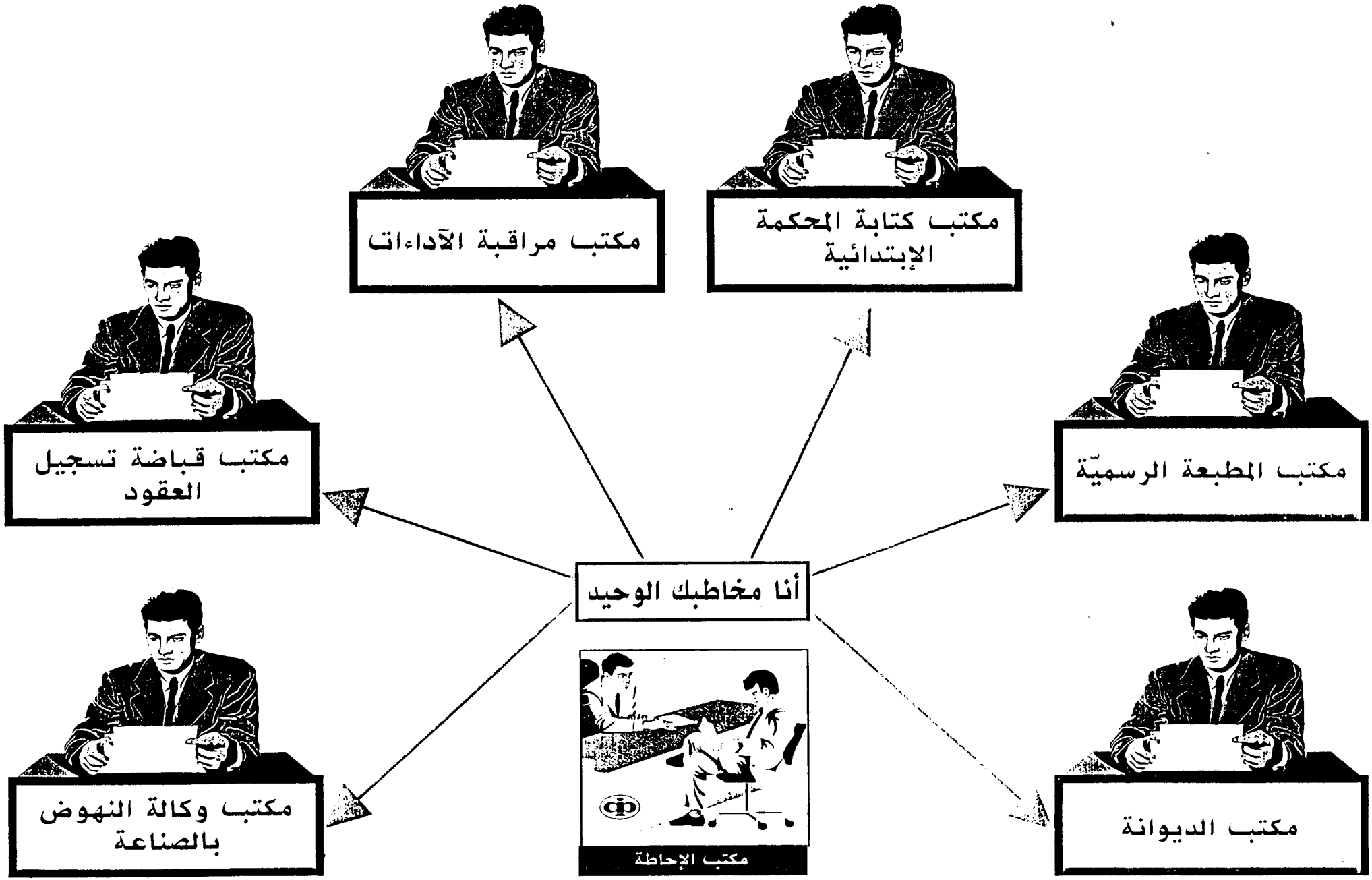
وكالة النهوض بالصّناعة : 63 نهج سوريا ـ 1002 تونس البلفدير ـ الهاتف : 144 792 ـ فاكس : 482 782

تقديم الشبّاك الموحّد

المكاتب المختصة بتكوين الشركات



يوفّر الشباك الموحد
بوكالة النهوض بالصناعة
إحاطة شاملة بالمستثمر الأجنبي
على مستوى الإجراءات
الخاصة بتكوين الشركات


مكتب كتابة المحكمة الإبتدائية
مكتب مراقبة الآداءات
مكتب المطبعة الرسميّة
مكتب قباضة تسجيل العقود
أنا مخاطبك الوحيد
مكتب الإحاطة
مكتب الديوانة
مكتب وكالة النهوض بالصناعة

المراحل المتبعـــة ...

1. مكتب وكالة النهوض بالصّناعة
2. مكتب مراقبة الآداءات
3. مكتب كتابة المحكمة الإبتدائية
4. مكتب الديوانة

إن إقتضى الأمر

الإجراءات	المكتب	الوثائق المطلوبة
1 شهادة إيداع التصريح بالإستثمار	وكالة النهوض بالصناعة في 24 ساعة	مطبوعة خاصة بتصريح الإستثمار
2 التصريح بالوجود	مراقبة الآداءات فورا	ـ مطبوعة تعمّر على عين المكان ـ نسخة من بطاقة التعريف الوطنية أو من جواز السفر ـ وثيقة تبين عنوان مقرّ النّشاط ـ شهادة إيداع التصريح بالإستثمار ـ رخصة لتعاطي النشاط بالنسبة للقطاعات الخاضعة لترخيص مسبّق .
3 التسجيل بالسّجل التجاري	كتابة المحكمة الإبتدائية فورا	ـ مطبوعة محررة في نظيرين ـ تصريح على الشرف ممضى ومختوم بطابع جبائي 15د ـ نسختان من شهادة التصريح بالوجود ـ نسختان من شهادة إيداع التصريح بالاستثمار ـ نسختان من بطاقة تعريف الطالب ـ نسختان من سند التصرّف في المحلّ
4 الترقيمة القمرقية	الديوانة فورا	ـ مطبوعة تعمّر على عين المكان ـ نسخة من شهادة التصريح بالوجود ـ نسخة من شهادة إيداع التصريح بالإستثمار ـ رقم التسجيل بالسّجل التجاري

المراحل المتبعـــة ...

1. مكتب وكالة النهوض بالصّناعة
2. مكتب قباضة تسجيل عقود الشركات
3. مكتب مراقبة الآداءات
4. مكتب كتابة المحكمة الإبتدائية
5. مكتب المطبعة الرسميّة
6. مكتب الديوانة

إن إقتضى الأمر

الإجراءات	المكتب	الوثائق المطلوبة
1 شهادة إيداع التصريح بالإستثمار	وكالة النهوض بالصناعة في 24 ساعة	مطبوعة خاصة بتصريح الإستثمار
2 تسجيل القانون الأساسي	قباضة تسجيل عقود الشركات في 24 ساعة	- القانون الأساسي للشركة (6 نسخ على الأقل) - محضر جلسة تعيين الوكيل أو الوكلاء
3 التصريح بالوجود	مراقبة الآداءات فورا	- مطبوعة تعمّر على عين المكان - نسخة من شهادة إيداع التصريح بالإستثمار - نسخة مسجلة من القانون الأساسي - نسخة من بطاقة التعريف الوطنية أو من جواز سفر الوكيل - وثيقة تبين عنوان المقرّ الإجتماعي للشركة (سند التصرّف في المحلّ) - رخصة لتعاطي النشاط بالنسبة للقطاعات الخاضعة لترخيص مسبّق
4 إيداع القانون الأساسي والتسجيل بالسجل التجاري	كتابة المحكمة الإبتدائية فورا	- مطبوعة محرّرة في نظيرين - تصريح على الشرف ممضى ومختوم بطابع جبائي 15 د - نسختان من القانون الأساسي - ترجمة باللّغة العربيّة للخّص من القانون الأساسي - نسختان من شهادة التصريح بالوجود - نظيران من محضر تعيين الوكيل - نسختان من شهادة إيداع التصريح بالإستثمار - نسختان من سند التصرّف في المقرّ الإجتماعي - نسختان من بطاقة التعريف الوطنية أو من جواز سفر الوكيل

الإجراءات	المكتب	الوثائق المطلوبة
5 الإشهار بالرّائد الرسمي	المطبعة الرّسمية الخمسة أيّام الموالية للإيداع	- مطبوعة تعمر بوضوح باللّغة العربيّة مع ترجمتها إلى الفرنسيّة - نسخة من بطاقة التعريف الوطنيّة للنّاشر
6 الترقيمة القمرقية	الدّيوانة فورا	- مطبوعة تعمّر على عين المكان - نسخة من شهادة التصريح بالوجود - نسخة من شهادة إيداع التصريح بالإستثمار - رقم التسجيل بالسّجل التّجاري .

المراحل المتبعـــة ...

1. مكتب وكالة النهوض بالصّناعة
2. مكتب كتابة المحكمة الإبتدائية
3. مكتب قباضة تسجيل عقود الشركات
4.
5. مكتب مراقبة الآداءات
6.
7. مكتب المطبعة الرّسمية
8. مكتب الدّيوانة

الإجراءات	المكتب	الوثائق المطلوبة
1 شهادة إيداع التصريح بالإستثمار	وكالة النهوض بالصناعة في 24 ساعة	مطبوعة خاصة بتصريح الإستثمار
2 الإيداع الوقتي للقانون الأساسي	كتابة المحكمة الإبتدائية فورا	- مشروع القانون الأساسي ممضي من قبل المؤسسين مع ترجمة ملخص منه للغة العربية
3 بطاقة الإكتتاب	قباضة تسجيل عقود الشركات في 24 ساعة	- وصل إيداع وقتي لمشروع القانون الأساسي - 10 نسخ من القانون الأساسي ممضي من قبل المؤسس أو وكيله - 10 نسخ من قائمة المكتتبين والدفعات - نسخة أصليّة من كل بطاقة إكتتاب ممضاة من قبل المكتتب - شهادة من البنك المودعة لديه النقود تثبت دفعها إليه - توكيل ممضي ومعرّف به للوكيل - نسخة من شهادة إيداع التصريح بالإستثمار - بطاقة الإكتتاب والدفع ممضاة من قبل المؤسس أو وكيله والقابض - وثيقة إرشادات حول المؤسس
4 تسجيل محضر الجلسة العامة التأسيسيّة ومحضر أول اجتماع مجلس الإدارة	قباضة تسجيل عقود الشركات في 24 ساعة	- 10 نسخ من محضر الجلسة العامة التأسيسية واجتماع مجلس الإدارة القاضي بتعيين أعضاء مجلس الإدارة ومراقبي الحسابات - محضر الجلسة العامة التأسيسية الثانية (في صورة تقديم حصص عينية مرفوقة بتقرير مراقب الحسابات)

الإجراءات	المكتب	الوثائق المطلوبة
5 شهادة التصريح بالوجود	مراقبة الأداءات فورا	- مطبوعة تعمّر على عين المكان - نسخة مسجّلة من القانون الأساسي - نسخة من شهادة إيداع التصريح بالإستثمار - نسخة من بطاقة الإكتتاب - نسخة من قائمة المكتتبين - نسخة من محضر إجتماع أو مجلس الإدارة - نسخة من محضر الجلسة العامة التأسيسية - وثيقة تبيّن عنوان المقر الإجتماعي (عقد الكراء ، شهادة ملكيّة ، شهادة استضافة) . - نسخة من بطاقة التعريف الوطنية أو من جواز سفر الرئيس المدير العام أو وكيله
6 الإيداع النهائي للملف والتسجيل بالسجل التجاري	كتابة المحكمة الإبتدائية فورا	- مطبوعة في نظيرين - شهادة تصريح على الشرف ممضي من الرئيس المدير العام مختومة بطابع جبائي 15 د - نسختان مطابقتان للأصل من القانون الأساسي - نسختان مطابقتان للأصل من محضر اجتماع مجلس الإدارة - نسختان مطابقتان للأصل من محضر الجلسة العامة التأسيسية - نسختان مطابقتان للأصل من بطاقة الإكتتاب والدّفع - نسختان من شهادة إيداع التصريح بالإستثمار - وثيقة في نظيرين تبيّن عنوان المقر الإجتماعي (عقد كراء، شهادة ملكيّة ، شهادة إستضافة) - نسختان من بطاقة التعريف الوطنية أو من جواز السفر للرئيس المدير العام أو وكيله
7 الإشهار بالرّائد الرسمي	المطبعة الرسمية الخمسة أيّام الموالية للإيداع	- نصّ الإعلان باللّغة العربيّة مع ترجمته إلى الفرنسية - نسخة من بطاقة التعريف الوطنية للناشر
8 الترقيمة القمرقية	الدّيوانة فورا	- مطبوعة تعمّر على عين المكان - رقم التسجيل بالسجل التجاري . - نسخة من شهادة التصريح بالوجود

نيابات وكالة النهوض بالصّناعة في تونس

أريانة

6 نهج عمر بن الخطاب ، 2080 أريانة

الهاتف : 064 716 ـ الفاكس : 437 709

باجة

شارع الحبيب بورقيبة ، عمارة تعاونية التأمين الفلاحي ، 9000 باجة .

الهاتف : 264 451 / 265 451 / 08

بنزرت

25 ، نهج ابن خلدون ، 7000 بنزرت

الهاتف : 667 433 / 556 433 / 02

بن عروس

59 شارع فرنسا بن عروس

الهاتف : 755 388 / 01

تطاوين

2 ، نهج الهادي شاكر عمارة دوكالي الطابق الثاني

الهاتف : 647 860 / 05

توزر

شارع أبو القاسم الشابي ، 2150 توزر

الهاتف : 919 452 / 06

تونس

67 ، شارع 20 مارس 2000 باردو

الهاتف : 936 227 / 935 227 / 01

جندوبة

نهج حديس الماجري ص.ب. 1[illegible] ـ 8100 جندوبة

الهاتف : 012 630 / 577 631 / 08

زغوان

الحي الإداري 1100 زغوان

الهاتف : 855 675 / 02

سليانة

نهج بنزرت ص.ب. 34 ـ 6100 سليانة

الهاتف : 463 871 / 08

سوسة

نهج نيس عمارة بوقديدة 4001 سوسة

الهاتف : 809 227 / 404 222 / 03 ـ الفاكس : 809 227 / 03

سيدي بوزيد

نهج ابن الجزار ، 9100 سيدي بوزيد

الهاتف : 008 630 / 380 630 / 06

صفاقس

1 ، نهج بجاية ، 3000 صفاقس

الهاتف : 370 224 / 320 224 / 04 ـ الفاكس : 072 223 / 04

قابس

تقاطع شارع فرحات حشاد ونهج التنمية ، 6000 قابس

الهاتف : 855 272 / 05

قبلّي

طريق قابس ، 6034 قبلّي

الهاتف : 234 490 / 05

القصرين

نهج الجباري ، عمارة القاسمي ، 1200 القصرين

الهاتف : 772 474 / 07 ـ الفاكس : 772 474 / 07

قفصة

6 نهج بغداد ص.ب. 214 ، 2100 قفصة

الهاتف : 535 221 / 437 221 / 06

القيروان

نهج المنجي بالي ، عمارة بلحاج ، 3100 القيروان

الهاتف : 283 221 / 07 ـ الفاكس : 355 228 / 07

الكاف

ص.ب. 210 ، 7100 الكاف

الهاتف : 942 220 / 08 ـ الفاكس : 910 221 / 08

مدنين

شارع الحبيب بورقيبة ، عمارة حمروني ، 4100 مدنين

الهاتف : 102 640 / 05

المنستير

1 طريق أ.ب. 2 ، 5000 المنستير

الهاتف : 855 462 / 03 الفاكس : 594 462 / 03

المهدية

ساحة غرة ماي ، عمارة البنك التونسي ، 5100 المهدية

الهاتف : 527 680 / 03

نابل

12 ، نهج خير الدين ، 8000 نابل

الهاتف : 973 286 / 963 286 / 02 ـ الفاكس : 793 286 / 02