PN-ACF-481

EGYPTIAN LEGAL AND JUDICIAL SECTOR ASSESSMENT

(CONTRACT NO 263-0377-C-00-3103-00)

REPORT AND RECOMMENDATIONS

SUBMITTED TO:

USAID/EGYPT

BY·

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KAMEL LAW OFFICE

IN ASSOCIATION WITH

KAMEL, YEHIA, ABUL ELA & SAKR

IN FOUR VOLUMES

VOLUME I

EXECUTIVE SUMMARY AND RECOMMENDATIONS

TABLE OF CONTENTS

PART I.

EXECUTIVE SUMMARY

PART II

DETAILED RECOMMENDATIONS

FEBRUARY 1994

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VOLUME II

MAIN REPORT - PARTS A & B

VOLUME III

MAIN REPORT - PARTS C & D

VOLUME IV

ATTACHMENTS

SUMMARY TABLE OF CONTENTS

VOLUME I - EXECUTIVE SUMMARY AND RECOMMENDATIONS

PART I EXECUTIVE SUMMARY -1-

PART II COMPILATION OF DETAILED RECOMMENDATIONS TO REDUCE OR ELIMINATE CONSTRAINTS ON MARKET DRIVEN ECONOMIC DEVELOPMENT IMPOSED BY EGYPT'S LEGAL AND JUDICIAL SECTORS -23-

VOLUME II - MAIN REPORT

PART A	**INTRODUCTION AND BACKGROUND**	-1-
CHAPTER 1	PURPOSE AND BACKGROUND OF REPORT	-1-
CHAPTER 2	OVERVIEW OF EGYPT'S LEGAL AND LAW MAKING SYSTEM	-13-
CHAPTER 3	OVERVIEW OF EGYPT'S COMMERCIAL, CIVIL AND ADMINISTRATIVE COURT SYSTEM	-21-
PART B	**CONSTRAINTS IMPOSED ON FREE MARKET ECONOMIC DEVELOPMENT BY EGYPT'S EXISTING COURT SYSTEM AND DISPUTE RESOLUTION MECHANISMS**	-32-
CHAPTER 4	INTRODUCTION AND OVERVIEW OF CASE RESOLUTION PROCESS	-32-
CHAPTER 5	DELAYS IN RESOLVING COURT CASES	-43-
CHAPTER 6	ENFORCING JUDGMENTS	-66-
CHAPTER 7	ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION	-70-
CHAPTER 8	PUBLIC LEGAL INFORMATION SYSTEMS	-74-

VOLUME III - MAIN REPORT

PART C	**CONSTRAINTS CREATED BY SUBSTANTIVE COMMERCIAL LAWS AND RELATED LEGAL INSTITUTIONS**	-77-
CHAPTER 9	INTRODUCTION	-77-
CHAPTER 10	COMMERCIAL REGISTER	-79-
CHAPTER 11	1883 COMMERCIAL CODE AND 1948 CIVIL CODE	-89-
CHAPTER 12	COMPANIES LAW	-95-
CHAPTER 13	INVESTMENT LAWS	-130-
CHAPTER 14	EGYPTIAN TAXES, CHARGES AND INVESTMENT INCENTIVES	-154-

CHAPTER 15	CAPITAL MARKETS LAW AND REGULATIONS	-173-
CHAPTER 16	LAND REGISTRATION	-179-
CHAPTER 17	NOT-FOR-PROFIT ASSOCIATIONS AND CHAMBERS OF COMMERCE AND INDUSTRY	-182-
CHAPTER 18	LABOR LAW	-186-
CHAPTER 19	ANTI-MONOPOLY, UNFAIR COMPETITION, CONSUMER PROTECTION AND TRADE LIBERALIZATION	-193-
CHAPTER 20	INSTITUTIONAL REQUIREMENTS FOR COMMERCIAL LAW MAKING	-197-
PART D & CHAPTER 21	**CONCLUSIONS AND RECOMMENDATIONS**	-200-

VOLUME IV - ATTACHMENTS:

Glossary of Terms

Attachment 1	Legal and Judicial Sector Assessment (Scope of Work)
Attachment 2	List of Participating Lawyers from Kamel Law Office and Kamel, Yehia, Abul Ela & Sakr
Attachment 3	List of Persons Interviewed
Attachment 4	Fee Schedule United States Court of Appeals -- North Circuit
Attachment 5	California Appellate Courts Schedule of Fees
Attachment 6	California Superior Court Fee Schedule
Attachment 7 (a)	Form of Commercial Register Extract (English Translation)
Attachment 7 (b)	Form of Commercial Register Extract (Arabic)

Selected Interview Notes and Memoranda

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VOLUME II:

MAIN REPORT - PARTS A & B

VOLUME III

MAIN REPORT - PARTS C & D

VOLUME IV:

ATTACHMENTS

DETAILED TABLE OF CONTENTS

VOLUME I - EXECUTIVE SUMMARY AND RECOMMENDATIONS

PART I	EXECUTIVE SUMMARY	-1-
Section A	Purpose and Organization of Report	-1-
Section B	Role and Nature of a Market Oriented Legal System	-2-
Section C	Background and Overview of Legal and Judicial Sector Constraints on Egypt's Market Economy	-4-
(1)	Case Delays, Judgment Enforcement Difficulties, Inadequate Arbitration Rules	-5-

5

(2)	Inadequate University Legal Education System	-5-
(3)	Lack of Post-Degree Continuing Education for Judges, Lawyers and Officials	-6-
(4)	Inadequate Legal Information Systems	-6-
(5)	Antiquated Commercial Law Institutions -- e.g., The Commercial Register	-6-
(6)	Outmoded Laws -- e.g., Civil and Commercial Codes	-6-
(7)	Lack of Institutionalized Economic Law and Policy Analysis	-6-
(8)	Lack of Institutionalized Private Sector Input on Economic Legislation	-6-
(9)	Inadequate Post-enactment Public Education on Commercial Laws	-7-
(10)	Need for Post-enactment Monitoring of Commercial Laws	-7-
(11)	Uncompleted Law Reforms	-7-
Section D	Constraints Imposed by Specific Substantive Commercial Laws	-7-
(1)	Commercial Register Law	-7-
(2)	Commercial and Civil Codes	-8-
(3)	Investment and Companies Laws	-8-
(4)	Companies Law	-8-
(5)	Tax Laws and Incentives	-8-
(6)	Stamp Taxes and Government Fees	-8-
(7)	Capital Markets Law	-8-
(8)	Land Register	-8-
(9)	Not-for-profit Associations and Chambers of Commerce and Industry	-9-
(10)	Labor Law	-9-
(11)	Anti-Monopoly, Unfair Competition, Consumer Protection	-9-
Section E	Conclusions and Overall Recommendation	-9-
(1)	Conclusions	-9-
(2)	Overall Recommendation -- Comprehensive Commercial Law Modernization Program	-10-
Section F	Condensed Summary of Specific Recommendations	-10-
Section G	Detailed Summary of Specific Recommendations	-11-
(1)	Provide Post-degree Commercial Law Orientation, Continuing Education and Training to Judges, Lawyers and Court Officials (Chapter 5)	-11-
(2)	Improve University Legal Education	-12-
(3)	Reduce Incentives for Case Delay by Compensating Contract Obligees Fully for Losses from Inflation, Attorneys fees, Litigation Costs and Frivolous Delays (Chapters 5 and 6)	-12-
(4)	Reduce Case Delays by Reducing Incentives to Appeal (Chapter 5)	-12-
(5)	Reduce Case Delays by Streamlining Civil Justice Administration through Modern Case Management Systems and Other Means (Chapters 5, 6 and 7)	-13-
(6)	Modernize Legal Information and Law Finding Systems (Chapter 8)	-13-

	(7)	Modernize the Commercial Register (Chapter 10)	-14-
	(8)	Revise and Modernize Substantive Laws to Improve the Legal Framework for Investment, Job Creation and Economic Growth (Chapters 11-20)	-14-
		(a) Commercial and Civil Codes (Chapter 11)	-14-
		(b) Companies Law (Chapter 12)	-14-
		(c) Investment Laws (Chapter 13)	-15-
		(d) Taxes and Investment Incentives (Chapter 14)	-16-
		(e) Capital Markets Law (Chapter 15)	-17-
		(f) Land Registration (Chapter 16)	-17-
		(g) Not-for-profit Associations (Chapter 17)	-17-
		(h) Chambers of Commerce and Industry (Chapter 17)	-18-
		(i) Labor Law (Chapter 18)	-18-
		(j) Anti-Monopoly, Unfair Competition, Consumer Protection and Trade Liberalization (Chapter 19)	-18-
	(9)	Establish Institutions for Making and Revising Economic Laws and Regulations (Chapter 20)	-19-
		(a) Institutional Economic Law and Policy Analysis	-19-
		(b) Institutionalized Private Sector and Public Input	-19-
		(c) Post-enactment Education	-19-
		(d) Post-enactment Monitoring and Technical Amendments	-19-
Section H		Recommendation Priorities	-19-
PART II		**COMPILATION OF DETAILED RECOMMENDATIONS TO REDUCE OR ELIMINATE CONSTRAINTS ON MARKET DRIVEN ECONOMIC DEVELOPMENT IMPOSED BY EGYPT'S LEGAL AND JUDICIAL SECTORS**	-23-
Section A		Chapter 5 Recommendations to Reduce Case Delays	-23-
	(1)	Require Specialization and Continuing Education of Judges, Lawyers and Court Officials	-23-
	(2)	Reduce Case Delay Incentives by Compensating Contract Obligees Fully for Losses from Inflation, Frivolous Delay Tactics, Attorneys Fees and Costs	-25-
	(3)	Reduce Case Delays Through Modern Case Management Methods	-25-
	(4)	Change Appeal Process to Reduce Incentives to Appeal	-26-
	(5)	Allow Parties to Present own Expert Witnesses	-27-
	(6)	Improve Efficiency of Service of Process	-27-
	(7)	Replace Excessively High Court and Government Fees with Low Flat Fees	-27-
	(8)	Open Communications between Lawyers and Judges on Mutual Concerns	-27-
	(9)	Increase and Improve Judicial Facilities and Staff	-27-
Section B		Chapter 6 Recommendations to Improve Enforcement of Judgments	-28-

7

Section C	Chapter 7 Recommendation to Enact Comprehensive, Modern Arbitration Legislation	-29-
Section D	Chapter 8 Recommendations to Modernize Legal Information and Law Finding Systems	-29-
Section E	Chapter 10 Recommendations to Modernize the Commercial Register	-30-
Section F	Chapter 11 Recommendations to Modernize the Commercial and Civil Codes	-32-
Section G	Chapter 12 Recommendations for Companies Law Reform	-32-
Section H	Chapter 13 Recommendations to Revised and Streamline Investment Laws	-36-
Section I	Chapter 14 Recommendations to Reform Taxes and Investment Incentives	-38-
Section J	Chapter 15 Recommendations to Revise the Capital Markets Law	-39-
Section K	Chapter 16 Recommendations to Improve Security and Clarity of Land Ownership	-39-
Section L	Chapter 17 Recommendations to Liberalize Not-for-profit Associations and Free Chambers of Commerce and Industry	-40-
Section M	Chapter 18 Recommendations to Revise the Labor Law to Encourage Investors to Hire Egyptians	-40-
Section N	Chapter 19 Recommendations to Protect Free Market Mechanisms from Monopoly, Anti-Competitive Business Practices, Unfair Competition and Consumer Fraud	-41-
Section O	Chapter 20 Recommendations to Create Institutions for Economic and Policy Analysis and Private Sector Input to Laws Affecting Business	-42-

VOLUME II - MAIN REPORT:

PART A	**INTRODUCTION AND BACKGROUND**	-1-
CHAPTER 1	PURPOSE AND BACKGROUND OF REPORT	-1-
Section A	Overview of Purposes and Methodology	-1-

8

Section B	The Role of the Legal System in Promoting Private Sector Economic Development and Investment	-3-
Section C	Impact of Socialism On Egypt's Laws, Lawyers and Legal Education	-6-
Section D	The Current Economic Policy Background	-7-
Section E	Advantages Offered To Investors By The Law and Policy Framework of Egypt	-8-
Section F	The Need to Modernize the Legal/Institutional Framework To Promote Private Sector Development and Investment	-10-
Section G	Related USAID and World Bank Projects Regarding Egyptian Law Modernization	-12-
CHAPTER 2	OVERVIEW OF EGYPT'S LEGAL AND LAW MAKING SYSTEM	-13-
Section A	The Constitution	-13-
Section B	Nature of the Legal System and Key Laws	-14-
Section C	The Sources and Forms of Egyptian Law	-15-
(1)	Sources of Law - General	-15-
(2)	Hierarchy of Law	-16-
(3)	Constitution	-16-
(4)	The Role of Shariah (Islamic Law) as a Source of Legislation	-16-
(5)	Laws or Statutes	-17-
(6)	International Treaties	-18-
(7)	Presidential Decrees	-18-
	(a) Presidential Decree Laws	-18-
	(b) Presidential Decree Regulations	-18-
(8)	Prime Ministerial, Ministerial and Other Official Decrees	-18-
(9)	Codes	-19-
(10)	Judicial Decisions and Precedents	-19-
Section D	Laws and Legal Publication in Egypt	-19-
CHAPTER 3	OVERVIEW OF EGYPT'S COMMERCIAL, CIVIL AND ADMINISTRATIVE COURT SYSTEM	-21-
Section A	Constitutional Position of the Courts and the Private Sector	-21-
Section B	Overview of the Courts	-21-

9

Section C	The Ordinary Courts of Law	-21-
(1)	Courts of Summary Jurisdiction	-21-
(2)	Courts of First Instance	-22-
(3)	The Courts of Appeal	-22-
(4)	The Courts of Cassation	-22-
(5)	Ordinary Court Organization and Administration	-22-
Section D	The Council of State and the Administrative Courts	-23-
(1)	The Advisory Section	-24-
(2)	The Legislative Section	-24-
(3)	The Judicial Section	-24-
	(a) First Instance Administrative Courts	-24-
	(b) The Supreme Administrative Court	-24-
(4)	Administrative Court Organization and Administration	-24-
Section E	The Supreme Constitutional Court	-25-
Section F	The State Security Courts	-25-
(1)	The Permanent State Security Courts	-26-
(2)	Emergency State Security Courts	-27-
Section G	The Military Courts	-27-
Section H	Prosecutors and Government Trial Lawyers	-28-
(1)	The General Prosecution	-28-
(2)	The Administrative Prosecution	-28-
(3)	The State Litigation Authority	-29-
(4)	The Socialist Prosecutor and the Courts of Ethics	-29-
Section I	Lawyers and the Legal Profession	-29-
PART B	**CONSTRAINTS IMPOSED ON FREE MARKET ECONOMIC DEVELOPMENT BY EGYPT'S EXISTING COURT SYSTEM AND DISPUTE RESOLUTION MECHANISMS**	-32-
CHAPTER 4	INTRODUCTION AND OVERVIEW OF CASE RESOLUTION PROCESS	-32-
Section A	Introduction	-32-
Section B	Overview of the Case Resolution Process in Egypt	-34-
(1)	The Ordinary Courts of Urgent Action, Summary Courts, Courts of First Instance and Courts of Appeal	-34-
	(a) Filing	-34-
	(b) Service of the Writ of Summons	-34-
	(c) Appearance of the Parties before the Court	-35-

10

(d) Trial Submissions of Evidence and Legal Arguments -35-
(e) Minimum Time Allowed for Appearance before the Court -36-
(f) Code of Procedures Timing Rules -36-
(2) Ordinary Courts of Appeal -- Special Factors -37-
(3) Court of Cassation -38-
(4) The Administrative Court of First Instance -40-
(5) Supreme Administrative Court -41-

CHAPTER 5 DELAYS IN RESOLVING COURT CASES -43-

Section A Introduction -43-

Section B Case Delay Causes -43-
(1) Unreasonably Heavy Case Loads -43-
(2) Outdated, Irregular, Inefficient Case Administration in the Ordinary Courts -44-
(3) Case Administration Problems in the Cassation Court -45-
(4) Case Administration Problems in the Administrative Courts -46-
(5) Lack of Certain Procedures to Shorten Litigation -- e.g., Summary Adjudication -46-
(6) Short Judicial Year -47-
(7) Inefficient Service of Process -47-
(8) Over-reliance on Outside Experts -48-
(9) Easy Opportunities and Incentives to Appeal -49-
(10) Excessive Court and Government Fees and Taxes -50-
(11) Lack of Judicial Specialization Orientation and Refresher and Advanced Training in Commercial Law Courses -52-
(12) No Communications Channels between Lawyers and Judges -54-
(13) Incentives to Delay by Parties (Usually Debtors and Other Obligors) -55-
(14) Numerous Delaying Tactics Available -56-
(15) Lack of Judicial Facilities and Support Staff -57-
(a) Ordinary Court Judges Lack Support Staff -57-
(b) Insufficient and Inadequate Courthouses and Courtrooms -58-
(c) Judges Lack their own Offices -58-
(d) Many Courtrooms Lack Air-conditioning -58-
(e) There are No Modern Facilities for Transcription of Testimony or Trained Short Hand Court Reporters as Exist in the United States -58-
(f) There is a Lack of Judicial Access to Current Laws, Regulations, Published Court Decisions or Legal Commentary through either a Professionally Staffed Fully Stocked Libraries with Photocopying Facilities or through an Electronic Computerized Legal Database -59-
(g) Summary of Need for Better Physical Facilities -59-
(16) Low Pay for Judges and Court Officials -59-

11

Section C	Recommendations	-60-
(1)	Require Specialization and Continuing Education of Judges, Lawyers and Court Officials	-60-
(2)	Reduce Incentives of Case Delays by Compensating Contract Obligees for Delay Losses from Inflation, as well as Attorneys Fees and Costs	-61-
(3)	Reduce Case Delays Through Modern Case Management Methods	-62-
(4)	Change Appellate Process to Reduce Incentives to Appeal	-63-
(5)	Allow Parties to Present own Expert Witnesses	-63-
(6)	Improve Efficiency of Service of Process	-63-
(7)	Replace Excessively High Court and Government Fees with Low Flat Fees	-64-
(8)	Open Communications between Lawyers and Judges on Mutual Concerns	-64-
(9)	Increase and Improve Judicial Facilities and Staff	-64-
CHAPTER 6	ENFORCING JUDGMENTS	-66-
Section A	Analysis	-66-
(1)	Lack of Fully Effective Court Procedures to Discover Judgment Debtors' Assets	-66-
(2)	Ease of Shifting Assets to Relatives	-66-
(3)	High Amount of Court Fees Required for Judgement Execution Order	-67-
(4)	Inadequate Sanctions to Deter Dilatory Tactics	-68-
(5)	Slow, Cumbersome Mortgage Foreclosure Procedures	-68-
(6)	Lack of Police and Bailiffs Trained in Enforcement	-69-
Section B	Recommendations	-69-
CHAPTER 7	ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION	-70-
Section A	Analysis	-70-
(1)	Advantages of Arbitration	-70-
(2)	Egypt's Commitments to Arbitration	-71-
(3)	Current Problems with Existing Legal Framework for Arbitration in Egypt	-72-
Section B	Recommendation -- Enact a Comprehensive, Modern Arbitration Law	-73-
CHAPTER 8	PUBLIC LEGAL INFORMATION SYSTEMS	-74-
Section A	Function and Importance of Legal Information Systems	-74-
Section B	Possibilities for Improvement	-74-
(1)	Hard Copy Improvements -- Indexes, Loose-leaf, Showing Changes	-74-
(2)	Electronic Full-text Legal Database	-74-

12

Section C Existing Situation -75-
(1) The IDSC Legal Database -75-
(2) Cassation Court and Council of State Precedents -75-
(3) Current Needs -75-

Section D Recommendations -76-

VOLUME III - MAIN REPORT·

PART C CONSTRAINTS CREATED BY SUBSTANTIVE COMMERCIAL LAWS AND RELATED LEGAL INSTITUTIONS -77-

CHAPTER 9 INTRODUCTION -77-

CHAPTER 10 COMMERCIAL REGISTER -79-

Section A Overall Concept and Importance of the Commercial Register -79-

Section B Commercial Register's Constraints -80-
(1) Not Cross-Indexed by name or Trade Name -80-
(2) Organized by District -- Not Centralized for all of Egypt -80-
(3) Excessive and Burdensome Procedures for an Enterprise Register -80-
(4) Not all Entities are Now Required to be Registered -81-
(5) Insufficient Information to be Registered -82-
(6) Modern Technology not Adequately Utilized to Realize the Commercial Register's Full Potential for the Public and the Market -82-
(7) Proliferation of Different Business Registers -84-
(8) Commercial Register Enforcement Powers may Require Expansion or Change to Insure Maximum Compliance -85-
(9) Commercial Register Officials may Require Increased Training -86-

Section C Recommendations -86-

CHAPTER 11 1883 COMMERCIAL CODE AND 1948 CIVIL CODE -89-

Section A The Need for Comprehensive Review and Modernization of the Civil and Commercial Codes -89-

Section B Analysis of Selected Problems -89-
(1) Need to Provide for Modern, Inexpensive Forms of Registered Mortgages and Security Interests -89-
(a) Overview -89-
(b) Prohibitively Expensive Real Estate Mortgage Registration Fees -90-
(c) Incomplete and Ineffective System for Mortgages on Movable and Intangible Property -90-

13

(d) Inadequate System of Mortgages Reduces Finance for Egyptian Enterprises -91-
(2) Inadequate Legal Framework for Commercial Leasing -92-
(3) Overall Comprehensive Review and Modernization of the Civil and Commercial Code is Required -93-

Section C Recommendations -93-

CHAPTER 12 COMPANIES LAW -95-

Section A Introduction and Background -95-
(1) Overview -95-
(2) The Economic Policy Role of Incorporated Companies -97-
(3) Overview of Legal Forms of Companies and Business Entities in Egypt -98-
(a) Individually Owned Establishment (Sole Proprietorship or Sole Trader) -98-
(b) Unincorporated Companies -- General and Limited Partnership -98-
(c) Incorporated Companies (Corporations) -98-
(i) The Joint Stock Company -99-
(ii) The Limited Liability Company -99-
(iii) The Partnership Limited by Shares -99-
(d) Shared Characteristics of Incorporated Companies -99-
(e) Branch -100-
(f) Representative Offices -100-

Section B Replace Current Company Formation Procedures with Simple Registration in the Commercial Register -100-
(1) Current Company Formation Procedures are Cumbersome -100-
(2) Companies Should Be Formed by Simple Streamlined Registration at the Commercial Register -102-
(3) Use Negative Lists for Foreign Shareholders or Partners -103-
(4) Eliminate all Documents Except for Application, Company Articles, and Identification -103-
(5) Security checks not to Delay Registration -104-
(6) Eliminate Government Evaluation of In-kind Shares -104-
(7) Minimum Review of Company Articles for Essentials Only -105-
(8) Companies Law Enforcement Framework -106-
(9) Reduce Joint Stock Company Founders to Two -106-

Section C Unduly Bureaucratic yet Incomplete Merger Procedures should be Revise and Streamlined -106-

Section D The Law Should Provide More Adequate Protection and Self-enforcement Mechanisms for Non-controlling Shareholders ("Minority Shareholders") -108-
(1) Importance of Protecting Non-controlling Shareholders -108-

(2)	Company Law Mechanisms or Changes needed to Protect Non-controlling Shareholders	-109-
	(a) Cumulative Voting for Directors	-109-
	(b) Shorter Board Member Terms	-110-
	(c) Outside Directors	-110-
	(d) Liberalize Proxy Rules	-111-
	(e) Eliminate Board Power to Invalidate Shareholders' Meetings by Non-Attendance	-111-
	(f) Clear Statement of Duties to Shareholders by Directors, Officers and Majority Shareholders	-112-
	(g) Self Enforcement through Right of Injured Parties to Sue	-113-
	(h) Stronger Provisions Regarding the Independence, Powers and Liabilities of Auditors	-113-
	(i) Independent Audit Committee	-114-
	(j) Balance Required	-114-
Section E	Measures to Realize Potential Joint Stock Company Advantages for Economic Development	-115-
(1)	Provide More Flexible Capital Structure by Eliminating Minimum Capital Requirements for Incorporated Companies	-115-
(2)	Provide Sounder Capital Structure by Eliminating Partially Paid Shares	-116-
(3)	Eliminate Unnecessary Restrictions on Issuance and Transfer of Securities and Allow more Freedom of Contract	-117-
(4)	Clearly Provide that Joint Stock Companies have Unlimited Duration in order to Promote Economic and Business Stability	-118-
(5)	Need to Provide for Interim Dividends	-119-
(6)	Allow for Board Action by Unanimous Written Consent in Place of Board Meetings	-119-
(7)	Need to Reduce Excessive Government Interference in Company Shareholders' Meetings	-119-
(8)	Need to Bring Companies Law Provisions into Line with Investment Law Provisions	-120-
Section F	Discrimination Against the Incorporated Companies in General and the Joint Stock Company in Particular	-121-
(1)	10 Percent Profit Distribution to Employees	-121-
(2)	Annual Proportionate Stamp Tax on Capital	-121-
Section G	Allow a More Flexible Form of Joint Stock Company and Eliminate the Limited Liability and Partnership Limited by Shares Company Forms	-122-
Section H	Amalgamation of Incorporated and Unincorporated Companies into a General Companies Law	-125-
Section I	Recommendations	-126-

15

Section J Postscript -129-

CHAPTER 13 INVESTMENT LAWS -130-

Section A Overview -130-

Section B Egypt's Multiple Investment Regimes should be Unified -131-
(1) Analysis -131-
(2) Recommendation Created a Unified Investment Regime Based on Reformulated Companies and Investment Law -134-

Section C The Investment Licensing Process in Egypt should be Replaced by Simple Enterprise Registration at the Commercial Register -136-
(1) Overview of Investment Licensing Process in Egypt -136-
(2) Recent Reforms -137-
(3) Problems, Bureaucracy and Delays still Remaining Following Recent Reforms -137-
(a) Despite the Negative List, Investment Authority Approval is still Required by Law -137-
(b) Fields of Investment are Limited under Law 230 -138-
(c) Disregard of Negative List and Restrictive Interpretation -138-
(d) Excessive information required at GOFI -139-
(e) Numerous follow-on approvals, licences, registrations and other procedures still required -139-
(4) The Investment Licensing Process in Egypt Constitutes a Major Impediment to Investment and Imposes Heavy Costs on Investors and the Country -140-
(a) Egypt's Investment Procedures still Excessively Bureaucratic by international Standards -140-
(b) Costs to Investors Imposed by Bureaucratic Investment Approval Procedures -140-
(c) Costs to Government imposed by Bureaucratic Investment Approval Procedures -141-

Section D Recommendation Reduce Bureaucratic Delay by Replacing the Existing Approval Process with a Simplified, Streamlined Enterprise Registration System Using Negative Lists -143-
(1) Overall Recommendation to Streamline the Investment Approval Process -143-
(2) Operation of the Negative List -144-
(3) Concomitantly Abolish E&O Licensing and Replace with Improved Health, Safety and Environmental Enforcement Procedures -146-
(4) Revise the Tax Incentive System for Investment -148-
(5) Summary of Investment Licensing Reform -148-

16

Section E	Shift Investment Authority and GOFI Personnel and Resources to Investment Promotion	-149-
(1)	Investment Promotion -- The Need	-149-
(2)	Investment Promotion Strategy Elements	-149-
(3)	Investment Promotion -- the Egyptian Public	-150-
(4)	Investment Promotion -- Egyptian Officals	-150-
(5)	Conclusion	-151-
Section F	Recommendations	-151-
CHAPTER 14	EGYPTIAN TAXES, CHARGES & INVESTMENT INCENTIVES	-154-
Section A	Overview	-154-
Section B	Background - Tax System	-154-
(1)	Brief Overview of Egyptian Tax System	-154-
(2)	Detailed Summary of Egyptian Tax System	-155-
	(a) Stamp Taxes	-155-
	(b) Registration and Notarization Fees	-155-
	(c) Customs Duties	-156-
	(d) General Sales Tax	-156-
	(e) Personal Income Tax	-156-
	(f) Corporate Profits Tax	-157-
	(g) Duty for Development of State Financial Resources	-157-
	(h) Capital Gains Tax on Securities Sales	-157-
	(i) Social Insurance	-157-
Section C	Background - Incentives	-158-
(1)	Overview	-158-
(2)	Investment Law 230 Tax Exemptions for Inland Projects	-158-
(3)	Investment Law 230 Exemptions for the Free Zone Projects	-158-
(4)	Income Tax Law 157 benefits for Certain Investments by Law 159 Companies and Others Enterprises	-159-
(5)	Tourism Law Tax Incentives	-160-
(6)	New Communities (Desert Cities) Law No 59/1979 Tax Incentives	-160-
(7)	Miscellaneous Investment Incentives Available to Inland Investment Projects Under Income Tax Law 157/1981	-161-
	(a) Write-off for New Replacement or Additional Equipment	-161-
	(b) Favorable Treatment of Inter-Company Dividends	-161-
	(c) Exemption from Corporate Tax for Portion of Profits of Joint Stock Companies Registered on the Stock Exchange	-161-
	(d) Lower Tax Rate for Industrial Companies	-161-
	(e) Exemptions Under Capital Markets Law 95/1992	-162-
	(f) Lower Customs Rate for Investment Projects	-162-

Section D	Analyses of Problems	-162-
(1)	General The Existing Tax System Contains Serious Obstacles to Investment in Egypt	-162-
(2)	Proportionate Annual Stamp Tax on Share Capital Discourages Use of Incorporated Companies	-162-
(3)	All Stamp Taxes on Loans, Credits and Other Business Dealings and Contracts, as well as Registration and Notarization Fees, should be Abolished or Replaced by Low Nominal Amounts	-163-
(4)	Import and Sale of Machinery, Equipment and Other Productive Assets should be Exempted from Sales Tax	-164-
(5)	Need to Improve Tax Administration Generally	-165-
(6)	Need to Establish Shorter, More Definite Limitation Period to Reduce Tax Disputes	-165-
(7)	Need to Replace Comprehensive with Selective Tax Audits	-166-
(8)	Tax Incentives should be Eliminated and Income Tax Rates Lowered Across the Board	-166-
(9)	While an Advance, the New "Unified" Personal Income Tax does not Represent the Comprehensive Income Tax Reform needed for Egypt	-170-
Section E	Future Tax Reform Considerations	-171-
Section F	Recommendations	-171-
CHAPTER 15	CAPITAL MARKETS LAW AND REGULATIONS	-173-
Section A	Overview and Background	-173-
Section B	Overlap between the Companies and the Capital Markets Laws should be Eliminated	-173-
Section C	Overregulation should be Eliminated	-174-
Section D	Gaps in Regulation should be Eliminated	-176-
(1)	Lack of Clear and Complete Rules on Insider Trading	-176-
(2)	Overly Rigid Definition of "Public Offering"	-176-
(3)	No Minimum Trading Volume as Listing Requirement	-177-
Section E	Tax Incentives should be Eliminated	-177-
Section F	Recommendations	-178-
CHAPTER 16	LAND REGISTRATION	-179-
Section A	Analysis	-179-
(1)	Background	-179-
(2)	Registration Delays	-179-

(3) Excessive Registration Fees -180-

Section B Recommendations -180-

CHAPTER 17 NOT-FOR-PROFIT ASSOCIATIONS AND CHAMBERS OF COMMERCE AND INDUSTRY -182-

Section A Not-for-Profit Associations -182-

Section B Chambers of Commerce and Business Associations -183-

Section C Recommendations -184-

CHAPTER 18 LABOR LAW -186-

Section A Overview and Background -186-

Section B Hiring through Government Labor Offices deters Investment -186-

Section C Hiring through Labor Contractors and Employment Agencies should be permitted -187-

Section D Freedom of Contract must be Expanded with Respect to Term and Working Conditions -187-

Section E Restrictions on Termination of Employment and Lay-offs Need to be Eased To Encourage Hiring More Egyptian Employees -188-
(1) Overview and Background -188-
(2) Elimination of Positions and Laying-off Workers -189-
(3) Dismissal -190-

Section F Union Membership should be Voluntary and Unions should be Free from Government Control -191-

Section G Recommendations -191-

CHAPTER 19 ANTI-MONOPOLY, UNFAIR COMPETITION, CONSUMER PROTECTION AND TRADE LIBERALIZATION -193-

Section A Anti-Monopoly, Unfair Competition, and Consumer Protection Laws -193-

Section B Trade Liberalization -194-

Section C Recommendations -195-

CHAPTER 20 INSTITUTIONAL REQUIREMENTS FOR COMMERCIAL LAW MAKING -197-

Section A The Need for Institutional Economic Policy and Law Analysis -197-

Section B The Need for Pre-Enactment and Post-Enactment Review of Economic Laws by the Private Sector -197-

Section C Recommendations -199-

PART D & CHAPTER 21 CONCLUSIONS AND RECOMMENDATIONS -200-

Section A Conclusions -200-

Section B Overall Recommendation -- Comprehensive Commercial Law Modernization Program -202-

Section C Continuing Post-Degree Commercial Law Education and Training -203-

Section D Reduce Incentives for Case Delays by Compensating Contract Obligees Fully for Losses from Inflation, as well as Attorneys Fees and Costs -205-

Section E Reduce Case Delays by Reducing Incentives to Appeal -206-

Section F Reduce Case Delays by Streamlining Civil and Commercial Justice Administration Through Modern Case Management Systems and Other Means -206-

Section G Modernization of Legal Information and Law Finding Systems -207-

Section H Modernize the Commercial Register -207-

Section I Modernize Substantive Commercial and Investment Laws -209-
(1) Comprehensive Modernization of Commercial and Civil Codes -209-
(2) Companies Law Modernization -209-
(3) Revision and Streamlining of Investment Laws and Procedures -212-
(4) Tax Laws and Investment Incentive Reform -213-
(5) Capital Markets Law Revision -214-
(6) Land Registration Reform and Modernization -215-
(7) Liberalize Not-for-profit Associations -215-
(8) Free Chambers of Commerce and Industry -215-
(9) Revise the Labor Law to Encourage Investors to Hire Egyptians -215-
(10) Anti-Monopoly, Unfair Competition and Trade Liberalization -216-

Section J Establish Institutions for Making and Revising Economic Laws and Regulations -216-

20

(1) Institutional Economic Law and Policy Analysis -216-
(2) Institutionalized Private Sector and Public Input -217-
(3) Post-enactment Education -217-
(4) Post-enactment Monitoring and Technical Amendments -217-

Section K Recommendation Priorities -217-

VOLUME IV - ATTACHMENTS·

Glossary of Terms

Attachment 1 Legal and Judicial Sector Assessment (Scope of Work)

Attachment 2 List of Participating Lawyers from Kamel Law Office and Kamel, Yehia, Abul Ela & Sakr

Attachment 3 List of Persons Interviewed

Attachment 4 Fee Schedule United States Court of Appeals -- North Circuit

Attachment 5 California Appellate Courts Schedule of Fees

Attachment 6 California Superior Court Fee Schedule

Attachment 7 (a) Form of Commercial Register Extract (English Translation)

Attachment 7 (b) Form of Commercial Register Extract (Arabic)

Selected Interview Notes and Memoranda

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2 Salah El Taweel, Chairman of Board, STRAPCO

3 Hatem N Moustafa, Chairman, Nimos Engineering Co

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5 Fathi Mohamed Yousef, Esq , Fouad Daniel, Esq , Ismail Hassan Schalakamy, Esq and Zarif El-Abar, Esq

6 Walid Abu-Taleb, Esq and Farouk El-Mahalawi, Esq

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8 Report on the legal problems that are found in the courts of North of Egypt

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EGYPTIAN LEGAL AND JUDICIAL SECTOR ASSESSMENT

(CONTRACT NO 263-0377-C-00-3103-00)

REPORT AND RECOMMENDATIONS

SUBMITTED TO

USAID/EGYPT

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VOLUME I

EXECUTIVE SUMMARY AND RECOMMENDATIONS

PART I

EXECUTIVE SUMMARY

Section A Purpose and Organization of Report

1 This report undertakes to analyze and make recommendations regarding constraints in Egypt's legal and judicial sectors which inhibit the proper functioning of a market economy It is based on an assessment of Egypt's legal and judicial sector requested by the Institutional Development Support Office ("IDS") of USAID/Egypt per the contract scope of work appended as Attachment 1 Also to be consulted are the World Bank's 2-volume 1992 Report on 'The Private Sector Regulatory Environment' in Egypt[1], and two unpublished reports of the Egypt-

[1] Volume I Executive Report and Volume II Main Report, hereinafter referred to as "I World Bank Report" and "II World Bank Report"

23

U S Legal Exchange Project -- namely, Phase 1, February 7 - 18, 1993 and Phase 2, April 4 - 20, 1993[2]

2 The main report consists of 21 Chapters organised into Parts A, B, C, and D Part A reviews the purposes and background of the report itself and provides an overview of Egypt's legal, law-making and court system Part B analyzes the constraints imposed on market driven economic development by Egypt's court and dispute resolution system Part C examines the constraints on a properly functioning market economy created by Egypt's substantive commercial laws and related institutions Part D sets forth conclusions and recommendations The length of the report requires that it also be arranged in four volumes as follows Volume I contains the Executive Summary and a compilation of recommendations for each of the major areas of constraints addressed by the report, as well as summary and detailed tables of contents, Volume II consists of Parts A and B, Volume III comprises Parts C and D, and Volume IV contains attachments and notes of selected interviews and written comments by selected interviewees

Section B Role and Nature of a Market Oriented Legal System

3 The government's chief function in a market driven economy is that of an enabling agent which creates the conditions needed for the market to function properly by responding efficiently to an infinite number and variety of individual business decisions, contracts and transactions which propel the economy forward Such conditions include appropriate macro-economic policies, adequate physical infrastructure, an effective educational system, social stability and overall security In addition, a well-conceived legal and institutional framework is essential to encourage and facilitate private sector economic activity generally and foreign and domestic investment in particular Conversely, the lack of appropriate laws and legal institutions or poorly designed laws and institutions can seriously hinder or prevent a market economy from functioning properly to generate desirable investment, business and job creating activity

4 In general, modern, comprehensive and well-designed commercial laws and institutions should

(a) Provide the clarity, stability, predictability and confidence needed to facilitate productive business and investment activity

(b) Reduce the costs and risks of entering into private business transactions

(b) Reduce the barriers to entry and operation of enterprises, as well as the mobility of private investment

(c) Provide efficient mechanisms for the orderly exit of enterprises which fail

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[2] Hereinafter referred to as "Phase 1 Legal Exchange Report" and "Phase 2 Legal Exchange Report" respectively

(d) Allow market actors to structure an infinite number of transactions among themselves with the maximum possible freedom from government interference consistent with preserving the integrity of the market from fraud, theft, monopolistic behaviour and restrictive anti-competitive business practices

5 To achieve the above aims, a well-conceived market-enabling legal system must

(a) Provide the means for private economic actors efficiently to make and enforce contracts which govern transactions among them -- namely

(1) Courts able to enforce contracts fully, effectively and quickly, and

(2) Modern substantive commercial laws which set out clear and complete rules, procedures and statements of duties, rights and effective remedies, but which avoid imposing inflexible formulas and mandatory terms on contracting parties

(b) Enable the public and the market actors -- e g , suppliers, customers, creditors, potential partners, etc -- easily to obtain basic, key information about individual enterprises in the market through effective institutions and requirements for public registration and disclosure of such information by all entities doing business

(c) Reduce government interference in economic transactions to the minimum possible consistent with protecting health, safety, the environment, and the free market itself -- because government interference inevitably reduces the speed and number of possible private business decisions and transactions which in turn reduces economic activity, growth and development Government interference can be reduced by

(1) Eliminating bureaucratic review and approval of private sector economic transactions and contracts as much as possible by, in turn, making rules and procedures as clear, complete, simple and automatic as possible For example, formation of a corporation should become a simple matter of registering essential information at the Commercial Register instead of extensive review and approval of company articles and numerous other documents by the Companies Department

(2) Promoting compliance with health, safety, environmental, land use, tax and other laws through selective and qualitative government inspections and investigations -- as opposed to the concept of assuming non-compliance and attempting to inspect all enterprises comprehensively[3]

(3) Leaving enforcement of laws and contracts largely to the economic actors themselves through lawsuits in the courts and providing for active government interference and enforcement efforts only in compelling circumstances, such as cases

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[3] See also I World Bank Report at pp xxii-xxiii, Annex A at p 20

25

where economic actors perpetrate serious fraud, deception, monopoly, restrictive business practices or other activities which unlawfully threaten the public and the market

(d) Provide laws and enforcement machinery to protect the free operation of market mechanisms from monopoly, unfair competition fraud and predatory, anti-competitive business practices I e, a well-functioning free market economy needs protection from private monopolists and anti-competitive business practices as well as from government bureaucrats and overregulation

(e) Establish institutionalized procedures for making, reviewing and revising laws and regulations which lead to well-considered economic legislation which is understood and generally supported by the public as follows

(1) An institutional economic law and policy analysis capability to review, develop and revise economic laws regulations and institutions which support and implement the nation's economic policy

(2) Obtaining regular, broad-based review and input from the private sector and the public in a clear institutionalized manner regarding proposed draft laws and regulations affecting commerce and investment in Egypt by advance circulation of such laws to business organizations and the public, followed by public hearings

(3) Institutionalized post-enactment education of the public regarding major new commercial legislation or regulations by means of regular conferences or seminars for lawyers, judges, relevant government officials, business executives and concerned citizens which would aim to develop a shared understanding among all concerned parties about new commercial laws, regulations and institutions in order to promote compliance and ensure success

(4) Systematic post-enactment monitoring of new laws and regulations to ascertain whether they are achieving their economic policy objectives and, if not, to prepare technical amendments to correct defaults or make changes in relevant institutions or take other corrective actions as necessary, such as changes in administration or additional training of officials, judges and lawyers

Section C Background and Overview of Legal and Judicial Sector Constraints on Egypt's Market Economy

6 Egypt's 20-year experiment with socialism and central planning adversely affected the ability of its legal infrastructure to facilitate and encourage private sector economic development, inter alia, by

- Skewing laws against free market activity
- Arresting the modernization of older commercial laws and institutions

- Drastically reducing the number of private lawyers and judges experienced in corporate and commercial transactions and litigation

- Seriously diminishing the quality of legal education

7 As a result, although Egypt has carried out major market oriented economic reforms in recent years, the private sector has not grown as rapidly or attracted as much domestic and foreign investment as it should have, in substantial part because of serious constraints imposed by the commercial law system Such constraints include those listed in the following subsections

(1) Case Delays, Judgment Enforcement Difficulties, Inadequate Arbitration Rules.

8 Court case delays, difficulties in enforcing judgments, inadequate arbitration rules, and other problems in the judicial sector impede adequate and effective enforcement of contracts which are essential to the operation of a free market economy (Chapters 5, 6 and 7) Among the most important causes of case delays are

(a) A severe shortage of judges and lawyers experienced, specialized and trained in commercial law matters resulting from the socialist period as noted above

(b) Powerful incentives to delay cases by contract obligors because obligees are not awarded -- and obligors do not pay

(1) Adequate compensation for losses in contract value from inflation, actual attorneys fees or litigation costs, and

(2) Effective sanctions for frivolous delays

(c) Lack of modern effective case administration and calendaring methods

(d) Overreliance by courts or government appointed experts

(e) Easy opportunities and incentives to appeal

(f) Inefficient and uncertain service of process and other court procedures

(2) Inadequate University Legal Education System

9 An inadequate, overcrowded university legal education system stresses memorization rather than legal analysis, legal writing, verbal communication skills and problem solving (Chapter 1 and 5)

(3) Lack of Post-Degree Continuing Education for Judges, Lawyers and Officials

10 There is a dearth of organized and effective programs of post-degree orientation and continuing education for judges, lawyers and court and government officials involved in the commercial law enforcement and dispute resolution process (Chapter 5)

(4) Inadequate Legal Information Systems

11 Lack of either a well indexed, hard copy law-finding system or a complete, integrated full text computerized database for laws, regulations and published court decisions makes it difficult for lawyers, judges and legislators -- much less the public -- to know and predict the rules governing private sector business and investment activity (Chapter 8)

(5) Antiquated Commercial Law Institutions -- e g , The Commercial Register

12 Antiquated, inadequate institutions supporting the commercial law system Outmoded technology, rules and organization prevent Egypt's Commercial Register, for example, from properly performing its role and fully realizing its tremendous potential in providing essential information about individual enterprises to the public and free market actors -- e g , suppliers, customers, creditors, or potential partners Fully and properly computerizing it would make it a highly effective institution which could support modernizing efforts in other commercial law fields (Chapter 10)

(6) Outmoded Laws -- e g., Civil and Commercial Codes

13 Outmoded commercial laws not revised during Egypt's long absence from free market economics in its socialist period thwart modern business development For example, outdated provisions of the Civil and Commercial Codes preclude Egypt from effectively benefiting from modern developments in business and financial transactions such as secured transactions, asset-based financing and equipment leasing because of the lack of a modern system of creating non-possessory security interests (i e , mortgages) in all forms of tangible and intangible property (Chapter 11)

(7) Lack of Institutionalized Economic Law and Policy Analysis

14 Lack of a well-functioning institutionalized economic law and policy analysis capability limits the capacity to develop well-conceived economic laws, regulations and institutions needed to support and implement the Nation's economic policy as well as the capacity to analyze and determine how best to eliminate unnecessary legal, regulatory or institutional constraints which impede equitable economic development

(8) Lack of Institutionalized Private Sector Input on Economic Legislation

15 Inadequate institutional means of obtaining comprehensive input on proposed economic and business legislation from the private sector and the public all too frequently leads to ill-

considered legislation which lacks understanding and support from the private sector and the public (Chapter 20)

(9) Inadequate Post-enactment Public Education on Commercial Laws:

16 Lack of post-enactment conferences and seminars for judges, lawyers, relevant government officials, business executives and concerned citizens regarding new legislation impairs public understanding of new legislation and thereby diminishes its effectiveness

(10) Need for Post-enactment Monitoring of Commercial Laws:

17 Lack of systematic post-enactment monitoring of new laws and regulations and no system of technical amendments result in faulty legislation continuing for too long

(11) Uncompleted Law Reforms

18 Uncompleted business law reforms impose excessive costs and restrictions on private sector economic development, in that many of the laws and regulations promulgated since the "Open door" policy -- as well as laws, regulations, procedures and practices left over from Egypt's socialist period -- continue to

- authorize and rely on inappropriately high levels of bureaucratic intervention which unnecessarily delay and complicate transactions normally left to the parties concerned in free market economies

- create unnecessary barriers to market entry, operations and exit by enterprises

- interfere with freedom of contract by mandating inflexible formulas and contract terms which should be left to the parties concerned or to the market

- fail to provide clear and sufficient legal protection to economic actors

- impose excessively high fees, taxes and other costs on private sector transactions and enterprises

Section D Constraints Imposed by Specific Substantive Commercial Laws

19 The most serious specific substantive law constraints identified by the main report include those listed in the following subsections

(1) Commercial Register Law

20 See Paragraph 12 above

(2) **Commercial and Civil Codes**

21 See Paragraph 13 above

(3) **Investment and Companies Laws**

22 A highly bureaucratic investment approval and company formation process imposed by the Investment and Companies Laws unnecessarily delays the investment and capital formation needed to create new jobs in Egypt, reduces the flow of investors because of the costs imposed, and leads to many lost opportunities for both private sector investors and the Egyptian economy Far too many resources are devoted to bureaucratic procedures which delay and discourage investment, while too few resources are directed toward creating investment awareness in Egypt and promoting investment within the country and abroad (Chapters 12 and 13)

(4) **Companies Law**

23 An outdated, overly bureaucratic Companies Law blocks full realization of the potential of the joint stock company as an engine for capital formation and economic growth and unnecessarily impedes ordinary company operations (Chapter 12)

(5) **Tax Laws and Incentives**

24 Egypt's current income tax system, while improved by Law 187/1993, nevertheless seriously deters healthy, long-term investment by means of excessively high tax rates on personal income and company profits, proportionate stamp taxes on capital and an incentive system of tax holidays and exemptions which erodes the tax base and encourages short-term distortionary business behaviour (Chapter 14)

(6) **Stamp Taxes and Government Fees:**

25 Excessive stamp taxes and exorbitant government registration, notarial and court fees discourage legitimate and sound private sector transactions and contracts and encourage evasive, unsound business practices (Chapters 11, 14 and 16)

(7) **Capital Markets Law:**

26 The new Capital Markets Law fails to provide the proper legal infrastructure for the sound development of a dynamic, well-functioning capital market for corporate shares, bonds, notes, mutual funds, government securities and other investment instruments because of overregulation and excessive bureaucratic intervention in many areas and serious gaps in regulations in other areas such as insider trading (Chapter 15)

(8) **Land Register**

27 Exorbitantly high fees and slow procedures prevent the land register from adequately serving the vital function in a market oriented economy of providing clarity and security of land

titles, mortgages and other real property rights despite the Egyptian Government's wise move to a modern system of land registration by plat or address (Chapter 16)

(9) Not-for-profit Associations and Chambers of Commerce and Industry:

28 Excessive bureaucratic review and approval procedures and stifling government involvement and overregulation severely impede not-for-profit associations and chambers of commerce and industry in performing the useful role of mobilizing capital and human resources for scientific, charitable and educational purposes and providing private sector input to government decisions (Chapter 17)

(10) Labor Law

29 By making it excessively difficult to lay-off unneeded employees in times of economic downturn and dismiss incompetent employees, the Labor Law actually creates powerful incentives for investors to avoid hiring Egyptian employees in the first place and instead opt for capital intensive activities which utilize labor saving machines to avoid bureaucratic hassles and difficulties (Chapter 18)

(11) Anti-Monopoly, Unfair Competition, Consumer Protection

30 The legal system does not adequately protect free market mechanisms from monopoly, unfair competition, consumer fraud, predatory anti-competitive restrictive business practices and uneconomic, administrative -- rather than free market -- methods of allocating production inputs (Chapter 19)

Section E: Conclusions and Overall Recommendation

(1) Conclusions

31 The above constraints lead to unnecessarily high costs and high risks for investment and business transactions in Egypt for all economic sectors Newer and smaller private Egyptian investors, however, face the highest costs resulting from the absence of a well-functioning commercial law system in terms of high barriers to entry, operations and credit The international trade and investment community also faces high costs of entry into Egypt and perceives the overall Egyptian commercial law system to be a major weakness in the business climate which increases the risks and costs of doing business in Egypt If private sector development is to be broadly based among small and large businesses alike in Egypt and if Egypt is to benefit fully from international trade and investment, modernization of the legal and judicial sector should become a priority

32 While much has been accomplished through in business law reforms since 1974, much still remains to be done to modernize and complete key portions of Egypt's commercial law infrastructure and modify other portions before Egypt's private sector can develop its full potential for producing goods and services, creating jobs and competing for productive investment by foreigners as well as its own citizens As the private sector grows in size and

complexity, a well-functioning, modernized commercial law system can facilitate its development by reducing costs and risks and by establishing clear and complete rules for the efficient conduct of private sector activities in a free market economy unfettered by bureaucratic overregulation Accordingly, a comprehensive program to modernize and reform the commercial law system is needed on an urgent basis in order to promote private sector economic growth and improve the distribution of economic benefits throughout Egypt by means of a properly functioning market economy

(2) Overall Recommendation -- Comprehensive Commercial Law Modernization Program·

33 Overall, therefore, it is respectfully recommended that a full scale, comprehensive and coordinated program be undertaken to modernize the major elements of Egypt's commercial law and court system and infrastructure in order to eliminate or reduce the constraints on private sector economic development identified in this report, as well as in the Egypt-U S Legal Exchange Reports and the World Bank Report cited above and in Paragraph 1 22 of the Main Report Detailed recommendations appear at the end of each of Chapters 5 - 20 of the Main Report and are compiled together in Part II of this Volume I Conclusions and a summary of recommendations are set forth in Part D and Chapter 21 of the Main Report

Section F. Condensed Summary of Specific Recommendations

34 By way of summary at this point, an overall comprehensive commercial law and institution modernization program would consist of the following components which are summarized in greater detail in Section G

(1) Provide post-degree commercial law orientation, continuing education and training to judges, lawyers and court officials (Chapter 5)

(2) Improve university legal education (Chapter 5)

(3) Reduce incentives for case delay by compensating contract obligees fully for losses from inflation, attorneys fees, litigation costs and frivolous delays (Chapters 5 and 6)

(4) Reduce case delays by reducing incentives to appeal (Chapter 5)

(5) Reduce case delays by streamlining civil and commercial justice administration through modern case management systems and other means (Chapters 5, 6 and 7)

(6) Modernize legal information and law finding systems (Chapter 8)

(7) Modernize the commercial register (Chapter 10)

(8) Revise and Modernize substantive laws to improve the legal framework for investment, job creation and economic growth (Chapters 11-19)

(a) Commercial and Civil Codes (Chapter 11)

(b) Companies Law (Chapter 12)

(c) Investment Laws (Chapter 13)

(d) Taxes and Investment Incentives (Chapter 14)

(e) Capital Markets Law (Chapter 15)

(f) Land Registration (Chapter 16)

(g) Not-for-profit Associations (Chapter 17)

(h) Chambers of Commerce and Industry (Chapter 17)

(i) Labor Law (Chapter 18)

(j) Anti-monopoly, unfair competition, consumer protection and trade liberalization (Chapter 19)

(9) Establish Institutions for Making and Revising Economic Laws and Regulations (Chapter 20)

(a) Institutional economic law and policy analysis

(b) Institutional private sector and public input

(c) Post-enactment education

(d) Post-enactment monitoring and technical amendments

Section G: Detailed Summary of Specific Recommendations

(1) Provide Post-degree Commercial Law Orientation, Continuing Education and Training to Judges, Lawyers and Court Officials (Chapter 5):

35 A well-conceived program of mandatory post-degree orientation and continuing education of judges, lawyers and court officials in the importance to the nation's economy of prompt, effective enforcement of contracts -- and the means thereof -- is essential to reduce delays in case resolution Judges familiar with commercial law subjects will be better able to resolve cases more quickly than those who are not and should not feel as great a need to refer cases to experts Additionally, appellate court judges should have greater confidence in the decisions of better trained lower court judges and will be better able to dispose of appeals by allowing lower court judgements to stand Meanwhile, trained lawyers should be better able to speed cases along by understanding their own cases better and by drafting clearer and more precise pleadings and

briefs Similarly, better trained bailiffs and court officials should perform important tasks such as serving papers and enforcing judgments more efficiently

(2) **Improve University Legal Education**

36 A critical need also is to improve commercial law knowledge and -- even more important -- analytical and legal writing skills at the university level Because of the large number of undergraduate students, efforts should be focused on graduate students in commercial law This would provide a manageable, self-selected target group with a demonstrated commitment to the field It may be desirable to involve university commercial law faculty and/or graduate students in the continuing education programs for judges and lawyers discussed above to the extent practicable

(3) **Reduce Incentives for Case Delay by Compensating Contract Obligees Fully for Losses from Inflation, Attorneys fees, Litigation Costs and Frivolous Delays (Chapters 5 and 6)**

37 Action should be taken to remove powerful incentives for delaying court cases by contract obligors and debtors by

(a) Awarding full compensation to contract obligees for losses from inflation

(b) Awarding full attorney's fees and other litigation costs to the winning party in cases where rights and obligations are clear

(c) Awarding effective sanctions to parties injured by frivolous delaying tactics

(d) Changing Civil Code delay payment provisions to allow payment of amounts equal to bank interest rates on savings deposits instead of the low amounts now provided for -- i.e., 4 to 7 percent

(4) **Reduce Case Delays by Reducing Incentives to Appeal (Chapter 5)**

38 To reduce the delays caused by the existing appeal process

(a) Allow appellate courts discretion to decline appeals

(b) Limit first level appeals to questions of law rather than also reviewing facts

(c) Reduce or eliminate rights to introduce new evidence and new theories

(d) Restrict appellate courts to matters raised on appeal

(e) Empower the Cassation Court to reach a final judgment on the first appeal

(5) **Reduce Case Delays by Streamlining Civil Justice Administration through Modern Case Management Systems and Other Means (Chapters 5, 6 and 7)**

39 Reduce delays and injustice resulting from existing case management procedures and other causes as follows

(a) Introduce a modern, effective system of case management and calendaring

(b) Replace the judicial summer holiday with rotating holidays through the year

(c) Provide for more efficient and reliable means of serving court process

(d) Reduce reliance on government appointed experts by allowing parties to introduce their own expert witnesses

(e) Replace excessive, percentage court and government fees with a low, flat fees

(f) Improve enforcement of judgments by, inter alia, providing means of discovering judgment debtor assets and streamlining foreclosure procedures

(g) Substantially improve and upgrade judicial facilities and support staff

(h) Enact modern, comprehensive arbitration legislation

(6) **Modernize Legal Information and Law Finding Systems (Chapter 8).**

40 To improve legal information and law finding systems for judges, lawyers and the public

(a) Convert to publication of laws, regulations and court decisions using an integrated computer database

(b) Create a full text database for all past laws, regulations and court decisions integrated with the official publication database mentioned above

(c) Develop software allowing access to the database for legal research purposes

(d) Publish hard copy laws, regulations and court decisions in loose-leaf form to allow easy organization and updating

(e) Show changes to amended laws and decrees by, e.g., strikeouts and underlining

(f) Developed comprehensive, detailed indexes to laws, regulations, and court decisions

(7) **Modernize the Commercial Register (Chapter 10)**

41 Few institutional modernization projects have greater potential for improving the functioning of a market economy in Egypt than computerizing and centralizing the Commercial Register so that

(a) All businesses would be multi-indexed by name, trade name, registration number, address, product, capital, and names of managers and partners instead of being indexed only by registration number

(b) Full extracts on any registered enterprise could be obtained from any Commercial Register branch in the country, not just the area where it registered

42 In addition, relevant laws, and procedures should be changed to

(a) Radically streamline commercial registration by drastically reducing required documents and procedures

(b) Expand registered information to include, e g , unpaid judgments and promissory notes

(c) Expand third party sources of information for registration to include members of the public having appropriately authenticated documents

(d) Institute rigorous, comprehensive training Commercial Register officials and inspectors

(8) **Revise and Modernize Substantive Laws to Improve the Legal Framework for Investment, Job Creation and Economic Growth. (Chapters 11-20):**

(a) Commercial and Civil Codes, (Chapter 11),

43 The Civil and Commercial Codes should revised to provide, at a minimum

(a) A modern system of perfecting non-possessory security interests (mortgages) in all forms of real, personal, and intangible property by simple registration in the Commercial Register for all creditors and obligors, not only banks

(b) Modern equipment leasing to protect lessors' interests fully by registration of equipment leases in the Commercial Register to put third parties on notice

(b) Companies Law (Chapter 12)

44 A reformulated companies law should be enacted which would

(a) Replace complex, time-consuming company formation procedures with simple, one-day registration in the Commercial Register by reducing and streamlining documents, procedures and founders required

(b) Revise and streamline merger procedures

(c) Provide more adequate protection and self-enforcement mechanisms for non-controlling shareholders by, inter alia, the following

(1) Require cumulative voting for directors in joint stock companies

(2) Permit shareholders to elect as many outside directors as they choose and eliminate directors' guarantee shares

(3) Allow shareholders to name anyone they wish as a proxy

(4) Provide a clear statement of duties by directors, officers, and majority shareholders to act in the best interest of the company and all shareholders

(d) Realize more fully the potential of the joint stock company form for economic development by numerous steps including providing for unlimited duration and board of directors' action by unanimous written consent

(e) Eliminate discrimination against joint stock companies in various laws by

(1) Allowing shareholders to determine the profit percentage distributed to employees as per former Investment Law 43/1974

(2) Eliminating the annual proportionate stamp tax on capital

(f) To gain greater national economic benefits from the advantages of the joint stock company as the best corporate vehicle for capital formation, and capital markets development, eliminate other forms of incorporated companies in favor of two joint stock company forms

(1) The publicly held joint stock company with formal management structure and disclosure requirements, and

(2) The privately held joint stock company with a simpler, flexible management structure and minimum reporting requirements which would have all of the advantages of a limited liability company, but which can easily change to a publicly subscribed joint stock company by meeting management, reporting, and disclosure requirements without changing form

(g) Amalgamate incorporated and unincorporated companies into a single companies law

(c) Investment Laws (Chapter 13)

45 To improve significantly the legal/procedural framework for investment in Egypt, all relevant laws, regulations, procedures and practices should be amended in a coordinated manner which will, inter alia

(a) Replace Egypt's confusing multiple investment regimes with a single unified investment regime for all Egyptian and foreign investors based on reformulated companies, investment, tax, and other laws as outlined in Chapters 12, 13 and 14

(b) Replace the multi-step system of investment licensing and company formation with simple, one-stop registration at the Commercial Register where all enterprises and companies would be automatically approved and registered as described in Chapters 12 and 13 without prior GOFI or Investment Authority approval except for those few sensitive projects clearly described in a short, clear and precise "negative list"

(c) Abolish establishment and operations licensing and all other local and governorate approvals required for investment projects and provide instead for enforcing health, safety, land-use and environmental standards by qualitative inspections during project construction and operations

(d) Replace existing discretionary tax incentives, holidays and exemptions with the best incentive of all -- i e, a stable, low tax rate -- or, alternatively, with automatic, unified incentives based on performance, instead of requiring discretionary approval at the licensing stage as discussed in subsection 4 below and in Chapter 14

(e) Channel government resources saved by streamlining the approval process for investment, company formation, and tax incentives into

(1) Investment promotion abroad and within Egypt, and

(2) Qualitative enforcement of health, safety, environmental and land use regulations through inspections during project construction and operations

(d) Taxes and Investment Incentives (Chapter 14).

46 The following measures should be undertaken to create a favorable tax climate for investment

(a) Abolish the annual proportionate stamp tax on company share capital to encourage capital formation and productive investment through incorporated companies

(b) Abolish or replace with very low flat amounts all stamp taxes on loans, credits, and contracts and dealings and percentage State Notarial fees for land and mortgage registration

(c) Exempt the import and sale of machinery, and productive assets from sales tax

(d) Undertake comprehensive income tax reform for Egypt which would

(1) Significantly broaden the tax base by eliminating all tax incentives, holidays and exemptions and all differential rates for various activities

(2) At the same time, substantially lower tax rates to no more than 25 percent for corporate profits and individual income

(3) Abolish all other taxes on income -- i e , 2 percent State Duty and capital gains tax

(4) Make any remaining investment incentives unified, automatic and performance-based as among various laws concerning investment

(5) End heavy handed tax administration techniques

(6) Reduce the Tax Department reassessment period from 5 years to 1 year in order to reduce uncertainty

(f) Consider shifting taxation from income entirely to consumption possibly through a consumption based income tax to encourage savings and investment as opposed to consumption

(e) **Capital Markets Law (Chapter 15)**

47 Review and revise the Capital Markets Law in coordination with of the Companies Law to

(a) Eliminate overlapping provisions as between them

(b) Eliminate overregulation by replacing rigid restrictions and excessive government intervention with clear, adequate rules and disclosure requirements, along with tough sanctions for fraud and deception and qualitative investigations by trained staff

(c) Eliminate fill gaps in regulation of critical subject areas such as insider trading

(f) **Land Registration (Chapter 16)**

48 Consideration should be given to

(a) Providing for the development of modern title insurance companies

(b) Computerizing the land registration and title system

(c) Replacing percentage registration fees for land and mortgages with low flat fees

(g) **Not-for-profit Associations (Chapter 17)**

49 A new law should be enacted for not-for-profit associations which would

(a) Make formation possible by simple, streamlined registration according to clear rules regarding the allowable purposes instead of government review and approval

(b) Replace the drastic direct government intervention now permitted by Law 32/1964 with clear rules of law and qualitative post-registration inspections

(h) Chambers of Commerce and Industry (Chapter 17):

50 Laws governing chambers of commerce and industry should be revised to

(a) Withdraw all government involvement and make all chambers completely private, voluntary and free of government

(b) Make membership voluntary instead of mandatory

(c) Allow businesses freely to form their own voluntary private associations and chambers of commerce and industry

(i) Labor Law (Chapter 18)

51 The existing Labor Law discourages hiring Egyptians by making termination and lay-offs difficult, time-consuming and expensive Therefore, it must be revised to encourage investors to hire Egyptians by providing more freedom of contract and by eliminating unnecessary rigidities, inter alia, as follows

(a) Allow employers to lay-off or terminate employment relationships upon notice or payment of a reasonable amount according to contract without bureaucratic interference

(b) Institute complete freedom of contract regarding term and termination

(c) Eliminate the requirement to hire workers through government labor offices

(d) Make notification to the labor office of vacancies and new employees optional

(e) Permit employment agencies and labor contractors to operate freely

(f) Free unions from all government control, make union membership voluntary, and allow employees to organize unions according to clear rules

(j) Anti-Monopoly, Unfair Competition, Consumer Protection and Trade Liberalization, (Chapter 19)

52 To protect free market mechanisms from monopoly and predatory business conduct

(a) All existing laws and regulations relating to anti-monopoly, anti-competitive business practices, unfair competition and consumer protection should be reviewed in the light of

Egyptian and international experience and comprehensive new legislation prepared, including provision for an independent anti-monopoly or free trade commission to guard against police predatory restrictive business practices and excessive concentrations of economic power which prevent market mechanisms from operating freely Care must be taken, however, to guard against overregulation which would interfere with, rather than protect, free market mechanisms and free competition

(b) The actions recommended by the World Bank to eliminate restrictions on the supply of intermediate inputs to private sector producers as outlined in Section B of Chapter 19 should be implemented

(9) Establish Institutions for Making and Revising Economic Laws and Regulations. (Chapter 20):

(a) Institutional Economic Law and Policy Analysis·

53 An institutional capability should be developed in Egypt to review, develop and revise economic laws regulations and institutions which support and implement the nation's economic policy as well as to analyze and determine how to eliminate unnecessary legal, regulatory or institutional constraints on private sector economic development

(b) Institutionalized Private Sector and Public Input

54 Regular, broad-based private sector review and input should be obtained in a clear institutionalized manner regarding proposed draft business laws and regulations

(c) Post-enactment Education.

55 Regular conferences or seminars on new commercial legislation and regulations should be held for lawyers, judges, government officials, business executives and concerned citizens to develop a shared understanding about new commercial laws, regulations and institutions to promote compliance and ensure success

(d) Post-enactment Monitoring and Technical Amendments.

56 Systematic post-enactment monitoring of new laws and regulations should be instituted to ascertain whether they are achieving their economic policy objectives and, if not, to prepare needed technical amendments or make needed changes

Section H Recommendation Priorities

21 32 As a prominent Egyptian Minister of Economy once stated

> "Our priorities in Egypt are like an inverted pyramid They are all at the top "

Similarly, all of the above recommendations are critical to establishing a well-functioning commercial law system which would facilitate and promote a properly functioning market economy instead of imposing the many constraints identified in this report All, therefore, are priority actions which should be undertaken as soon as possible If forced to choose, however, the author would put the following priorities at the top of the pyramid

(a) Rapidly develop Egyptian courts to the point where they are able to enforce contracts fully, effectively and quickly, because contract enforcement is vital to the proper functioning of a market economy Accordingly, the following must be done to improve the overall quality of justice and reduce the case delays which now hamper effective contract enforcement

(1) Develop and provide commercial law orientation and continuing education to motivate and equip judges, court officials and lawyers to enforce contracts promptly and effectively

(2) Change laws, practices, procedures and practices to

- Compensate contract obligees fully for losses from inflation, frivolous delay tactics, attorneys fees and costs to remove overwhelming incentives for delaying cases by contract debtors and obligors

- Streamline civil and commercial justice administration through modern case management systems and calendaring to give judges the tools needed to speed up case resolution

- Reduce incentives to appeal

(3) Develop a modern comprehensive, well-indexed hard copy and computerized legal information and law finding system

(4) Substantially increase and improve judicial facilities and support staff

(b) Modernize and strengthen the Commercial Register so that it can fully and properly carry out its vital mission of providing basic information about registered enterprises to market actors and the public by the following actions

(1) Computerize and centralize the Commercial Register through an on line electronic computer system so that it can be multi-indexed by name, trade name, address and other key elements, as well as by registration number,

(2) Radically streamline commercial registration by reducing documents and procedures required, and

(3) Expand and expand the sources and type of information registered

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(c) Revise the Civil and Commercial Codes to create modern systems of equipment leasing and non-possessory security interests in all forms of property by all creditors by simple registration of leases and security agreements in the Commercial Register

(d) Replace the time-consuming multi-step system of investment approvals and company formation with streamlined, one-stop, one-day registration at the Commercial Register where all enterprises would be automatically approved without prior GOFI or Investment Authority approval except for a few sensitive projects clearly described in a short, clear and precise negative list

(e) Abolish establishment and operations licensing and all other local and governorate approvals required for investment projects and provide instead for enforcing health, safety, land-use and environmental standards by qualitative inspections during the project construction and operations

(f) Undertake comprehensive tax reform in a manner which would

(1) Significantly broaden the income tax base by eliminating all tax incentives, holidays and exemptions and differential rates

(2) At the same time, substantially lower income and profits tax rates to no more than 25 percent while abolishing all other taxes on income including the 2 percent State Financial Resources Duty and the tax capital gains from on sales of securities

(3) Abolish the annual proportionate stamp tax on company share capital

(4) Abolish or replace with very low, flat amounts all stamp taxes on business and financial transactions and the very high court fees and fees for land and mortgage registration

(g) Revise the Labor Law to encourage investors to hire Egyptians by allowing employers to lay-off or terminate employment relationships upon notice or payment of a reasonable amount according to contract without government interference and by allowing freedom of contract regarding term and termination in employment agreements

(h) Revise and modernize the Companies and Capital Markets Laws in a manner which fully realizes and promotes the potential of the joints stock company form as an engine for capital formation and economic growth and which removes existing unnecessary bureaucratic and legal impediments to ordinary company operations

(i) Enact comprehensive legislation protecting free market mechanisms from monopoly, unfair competition, anti-competitive business practices and consumer fraud

(j) Free not-for-profit associations and chambers of commerce from excessive government controls over formation and operations

(k) Establish institutions for economic law and policy analysis, private sector and public input to economic legislation, and post-enactment public education, monitoring and correction of laws and regulations affecting commerce and investment

EGYPTIAN LEGAL AND JUDICIAL SECTOR ASSESSMENT

REPORT AND RECOMMENDATIONS

VOLUME I:

EXECUTIVE SUMMARY AND RECOMMENDATIONS

PART II:

COMPILATION OF DETAILED RECOMMENDATIONS

TO REDUCE OR ELIMINATE

CONSTRAINTS ON MARKET DRIVEN ECONOMIC DEVELOPMENT

IMPOSED BY EGYPT'S LEGAL AND JUDICIAL SECTORS

This Part II of Volume I collects in one place the detailed recommendations of this report as compiled from the Chapters and Paragraphs indicated Recommendation summaries are contained in Part I above and Part D and Chapter 21 of the Main Report

Section A. Chapter 5 Recommendations to Reduce Case Delays

5 61 A coordinated multi-pronged effort is required to reduce heavy case loads and case delays plaguing the Egyptian court system In this regard, the recommendations contained in the following paragraphs are respectfully offered for consideration

(1) Require Specialization and Continuing Education of Judges, Lawyers and Court Officials:

5 62 To reduce over-reliance on court "experts" and otherwise to speed processing of commercial cases, as well as to improve the overall quality of justice in the commercial field, consideration should be given to developing a cadre of judges highly experienced, specialized and trained in commercial law cases by

(a) Requiring judges to become specialized in commercial law (and other fields) in accordance with existing rules as described in Paragraphs 3 12 and 3 13, and

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(b) Establishing and maintaining a rigorous, comprehensive and high quality program of orientation, refresher and advanced courses and seminars in commercial law for commercial law judges as follows

(1) All new judges would undergo a one year orientation course before taking the bench in the way that new prosecutors formerly underwent a one year orientation course[4], since reduced to three to six months Such a course would include such topics as

- A review of the overall commercial law framework

- Refresher courses on all major substantive areas of commercial law -- e.g., contract rights and remedies, commercial paper, mortgages, leasing, loans, companies, taxation, etc

- Explanation of the importance of speedy and effective enforcement of contracts to the Egyptian economy

- A thorough analysis and explanation of the effects of inflation on the value of contracts where enforcement is delayed and whether and how compensation for losses due to inflation could be awarded to a contract obligee or creditor under existing Egyptian law

- An explanation of the costs incurred by parties in pursuing litigation, including the actual amount of attorneys fees

- Clinical training on conducting evidentiary hearings with live testimony, questioning lawyers, writing opinions and developing computer literacy and skills

- Clinical training on modern case management methods

(2) Judges would also have the opportunity and the requirement as their careers advance to participate in advanced seminars and courses which would systematically cover all key commercial law subjects In addition, required seminars would be conducted on major new commercial legislation within 90 days of publication of the new law

(3) Ideally, increases in judicial compensation and bonuses, as well as promotion, would be tied to attendance at and performance in orientation advanced and refresher courses

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[4] One lawyer in Menia suggested that before being selected as a judge, a candidate should undergo intensive training in a special area of law such as civil or commercial law, criminal law, family law, etc for a period of 2 years

(4) Preferably, some refresher and advanced seminars and courses and seminars on new legislation could be conducted jointly with lawyers as a means of improving communications between lawyers and judges

(5) One lawyer interviewed by us suggested that judges also should attend annually practical training courses in certain special laws together with the officials responsible For example in the case of the Public Notary Law, judges could organize meetings and presentations with persons specialized in public notary work for example

(2) Reduce Case Delay Incentives by Compensating Contract Obligees Fully for Losses from Inflation, Frivolous Delay Tactics, Attorneys Fees and Costs:

5 63 Incentives to delay by contract debtors and obligors can be sharply reduced by the following measures

(a) Empower and mandate judges to award damages for losses in the value of contracts due to inflation based on the consumer price index or other reliable inflation index, in addition to the principal amount of the obligation owed together with interest Again, commercial law refresher courses and advance seminars for judges should illustrate how to calculate losses resulting from inflation and other factors caused by delays in contract performance

(b) Additionally, change the Civil Code interest provisions from the 4, 5 and 7 percent limits now imposed to a formula which would allow payment of amounts equal to bank rates of interest on saving deposits

(c) Empower and mandate judges to impose effective sanctions on parties for frivolous tactics which would be paid to the other party For example, in a recent U S case in which our office was involved, the U S District Court ordered a lawyer to pay the other party court imposed sanctions of almost $ 3,000 for filing frivolous papers which wasted the time of the court and the other party By contrast, in Egypt, as noted in Chapter 4, the maximum sanctions are tiny fines payable to the court -- not to the injured party -- of between L E 1 and L E 20 (or between U S $ 0 30 and $ 6 00)

(d) Judges should be empowered and mandated to award actual attorneys fees and other costs incurred by the winning party in bringing a case instead of the nominal amounts now awarded -- certainly, in cases where the winning party's rights, or the losing party's obligations, are clear

(3) Reduce Case Delays Through Modern Case Management Methods

5 64 A modern effective system of case administration and calendaring should be introduced which would draw on the comparative experience of other countries as well as successful examples from the various court systems within Egypt Such a system would involve the following features

(a) Streamlining case filing procedures by reducing a number of steps and officials involved from 5 steps and for officials to one or two

(b) Requiring courts to establish a calendar for each case, which would specify deadline dates by which parties must submit documents and evidence As one business executive interviewed by us in Alexandria suggested

> "There should be a time limit for every step of the case procedure even if this means amending the procedural laws "

5 65 One solution might be to direct the clerks of the court not to accept papers filed after a calendar deadline similar to the Cassation Court clerk At the same time, the Cassation Court should calendar a response by the General Prosecution for a specific deadline failing which the response would be ignored if not filed on time Similarly in the Council of State, the Commissioner's report would also be subject to a case calendar Finally, all courts would set calendar dates in advance for issuing judgment

5 66 By way of supplement to a more effective case administration system as recommended above, various litigation shortening procedures -- such as summary adjudication procedures, stipulations by parties to agreed facts, and judicial encouragement of settlements -- could be introduced

5 67 The current summer judicial holiday should be replaced by a system whereby courts remain in constant session and judges have rotating holidays throughout the year

(4) Change Appeal Process to Reduce Incentives to Appeal.

5 68 To reduce the delays caused by the existing appeal process, consideration should be given to

(a) Allowing appellate courts -- especially the Cassation Court -- to decline to consider cases and leave lower court judgements standing

(b) Limiting appeals to questions of law, rather than reviewing or retrying factual matters as well In other words, the scope of review for courts of appeal would be restricted primarily to questions of law as is the case with the Cassation Court This would end the duplicative procedures which now characterize the first level of appeal

(c) Reducing or eliminating the right of appellants to introduce new factual evidence and new theories and arguments for consideration by the court of appeal

(d) Empowering the cassation court, at its option either to reach a final judgment on the first appeal or to remand the case back to the court which made the error depending upon the requirements of justice under the circumstances

(e) Restricting the court of appeal only to issues, matters and arguments raised on appeal and not require them to consider arguments and matters raised at the lower court but not raised on appeal In other words, the "Appeal Carrying Effect" doctrine which requires the court of appeal to review the entire record of the case below would be eliminated

(5) **Allow Parties to Present own Expert Witnesses·**

5 69 To improve confidence in the judicial system, consideration should be given to permitting the parties to introduce their own expert witnesses

(6) **Improve Efficiency of Service of Process.**

5 70 To solve the problem of inefficient and unreliable service of process, the following could be done

(a) Provide for service by registered mail to the address of parties who are registered businesses in the Commercial Register (but without an envelop to avoid the claims made by some that, although they received the envelop, it was empty)

(b) In the case of companies authorize service by delivery to the company's registered address rather than to the company's chief executive or manager

(c) Provide for service of process by licensed private process servers as well as court bailiffs

(7) **Replace Excessively High Court and Government Fees with Low Flat Fees:**

5 71 To eliminate cases concerning assessments for court fees and other government fees, the current system of percentage fees based on the "value" of cases or land or other property should be replaced with a system of relatively low flat fees, similar to those obtaining in the United States courts At the same time, the period within which officials can reassess for taxes and fees should be reduced from 5 years to 1 year

(8) **Open Communications between Lawyers and Judges on Mutual Concerns:**

5 72 The channels of communications between lawyers and judges on common problems of mutual concern could be substantially improved by

(a) Conducting joint seminars on commercial law topics as recommended above, and

(b) Providing for representation by the Lawyers' Syndicate on the general assemblies of court and the Supreme Judicial Council in the way that the General Prosecution is now represented Or, alternatively, develop a system of advisory boards of private lawyers for each level of courts and schedule a minimum number of meetings per year between the judges and such advisory boards Law professors could also play a part on such advisory boards

(9) **Increase and Improve Judicial Facilities and Staff**

5 73 As suggested by the Egypt-U S Legal Exchange Project[5], consideration should be given to providing judges with law research clerks These could be bright young law graduates who are considering careers as judges Such clerks could have the specific job of assisting judges to prepare cases by outlining issues, performing legal research, and preparing proposed draft judgements Such clerks could be assigned for a one or two year period, similar to law graduates entering private practice who must work for a lawyer for two years As pointed out by the Egypt-U S Legal Exchange Project

> "This would provide a cadre of law clerks who could be of great benefit to the judges, give young lawyers an opportunity to see if they really want to become prosecutors and judges and give the judicial selection entity a chance to evaluate the performance of judicial applicants"[6]

5 74 Consideration should be given to making substantial investments to improve the physical infrastructure of justice by

(a) Refurbishing and renewing old court houses and court rooms and building new ones Appropriate physical facilities are important to convey to judges, litigate and the public the vital message that delivery of justice is taken seriously by the authorities

(b) Providing judges with offices and office facilities where they can carry out their work in confer with colleagues rather than working at home

(c) Providing air conditioning which to enable courtrooms to be used longer, possibly with rotating benches of judges during the day and full time during the summer

(d) Obtaining modern equipment for the transcription of oral testimony and providing trained short hand court reporters for the purpose of operating such equipment

(e) Undertaking a program to develop, staff and equip libraries in court houses throughout the country each of which would contain a complete collection all of Egypt's published laws, regulations, treaties and published court decisions for the purpose of insuring that judges have easy access to the laws and regulations which they are interpreting and enforcing Preferably, such legal materials would be available both in hard copy, and, as discussed below in Chapter 8, electronically through computer terminals and computer diskettes

Section B: Chapter 6 Recommendations to Improve Enforcement of Judgments

6 14 To improve enforcement of judgments, it is respectfully recommended that laws and procedures be revised as necessary in order to

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[5] Phase 1 Legal Exchange Report at p 25

[6] Phase 1 Legal Exchange Report at p 25

(a) Provide for a means through court examination and cross examination of requiring a judgment debtor to reveal the nature and location of all of his assets as well as assets to which he has access through his children, spouse and other close relatives

(b) Enable a judgment creditor to seize and foreclose on assets which the judgement debtors has in fact treated as his own even though they are in the name of a relative

(c) As already recommended in Paragraphs 5 35 and 5 70, replace the current system of percentage court fees based on the "value" of cases with a system of relatively nominal flat fees similar to those obtaining in the United States courts

(d) Empower and mandate judges to impose effective sanctions for judgement debtors who frivolously file cases for injunctions for the sole purpose of delaying or avoiding execution of a final judgment and on third parties who file groundless restitution suits Such sanctions should be at least equal to the cost in terms of inflation or lost savings deposit interest and should be payable to the judgment creditor, not to the court

(e) Institute streamlined mortgage foreclosure procedures base on the best comparative experience of other countries suitably adapted to the Egyptian environment

(f) Provide high quality training to court bailiffs in judgment enforcement procedures and techniques

Section C. Chapter 7 Recommendation to Enact Comprehensive, Modern Arbitration Legislation

7 06 Egypt's archaic and incomplete arbitration framework represented by Procedure Code Sections 502-513 should be replaced with comprehensive, modern legislative machinery for both local arbitration within Egypt and international arbitration within Egypt and abroad In this regard, draft legislation is now before the People's Assembly which is based on and similar to the UNCITRAL Model Law on International Commercial Arbitration According to Dr Mohamed Aboul Enein, Director of the Cairo Regional Centre for Commercial Arbitration, the draft Egyptian legislation would provide the framework for both international and local arbitration Passing and implementing this law is one of the most important steps which Egypt could take in the field of dispute resolution A number of other countries, as well as several states of the United States of America, have successfully used the UNCITRAL Model Law as the basis for their own arbitration legislation

Section D Chapter 8 Recommendations to Modernize Legal Information and Law Finding Systems

8 11 To render knowledge of Egypt's laws regulations and published court decisions easily accessible to judges, lawyers and the public, it is respectfully recommended to

(a) Convert official publication of the newly issued laws, decrees, and court decisions -- i.e., the *Official Gazette* and the *Egyptian Bulletin* and published court decisions -- to printing

from a database created by full text entry of all newly issued laws, decrees and court decisions In this way, at least all future laws, decrees and court precedents will already be entered into a full text database

(b) Create a full text database for all past laws, decrees and court decisions which would be integrated with the official publication database described in sub-paragraph (a) above utilizing to the extent possible the valuable work already done by the Cabinet Information and Decision Support Center as well as the court decision databases developed by the Ministry of Justice and the Council of State

(c) Develop "user-friendly" software which will allow lawyers and judges to access the database for legal research purposes similar to *Lexis* and *Westlaw* programs developed in the United States

(d) Publish Hard copy laws, decrees, other legislative instruments and court decisions in loose-leaf form which would enable users to update and organize them by subject easily

(e) Provide optional, hard copy publications also should be done in a manner which shows the changes made by amendments to laws and decrees by devices such as strikeouts, underlining and/or bold face

(f) Develop comprehensive and detailed indexes to the *Official Gazette*, the *Egyptian Bulletin*, and published court decisions for hard copy research

Section E: Chapter 10 Recommendations to Modernize the Commercial Register

10 34 It is respectfully recommended that the Commercial Register Law, regulations, practices and procedures be reviewed and revised in order to

(a) Radically simplify and streamline commercial registration procedures by replacing the present requirements for numerous documents and pre-registration inspection procedures with a simple process of filing a complete, but short registration/application form together with company articles Severe penalties would then be imposed for knowingly providing false information or material omissions All prior approvals by other government entities would be eliminated including the requirement of authorization by the local chamber of commerce or industry All foreign branches would be registered in a similar manner upon presenting the required form together with a duly authenticated certificate of registration from their home countries instead of the company's complete articles at association All enterprises -- including foreign branches -- would be registered unless the activity appears on a negative list as forbidden or requiring special review and approval

(b) Implement the recommendations made in subsequent chapters to streamline the investment licensing and company formation process by combining those procedures with registration in the Commercial Register and eliminating the requirement of prior approval by the Investment Authority or the General Organization for Industrialization (GOFI), again except for projects specified in a short, clear "negative list"

(c) Expand enforcement powers and replace pre-registration inspections with post-registration inspections to ensure compliance with the requirements to register new enterprises and significant changes to enterprises already registered and to ensure that the information registered is accurate and complete

(d) Complete computerization of all offices of the Commercial Register and put them "on line" in such a manner that an extract on any enterprise can be obtained from any Commercial Office in the country rather than only from the Commercial Register office of the district where the enterprise is located and registered -- e.g., an applicant in Aswan will be able to obtain an extract or an enterprise in Suez

(e) Reorganize the Commercial Register either using computer technology or by hand so that, at a minimum, an extract can be obtained on an enterprise simply by providing the name or the trade name or even part of the name of the enterprise -- i.e., providing the commercial register number would no longer be the only means to obtain an extract of a registered enterprise

(f) Require the Commercial Register, once it is recognized and/or computerized, to provide many additional services, such as

(1) Providing names and commercial register numbers of enterprises registered at a particular address

(2) Producing lists of firms engaged in particular industries or fields

(3) Produce lists of all enterprises in which a named individual is a founder, partner or manager

(g) Expand the requirement to register in the Commercial Register to include all entities doing business in Egypt including representative offices, not-for-profit associations, professional firms, non-trading cooperative societies and foreign contractors operating under the auspices or funding of USAID, the United States Foreign Military Assistance Program, the World Bank, and other foreign and international donors, whether such contracts would be considered to be a single transaction or not

(h) Expand the information to be registered to include unpaid judgments or presented and unpaid promissory notes and possibly other matters

(i) Expand third party sources of information for registration to include bankruptcy receivers, company liquidators, and any concerned members of the public having appropriately officially authenticated documentation, such as officials abstracts of court judgments Again, severe penalties would be imposed for registering fraudulent information

(j) Combine other business registers with the Commercial Register after the latter has been computerized including but not limited to the Industrial Register, the Importers Register, the Exporters Register, the Commercial Agency Register, the Trademark Register, etc

(k) Carry out a rigorous, comprehensive program of training Commercial Register officials and inspectors to better appreciate and carry out the important role of the Commercial Register

Section F Chapter 11 Recommendations to Modernize the Commercial and Civil Codes

11 16 It is respectfully recommended that a comprehensive review and modernization of the Civil and Commercial Codes be undertaken to provide the enabling legal framework needed for modern business and financial transactions in Egypt At a minimum, these and other relevant laws, regulations, practices and procedures should be amended and/or new laws and regulations promulgated in order to provide for

(a) A modern system of perfecting security interests and mortgages by all creditors -- and not just banks -- in all forms of property including real property, personal property, and intangible property by simple registration of a security agreement in the Commercial Register

(b) Modern equipment leasing in a manner that protects the lessor's interests in the leased property as against innocent third party transferees fully and adequately by, for example, registration of equipment leases in the Commercial Register which would protect the lessor's interest by putting third parties on notice

(c) Other financial and commercial transactions in accordance with modern international commercial and financial practice

(d) Replacing the current system of exorbitant percentage fees for registering mortgages with a system of very low, flat fees such as L E 50 for each feddan of mortgaged land to make credit less costly and more accessible to investors and businesses -- especially smaller ones[7]

Section G. Chapter 12 Recommendations for Companies Law Reform

12 106 It is respectfully recommended that a reformulated companies law be enacted which will

(a) Simplify and streamline formation procedure for all companies, both incorporated and unincorporated, by replacing the existing complex, bureaucratic and time-consuming procedures with simplified registration in the Commercial Register characterized by the following measures

(1) Reduce the documents to be submitted to no more than 3 -- an application form, company articles and identification documents

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[7] See also Chapter 5 on litigation and resulting case delays created by high government fees, Chapter 14 on the constraints on investment and desirable economic activity imposed by exorbitant government fees and taxes, and Chapter 10 on the disincentives to land registration and security and clarity of land titles posed by excessive fees

(2) Minimum review of company articles to ensure only that the company's objects are not plainly unlawful, that there is an address, and that the capital structure is described in the articles In other words, clearly stated legal requirements for company articles would be set forth in the law but primary responsibility for the legality and enforcement of a company's articles would be left to the parties concerned, rather than detailed and time-consuming review by government officials

(3) Use negative lists to exclude unpermitted objects or activities by foreigners or the private sector generally

(4) Continue security checks but eliminate them as a pre-condition for formation

(5) Transfer responsibility and liability for evaluation of in-kind contributions to capital from the government to the parties concerned but require full disclosure

(6) Reduce joint stock company founders from 3 to 2

(7) Impose severe penalties for knowingly providing false information or material omissions

(8) Institute qualitative inspections of random samples and cases with reasonable grounds for suspicion to promote compliance

(b) Revise and streamline merger procedures by means of, inter alia, the following

(1) As in the case of company formation, transfer responsibility for evaluation of the merging companies' assets to the parties concerned and independent auditors or appraisers instead of government officials or committees

(2) Replace ministerial approval with the opportunity for review by an independent monopolies or free trade commission subject to strict time and other requirements and as part of a revision of the anti-monopoly law in Egypt as discussed below in Chapter 19

(c) Provide more adequate protection and self-enforcement mechanisms for non-controlling shareholders by the following steps

(1) Require cumulative voting for directors in joint stock companies

(2) Institute shorter terms for board members and especially reduce terms of board members appointed by the founders to no more than the time required to hold an election at the first general shareholders' meeting

(3) Permit shareholders to elect outside directors if they choose and eliminating the requirements that directors must be shareholders and must deposit guarantee shares

(4) Liberalize proxy rules to allow shareholders to name any one they wish as a proxy, including directors, with appropriate rules requiring full disclosure of material facts by those soliciting proxies

(5) Eliminate the rule invalidating shareholders' meetings when an insufficient number of board members or board officers attend

(6) Provide a clear statement of duty which forbids directors, officers, and majority shareholders from abusing non-controlling shareholders by appropriating company opportunities for themselves and which requires them to act in the best interest of the company and all of its shareholders

(7) Provide a clear right of shareholders to sue for breach of duty by directors, officers, and majority shareholders independently of action by the shareholders' general meeting

(8) Strengthen requirements for the independence and power of auditors

(9) Require an independent audit committee of the board of directors elected by the non-controlling shareholders for certain widely held companies

(10) At the same time, balance the need to protect non-controlling shareholders against the need to allow the companies to grow and carry on business in an efficient dynamic way

(d) Realize more fully the potential of the joint stock company form for economic development purposes by means of the following

(1) Provide for a more flexible capital structure by eliminating minimum capital requirements for joint stock companies

(2) Provide for a sounder and more certain capital structure by eliminating partially paid shares

(3) Eliminate unnecessary restrictions on the issuance and transfer of securities such as

- Preventing issuance by a company of shares higher than the nominal value except for a premium justified by the auditors report

- Restricting founders from selling their shares before publication of financial statements for two full fiscal years

- Limiting issuance of bonds to the value of the company's assets except in exceptional circumstances

56

(4) Clearly provide that joint stock companies have unlimited duration unless otherwise specified in the articles in order to promote economic and business stability

(5) Clearly and fully provide for interim dividend distributions instead of only annual dividends

(6) Permit the board of directors to take action by unanimous written consent in place of board meetings

(7) Reduce excessive government interference in shareholders' meetings by eliminating requirements that notices of meetings be sent to government agencies, representatives of such agencies be permitted to attend shareholders' meetings on a regular basis, and minutes of such meetings be submitted to the Companies Department or other agencies

(8) Bring Companies Law provisions into line with Investment Law provisions by eliminating nationality requirements for founders of joint stock companies and directors

(f) Eliminate discrimination in various laws against joint stock companies by

(1) Allowing shareholders to determine the percentage of profit to be distributed to the employees according to a formula similar to that of former Investment Law 43/1974, and

(2) Eliminating the annual proportionate stamp tax on capital

(g) Eliminate the limited liability and partnership limited by shares forms of incorporated companies, leaving instead only the joint stock company form which could be either

(1) A publicly held joint stock company which will have a formal management structure and reporting and disclosure requirements mandated for such companies by the Capital Markets Law or the Companies Law, as appropriate, or

(2) A privately held joint stock company which could have a simpler, more flexible management structure and minimum reporting requirements which will enable investors to have all of the advantages of a limited liability company, but which can be easily changed to a publicly subscribed joint stock company when necessary and desirable to raise capital or other finance through issuing shares or other securities to the public by meeting management, reporting and disclosure requirements in accordance with the Capital Markets Law, but without changing the company form, as would be required in the case of a limited liability company

(h) Amalgamate incorporated and unincorporated companies into a single general companies law which will allow for unified formation procedures and duties by managers and controlling shareholders and partners to outside investors and the public

57

Section H: Chapter 13 Recommendations to Revised and Streamline Investment Laws

13 63 It is respectfully recommended that legislation be enacted, regulations promulgated and official actions taken regarding investment in Egypt in order to replace Egypt's confusing multiple investment regimes with a single unified investment regime for all investors based on both reformulated companies and tax laws as outlined in Chapters 12 and 14 and a single new unified investment law which will among other things

(a) Declare that increasing private sector investment in Egypt by both foreign and Egyptian investors is a national priority

(b) Treat all investors equally regardless of nationality

(c) Cover all fields of investment

(d) Provide for a set of guarantees applicable to all investors including

(1) Guarantees against nationalization, confiscation and expropriation without prompt, adequate and effective compensation and without a judicial order

(2) Free transfer abroad of payments for all purposes required including profits, capital repatriation and payments for -- e g., -- imports, royalties and fees

(3) Freedom from all controls on prices, profits and salaries

(4) Freedom to manage the business free from government interference

(5) Guarantees against deprivation of licences or other rights without independent court review and due process of law

(6) Freedom from administrative attachment or seizure without a court order

(7) Guaranteed access to the courts or to binding arbitration for disputes generally

(8) Guaranteed arbitration of disputes with the government if the investor so chooses similar to Article 8 of former Investment Law 43/1974

(e) Replace the existing bureaucratic, time-consuming multi-step system of investment licensing and company formation by multiple national and local government agencies with a simple one-stop registration system at the Commercial Register -- as detailed in Section B on company formation in Chapter 12, Section D of this Chapter and the following Paragraph 13 64 -- where all enterprises and companies would be automatically approved and registered without prior GOFI or Investment Authority approval except for those few sensitive projects clearly described in a short, clear and precise "negative list"

(f) Transform the Investment Authority into an investment promotion agency with appropriate powers to promote and facilitate investment among both foreign and Egyptian investors and to create awareness of the importance of encouraging and facilitating investment among the Egyptian bureaucracy and the public at large

(g) Transform GOFI into an industrial investor service organization providing investors and potential investors with needed information about industrial suppliers, customers and markets in Egypt

13 64 To improve significantly the legal and procedural framework for investment in Egypt, we strongly recommend streamlining the investment approval process by amending all relevant laws, regulations, procedures and practices in a manner which will simultaneously

(a) Replace the existing complex, multi-step system of investment licensing and company formation approvals by multiple Government agencies with a simple one-stop registration system for enterprises and companies at the Commercial Register as described in Section B on company formation in Chapter 12 and in Sector D of this Chapter In other words, application would no longer be made to GOFI or the Investment Authority for approval or registration of investment projects Instead, investors would simply register enterprises or companies at the Commercial Register as described in Section B of Chapter 12 on company formation Enterprises and companies would be automatically approved and registered for all lawful objects and all projects except for those few sensitive projects clearly described in a short and precise "negative list" of projects

(b) Abolish establishment and operations (E&O) licensing and all other investment project approvals at the governorate and new community level now required by Law 453/1954 and instead provide for environmental, health, safety, land-use and other standards to be enforced by qualitative inspections during the construction and operational stages instead of through the licensing process as detailed in Section D (3) of Chapter 13

(c) Replace time-wasting discretionary approval of tax incentives prior to commencement of a project preferably by means of a thorough comprehensive tax law reform which will eliminate all existing tax exemptions and holidays and replace them with the best tax incentive of all -- namely, a stable, low tax rate -- or, alternatively, with automatic, unified incentives based on subsequent enterprise performance, instead of requiring discretionary approval at the licensing or establishment stage as is discussed in detail in Chapter 14

(d) Channel government, human and financial resources saved by streamlining the investment licensing, company formation, and incentive approval process as recommended in this and the following Chapter into

(1) Investment promotion abroad and within Egypt, and

(2) Qualitative improvements of enforcement of health, safety, environmental and land use regulations through inspections during the project construction and operational stages, rather than at the investment approval and registration stage.

Section I Chapter 14 Recommendations to Reform Taxes and Investment Incentives

14 70 It is respectfully recommended that the following measures be undertaken to create a tax climate much more favorable to investment than now exists in Egypt

(a) The proportionate annual stamp tax on the share capital of incorporated companies should be abolished in order to encourage and facilitate capital formation and productive investment through incorporated companies

(b) All stamp taxes on loans, credits, and other business dealings and contracts should be abolished or replaced by very low, flat amounts

(c) All percentage State Notarial and registration fees for land transfers, mortgages and other transactions should be replaced by very low, flat fees as already recommended in Chapter 5

(d) The import and sale of machinery, equipment and other productive assets should be exempted from sales tax

(e) A comprehensive income tax reform for Egypt should be undertaken which would

(1) Significantly broaden the tax base by eliminating all tax incentives, including tax holidays tax exemptions, and differential tax rates for different activities and taxpayers

(2) At the same time substantially lower the rates to no more than 25 percent for corporations and for individuals

(3) Abolish the 2 percent add-on to income and profits taxes by the Duty for State Financial Resources Improvement under Law 147/1982

(4) Abolish the 2 percent capital gains tax on securities sales imposed by the Capital Markets Law 95/1992

(5) End heavy handed tax administration techniques such as disallowing reasonable business deductions

(6) Eliminate the enormous uncertainty created by the system of allowing the tax authorities 5 years within which to reassess taxpayer income -- and then a further indefinite period by simply sending the taxpayer a reassessment before the 5 years is up -- by mandating a reasonable period for reassessment of, say, 1 year after which a tax matter should be closed to further review by the tax authorities except in clear cases of fraud

(7) Replace comprehensive auditing of all taxpayers with qualitative auditing of selected samples of taxpayers

(f) To the extent that investment incentives are retained, they should be made automatic, performance-based and unified as among the various laws concerning and affecting investment including the Investment Law, the Income Tax Law, the Tourism Law, the New Communities Law and the Capital Markets Law, but again, the best solution for encouraging investment is to eliminate all tax incentives and lower tax rates substantially

(g) Consideration should be given to shifting taxation from income entirely to consumption possibly through a consumption based income tax to encourage savings and investment as opposed to consumption

Section J: Chapter 15 Recommendations to Revise the Capital Markets Law

15 22 It is respectfully recommended that the Capital Markets Law and its regulations be reviewed and revised in coordination with review and revision of the Companies Law to achieve the following

(a) Overlapping provisions as between the Companies and Capital Markets Laws should be eliminated to avoid confusion and possible conflict

(b) Overregulation should be eliminated by replacing rigid restrictions on, and excessive government intervention in, market transactions with clear regulations regarding disclosure to investors of all material facts known to affect a particular company or transaction involved This should be supported by tough sanctions against fraud and deception, together with qualitative inspections and investigations of justifiably suspicious cases and random samples by well trained staff

(c) Gaps in regulation should be filled by, for example, providing for clear regulations on critical subject areas such as insider trading and requiring a minimum trading volume for listing on a stock exchange

(d) Finally, as already recommended in Chapter 14 on taxes and tax incentives, it is respectfully recommended that both the 2-percent capital gains tax and all tax incentives contained in the Capital Markets Law be eliminated along with other investment incentives in favor of a low, stable tax rate on business profits

Section K Chapter 16 Recommendations to Improve Security and Clarity of Land Ownership

16 07 Consideration should be given to encouraging and providing for the development of modern title insurance companies

16 08 Consideration should also be given to computerizing the land registration and title system to improve speed, efficiency and accuracy with respect to title searches

16 09 The exorbitant percentage fees for registration of land and mortgages should be replaced by very low, flat fees in order to encourage registration The goal of land registration law and

policy should be not to raise revenue, but to encourage registration of all land and all titles and interests in land Perversely, the ultimate effect of high land and mortgage registration fees is to reduce, not raise, government revenues This is because excessively high registration fees deter land and mortgage registration which means that relatively few land owners and mortgagees actually pay them, preferring to delay or avoid registration Moreover, incomplete land and mortgage registration discourages investment and overall economic growth and activity, and lower economic activity, in turn, reduces potential government revenues from income and sales taxes Conversely low, flat fees would encourage land and mortgage registration which in turn would facilitate investment and economic growth leading to higher government revenues from income and sales taxes Additionally, as noted in Chapter 5, low, flat fees for land registration would reduce litigation relating to disputes over reassessments of fees for land registration based on the "value" of the land Also, as noted in Chapter 11, low, flat fees for land transfer and mortgage registration will greatly improve the opportunities for long term credit financing of investment projects

Section L. Chapter 17 Recommendations to Liberalize Not-for-profit Associations and Free Chambers of Commerce and Industry

17 10 A new law should be enacted for not-for-profit associations which would

(a) Make formation of not-for-profit association possible by simple registration -- preferably in the Commercial Register -- according to clear rules regarding the allowable purposes for such associations instead of requiring extensive pre-registration government review and approval

(b) Drastically reduce the direct government intervention now authorized by Law 32/1964 by utilizing instead qualified and selective post-registration inspections combined with stiff penalties for fraud and abuse of not-for-profit status

17 11 The laws and regulations governing the chambers of commerce and industry should be reviewed and revised to

(a) Withdraw all government involvement and support and make the chambers completely free of the government,

(b) Make membership voluntary instead of mandatory, and

(c) Officially allow, enable and encourage businesses freely to form their own voluntary and private associations and chambers of commerce and industry according to clear rules regarding their purposes and operations

Section M Chapter 18 Recommendations to Revise the Labor Law to Encourage Investors to Hire Egyptians

18 25 It is respectfully recommended that the Labor Law and related regulations, procedures, policies and practices be reviewed and revised generally to make hiring Egyptians easier and

more attractive to investors by providing for more freedom of contract and by eliminating unnecessary rigidities in the law, inter alia, as follows

(a) Allow employers to lay-off or to terminate employment relationships upon notice or payment of a reasonable amount according to contract and without bureaucratic interference or additional procedures being imposed

(b) Replace the rule that continuation of a limited period contract after expiration results in an indefinite contract with a provision and allow complete freedom of contract with respect to term and termination

(c) Eliminate the requirement to hire workers through a government labor office

(d) Make notification to the labor office of vacancies and newly hired employees optional instead of mandatory

(e) Permit employment agencies and labor contractors to operate freely

(f) Free unions from all government control and affiliation, make union membership voluntary and free, and allow employees to organize unions according to clear rules

18 26 The recommendations of this Chapter are to make labor relations--including hiring, firing and dispute resolution--easier and less encumbered with bureaucracy This is because a freer, less rigid labor market will provide greater incentives for investors both to invest and to hire Egyptians The existing Labor Law actually discourages industries from hiring Egyptians I.e., by making employment permanent after the first contract and by making termination and lay-offs difficult and expensive, the law creates powerful incentives to avoid hiring Egyptian employees in the first place

Section N. Chapter 19 Recommendations to Protect Free Market Mechanisms from Monopoly, Anti-Competitive Business Practices, Unfair Competition and Consumer Fraud

19 08 It is respectfully recommended that all existing laws and regulations relating to monopoly, anti-competitive business practices, unfair competition and consumer protection should be thoroughly reviewed in the light of Egyptian and international experience and comprehensive, modern legislation should be prepared and enacted with the aim of protecting the free market and the consumer as follows

(a) A law against unfair competition should be enacted which would clearly outlaw unfair, predatory, restrictive, anti-competitive and monopolistic trade practices Such a law should establish an independent, specialized anti-monopoly or free trade commission to review mergers as suggested in Chapter 12 and otherwise to guard against excessive concentrations of economic power and anti-competitive restrictive business practices which inhibit market mechanisms from operating freely to set prices and allocate resources

(b) Enact a new consumer protection law which would supplement and/or subsume existing laws and regulations and would achieve the following goals

(1) Protect consumers by prohibiting unfair, deceptive, fraudulent and unconscionable trade practices such as misleading advertising and practices

(2) Provide consumers with specified minimum essential information regarding certain products in the market to enable them to make informed choices through labelling requirements for certain products

(3) Define and set minimum required quality standards and specifications

(4) Protect consumers' health and safety from dangerous or potentially dangerous products

(5) Establish a suitable range of effective enforcement mechanisms such as inspections, cease and desist orders, penalties, etc

(6) Provide appropriate remedies for injuries suffered

Such legislation would also protect honest and fair competitors in the market as well as consumers Care must be taken, however, to guard against overregulation which would interfere with, rather than protect, free market mechanisms and free competition

19 09 In addition, the trade liberalization actions recommended by the World Bank to lower or eliminate restrictions on the supply of intermediate inputs to private sector producers as outlined in Section B of Chapter 19 should be implemented in full

19 10 Also essential to promoting free and fair competition and consumer protection are the recommendations of Chapters 10, 12 and 13 of this report to reduce bureaucratic barriers to entry into the market by new firms and investors by replacing current investment approval and company formation procedures with simplified one-day registration in the Commercial Register and otherwise reformulating the companies and investment laws

Section O. Chapter 20 Recommendations to Create Institutions for Economic and Policy Analysis and Private Sector Input to Laws Affecting Business

20 09 An institutional capability should be developed in Egypt to review, develop and revise economic laws regulations and institutions which support and implement the nation's economic policy as well as to analyze and determine when unnecessary legal, regulatory or institutional constraints impede private sector economic development and how best to eliminate them

20 10 Regular, broad-based private sector review and input should be obtained on an institutionalized basis with respect to proposed draft laws and regulations affecting the conduct of commercial business and investment in Egypt through advance circulation of such laws to chambers of commerce and industry and other business organizations The best solution would

be advance publication in widely circulated newspapers with a minimum period of, say, 90 days for all members of the public to review and comment on the proposed laws or regulations This could be done through public hearings by administrative authorities and parliamentary committees which would take testimony and written comments

20 11 Following promulgation of new commercial or economic legislation or regulations, regular conferences or seminars should be held for lawyers, judges, relevant government officials, business executives and concerned citizens to develop a shared understanding about the new law or regulations

20 12 Systematic post-enactment monitoring of new laws and regulations should be instituted along with a system of technical amendments to correct defaults

PN-ACT

EGYPTIAN LEGAL AND JUDICIAL SECTOR ASSESSMENT

(CONTRACT NO 263-0377-C-00-3103-00)

REPORT AND RECOMMENDATIONS

SUBMITTED TO.

USAID/EGYPT

BY.

JOHN BENTLEY, J. D

INTERNATIONAL LEGAL CONSULTANT

KAMEL LAW OFFICE

IN ASSOCIATION WITH

KAMEL, YEHIA, ABUL ELA & SAKR

IN FOUR VOLUMES

VOLUME II

MAIN REPORT

PART A.

INTRODUCTION AND BACKGROUND

PART B.

CONSTRAINTS IMPOSED
ON FREE MARKET ECONOMIC DEVELOPMENT
BY EGYPT'S EXISTING COURT SYSTEM
AND DISPUTE RESOLUTION MECHANISMS

FEBRUARY 1994

USAID/CAIRO
DEVELOPMENT
INFORMATION

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MAIN REPORT - PARTS A & B

SUMMARY TABLE OF CONTENTS

PART A	INTRODUCTION AND BACKGROUND	-1-
CHAPTER 1	PURPOSE AND BACKGROUND OF REPORT	-1-
CHAPTER 2	OVERVIEW OF EGYPT'S LEGAL AND LAW MAKING SYSTEM	-13-
CHAPTER 3	OVERVIEW OF EGYPT'S COMMERCIAL, CIVIL AND ADMINISTRATIVE COURT SYSTEM	-21-
PART B·	CONSTRAINTS IMPOSED ON FREE MARKET ECONOMIC DEVELOPMENT BY EGYPT'S EXISTING COURT SYSTEM AND DISPUTE RESOLUTION MECHANISMS	-32-
CHAPTER 4	INTRODUCTION AND OVERVIEW OF CASE RESOLUTION PROCESS	-32-
CHAPTER 5	DELAYS IN RESOLVING COURT CASES	-43-
CHAPTER 6	ENFORCING JUDGMENTS	-66-
CHAPTER 7	ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION	-70-
CHAPTER 8	PUBLIC LEGAL INFORMATION SYSTEMS	-74-

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MAIN REPORT

PART A

INTRODUCTION AND BACKGROUND

CHAPTER 1

PURPOSE AND BACKGROUND OF REPORT

Section A. Overview of Purposes and Methodology

1 01 This report undertakes to

(a) Identify the constraints in Egypt's legal and judicial sectors which inhibit the proper functioning of a market economy, and

The views expressions and opinions in this report are those of the authors and are not

(b) Recommend possible practical technical solutions which could be offered by the international donor community to remove or reduce the constraints identified

The report and its recommendations are based upon an assessment of Egypt's legal and judicial sector carried out pursuant to a request by the Institutional Development Support Office ("IDS") of the Cairo Mission of the United States Agency for International Development ("USAID/Egypt") as detailed and formalized in the scope of work set forth in the above referenced USAID Contract The scope of work is appended hereto as Attachment 1

1 02 This report was prepared pursuant to a work plan and an outline of topics submitted to USAID/Egypt on 8 July, 1993 as follows

(a) First, the consultant read and analyzed relevant reports and materials made available by USAID/Egypt including those referred to in Attachment 1

(b) Subsequently, a number of lawyers from Kamel Law Office and the associated firm of Kamel, Yehia, Abul Ela & Sakr, Attorneys at Law, prepared reports on the major topics identified in the outline based on their own experience, knowledge and research

(c) Thereafter, lawyers from Kamel Law Office and Kamel, Yehia, Abul Ela & Sakr interviewed selected Egyptian and foreign business executives, investors, bankers and foreign embassy officials, as well as selected judges, government officials and Egyptian private and public sector lawyers outside of Kamel Law Office Most of those interviewed were from the Alexandria and Cairo areas In addition, a number of lawyers, judges and court officials were interviewed in Tanta, Monofiyya, Fayoum and Menia

(d) At the same time, extensive legal research was carried out by the Consultant together with various colleagues at Kamel Law Office and Kamel, Yehia, Abul Ela & Sakr on relevant laws and regulations

(e) On 12 September, 1993, the Consultant submitted the first Draft Report and Recommendations

(f) On 23 September, 1993, the Consultant submitted a second Draft Report and Recommendations

1 03 A list of Kamel Law Office lawyers who prepared memos performed a research, and conducted interviews for the preparation of this Report is appended hereto as Attachment 2 A list of those interviewed for the report is appended as Attachment 3 A volume of consisting of memoranda of key interviews and the written comments of some of those interviewed is also submitted herewith

69

Section B The Role of the Legal System in Promoting Private Sector Economic Development and Investment

1 04 A rational, comprehensive legal and institutional framework is one of the essential elements needed to encourage and facilitate private sector economic activity generally and foreign and domestic investment in particular Of course, a well conceived, comprehensive legal system cannot by itself create or stimulate economic activity or investment Many other factors are necessary including, for example, appropriate macro-economic policies, adequate physical infrastructure, an effective educational system, social stability and overall security But the lack of proper laws or legal institutions or poorly designed or outdated laws or institutions can discourage, impede or even strangle desirable investment, business and job creating activity Modern, comprehensive and well designed commercial laws and legal institutions, on the other hand, can provide the clarity, stability, and predictability needed to promote and facilitate beneficial and productive private sector economic development

1 05 A good legal system provides confidence to private investors Laws should be clear so that investors and businesses know whether contemplated transactions are permitted The effective implementation of laws is equally critical to assure investors and other actors in the market place that contracts and transactions in accordance with the laws will be respected and enforced A well-functioning market oriented commercial legal system promotes a properly functioning market economy by

(a) Reducing the costs and risks of entering into private business transactions,

(b) Reducing the barriers to entry and mobility of private investment, and

(c) Providing efficient mechanisms for the orderly exit of private businesses that fail

(d) Allowing market actors to structure an infinite number of transactions between themselves through contracts with the maximum possible freedom from government interference consistent with preserving the integrity of the market from fraud, theft, monopolistic behaviour and anti-free market restrictive business practices

1 06 Vital to a market-oriented, well functioning commercial legal system is a properly defined role for the government Since proclamation of the Infitah (Open Door) Policy by President Sadat in 1973, Egypt has been moving to a market oriented economy relying on private sector development from a centrally planned economy relying on government controls In a centrally planned economy, the government is the chief actor in the economy, and the economy is driven by government commands in accordance with the government's economic plan Thus, for example, prices and production are determined by government decrees and factors of production allocated pursuant to government instructions all in accordance with detailed government plan A government command economy, in turn requires a large bureaucracy and constant bureaucratic intervention in the economy and in market decisions to ensure that government commands are carried out at every level

1 07 By contrast, in a market driven economy, the chief actors are private sector entities and individuals, operating as buyers and sellers and the economy is propelled forward by an infinite number and variety of individual decisions, contracts and transactions by and among those private sector actors The government's paramount function then becomes that of an enabling agent which creates the conditions necessary and desirable for the market to function and respond efficiently to private sector decisions and actions In a market driven economy, a primary economic policy objective of the government must be to enable an infinite number of transactions between and among private sector actors to take place as easily and efficiently as possible To achieve this objective, the government must provide

(a) Appropriate macro-economic policies -- e.g., fiscal and monetary policies which produce low or no inflation and freedom from controls on prices, interest rates, currency exchange, etc

(b) Adequate physical infrastructure -- i.e., accessible, effective communications, transportation, water, power, etc

(c) An effective educational system -- to develop the skills of the work force

(d) Social stability and overall personal security

(e) A well conceived legal and institutional frame work which facilitates and encourages investment and job creating economic activity -- as outlined in the following paragraph

1 08 From the legal standpoint, the key objectives and essential machinery for an effective market enabling legal infrastructure comprise the following

(a) Providing the institutional mechanisms for economic actors themselves to make and enforce contracts which govern the transactions among them Such mechanisms include

(1) Courts educated and specialized in relevant commercial laws, regulations, remedies and enforcement mechanisms and motivated to enforce contracts fully, effectively, justly and with dispatch, and

(2) A modern, complete system of substantive laws in all areas affecting commerce and investment which set out clear and complete rules, procedures and statements of duties, rights and remedies but which avoid imposing inflexible formulas and mandatory terms on contracting parties

(b) Promoting accessibility to accurate basic information by the public generally and market actors in particular by establishing institutions and requirements for disclosure of key information by private and public sectors enterprises This is accomplished in two ways requiring registration of activities, and disclosure of financial, legal and other key information to make it accessible to the public

(c) Reducing government interference in economic transactions to the minimum possible consistent with protection of health, safety, the environment, and the free market itself This is

91

because government interference inevitably reduces the speed and number of possible private economic decisions and transactions which in turn reduces economic growth and development Reduced government interference is achieved by the following principal means

(1) Reducing bureaucratic review and discretion in private sector agreements and economic transactions by, in turn, making rules and procedures as clear, automatic, efficient and speedy as possible For example, formation of a corporation would become a simple matter of registration at the Commercial Register instead of extensive review and approval of company articles by the Companies Department

(2) Promoting voluntary compliance with health, safety and environment protection regulations and tax laws, through selective and qualitative government inspections and investigations -- as opposed to the concept of assuming non-compliance by all enterprises and attempting to inspect everyone comprehensively

(3) Leaving enforcement of laws and contracts largely to the economic actors themselves through lawsuits in the courts and providing for active government interference and enforcement efforts only in compelling circumstances, such as cases where economic actors perpetrate serious fraud, deception, monopoly, restrictive business practices or other activities which unlawfully threaten the public and the market

(d) Providing laws and enforcement machinery to protect the free operation of market mechanisms from monopoly, unfair competition fraud and predatory, anti-competitive business practices I.e., a well-functioning free market economy needs protection from private monopolists and anti-competitive business practices as well as from government bureaucrats and overregulation

(e) Establishing institutionalized procedures for making, reviewing and revising laws and regulations which lead to well-considered economic legislation which is understood and generally supported by the public as follows

(1) An institutional capability for economic law and policy analysis to review, develop and revise economic laws regulations and institutions which support and implement the nation's economic policy as well as to analyze and determine how best to eliminate unnecessary legal, regulatory or institutional constraints which impede private sector economic development

(2) Obtaining regular, broad-based review and input from the private sector in particular and the public in general in a clear institutionalized manner regarding proposed draft laws and regulations affecting commerce and investment in Egypt by advance circulation of such laws to business organizations and the public, followed by public hearings

(3) Institutionalized post-enactment education of the public regarding major new commercial legislation or regulations by means of regular conferences or seminars for lawyers, judges, relevant government officials, business executives and concerned

12

citizens which would aim to develop a shared understanding among all concerned parties about how new commercial laws, regulations and institutions are intended to operate in order to promote compliance and ensure success

(4) Systematic post-enactment monitoring of new laws and regulations to ascertain whether they are achieving their economic policy objectives and, if not, to prepare technical amendments to correct defaults or make changes in relevant institutions or take other corrective actions as necessary, such as changes in administration or additional training of officials, judges and lawyers

Section C: Impact of Socialism On Egypt's Laws, Lawyers and Legal Education

1 09 During the late 1950's and 1960's, under the late President Nasser, Egypt instituted one of the most heavily socialized and most centrally planned and directed economies in the world outside of the former Soviet Bloc Egypt's 20-year experiment with socialism and central planning severely and adversely impacted on the ability of Egypt's legal infrastructure to facilitate and encourage private sector economic development in four significant ways as described in the following paragraphs

1 10 **First**, and most obvious, the substantive laws were skewed against the free market economy and private sector activity Thus, during Egypt's socialist period (1957-1973), many of the laws which previously had supported Egypt's private sector were drastically amended and many new laws were passed in order to create an economy almost entirely controlled by the state, to nationalize most businesses of significant size, to favor the public sector and to discourage significant private sector economic development including both foreign and private investment

1 11 **Second**, older commercial laws and institutions which were left in force during the socialist period were ignored and never modernized to keep pace with new developments in business and financial transactions in free market economies In other words the socialist period arrested modern commercial law development in Egypt from the late 1950's onward

1 12 **Third**, Egypt suffered a drastic decline in private lawyers and judges experienced in corporate and commercial transactions and litigation When most businesses of significant size were nationalized, opportunities for private corporate and commercial law practice all but disappeared Many lawyers accepted offers to go into the public sector as employees for their former clients Some lawyers went abroad -- a portion to the countries in the Arab World and a small number to Europe and the U S Most of the private practice opportunities which remained were in the fields of criminal defense and government regulatory work A very small number of lawyers were able to continue to practice corporate and commercial law because they represented foreign oil companies or the few foreign companies which were never nationalized[8]

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[8] For example, it has been noted by Mr Abdel Halim Abul Ela, a lawyer with almost 45 years of experience practicing corporate and commercial law in Egypt that few if any of the American companies operating in Egypt were ever nationalized

73

Similarly, as the public sector expanded and the private sector correspondingly shriveled commercial and corporate litigation also shrank, reducing the numbers of judges familiar with private sector commercial and corporate matters as well as lawyers Thus, when the "Open Door Policy" came into effect in 1974, Egypt was seriously short of experienced lawyers and judges able to comprehend and handle complex private sector commercial transactions and litigation Although partially made up by the return of some Egyptian lawyers and judges who had gone abroad and an increasing number of younger lawyers and judges with commercial law experience as the private sector has expanded again, a serious shortage remains

1 13 **Fourth**, there has been a serious deterioration in the quality of legal education Partly, this has resulted from the diminution of the role of law and the position of lawyers in Egyptian society Before the 1952 Revolution and the coming of socialism, lawyers constituted an independent and prosperous profession Moreover, many of Egypt's modern day heroes -- including Mostafa Kamel and Saad Zaghloul (leaders of Egypt's 1907 and 1919 movements for independence from Britain) -- were lawyers as were many of Egypt's pre-1952 prime ministers, ministers and members of Parliament Correspondingly, the Faculty of Law of Cairo University was one of Egypt's earliest and finest institutions of higher learning Not surprisingly, therefore, the law and legal education once attracted the best and brightest of Egypt's ambitious youth The priorities of the 1952 revolution emphasized other professions, however -- such as, the military, engineering and medicine At the same time, socialism removed economic and intellectual opportunities from the legal profession and reduced most lawyers to positions as government functionaries As a result, except for a few self-selected, very able students who choose law because of family background or other personal reasons, a legal education in recent times generally has fallen to those who could not score well enough on their secondary examinations to go into the favored faculties of engineering or medicine and who have enrolled in the faculties of law by default Moreover, free education and mass admissions policies have swamped Egypt's law faculties with thousands of students With huge classes, the chief educational tool has become the mass lectures and there is little opportunity for classroom discussion, legal writing exercises or clinical education Given such circumstances, it is not surprising that law faculty grades and examinations emphasize memorizing lecture notes rather than mastering the skills needed by commercial and corporate lawyers Namely, analysis of issues, problem solving, legal writing and verbal communications in negotiations and court proceedings

Section D. The Current Economic Policy Background

1 14 This assessment takes place against the background of a continuing Egyptian Government Policy commitment to transform Egypt's economy gradually from a socialist one characterized by central planning and administered prices and dominated by large state-owned enterprises to a free enterprise economic system driven by market mechanisms This policy commenced in October 1973 with the proclamation, by the late president Sadat, of the "Infitah" or "Open-door" policy and has continued up through the present day Under this policy, Egypt is continuing to make major economic reforms, most recently by liberalizing foreign exchange regulations, reducing subsidies to both private individuals and public sector corporations and commencing a program gradually to privatize its huge public sector

1 15 In turning back toward a private sector market oriented economy, one of Egypt's major tasks has been, and continues to be, reversing, modifying or replacing laws and regulations enacted and promulgated during the socialist period Thus, a key element of the "Open Door Policy" in its earliest days was to establish an investment climate in Egypt which would encourage substantial flows of foreign capital and transfers of advanced technology To this end, Law 43/1974 concerning "Arab and Foreign Investment and Free Zones" was promulgated and later replaced by Investment Law 230/1989 The primary goal of both Investment Laws has been to attract foreign investors to establish selected businesses in Egypt usually, but not necessarily, in association with Egyptian partners by granting them benefits and protection in the form of exemptions from certain provisions of the various laws governing the conduct of business in Egypt -- including corporate, tax, and foreign exchange laws -- which were considered disincentives to private investment Initially, enactment of these benefits created a wide gap between Investment Law 43 companies and companies formed exclusively under the former Companies Law 26/1954

1 16 Because another key element of the Open Door Policy was to liberalize the Egyptian economy generally in addition to encouraging foreign investment[9], the Egyptian Government in the years since 1974 has changed many of the laws which previously severely restricted private sector business activities in Egypt and thereby has narrowed the gap which enactment of Investment Law 43 had created Accordingly, a new foreign exchange law was issued in 1976 (Law 97/1976), a "New Communities" Law in 1979 (Law 59/1979) which provided incentives to businesses to locate in new industrial cities in the desert, followed by a reformed companies law in 1981 (Law 159/1981) and a new income tax Law also in 1981 (157/1981) Finally, as already noted, in 1989, Investment Law 43 was itself replaced by new Investment Law 230/1989 More recently, major legislation has been promulgated in the fields of banking, and finance (Laws 37/1992 and 101/1993), capital markets (Law 95/1992), public sector companies (Law 203/1991) and maritime activities (Law 8/1990)

Section E. Advantages Offered To Investors By The Law and Policy Framework of Egypt

1 17 While the bulk of this report necessarily deals with legal and judicial sector constraints on private sector development in Egypt, it is important to note that Egypt's legal, institutional, and policy framework yet offers to investors certain significant and valuable advantages and potential advantages as follows

(a) A clear and growing Government commitment to private sector investment and private business development

(b) An economy increasingly free of artificial macro-economic policy distortions as more and more economic reforms take place

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[9] In fact almost two thirds of the "foreign" investment -- i e , investment of foreign currency -- since the enactment of Law 43/1974 has been made by Egyptian nationals from their own foreign currency resources according to Investment Authority sources

(c) A significant institutional financial framework for business e.g.

- A number of experienced banks -- public and private sector, domestic, foreign and joint venture

- New capital market encouragement legislation and regulations which could provide the basis for developing a secondary market for securities functioning within a regulatory framework

- Several private and public institutions focusing on investment development and investment finance including a number of private investment companies

- Public sector development banks for agriculture and industry

- Successful programs being developed with USAID assistance for financing small businesses

(d) A well developed and organized accounting and auditing profession with a long tradition tied to England

(e) Though plagued with problems which are among the major subjects of this report, and badly in need at repair, a long established and well developed legal system which has worked very well in the past and could work well again, consisting of

- A well developed system of ordinary and administrative courts, explained in more detail below, to which all persons -- including citizens, foreign residents, and domestic and foreign companies have equal and virtually uninhibited access,

- An organized legal profession,

- A well developed, functioning -- although very old-fashioned -- commercial register, which, if fully and properly computerized, could serve as the basis for some of the key recommendations in this report for commercial law modernization in Egypt,

- An Official Gazette which publishes all official documents including laws and decrees in Arabic in a reasonably timely fashion, supplemented by a number of daily, and weekly regular and commercial newspapers published in the country

- A number of private law publishers which publish court opinions and collections of laws in an organized way which makes legal research possible

- A law-oriented population not afraid to go to court to defend their rights

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Section F. The Need to Modernize the Legal/Institutional Framework To Promote Private Sector Development and Investment

1 18 Despite the above-described advantages, although for 20 years the Government has carried out a major program of economic reforms, in response, the private sector has not grown as rapidly or attracted as much domestic and foreign investment as it should have because of constraints imposed by the commercial law system Accordingly, a comprehensive program to complete modernization of the commercial law system is needed on an urgent basis in order to achieve private sector economic growth and improve the distribution of private sector economic benefits throughout the economy As is discussed in detail in the ensuing sections of this report, much remains to be done to modernize and complete key portions of Egypt's commercial law infrastructure and modify other portions before Egypt's private sector can develop its full potential for producing goods and services, for creating jobs and for competing for productive investment by foreigners as well as its own citizens As the private sector grows in size and complexity, a properly functioning, modernized commercial law system will facilitate its development by reducing costs and risks and by establishing rules for efficient private sector activities in a less regulated, free market economy

1 19 The existing commercial law infrastructure in Egypt suffers from the following problems developed in more detail subsequently in this report

(a) Inefficient and ineffective implementation of commercial laws and enforcement of contracts by and through the courts constitute a serious constraint on private sector development Delays and other difficulties of enforcement of private contracts, agreements and commitments lead to unusually high costs and risks of economic, investment and business transactions in Egypt

(b) Antiquated, inadequate institutions needed to support the commercial law system such as the Commercial Register, the Official Gazette and the Land Register The Commercial Register for example, although potentially a highly effective institution, is still maintained mostly by hand and is not cross-indexed Fully and properly computerizing it would make it a highly effective institution which could support many other modernizing efforts in the commercial law fields as is discussed below

(c) Outdated and outmoded commercial laws in many areas For example, the Civil Code dates back to 1948 and the Commercial Code to 1883 They do not adequately support modern developments in commercial, investment credit and financial transactions

(d) Uncompleted business law reforms in that many of the laws enacted since the "Open door" policy -- as well as laws, regulations, procedures and practices left over from Egypt's socialist period -- continue to

- authorize and rely on inappropriately high levels of bureaucratic intervention which unnecessarily delay and complicate transactions normally left to the parties concerned in free market economies

- create unnecessary barriers to market entry, operations and exit by enterprises

- interfere with freedom of contract by mandating inflexible formulas and contract terms which should be left to the parties concerned or to the market

- fail to provide clear and sufficient legal protection to economic actors

- impose excessively high fees, taxes and other costs on private sector transactions and enterprises

Thus, for example, although the Companies Law 159/1981 represented a dramatic step forward, it still falls far short of what is required in terms of bureaucratic reducing barriers to entry, allowing founders sufficient freedom to structure their company's articles of association and providing an effective framework of directors' duties to protect investors and shareholders Similarly, the Investment Law reforms of 1974, 1977 and 1989, dramatically improved the climate for investment Nevertheless, these laws and a number of other laws still pose unnecessary barriers to entry and substantially restrict the flow of investment from what it otherwise could be These and other examples are discussed more fully in Part C below

(e) Excessively high stamp taxes, income taxes and government fees on land and mortgage registration, court judgments and legal transactions discourage legitimate, sound private sector transactions and long-term investment and encourage short-term, evasive, unsound business behaviour

(f) An inadequate, overcrowded legal educational system at the University level based on a standard unchanging, outdated legal curriculum which stresses and rewards memorization rather than legal analysis, legal writing, verbal communication skills and problem solving

(g) A dearth of organized and effective programs of orientation, refresher courses and advanced substantive and clinical training and continuing education for judges, lawyers and court officials involved in the commercial law dispute resolution process

(h) The lack of a modern, complete integrated and fully indexed law finding system in published or electronic form easily accessible to judges, lawyers, officials, law professors and the public throughout the country

(i) The lack of a well-functioning, institutionalized economic law and policy analysis capability to develop or revise economic laws, regulations and institutions as needed to support and implement the Nation's economic policy, as well as to analyze and determine when unnecessary legal, regulatory or institutional constraints impede equitable economic development and how best to eliminate them

(j) No institutionalized means of obtaining adequate private sector review and input on existing, newly enacted or proposed laws and regulations which affect private business and investment

78

(k) Lack of systematic post-enactment monitoring of new laws and regulations and no system of technical amendments result in faulty legislation continuing for too long

1 20 All sectors are affected by the above constraints Of particular significance, however, are the constraints imposed on (a) newer and smaller Egyptian private investors, and (b) the foreign trade and investment community Newer and smaller private Egyptian investors face the highest costs of the absence of a well-functioning commercial law system, in terms of high barriers to market entry and access to credit The multinational trade and investment community perceives the Egyptian commercial law system to be a major weakness in the business climate which increases the risks and costs of doing business in Egypt If private sector development is to be broadly based among small and large businesses alike in Egypt and is to benefit from international trade and investment, modernization of the legal and judicial sector must become a priority for both the Egyptian Government and the donor community

Section G: Related USAID and World Bank Projects Regarding Egyptian Law Modernization

1 21 In addition to commissioning this report, USAID/Egypt has been active in other projects to assist and modernize the Egyptian legal and judicial sector In the late 1970's and early 1980's, together with the Ford Foundation, USAID/Egypt co-financed and cosponsored early successful efforts by the Egyptian Government to modernize and improve the investment, companies and tax laws, in addition to a program which sent a number of government lawyers and officials as well as members of the People's Assembly and some private lawyers to Harvard Law School for seminars on topics and issues regarding the legal framework for investment in Egypt In related projects, USAID/Egypt has supported efforts to upgrade accounting and auditing standards with the Accounting Syndicate as well as tax administration

1 22 More recently, USAID has supported World Bank efforts to modernize the legislative framework for the encouragement and regulation of capital markets and additional efforts to improve the income tax law and tax administration In addition, USAID/Egypt has sponsored visits by U S judges and lawyers associated with the Institute for the Study and Development of Legal Systems (also known as the "MAYO Group") in a very successful Egypt-U S Legal Exchange Project which is still on-going The MAYO Group has gathered invaluable information on the organization and workings of the Egyptian ordinary courts and legal education system which they have memorialized in reports highly useful to the authors of this report In their report, among other things, the Egypt-U S Legal Exchange Project identified a number of key problem factors affecting the case backlog in the Egyptian ordinary courts and made highly useful proposals for solving them

1 23 Also very useful has been the World Bank's 1992 Report on "The Private Sector Regulatory Environment" in Egypt, Volume I Executive Report and Volume II Main Report, hereinafter referred to as "I World Bank Report" and "II World Bank Report" respectively It is strongly recommended that this report be read together with both the World Bank report and the two unpublished reports of the Egypt-U S Legal Exchange Project -- namely Phase 1, February 7 - 18, 1993, hereinafter referred to as "Phase 1 Legal Exchange Report" and Phase 2, April 4 - 20, 1993, hereinafter referred to as "Phase 2 Legal Exchange Report"

79

CHAPTER 2

OVERVIEW OF EGYPT'S LEGAL AND LAW MAKING SYSTEM

Section A The Constitution

2 01 It is important to note, first, that Egypt has been a modern constitutional state since 1923 when the country adopted its first written constitution one year after having obtained limited independence from Great Britain which had occupied the country since 1883

2 02 The Constitution of September 2, 1971 -- which remains in force today as amended in 1980 and is hereinafter referred to as "the Constitution" -- provides for a presidential system of government based on the principle of separation of the legislative, executive and judicial powers Executive power is vested in the President of the Republic who is nominated by the People's Assembly and then approved in a referendum of the people The President serves a term of six years and may be re-elected The President appoints and dismisses the vice-president, the Prime minister, and the ministers, as well as other civil, military, and diplomatic officials and governors of governorates Under Article 153 of the Constitution, the government is the supreme executive and administrative organ of the State and consists of the Prime Minister, his deputies, the ministers and their deputies

2 03 The Constitution vests legislative power in the People's Assembly (*Maglis Il-Shaab*), a representative national parliament elected directly by the people, as will be seen below, however, the President of the Republic may also promulgate decrees having the force of law, in certain circumstances The People's Assembly consists of at least 350 members, at least half of whom must be drawn from among the workers and peasants, it has a term of five years In addition to enacting laws, it is empowered to approve the general policy of the state, the economic and social development plan and the general budget

2 04 The May 1980 amendments to the Constitution provided also for a "Consultative Council" or "*Maglis El Shura*" which reviews and advises on matters set forth in Article 195 of the Constitution including constitutional amendments proposals, peace treaties and laws and policies referred to it by the President of the Republic The Shura Council is an advisory body only, and it has no legislative or veto power It is composed of not less than 132 members, of which one third are appointed by the President of the Republic and two thirds must be elected according to geographical districts throughout the country

2 05 With regard to the system of the local government, the Constitution divides the Republic into various administrative units including governorates, cities, villages, and such other units as may be established Executive authority is vested in governors, mayors, and village headmen or *Omdahs* Legislative authority is vested in local People's Councils which are directly elected Most taxing, police and other powers, however, remain centralized in the national government

2 06 The Constitution is based upon respect for individual freedoms and for the "rule of law" For private sector development, the Constitution's provisions protecting private property are of particular interest and are to be found in Articles 29 and 34-36 translated as follows

Art 29 "Property shall be under the supervision of the people and protection of the State There are three kinds of property Public, co-operative, and private property "

Art 34 "Private ownership shall be safeguarded and may not be put under sequestration except in the cases defined by law and in accordance with a judicial decision It may not be expropriated except for a public purpose and against a fair compensation in accordance with the law The right of inheritance is guaranteed in it "

Art 35 "Nationalization shall not be allowed except for considerations of public interest, by means of a law and against compensation "

Art 36 "General confiscation of property shall be prohibited Special and limited confiscation shall not be allowed except with a judicial decision "

2 07 It should be, remembered, however that the Constitution came into effect in 1971, before Egypt's swing away from socialism with the 1973 "Open-Door Policy" Accordingly, there are numerous socialist principles contained in the Constitution For example, Article 4 provides that

> "The economic foundation of the Arab Republic of Egypt is the Socialist Democratic System based on sufficiency and justice, in a manner preventing exploitation "

Moreover, Article 26 states a general requirement that

> "Workers shall have a share in the management and profits of projects "

2 08 These latter two principles of Article 26 are enshrined in the Companies Law 159/1981 and the Investment Law 230/1959, as amended, which require, for example, that workers shall receive 10 percent of all distributed dividends of corporations up to 100 percent of total salaries and shall be represented in some form (although very diluted) on the boards of joint stock companies formed under the Investment and Companies Laws (Such requirements do not apply, however, to projects organized in the form of partnerships or limited partnerships, the law thus discriminates against the corporate form of organization

2 09 The position of the judiciary and the role of law under the constitution is discussed under Part C below

Section B. Nature of the Legal System and Key Laws

2 10 As one of the world's oldest civilizations, Egypt has a tradition of law and government stretching thousands of years from the pharaohs through the periods of the Greek and the Roman

21

Empires on through the reigns of the Arab, Fatamid, Ayubbid, Mamluk and Ottoman Islamic Rulers, and from the period of westernization beginning in the 19th century with Mohamed Ali through the socialist period of President Nasser to the Open Door Policies of the present day As it is well known, for over a thousand years, Al Azhar has been, and is, perhaps the world's preeminent center of Islamic law and legal education Despite its long Islamic law tradition, however, for over a hundred years Egypt's legal system has been modeled in form on the European code system with western style courts and laws

2 11 Thus, at the heart of Egypt's commercial law system are the Civil Code of 1948 -- clearly inspired by the French *Code Napoleon* -- and the Commercial Code of 1883 These are supplemented by the Code of Civil and Commercial Procedure of 1968, the Penal Code of 1937, and the Code of Criminal Procedure of 1950, in addition to special laws governing various financial and commercial subjects including those already referred to above The Civil Code sets forth a comprehensive code of basic legal obligations which governs contractual as well as tortious liability, and specific contracts such as sale, exchange, gifts, partnerships, loans, leases, service, insurance, and so forth In addition, the Civil Code provides for property ownership and other property rights and deals with various methods of acquiring ownership, rights of usufruct and servitude as well as mortgages and pledges of property

2 12 The Commercial Code addresses commercial transactions and modifies the Civil Code's general rules of contract in so far as a transaction may be specifically provided for The Commercial Code covers such items as promissory notes, bills of exchange and other negotiable instruments, as well as bankruptcy Supplementing these codes are various special laws governing specific areas such as those mentioned above, i.e., the Investment Law, the Companies Law, taxes, labor, mortgages, patents and trademarks, maritime law, etc

2 13 An important point to note is that, while it is urgently required that they be brought into line with modern commercial and financial practices and recent legal developments, Egypt's Civil and Commercial Codes do at least provide a comprehensive system for making and enforcing contracts, and determining and protecting property rights as well as determining and enforcing extra contractual liability -- i.e., tort liability -- for damages suffered from as a result of wrongful activity

Section C The Sources and Forms of Egyptian Law

(1) Sources of Law - General.

2 14 Egyptian law is derived from a variety of sources Article 1 of the 1948 Civil Code lists as sources of law which judges are advised to apply in order as follows

- Applicable legislation in order of the hierarchy described in Paragraph 2 15 below
- Custom

82

- Principles of Islamic Law (Shariah)[10]
- Principles of Natural Justice
- Rules of Equity

(2) **Hierarchy of Law**

2 15 In general, the various forms of Egyptian legislation -- i.e., laws, decrees and rules -- constitute a hierarchy which, in descending order, is as follows

- Constitution
- International Treaties
- National Laws (i.e., statutes)
- Presidential decrees
- Council of Ministers (Cabinet) decrees
- Prime Ministerial decrees
- Ministerial decrees
- Regional (i e., governorate) and Local Council resolutions, legislation and decrees
- Decrees and acts of governors and local officials

Inferior instruments of law within the hierarchy must be in accordance with, and authorized by instruments which are superior, otherwise, they are without legal basis and are invalid

(3) **Constitution:**

2 16 The Constitution is the supreme law of the land, and it may be amended only by following a special procedure set out in the constitution itself Constitutional amendments require a special debate and approval by the People's Assembly, followed by a referendum of the people

(4) **The Role of Shariah (Islamic Law) as a Source of Legislation**

2 17 The first Egyptian Constitution of 1923 provided that Islamic Law would be one of the sources of laws adopted by the Egyptian legislature The currently prevailing Constitution of 1971, however, provides that Islamic Law shall be the principal source of Egyptian legislation Consequently, following the issuance of the 1971 Constitution, any Egyptian legislation passed thereafter which is not in conformity with Islamic Law would be unconstitutional and therefore invalid

2 18 Laws adopted prior to the issuance of the 1971 Constitution, however, are valid even if they are not in conformity with Islamic Law This principle has been affirmed by the Egyptian Supreme Constitutional Court Accordingly, both the 1948 Civil Code and the 1883 Commercial

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[10] By making Islamic Law the principal source of Islamic legislation, the 1971 Constitution may amend this provision of the 1948 Civil Code to raise Islamic Law principles above custom in the hierarchy See Paragraph 2 16 below, But see also Paragraph 2 17

Code are valid in that both were passed prior to the issuance of the 1971 Constitution even to the extent that they do not conform with Islamic Law

2 19 In any event, the principle of primacy of the Shariah is not considered drastically to affect laws in respect of business and commerce in Egypt Many of the concepts, doctrines and theories contained in Civil and Commercial Codes were known and specifically dealt with by the Shariah, such as bankruptcy, bills of exchange, assignment of debts and rights of commercial companies (especially companies with the form of the "limited partnership", contractual obligations, and tort liability) Indeed, the Egyptian Civil and Commercial Codes and Laws are considered by legal scholars to be entirely in conformity with Islamic law except for two subjects which are debatable -- namely, interest and insurance

2 20 The controversial subject of "interest" has provoked heated dialogue between Orthodox and moderate Islamic Law scholars Recently, Egypt's Grand Mufti -- i.e., the Islamic Chief Official Law Consultant -- has expressed the view that interest on bank deposits, investment certificates issued by banks, and even on bank loans and bonds does not contravene the Shariah as it involves no usury in the sense of charging oppressive rates through exploiting the dire need of the borrower Accordingly, both Shariah and Egypt's man-made laws are officially considered to be in conformity with respect to the main operations of modern business such as purchase and sale, methods of financing -- including stocks and even bonds (as recently held by the Grand Mufti) -- bills of exchange and promissory notes, speculation on appreciation and depreciation of the value of things, contributions to formation of companies, bankruptcy, borrowing at non-oppressive and non-usurious rates of interest (i.e., interest not exceeding levels prescribed by laws) and so forth

(5) Laws or Statutes.

2 21 A law (or more precisely, a statute) is the highest expression of legislative power, and the Constitution vests such legislative power in the People's Assembly In theory, a bill to enact a law may be introduced in the Assembly either by a member of the Assembly or by the President of the Republic who refers bills prepared by the government In fact, virtually all proposed laws currently are introduced by the Government The People's Assembly often amends the Government's proposed laws before passing them, however Prior to discussion in the People's Assembly, government bills are first sent to an appropriate Assembly committee for consideration and report Member's bills, on the other hand, must first be considered by a special screening committee before being referred to the appropriate committee

2 22 Moreover, to ensure that no law contravenes the Shariah, any draft law, prior to presentation to the Assembly for debate should be referred to the Legislative Committee and in turn to a sub-committee called "the Shariah Committee" The Shariah Committee should first review the draft law with a view as to whether it is in conformity with Islamic Law and, then, send it back with its comments thereon to the Legislative Committee If a difference of view arises between the two committees as to whether or not the draft law is in conformity with the Shariah, the matter would be referred to the Grand Mufti for a final decision on the issue

84

2 23 Except in cases where a special majority is required, bills in the People's Assembly are adopted by a simple majority of the votes of the members present, and they are voted upon article by article After approval by the Assembly, a bill is referred to the President of the Republic who may either approve it as a law or reject it If the President does not return a bill to the Assembly within 30 days, it is considered approved If he does return a bill, it may nevertheless be voted into law if the Assembly adopts it by a two-thirds vote of the members

(6) **International Treaties**

2 24 Under Article 151 of the Constitution, international treaties concluded by the President, and which are duly ratified and published have the force of law Lawyers and legal scholars generally are of the opinion that treaty provisions prevail over conflicting preceding or subsequent ordinary legislation unless the latter specifically abrogates the treaty provision in question

(7) **Presidential Decrees:**

(a) <u>Presidential Decree Laws.</u>

2 25 Under certain circumstances, the President of the Republic, may also enact laws by means of a presidential decree Such laws, known as presidential decree laws, may be enacted in two cases

(a) Where the People's Assembly, by a two-thirds vote of its members, authorizes the President of the Republic to enact laws for a fixed period of time on certain specified subjects, and

(b) When the People's Assembly is not in session and an event occurs which requires prompt legislative action

Although such presidential decree laws may go into effect when they are issued, they must nonetheless be submitted to the People's Assembly within fifteen days of their date of issuance, if not submitted to the Assembly or if the Assembly refuses to approve it, presidential decree law becomes invalid with retroactive effect unless the People's Assembly otherwise provides

(b) <u>Presidential Decree Regulations.</u>

2 26 The President of the Republic has the power to issue regulations necessary for the execution of laws If the law does not otherwise provide, he may delegate such power to another official The President also issues control regulations and the decrees necessary for the establishment and organization of public institutions and departments

(8) **Prime Ministerial, Ministerial and Other Official Decrees**

2 27 The Prime Minister issues decrees on the basis of authorization received from the President of the Republic

2 28 Ministers issue decrees based on authorization specified in the law or delegated by the President or the Prime Minister The decisions or decrees of the Prime Minister, Ministers or other officials or agencies must be authorized or provided for by a superior law Otherwise, they are without legal basis and subject to cancellation by the Council of State's administrative courts as discussed below

(9) Codes·

2 29 In general, many Egyptian laws have drawn their inspiration from European -- primarily French -- codes and legislation, which traditionally has been considered a historical source of law in Egypt Similarly, the basic divisions and categories of the court system tend to follow those of France, and, as already noted in Paragraphs 2 10 - 2 13 above, the principal branches of Egyptian law are now to be found in specific codes and legislation similar to the European type

(10) **Judicial Decisions and Precedents**

2 30 Since Egypt generally follows the European Civil Law tradition, rather than that of the Anglo-American common law, judicial decisions do not constitute a formal source of law in the sense of setting down binding rules for future conduct Nevertheless, judicial decisions have persuasive authority Indeed, much of Egypt's administrative law is not found in statutes but rather is to be found in the decisions and opinions of the administrative courts of the Council of State Not infrequently, Egyptian judges and lawyers will look to French judicial decisions for guidance

Section D Laws and Legal Publication in Egypt

2 31 The following summarizes the state of publication of laws, decrees and court decisions in Egypt

(a) Laws, presidential decrees, decrees of the Prime Minister and judgments of the Supreme Constitutional Court are published in Egypt's *Official Gazette*, known in Arabic as *Al-Garida Al-Rasmia* A law must normally be published within two weeks of its issuance by the President of the Republic, and unless it otherwise provides, must come into effect one month from the date of its publication

(b) Internal regulations of the Council of Ministers and all ministerial and other official decrees, decisions and acts approved for publication are to be published in a supplement to the *Official Gazette* known as the *Egyptian Bulletin* (*Al-Wakeya Al-Misriya*)

(c) The Ministry of Justice also edits and publishes periodically collections of the judgments of the Court of Cassation and selected judgments of the courts of appeal

(d) At least once a year, the Council of State, Egypt's highest administrative law court, publishes a collection of the decisions of the Supreme Administrative Court and the other administrative courts, as well as the legal opinions given by its advisory departments

86

(e) Copies of legislation and regulations may be purchased at the Government Publications Sales Office located in Opera Square, Cairo

(f) Important laws and regulations are often printed in one or more of the country's Arabic newspapers

(g) Some private publishers collect and organize laws and decrees by subject on an up-to-date basis, the best known of which is *Fakahany*

(h) English translations of selected commercial laws are published by the Middle East Library as well as *the Middle East Observer*, a weekly commercial newspaper affiliated with the former, and various private translators

67

CHAPTER 3

OVERVIEW OF EGYPT'S COMMERCIAL, CIVIL AND ADMINISTRATIVE COURT SYSTEM

Section A Constitutional Position of the Courts and the Private Sector

3 01 Both the law and the judiciary occupy strong places in Egypt's current Constitution Thus, Part IV of the Constitution proclaims the "Sovereignty of the Law" and commands that

> "The State shall be subject to law The independence and immunity of the judicature are two basic guarantees to safeguard rights and liberties "

Further, Article 68 guarantees access to the courts for all, and provides that "every citizen has the right to refer to his competent judge" The Constitution further provides that the judicial authority is to be independent and that judges are subject to no other authority but the law The Constitution also specifically prohibits any law from granting immunity from judicial review to any act or administrative decision

Section B. Overview of the Courts

3 02 The Egyptian judicial system, like that of France, consists basically of two separate court structures The ordinary courts of law and the Council of State's administrative courts These are supplemented by the Supreme Constitutional Court, the state security courts, the military courts and the court of ethics (also known as the court of shame) Cases concerning commercial transactions, however, primarily are heard by the ordinary and administrative courts

Section C The Ordinary Courts of Law

3 03 The ordinary courts of law have general jurisdiction over all disputes, except for administrative and military cases, and they apply the civil, commercial, criminal, and personal status laws, among others Governed basically by Law No 46 of 1972, these courts form a hierarchy of four levels, consisting of the following in ascending order of importance Courts of Summary Jurisdiction, Courts of First Instance, Courts of Appeal, and the Court of Cassation

(1) Courts of Summary Jurisdiction

3 04 Comparable to magistrates courts these courts are located in each of the administrative districts and subdivisions of the Republic In civil and commercial matters, they have jurisdiction to hear cases whose value does not exceed L E 5000 They are also authorized to decide controversies involving the use and drainage of water, as well as boundaries to land They are empowered to hear urgent cases In criminal matters, the courts of summary jurisdiction have jurisdiction to try misdemeanors and infractions or minor violations

(2) Courts of First Instance

3 05 Located in each of the provincial capitals, the courts of the first instance have original jurisdiction over all civil and commercial cases whose value equals or exceeds L E 5000 or whose value cannot be determined All such decisions are subject to appeal before the courts of appeal The courts of first instance also have criminal jurisdiction over misdemeanors and infractions and appellate jurisdiction over judgments of courts of summary jurisdiction in civil suits where the amount of damages exceeds L E 5000, in urgent law suits of whatever value, and in criminal cases, under certain circumstances

(3) **The Courts of Appeal**

3 06 Located in Cairo and the capitals of the largest provinces, the courts of appeal hear appeals against the civil judgments rendered by the courts of first instance In addition, within each court of appeal is a criminal chamber which has first instance jurisdiction to try persons accused of felonies

(4) **The Courts of Cassation**

3 07 Located in Cairo, the Court of Cassation heads the ordinary judicial hierarchy, and its principal function is to ensure that the other courts have correctly interpreted and applied the law Like the ***Cour de Cassation*** in France, its jurisdiction is limited to reviewing final judgments which are challenged on the grounds of violation, misapplication, or misinterpretation of law, as well as those prejudiced by the use of an improper procedure

(5) **Ordinary Court Organization and Administration**

3 08 According to Law 46/1972, as amended by Law 35/1984, concerning "The Judicial Authority", the Ministry of Justice supervises all ordinary courts and judges Within the Ministry of Justice, in turn, the Supreme Judicial Council makes all decisions regarding the overall administration of the ordinary courts, including recommendations regarding the appointment, promotion and pay of judges to the President of the Republic who normally accepts such recommendations Moreover, Article 173 of the constitution requires that the Supreme Judicial Council must be consulted with regard to the draft laws organizing the affairs of the judiciary

3 09 The Supreme Judicial Council consists of the President of the Cassation Court together with the two most senior judges after him on the Court of Cassation plus the three most senior presidents of the courts of appeal and the Prosecutor General Below the Supreme Judicial Council, each court and its judges are governed by that court's president and its general assembly The General Assembly of the Court of Cassation, each court of appeal and each court of first instance is composed of all of its judges <u>and</u> a representative from the General Prosecution who would have a countable vote only on matters directly concerning the prosecution

3 10 Accordingly, the practices and procedures of the ordinary courts are controlled by the decisions of individual judges who, in turn, should abide by relevant provisions of the Code of

Civil and Commercial Procedures as well as appropriate directives of the Supreme Judicial Council, and the presidents and general assemblies of individual courts

3 11 Within their various levels, as outlined above, the ordinary courts are divided into divisions -- i.e., the Civil Court Division and the Commercial Court Division with each such division divided in turn into benches, e.g., housing bench, labor bench, tax bench, bankruptcy bench, commercial bench, etc All such divisions and benches are not rigidly separated, and judges may move freely from one division to another and from one bench to another

3 12 Selection of the judges to serve in any of the aforementioned divisions and to sit on any of the various benches is the duty of the general assembly of each court A judge's capability is assessed through analyzing a judge's performance during, say, one or two judicial seasons Such analysis is undertaken by the Judicial Inspection Department of the Ministry of Justice

3 13 In theory, selection of a judge to specialize in a specific branch of law, enabling the judge to hear certain types of cases, is determined by the Supreme Judicial Council after exploring the judge's personal desire Thus, Article 12 of Law 46 of 1972 concerning judicial authority permits a judge to specialize in hearing a specific type of cases after serving as a judge for four years and, in fact, requires such specialization for all judges after eight (8) years of judicial service In this regard, following approval of the Supreme Judicial Council, the Minister of Justice has issued a decree setting forth the criteria which are to be observed in selecting judges to specialize in specific branch(s) of law In practice and in fact, however, these rules regarding judicial specialization generally are not followed

Section D The Council of State and the Administrative Courts

3 14 The ordinary courts of law may not adjudge cases that are considered "administrative", that is, non-criminal cases in which the state or one of its agencies is a party -- except for taxation cases Under Article 172 of the Constitution, administrative cases fall within the exclusive jurisdiction of the administrative courts, which in Egypt compose the judicial section of the Council of State Founded in 1946, and now governed by Law No 47/1972, as amended by Law 136/1984, the Egyptian Council of State, like its famous French counterpart, was established to ensure that governmental and administrative agencies respect the law To this end, the Council of State administrative court have the power to annul erroneous administrative decisions, to grant compensation to parties injured by wrongful acts of the government and to give non-binding legal advice to the government and its agencies

3 15 Thus, businesses injured by wrongful government decisions by, say, the Investment Authority or the Companies Department or other government agencies are entitled to sue in the administrative courts and seek cancellation of the wrongful decision or compensation In deciding cases, the court refers to legislative texts, to the unwritten **"droit administratif"**, to judicial precedents whether from Egypt or other countries (usually France), and to the general principles of law Constitutionally, the Council of State -- and its administrative courts -- is independent of the Ministry of Justice and the ordinary courts

3 16 The Council of State is divided into three sections -- namely, Advisory, Legislative, and Judicial as follows

(1) **The Advisory Section**

3 17 This section provides the government and its agencies, at their request, with non-binding legal advice on all questions arising in the course of their activities, particularly with respect to the interpretation of legislative provisions

(2) **The Legislative Section**

3 18 This section reviews and revises all bills, as well as general regulations so that they conform to the constitution and legislative provisions of a higher level per the hierarchy of laws described in Paragraph 2 15 above

(3) **The Judicial Section**

(a) First Instance Administrative Courts.

3 19 This section includes administrative courts of various grades which have jurisdiction to hear and decide administrative law cases and to grant such remedies as the annulment or suspension of the execution of administrative decisions which violate the law and the award of compensation for damages resulting from illegal administrative acts and omissions or from the breach of an administrative contract

(b) The Supreme Administrative Court.

3 20 Judgments rendered by the administrative courts are subject to the judicial control of the Supreme Administrative Court which exercises in administrative law matters a role similar to that of the Cassation Court in civil, commercial and criminal cases

(4) **Administrative Court Organization and Administration**

3 21 Like the ordinary courts, the Administrative Court and the Supreme Administrative Court of the Council of State both have a general assembly consisting of all of their judges The main duty of each such assembly is to review and deal with all matters relating to the court's organization, internal affairs and distribution of work among its members and of cases to the court's various divisions and benches Hence, practices and procedures of the administrative courts are controlled by the decisions of the individual judges who should abide by (1) the specific procedural provisions of Law 47/1972 as amended by Law 136/1984 concerning the Council of State, (2) the provisions of the Code of Civil Procedures in any matter that is not addressed by a specific provision in Law 47/1972, and (3) the directives issued by the general assembly of the judge's court

91

3 22 Appointment of judges to the Administrative Court's various divisions and benches is the duty of the court's general assembly The Administrative Court is divided into the following divisions

(a) The Administrative Judicial Court which has jurisdiction over disputes pertaining to concession agreements, public works contracts, supply agreements and any other administrative contract, as well as over applications for cancellation of administrative decisions issued by administrative bodies having semi-judicial competence -- such as, for example, the decisions rendered by the Committee established under Article 107 of the Labor Law 137/1981 to consider applications for down-sizing activities affecting the number of employees in the work place

(b) The Administrative Court which has jurisdiction over administrative decisions pertaining to the appointment, promotion or termination of civil servant employees

(c) The Disciplinary Court which has jurisdiction over cases of discipline for financial and administrative violations committed by government employees, and members of the boards of directors of trade unions and employee representatives on the board of directors of public sector joint stock companies

Section E. The Supreme Constitutional Court

3 23 The draftsmen of Egypt's Constitution recognized that stated constitutional rights and freedoms may be ineffective in the absence of an institution or mechanism to enforce them For this reason, the Constitution established the Supreme Constitutional Court to adjudicate the constitutionality of laws and regulations and to render authoritative constitutional interpretations of legislative texts As organized by Law No 81/1969, the Supreme Constitutional Court has jurisdiction in the following cases

(a) To adjudicate the constitutionality of laws or statutes challenged on grounds of non-constitutionality in other courts

(b) To make binding interpretations, at the request of the Minister of Justice, of legal provisions in order to ensure that the courts apply them in a unified manner

(c) To adjudicate requests to suspend the application of judgments issued by legal bodies formed to decide disputes involving the government and the public sector, and

(d) To decide jurisdictional conflicts between other judicial bodies

3 24 The judgments of the Supreme Constitutional Court are final and are not subject to appeal or review

Section F. The State Security Courts

3 25 As the name implies, the state security courts are concerned with matters affecting the security of the State and are authorized by Article 171 of the Egyptian Constitution To date,

Egyptian law has created two types of state security courts Namely, permanent and emergency In each case, the courts in turn are organized into summary state security courts for misdemeanor state security crimes and high state security courts for felony state security crimes

(1) **The Permanent State Security Courts:**

3 26 The permanent state security courts are governed by Law No 105/1980 as amended by Law No 50/1982 Each high state security court consists of 3 appeal court judges and each summary state security court, one judge In addition, the President of the Republic is empowered to appoint 2 military officers to join the court Under said law, the state security courts are criminal courts with jurisdiction over crimes affecting the security of the State, examples of which are as follows

(a) Crimes under the penal code directed against the Government both inside the country or from abroad and bribery

(b) Crimes under Law 34/1972 regarding the protection of national unity such as the following

(1) Establishing or organizing or directing an illegal group or an organization with the help of a foreign government,

(2) Illegally, resisting the State policy with the help of a foreign government,

(3) Spreading lies or untrue stories with the intention to harm the country with the help of a foreign government

(c) Violations of Presidential Decree No 2/1977 on the protection of citizens and the freedom of country, such as

(1) The establishment of secret organizations for the purpose of attacking the society structure or system,

(2) The destruction of public and private property which results from a gathering of people,

(3) Strike

(d) Crimes specified under Law No 40/1977 concerning political parties as amended by Law No 37/1979

(e) Crimes under Law 163/1950 regarding compulsory price and fixed profits such as

(1) Selling any price-controlled goods at a price higher than the price fixed by the Government, refusing to sell price-controlled goods at the officially fixed price, or forcing the buyer to buy goods other than those which have fixed prices,

93

(2) Selling meals or drinks at prices higher than officially fixed prices,

(3) Renting rooms in hotels at rates higher than officially fixed prices

(f) Crimes specified in Law 49/1977 concerning the lease and sale of housing and the relationships between landlord and tenant

Thus, although price controls may have been abolished on a number of goods, to the extent that they still exist, violating them may constitute crimes over which the State Security Courts have jurisdiction

3 27 Judgments issued by the permanent state security courts are subject to appeal or, alternatively, to a request for a new trial

(2) Emergency State Security Courts

3 28 The emergency state security courts are governed by Law 162/1958 as amended by Laws 60/1967 and 37/1972 concerning the declaration of state of emergency Such courts exist so long as the state declared of emergency is in effect Under this law, the President of the Republic has power to issue orders and decrees which have the force of law and the emergency security state courts have jurisdiction over violation of such orders These courts also have jurisdiction over crimes transferred to them by order of the President of the Republic For example, Order No 7/1967 transferred the following crimes from the public law to the emergency state security courts Felonies and misdemeanors concerning security of the State from inside the country or abroad, damaging of transportation, bribery and crimes affecting food supply

3 29 The real difference between the emergency state security courts and the permanent state security courts is that the judgments of the former are not subject to any kind of appeal and they are considered final after approval of the President of the Republic After reviewing the court judgment, the President may either sustain the judgement, change or abolish it altogether In the latter case, the President may order a re-trial before another court provided that he gives reasons in writing

Section G. The Military Courts

3 30 The military courts are organized by Law No 25/1966 pursuant to Article 183 of the Egyptian Constitution which states as follows

> "The law shall organize military judicature, prescribe its competencies within the limits of the principles prescribed by the Constitution "

Under the law, the jurisdiction of the military courts extends to matters involving military personnel and discipline and to specified state security crimes transferred to the military courts by a decree of the President of the Republic Furthermore, once a state of emergency is declared any crimes can be transferred to the military court, by the President of the Republic

3 31 The only method of appeal against military court judgment is a petition presented to the supreme commanding officer, i.e., the President of the Republic who shall have the power to

(a) Reduce the sentence and change it to lesser one,

(b) Abolish the sentence,

(c) Suspend execution of the sentence,

(d) Abolish the judgment without further action or with an order for a re-trial before another court, supported by written reasons

Section H. Prosecutors and Government Trial Lawyers

(1) The General Prosecution

3 32 The General Prosecution -- known as the *Niyaba* -- is a branch of the Ministry of Justice which, unlike prosecutors in Anglo-American legal systems, is closely related to the judiciary and is modeled on the French *parquet* Although, the general prosecutors prosecute criminal cases, they are expected to adjudge each case independently like a judge before taking action and are charged with protecting the public interest generally As already noted, the General Prosecution is represented on the Supreme Judicial Council and on the general assemblies of the various ordinary courts

(2) The Administrative Prosecution

3 33 Organized by Law 117/1958, the Administrative Prosecution is an independent authority under the overall supervision of the Minister of Justice, and separate from the General Prosecution

3 34 The Administrative Prosecution has authority to carry out the following tasks

(1) Initiate and conduct any necessary investigation to discover violations of laws, regulations or duties by government officials and agencies as well as financial irregularities and misuse or misappropriation of government property

(2) Review complaints regarding violations of the law or negligence in performing official duties by government officials and agencies

(3) Report violations discovered and recommend appropriate disciplinary action including fines, suspension or dismissal to the relevant government authorities Where cause is found to believe that a crime has been committed, the matter is referred to the General Prosecution for review and appropriate action

(3) The State Litigation Authority

3 35 The State Litigation Authority is an independent juridical authority under the overall supervision of the Minister of Justice Organized by Law 75/1963, it defends government agencies in civil and commercial lawsuits filed against them before courts or other dispute resolution bodies including local and international arbitration tribunals The President of the State Litigation Authority has the power to retain any private lawyer to act in special cases on behalf of Egyptian government agencies before foreign courts

(4) The Socialist Prosecutor and the Courts of Ethics:

3 36 A unique institution of the Egyptian government is the "Socialist Public Prosecutor" Created by Article 179 of Egypt's 1971 Constitution, the Socialist Public Prosecutor answers to the People's Assembly and is "responsible for taking the measures which secure the people's rights, the safety of the society and its political regime, the preservation of the socialist achievements and commitment to the socialist behaviour " To date, the Socialist Public Prosecutor has primarily been responsible for implementing the "Law for Protection of Ethics against Misbehavior", Law 95/1980 Known as the "Law of Shame", this legislation proscribes a broad range of conduct which is discussed below The law also creates special courts namely the Court of Ethics and the Higher Court of Ethics which hears cases against those accused of violating the Law of Shame The Socialist Public Prosecutor and the Courts of Ethics fall outside of the supervision of the Ministry of Justice and are independent of the ordinary and administrative court system

Section I. Lawyers and the Legal Profession

3 37 Lawyers are organized within a national bar association known as the "Lawyers Syndicate" which is an independent legal entity whose governing body is a council elected by the a general assembly of members The Lawyer's Syndicate maintains the general register of lawyers at its headquarters which is located in Cairo at 51 Ramses Street The register contains names of all lawyers enrolled as members of the legal profession Annexed to this general register are two lists

(a) A list of non-practicing lawyers, and

(b) A list of practicing lawyers which consists of four parts

(1) Lawyers entitled to practice before the Court of Cassation and the Supreme Administrative Court at the Council of State,

(2) Lawyers entitled to practice before the courts of appeal and the court of administrative justice,

(3) Lawyers entitled to practice before courts of first instance and the lower administrative courts, and

96

(4) Lawyers serving their apprenticeship

3 38 The organization and activities of the legal profession are governed by Law No 71/1983 In general, no one may practice as a lawyer or be appointed to the legal staff of a public organization, general authority or any economic unit attached thereto unless his name has been registered on the official list of practicing lawyers Moreover, no court or public department may accept the appointment of a person to act as an attorney unless such person has also been registered

3 39 To become registered as a lawyer, a person must be an Egyptian national or the national of another Arab State which grants reciprocal treatment to Egyptian lawyers, however, the Council of the Lawyer's Syndicate may waive the latter requirement for national considerations in individual cases by a three quarters majority vote In addition, the candidate must hold a law degree from an Egyptian Law Faculty, or a degree considered equivalent thereto in which case he must also pass an equivalency examination A prospective lawyer must also be of good moral conduct and reputation, must possess full civil rights, and must not have been convicted of a crime

3 40 To be able to practice before the courts of first instance and the administrative courts, a lawyer must have completed his apprenticeship, which normally lasts for two years but can be shortened to one year if he holds two diplomas of higher studies or a diploma from a Higher Institute for the Legal Profession In order to be eligible for registration as a lawyer entitled to practice before the courts of appeal and the court of administrative justice, the lawyer must have actually practiced law for a period of at least three years from the date he was accepted to practice before the court of first instance and administrative courts And finally, to be eligible to appear before the Court of Cassation and the Supreme Administrative Court of the Council of State, a lawyer must actually have practiced for seven years before the courts of appeal and the lower administrative courts and his application for registration must also be approved by a special committee consisting of the President of the Court of Cassation, the Attorney General, the President of the Bar Association and two members selected by the Lawyer's Syndicate Council

3 41 Registered lawyers have the exclusive right to represent other persons in courts, public prosecutors' offices, arbitration proceedings, police headquarters, legislative and administrative committees, and all other organs conducting criminal, administrative or social investigations Non-lawyers are not allowed to give legal consultations on a regular basis or to undertake any kind of legal work or proceedings for others Moreover, contracts with a value of L E 1500 or more may not be registered, approved, or certified at the office of any notary unless they have been signed by a lawyer registered to practice before the court of first instance Any private company or joint stock company whose capital exceeds L E 50,000 must, in addition to whatever legal staff it may employ, have as a legal advisor a lawyer qualified to practice before the courts of appeal

3 42 All lawyers are required to respect the ethics of the profession, to obey the internal regulations of the Lawyer's Syndicate, to fulfill their professional obligations and to avoid activities and behavior that dishonor or degrade the legal profession Failure to do so may result

in punishment which may take various forms, including warning, reprimand, suspension from practice, or permanent disbarment

98

EGYPTIAN LEGAL AND JUDICIAL SECTOR ASSESSMENT

REPORT AND RECOMMENDATIONS

VOLUME II

MAIN REPORT

PART B.

CONSTRAINTS IMPOSED ON

FREE MARKET ECONOMIC DEVELOPMENT

BY EGYPT'S EXISTING COURT SYSTEM

AND DISPUTE RESOLUTION MECHANISMS

CHAPTER 4.

INTRODUCTION AND OVERVIEW OF CASE RESOLUTION PROCESS

Section A. Introduction

4 01 Few matters are more important to encouraging private sector investment and business activity than providing Egyptian and foreign investors and businesses with confidence that any unresolved dispute which they may come to have with any party -- including the Government, suppliers, customers, employees, partners, shareholders, lenders, borrowers, and other third parties -- ultimately could be settled by an independent, impartial, efficient and competent court or arbitration tribunal in a timely, effective manner according to clear, predictable rules of law and procedure A truly free market economy depends upon the actors in the market all being able freely to make and amend contracts and agreements which govern their commercial rights and relationships For the system to work, private property rights and commercial contracts freely made and entered into must be enforceable In turn this requires that there be a court or other institution able, willing and empowered to enforce contracts impartially, quickly and effectively

4 02 Fortunately, as noted at the outset of this report, Egypt has a complete, well-established system of civil, commercial and administrative courts Equally important, there is a long-standing tradition of judicial independence in Egypt which indeed, as noted above, is required by Egypt's 1971 Constitution and made effective through laws which give the judiciary control over its own internal affairs The reputation of Egypt's courts for independence was seriously compromised in the late 1960's when the then President of Egypt took court administration away

from the Supreme Judicial Council and placed it under the direct control of the Ministry of Justice This was accompanied by a mass firing of judges (known in legal and judicial circles in Egypt as the "massacre" of the judges) As already recounted in Paragraph 3 01 above, the 1971 Constitution -- ratified under President Sadat -- re-introduced the principle of independence of the Judiciary in clear and unmistakable language

4 03 To his great credit, President Mubarak took important practical steps towards realizing the constitutional principle of judicial independence by returning control of the ordinary courts to the Supreme Judicial Council pursuant to Law 35/1984 and the administrative courts to the Council of State pursuant to Law 136 of 1984 Now, the Supreme Judicial Council and the Council of State again have the power to recruit, train, assign, transfer, promote and discipline judges instead of the Minister of Justice As a result, the courts of Egypt are once again seen to be more truly independent Moreover, despite many problems -- discussed in detail below -- which militate against it, Egypt's judiciary still retains an overall good reputation for independence, and fairness among the public generally

4 04 Thus, in recent years, courts have held against the government in some highly visible and well publicized cases For example, when the government refused to certify the new Wafd as party as eligible for taking part in elections, the party went to court and obtained a decision from the Supreme Administrative Court notifying the government decision and upholding the eligibility of the party for certification The government did not contest this decision There have been other publicized cases of judicial independence where the courts have held against the government, and the government has abided by the courts' rulings

4 05 Despite these recent, laudable advances in strengthening the overall constitutional position of the courts in Egypt, the overall general reputation and ability of the judiciary to deliver effective justice in commercial cases are burdened and threatened by a number of problems including the following

(a) Practices, procedures and conditions which invite and encourage delays in processing cases, including, but not limited to

(1) Archaic and inadequate methods of case administration -- e.g., lack of clear and consistent case calendaring and case management procedures,

(2) Failure to award interest or damages which are sufficient to compensate creditors for losses due to inflation resulting from case delays thereby encouraging litigants -- especially delinquent debtors -- to continue fighting even bad cases

(3) Failure to award a winning party actual attorneys fees and costs of litigation from losing parties who are at fault which further encourages delinquent debtors to delay cases

(4) No system of effective court imposed sanctions against parties who wilfully delay and obstruct the progress of cases

(5) Virtually unrestricted rights of losing litigants to appeal cases all the way to the top court

(6) Lack of commercial law experience, and lack of advanced seminars, education and training among the judiciary, court officials and -- to a lesser extent -- lawyers

(7) Excessive reliance on court experts -- who often are underqualified -- to make findings on both facts and law in commercial cases

(b) Difficulties in enforcing money judgments arising from -- among other things -- lack of fully effective means to discover assets belonging to a judgment debtor coupled with the high court fees required to obtain a final judgment and an order of enforcement

(c) Lack of a modern, clear and complete framework for local and international arbitration of commercial and investment disputes

(d) Delays and other problems in quickly and effectively enforcing local and international arbitration awards

(e) The need for further enhancement of the independence of the courts from the executive agencies of the Government by recruiting more judges from outside the bureaucracy in general and from outside the ranks of prosecutors in particular

(f) Low pay for judges and other court officials which constitutes an invitation to corruption

Section B: Overview of the Case Resolution Process in Egypt

4 06 Before analyzing the problems listed in Paragraph 4 05 above in greater detail in subsequent sections of this report, it is worthwhile to review the process used to reach a final judgment in commercial cases in both the ordinary civil courts and the Council of State's Administrative Courts

(1) The Ordinary Courts of Urgent Action, Summary Courts, Courts of First Instance and Courts of Appeal

(a) Filing

4 07 First, the case or appeal is filed, which involves paying initial court fees, obtaining a date for the first hearing, recording the case in the Court Register, and stamping the original writ of summons and the copies needed for service upon the defendants in a first instance lawsuit or the respondents in an appeal

(b) Service of the Writ of Summons

4 08 Filing the case as described above would be followed by serving the writ of summons on each defendant or respondent, this is undertaken by a court bailiff Following the service of

161

the writ, the original thereof should be returned to the court clerical office (*greffier*) for filing in the dossier of the case

4 09 Court bailiffs are required to serve the writ of summons within 30 days from the date of receiving it from the greffier who is required to deliver it to the bailiff on the day following that on which the case is recorded Failure to effect the service of the writ within the said period of 30 days would expose the court greffier or the bailiff who caused the delay to a penalty of paying a fine not less than L E 1 and not more than L E 10

4 10 If the writ is not served within three (3) months due to the plaintiff's fault or intervention, the court may, at the request of the defendant, consider the case as never had been filed This would not prevent the plaintiff from filing a new case for the same claim unless the claim is barred by statutory time limitation

(c) Appearance of the Parties before the Court

4 11 Then comes the first appearance of the parties before the court which is governed by the following rules

(a) If both the plaintiff and defendant fail to appear at the first hearing, the court would strike the case off at the hearing roll Then, the case is not renewed within 60 days, it would be considered as having not been filed But this would not deprive the plaintiff from filing a new case for the same claim provided that such claim was not barred by statutory time limitation

(b) However, if the defendant appears at the first hearing while the plaintiff fails to appear, the court is required to pass its resolution on the merits of the case if the case is eligible for resolution -- i.e., the defendant has submitted pleadings and evidence

(c) If the defendant fails to appear at the first hearing, and the writ of summons is proved not to have been served to him personally, the court in all cases -- except for those lodged before the court of urgent action -- should delay the case to enable the plaintiff to have the writ again served on the defendant by the court bailiff

(d) If the writ was properly served and the litigants appear before the court in person or through their attorneys or are deemed to have been appeared as in the case of a defendant failing to appear despite the fact that the writ of summons was served to him personally, then the case would proceed to submissions of evidence by all parties and thereafter to judgment

(d) Trial Submissions of Evidence and Legal Arguments

4 12 From the first hearing through judgment, the following factors characterize the case resolution process in the ordinary courts of Egypt

(a) There is no trial as in the United States at which all of the evidence is presented at one time rather, the parties begin submitting evidence from the filing of the case and continue submissions until judgment[11]

(b) Most civil and commercial cases are based on documentary evidence presented by the parties Witness testimony is rarely admitted although at any point, a judge can refer the case to testimony on the motion of any party or the judge's own motion

(c) The courts often refer cases to non-legal experts from the Expertise Office at the Ministry of Justice to resolve specified issues

(d) Documents submitted in a foreign language must be referred to the Ministry of Justice Translation Office for an official translation if requested by a party

(e) Minimum Time Allowed for Appearance before the Court

4 13 The so-called "time granted for appearance" is the minimum time prescribed for the period between the date of serving the writ of summons and the date of the first hearing This minimum time varies depending on the court level and degree as follows

(a) For the Court of Urgent Action, the minimum time is 24 hours

(b) For the Summary Courts, the minimum time is eight (8) days

(c) For both the Courts of First Instance and the Courts of Appeal, the minimum time is fifteen (15) days

4 14 In cases of necessity, such minimum time may be shortened by a special order from the judge of urgent affairs For instance, it could be shortened to only 1 hour with respect to cases lodged before the court of urgent action

4 15 From the foregoing, it should be noted that the law has set minimum times for the first hearing before the various ordinary courts but has not set maximum times

(f) Code of Procedures Timing Rules

4 16 The Code of Civil and Commercial Procedures does set forth a number of rules aimed at moving cases along such as the following

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[11] Egypt-U S Legal Exchange Project, Phase 1 (February 7 - 18, 1993) Report at p 17 (unpublished)

> " the process of review and court appearances is ongoing with no trial-like event at which witnesses appear and evidence is presented Evidence is accumulated over a period of time and added to the court file When all of the evidence has been collected, the case is argued and submitted for decision "

(a) For instance, Article 65 of the said Code requires

(1) The claimant "to have the statement of commencement of the action accompanied by all documents supporting his claim as well as by a written memorandum explaining his claim"

(2) The defendant "to file with the greffier his written pleading and supporting documents three days before the first scheduled hearing"

No penalty is prescribed for non-compliance with Article 65, however

(b) Furthermore, Article 97 of the said Code supplements Article 65 by instructing the court that

(1) Documents submitted at the first hearing which could have been submitted earlier with the pleadings in compliance with Article 65, shall be accepted by the court if such acceptance does not cause postponement of the case, or

(2) If submission of such a document does cause a postponement, the court must penalize the party causing the delay by a fine not less than L E 3 and not more than L E 20

(c) Also, Article 76 of the procedures code requires the bailiff to notify the writ of summons effectively within 30 days, as noted previously in Paragraph 4 09 above The penalty prescribed for failure to do so is a fine ranging between L E 1 and L E 10

(d) Finally, Article 98 of the said Code provides that

"No case shall be postponed more than once for the same reason and any such postponement shall be for a period not exceeding 3 weeks"

(2) Ordinary Courts of Appeal -- Special Factors

4 17 The first level of appellate courts and first instance courts acting as courts of appeal for the summary courts follow the same process in reaching a judgment as that outlined above for all of the ordinary courts In addition the following factors should be noted

(a) Except for certain highly specific judgments such as a judgment suspending termination of an employee, a losing party at first instance has an automatic right to appeal the case, and the appellate tribunal can review both facts and law, essentially re-hearing the entire case in full Moreover, litigants are not restricted to the prior case record, but can introduce new evidence and new theories and arguments (As is noted below, this is not true of the Supreme Administrative Court or true of the Court of Cassation, but is true with other ordinary courts)

(b) The scope of review by the court of appeal is considerably extended by a doctrine adopted and confirmed by the Court of Cassation, called the "Appeal Carrying Effect" According to this doctrine, the Court of Appeal is bound to consider all the arguments introduced by the appellant before the lower court even if such arguments are not included in the statement of appeal filed by the appellant This throws a heavy burden on the appellant judges to review the entire record of the case presented in the lower court The Egypt-U S Legal Exchange Project pointed out its Phase 2 Report that the underlying justification for this doctrine may be an "institutional distrust of the competence of junior judges sitting in the lower courts "[12]

(3) **Court of Cassation**

4 18 As noted above, the Court of Cassation is the supreme court at the apex of Egypt's system of ordinary courts Also, it is one of three supreme courts, ranking equally with the Supreme Administrative Court and the Supreme Constitutional Court and having no jurisdiction or authority over them Primarily, the Cassation Court hears appeals from the ordinary Courts of Appeal as described in the following paragraphs

4 19 Appeal before the Cassation Court is open for 60 days from the date the appealed judgment was delivered The Cassation Court considers only pure legal issues and not questions of fact Unlike the lower courts of appeal, no arguments other than those set forth in the statement of appeal can be used at any later stage, unless such argument pertains to the public order of the country

4 20 Filing an appeal with the Cassation Court does not stay the execution of the appealed judgment unless the Court decides otherwise at the request of the appellant In the event that the Court orders the stay of execution, it may require the party who solicited such order to offer a guarantee adequate to secure the other party's interest Also in such a case the Court must schedule a hearing on the appeal to be held within 6 months from the date of ordering the stay of execution

4 21 It is to be noted that all submissions from all parties (statement of appeal, supporting documents and written pleading) are to be made with the court clerical office (greffier) within the time limits prescribed in the law The greffier is forbidden from accepting any submissions beyond those limits, unlike the lower ordinary courts Accordingly, the statement of appeal is required to be filed with the greffier of the Cassation Court or of the Court of Appeal which delivered the appealed judgment within the aforementioned 60 days

4 22 The statement of appeal should be accompanied by the written pleading, supporting documents and a true copy or the notified copy of the appealed judgment

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[12] Egypt-U S Legal Exchange Project, Phase Two at page 16 (April 4-20, 1993, unpublished)

4 23 The greffier is required to record the appeal on the same day that the statement of appeal is filed and to deliver to the bailiff, no later than the succeeding day, the original of the statement and a sufficient number of conformed copies for notification of the same to respondents

4 24 Court bailiffs are required to notify the respondent of the statement of appeal within no longer than 30 days However, failure to do so within the said time limitation does not invalidate the appeal, but, as previously noted, would expose the court official who caused the delay to a fine ranging between L E 3 and L E 20

4 25 The respondent may file his written pleading accompanied by supporting documents with the greffier within 15 days from the date on which he was notified of the statement of appeal

4 26 If the submission is made by the respondent as above, the appellant would have the right to comment thereon through a written note accompanied with necessary supporting documents to be filed with the greffier within 15 days

4 27 If the appellant does submit a comment, the respondent would be entitled to supplement his defence by filing a written note within another 15 days

4 28 After expiration of all the above dates, the greffier would deliver the file of the case to the General Prosecution which is required to file a written brief outlining its legal views as soon as possible, although no deadline is set The General Prosecution's brief is not restricted to matters or legal research considered by the lower courts, but may address any issues considered by the Prosecution to be relevant or important [13]

4 29 Following the submission of the Prosecution's written view, the appeal would be reviewed by the court held internally in the so-called "Consultation Chamber" to decide whether or not the appeal is valid (i e., whether filed within the time limitation prescribed in the law, in compliance with the legal procedures and based on strictly legal issues) If the chamber comes to the conclusion that the appeal is invalid, the appeal would be dismissed If, on the contrary, it finds out that the appeal is valid, the Court would schedule a date for a hearing

4 30 Note Except for the request to stay execution of the appealed judgment, no oral pleadings are allowed before the Court of Cassation, unless the court itself decides to hear oral pleading to clarify specific unclear points So, the above-mentioned scheduled hearing would be for the only purpose of setting a date for the announcement of its judgment

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[13] Egypt-U S Legal Exchange Project Report, Phase One, at page 15 (February 7-18, 1993, unpublished)

4 31 If the appeal is accepted, the court must lay down the legal principle on which the acceptance is relied upon and order the case to be returned to the same court which delivered the appealed judgment for re-consideration, but to a bench different from that which delivered the appealed judgment In re-considering the case, the court to which the case is returned is bound to honor and to comply with the legal principle(s) laid down by the Cassation Court

4 32 The Cassation Court does not deliver a final judgment on the merits of the appeal except in two events (a) Where the appeal is based on a jurisdictional issue, and (b) Where the appeal is the second action taken against the appealed judgment

4 33 If the appeal is dismissed, the L E 25 required to be deposited with the court as a guarantee would be entirely or partially confiscated Additionally, if it finds that the appellant was motivated by bad faith in filing the appeal, the court may award compensation to the other party Our office does not know of any case, however, where such compensation was ever awarded

4 34 The right to appeal before the Court of Cassation is not limited to the litigants involved in the dispute The Attorney General also has the right to appeal any case -- even civil and commercial cases -- in the interest of the law itself and the public interest

(4) The Administrative Court of First Instance:

4 35 Proceedings aimed at challenging an administrative decision by a government agency should be filed within 60 days from the issuance of such decision or from the date of its publication in the *Official Gazette* or in the publications issued by public corporations or from the date it was notified to the person concerned or affected A suit for breach or enforcement of an administrative contract -- i.e., a contract with a government agency for public works -- should be filed within the applicable limitation period

4 36 Proceedings are initiated by filing the statement of commencement of the action with the court clerical office The statement should include the address of the claimant and that of the defendant as well as the substance of dispute

4 37 Such statement would be notified to the administrative authority which issued the challenged decision and to whomever else is concerned within no longer than seven (7) days from filing by virtue of a registered letter with receipt of acknowledgment

4 38 The claimant may couple the statement of commencement with his written pleading

4 39 The Administrative Authority (the defendant) must submit its written pleading coupled with supporting documents within 30 days from its receipt of notification

4 40 The file would then be transferred to the court commissioner, who is a member of the Council of State, for preparation of the case within 24 hours from the expiration of the aforesaid 30 days within which the defendant is required to file his submissions

4 41 Further submissions by both litigants may be made to the commissioner who would grant delays to enable litigants to make their submissions The commissioner may not grant more than one delay for the same reason

4 42 After preparation of the case, the commissioner would prepare and file with the court a report outlining his own view of the case and the kind of resolution which he believes the court ought to reach

4 43 Within three days from filing the commissioner's report, the commissioner must produce the file to the president of the court to set a date for the hearing

4 44 The court clerical office would advise involved litigants of the date of said hearing by virtue of registered letters

4 45 The President of the court may request the commissioner or the litigants or any one of them to produce any specific clarification that the court may consider necessary

4 46 The court may not accept from any party any argument, request or paper that could have been made or submitted before the hearing was set down unless it is proved that justification for using such argument or making such request or submitting such paper arose only after setting the hearing or were until that time unknown to the said party However, and without prejudice to the right of using arguments pertaining to the public order at any time, the court may find that justice warrants the acceptance of any of the aforementioned new arguments, requests or papers In such a case, the court may impose a fine of not more than L E 20 on the negligent party Such a fine may be paid to the other party

4 47 The court would then set a hearing for delivery of its judgment

(5) **Supreme Administrative Court**

4 48 The Supreme Administrative Court is the court at the apex of the administrative courts, on a par with the Cassation Court and the Supreme Constitutional Court and hears appeals from the Administrative Courts of First Instance as described in the follow paragraphs

4 49 Appeal before the Supreme Administrative Court is open for 60 days from the date of the delivery of the judgment which is the subject of the appeal only on strictly legal issues No arguments other than those set forth in the statement of appeal can be used or raised at any later time unless pertaining to public order

4 50 The appeal is processed by means of a report to be filed with the clerical office of the court The appellant is required to make a deposit of L E 10 with the court at the time of filing the appeal, which would be confiscated if the "Appeal Review Bench" dismisses the appeal Such required deposit does not apply to appeals filed by ministers, the Central Audit Authority or the Administrative Prosecution

4 51 Execution of the judgment against which the appeal is filed is not stayed unless the Appeal Review Bench decides otherwise

4 52 The Appeal Review Bench would examine the appeal The chief of such bench may decide to hear the commissioner and the parties concerned The Bench may decide to present the appeal to the Supreme Administrative Court if it feels that the judgment against which the appeal is filed is likely to be reversed or that resolution in the appeal warrants the adoption of an unprecedented legal rule, otherwise, the Bench would, by unanimous vote, dismiss the appeal without presenting the same to the court Such a decision is not open for any appeal

4 53 If the Appeal Review Bench decides to present the appeal to the Supreme Court, all parties involved in the appeal in addition to the state commissioner would be advised of such decision

4 54 The file would then be referred to a commissioner for preparation of the case and a report

4 55 From the time the file is referred to the commissioner until a final resolution is handed down by the Supreme Administrative Court, the very same procedures outlined when discussing the process before the first instance Administrative Court would apply to the appeal before the Supreme Administrative Court

CHAPTER 5

DELAYS IN RESOLVING COURT CASES

Section A Introduction

5 01 Delays in processing cases and reaching judgments represent a serious constraint on private sector economic development in Egypt For example, the general counsel for a major joint venture bank told us that a straight forward unconditional letter of guarantee where there were no real defenses took five years to reach a judgement at first instance and was now in the third year of appeal with no end to the case in sight Our office recently obtained final judgment in case which took over 20 years -- while not usual, such length of time is also not uncommon

5 02 In the commercial context, the old adages "justice delayed is justice denied" and "time is money" are very true Thus, for an investment project or other business, every day that a contract presented to a court for enforcement goes unenforced reduces its value for a number of reasons First, the value is reduced by the rate of inflation Second, costs of enforcement through the courts are constantly incurred in the form of legal fees and lawyers' expenses While legal fees can be low in Egypt, fees for lawyers and law-firms offering high quality services also can be on a par with those in the U S and other industrialized countries depending upon the lawyer or firm involved Moreover, as detailed below, actual attorneys' fees and expenses of litigation normally will not be awarded to the party winning judgment

5 03 Because judgment winners are not compensated for losses in the value of contracts due to inflation or for litigation costs, case delays mean that generally speaking, contracts cannot be fully and effectively enforced by and through Egypt's judicial system

5 04 Case delays arise at virtually all stages of the case resolution process in both the Ordinary and the Administrative Courts Various case delay causes are discussed in the Section below The excellent analyses presented in the Phase 1 and Phase 2 Egypt-U S Legal Exchange Project Reports cited in Paragraphs 1 22 and 1 23 above also should be consulted

Section B: Case Delay Causes

(1) Unreasonably Heavy Case Loads

5 05 A major reason for case delay is the fact that most judges face an unreasonably heavy case load As the Egypt-U S Legal Exchange Project noted in its Phase 1 Report

110

"Lower court judges may confront a docket of over 100 cases for a single day's session They have no choice but to postpone consideration of the majority of these cases "[14]

Indeed, our office knows of courts where judges have dockets of 200 to almost 500 cases per day As noted above, such heavy case loads cause judges to postpone consideration of the cases Meanwhile, more cases are filed, thereby increasing the case load Thus, the courts are caught in a vicious cycle of an ever-increasing case load which, in turn, causes case delays, and case delays then allow the case load to increase even further as unresolved cases continue to be postponed

(2) Outdated, Irregular, Inefficient Case Administration in the Ordinary Courts

5 06 One of the major causes of the increasing case load and resulting in case delays is the lack of up-to-date efficient methods of case administration For example, filing a lawsuit is a 5 step process handled and undertaken by four different court officials mostly located in separate offices These steps are

(a) Assessment by one official of the court fees payable at the time of filing, based on its value as indicated in the statement of the action

(b) Payment to a second official, the cashier, of such fees as assessed

(c) Setting down the date of the first hearing by a third official

(d) Recordation of the case in the court register by a fourth official

(e) Stamping the original writ of summons and as many copies thereof as may be needed according to the number of defendants and respondent, also by the fourth official

Normally, all of these 5 steps are unlikely to be completed within the same day

5 07 Moreover, there is no specific uniform case management system requiring courts to set a calendar for each case which specifies cut-off dates by which parties must submit responses or by which all documents and evidence must be submitted Although the law establishes minimum times for appearances and submissions as noted in Chapter 4 above, it does not require maximum time limits to be set Thus, as pointed out by the Egypt-U S Legal Exchange Project

"The Egyptian Civil Litigation Process also suffers from an intermittent process with few (if any) enforced time limits imposed on any procedural

[14] Phase One Report, Id at p 2

step The judiciary has no case management approach In particular, calendars are rarely established, much less enforced "[15]

5 08 In addition, although the Code of Civil and Commercial Procedures, as noted in Paragraph 4 16 above, sets forth deadlines and requirements designed to move case processing along, these provisions generally are not observed by the courts This is partly because the courts have concluded that all such dates and deadlines are "organizational" and, therefore, are not binding upon them Accordingly, it is difficult for the Ministry of Justice or even the Supreme Judicial Council to order judges to obey these deadlines because of the principle of independence of judges Deadlines for submissions by the parties appear to be effective only in the case of the Cassation Court where such deadlines are directed not at judges but at court clerks who, as noted above in Paragraph 4 21, are forbidden by law not to accept any submissions from any party beyond the time limits prescribed by the law therefor

(3) Case Administration Problems in the Cassation Court.

5 09 Although the Cassation Court does have an effective system to motivate the parties to make their submissions in a timely fashion by simply forbidding the greffier to accept submissions after the deadline, cases are also delayed in the Cassation Court by the following case administration gaps and problems

(a) As stated earlier in Paragraph 4 28, representation of the General Prosecution in all types of appeal filed with the Cassation Court is required In this connection, filing a written note by the General Prosecution outlining its views on the validity of the grounds of appeal is mandatory, and the Court would not move to schedule a hearing until after submission of the Prosecution's written note But the law does not set any deadline for the Prosecution to submit its note Accordingly, the appeal could drag on for a long time until the Prosecution submits its note

(b) Then, once the Prosecution submits its written note, there exists no legal time limit between the date on which the Prosecution's note is submitted and the date scheduled for the hearing and final judgment without a clear deadline, the court can delay a hearing indefinitely

(c) Moreover, as already noted in Paragraphs 4 31 and 4 32 above, the Cassation Court cannot reach a final judgment in the first appeal, rather it must remand the case back to the court after setting forth the defects in the judgment and the legal principles upon which they are based

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[15] Phase Two Legal Exchange Report, Id at p 17

(4) Case Administration Problems in the Administrative Courts

5 10 Case resolution in the Administrative and Supreme Administrative Courts also is delayed by lack of a modern, effective case and calendar management system Thus, Administrative Courts cannot move toward consideration of the case except after the commissioner has duly filed his report as explained in Chapter 4 above But, the commissioner is not bound by any deadline for filing such a report Consequently, this step can take months, even up to a year in a relatively simple case Similarly, the court itself is not bound to resolve the case within any time limit after receiving the commissioner's report

(5) Lack of Certain Procedures to Shorten Litigation -- e.g., Summary Adjudication

5 11 As it is pointed out by the Egypt-U S Legal Exchange Project, Egyptian procedures currently lack several techniques which could shorten litigation as follows

(a) There is no system or policy for actively encouraging settlement by judges through mandatory settlement conferences or other procedures[16],

(b) "The Egyptian process does not allow the parties to stipulate to facts which are not in dispute, thereby requiring additional, however, needless fact - finding processes"[17]

There are no effective summary adjudication procedures in effect as known in the U S , such as judgment on the pleadings or summary judgment Non-substantive issues such as those pertaining to jurisdiction or to fatal defects in the proceedings for any reason -- such as a party lacking capacity to have legal standing to sue, for example -- could cause the judge to dismiss the case from the outset, or the judge instead may decide to reserve all issues for final judgment Often, the courts tend to leave all matters open until final judgment Our law firm, for example, has a case in which a sovereign nation is one of several defendants where service has not been made as required under the Hague Convention, to which Egypt has adhered, and under which sovereign immunity has been tendered as one of several defenses Establishing either and both of these grounds would require dismissal of the defendant in question under Egyptian law Despite requests to do so, however, the court has continued to reserve these issues for a later decision

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[16] Phase 1 legal Exchange Report, at p 26, and Phase 2 Legal Exchange Report, at p 17

[17] Phase 2 Legal Exchange Report, at p 18

(6) Short Judicial Year

5 12 Exacerbating the lack of a modern, efficient case administration system is the psychological impact of the formally short judicial year Until recently, judges enjoyed a long summer holiday during which the courts were closed for a full three months every year from the end of June until the end of September, except for urgent cases Moreover, the impact of the holiday extended far beyond the 3-months holiday itself This was because in anticipation of the summer holiday, beginning in April, courts tended to put cases over until October or later Thus, the 3 months holiday effectively caused cases to be delayed for 6 months

5 13 Recently, however, vacation time for judges has been shortened to 45 days In addition, judges are paid double to work for up to 15 days during their vacation Despite these changes, however, the former long holiday schedule so far has continued to exert a strong psychological influence in that, according to the experience of our office, almost no serious action is taken by the courts on civil and commercial cases between April and October The courts still tend to put cases over for at least the three months summer period and usually for almost 6 months Recent pronouncements in the press reflect renewed determination by presiding judges and the Ministry of Justice to eliminate this practice, however An effective case calendaring system should help the courts and the public realize the benefit of the shortened judicial holiday in a more substantial way

(7) Inefficient Service of Process·

5 14 As analyzed by the Egypt-U S Legal Exchange Project, the system of serving process through court bailiffs contributes to delays as well as problems of fairness On the one hand, bailiffs are poorly paid, and the Egypt-U S Legal Exchange Project suggests that some may be enticed by some defendants to say that the defendant could not be found Or the bailiff may state that process has been served when, in fact, it has not[18]

5 15 A related problem is that, in the case of companies, service must be personally served on the company's chief executive officer -- i e , the chairman of a joint stock company or the manager of a limited liability company Proof of delivery by the bailiff to the company's registered address is not sufficient Where a party -- or the chairman or manager of a company which is a party -- is not found, the bailiff delivers the note to the police station and writes a registered letter to the defendant advising him that the note has been delivered to the police station Sometimes, this letter, in fact, is never written or never delivered, however, the courts regard the defendant as properly served under the circumstances based on the bailiff's report of service

5 16 If a party fails to appear, the court will postpone the first hearing for re-notification At the next hearing, assuming there is evidence that process has been

[18] Phase 1 Legal Exchange Report, at p 21

properly served as described above, the party will be treated as served whether he appears in court or not Challenges to service of process, together with responses thereto and corrective action thereof, regularly take up considerable lawyer and court time

5 17 As is done in the administrative courts, a possible solution to the problem of personal service by court bailiffs in the ordinary courts would be to use registered letters with return receipt This system works in the administrative courts because the defendant usually is an official government agency with a known or easily discoverable address A similar system could be used by the ordinary courts at least in the case of businesses registered in the commercial register Thus, service by registered letter with return receipt sent to the address of a party as registered in the Commercial Register could be considered as effective service For individuals, personal service might still be required but perhaps the system could be expanded to license private process servers as in some other countries such as the United States[19]

(8) **Over-reliance on Outside Experts**

5 18 The courts rely excessively on non-legal experts to resolve issues In theory, the experts should be used to resolve questions of fact requiring their expertise Frequently, however, the court will assign the experts to resolve legal issues as well -- such as, e g., ownership rights -- even when no facts are in dispute and only legal issues are required to be resolved

5 19 Upon referral, the Expertise Office at the Ministry of Justice must appoint the expert, a bureaucratic process which invariably takes time No time deadlines are imposed on the experts to produce their report Indeed, the courts do not have control over the Expertise Offices which come directly under control of the Ministry of Justice Therefore, the courts cannot set deadlines for the experts to file the reports outlining their findings

5 20 The experts can take years to submit a report in complicated cases At a minimum, appointment of an expert normally will delay a case for a full year Lawyers whose clients are on the unfavorable side of an expert's report -- once it is submitted to the court -- will often dispute the report and demand the appointment of a new expert, which the courts often agree to do or the judge himself may find that the opinion is inadequate and request a second opinion or refer the matter back to the same expert for further clarification or to respond to questions raised by the report itself In this manner, several experts may be appointed in a single case for the same issue, thereby delaying a case for years until an expert's report survives all challenges

5 21 In recent times, an incentive system to pay experts extra based on the number of cases which they complete has been instituted to encourage the experts to speed up processing of cases To date, however, our office has not found that the incentive system

[19] See Phase 1 Legal Exchange Report, at p 23

has made any difference For example, our office has a case in which we objected to the expert's report over two years ago The judge referred the case back to the Ministry of Justice Expertise Office, which then reappointed the same expert A few weeks ago, almost two years later to the day he was reassigned to the case, the expert submitted a report which was identical to his first report In other words, it took the expert two years to review the case, reach the same conclusions and submit exactly the same report as he had submitted two years previously

5 22 A related problem is that the appointed experts themselves often lack the expertise required Certainly this is the perception of some of the business executives interviewed by us This creates 2 serious potential problems First, the perception that the experts are not well qualified leads business executives to lack confidence in the judicial system, especially in cases where the quality of justice for the case depends upon the quality of the expert's report A second problem is that, if an expert is not truly well qualified, this in itself may delay progress on the case in that lack of knowledge often leads to delayed decisions Outside of Cairo, in the rural governorates, lawyers reported to us in Monofiyya Governorate that delays are experienced from experts charged with determining validity of deeds and documents There appears also to be a shortage of persons who are well qualified to perform such functions in the rural provinces

5 23 One solution might be to shift to the parties the burden of finding and presenting their own expert witnesses who would then be subject to cross examination on their qualifications and their conclusions This system has worked well in the United States The opportunity to present expert witnesses selected by the parties and better qualified experts would substantially build confidence in the judicial system within the business community Hopefully, also, better qualified experts might reduce the period of delay in resolving cases

(9) Easy Opportunities and Incentives to Appeal

5 24 As noted by the Egypt-U S Legal Exchange Project "Parties to civil cases have structural incentives to appeal their cases to the highest court possible "[20] Thus, in cases whose determined value exceeds L E 500 at summary court level or L E 5,000 at first instance court level, a losing party has an automatic right to appeal the case to the next level court of appeal And, since the appellate tribunal can review both facts and law, essentially rehearing the entire case in full, the losing party often is able to obtain a complete new trial of his case This is quite unlike the United States where Appellate Courts are restrict to questions of "law" -- i.e., whether or not the first instance or trial court made a mistake of law in conducting the case Moreover, litigants are not restricted to the prior case record, but can introduce new evidence and new theories and arguments for consideration by the court of appeal Given the advantage of appealing, it is not surprising that the percentage of cases appealed is very high It is estimated that 70 to 80 percent of the cases are appealed

[20] Phase 1 Legal Exchange Report at p 24

116

5 25 Even appeals to the Cassation Court are almost automatic, in that the Cassation Court can decline to consider cases only if the procedural requirements in terms of time and other factors have not been met This is unlike the situation with respect to the administrative court system where the Supreme Administrative Court will not consider a case which the Appeal Review Board feels is unlikely to be reversed Similarly, appellate courts in the United States have a clear option to leave lower court judgements standing

5 26 Appeals add significantly to the final resolution of a dispute -- at least another three months, very often two to three years, and not infrequently ten years or more, to the final resolution of a dispute -- for the following reasons

(a) The automatic right to appeal coupled with the limited power of appellate courts -- even the Cassation Court -- to decline to hear appeals and leave lower court judgments standing[21]

(b) Duplicative procedures caused by the power of the review of both facts and law by the appellate tribunal allowing the case to be reheard in full,

(c) The requirement that the Court of Appeal consider all arguments of the appellant raised in the court below even those which are not set forth in the statement of appeal under the doctrine of the "Appeal Carrying Effect" discussed above in Paragraph 4 17 (b),

(d) The rule that, except in very limited circumstances, as discussed in Paragraphs 4 31 and 4 32, the Cassation Court cannot finally dispose of the case unless it comes back up on a second appeal, rather the case must be remanded back to the Court which made the error, although to a different bench than on the first round

(10) Excessive Court and Government Fees and Taxes

5 27 Another factor which adds tremendously to the case load of the courts are the disputes between litigants and the courts themselves or between private parties and other government agencies over court and other fees for government services, as well as taxes

5 28 The problem arises from the fact that court fees in Egypt are not a flat amount but are calculated as a percentage of the "value" of the case As already noted, when a claimant files a case, part of the procedure is for court officials to estimate the "value" of the case At the case filing stage, the claimant is charged a relatively low nominal flat amount on account of the ultimate total estimated court fees, but the "value" of the case still must be estimated at this point Then, in case the claimant should lose the case, he would be assessed on the value as initially estimated (As noted in Paragraph 5 06 above, this procedure already delays matters by involving 2 or 3 officials, one of whom

[21] Phase Two Legal Exchange Report, Id at p 24

117

estimates the value and the other of whom receives the money with the third registering the case)

5 29 If the claimant wins, the losing party in theory is required to pay the judicial fees to court, but the claimant cannot obtain an enforcement order before such judicial fees are paid The result is that the judgment creditor usually pays the judicial fees and then seeks reimbursement for that amount from the losing party Obviously for judgments which are high -- say in the millions of Egyptian Pounds -- the judicial fees of court can be very large and the claimant runs the risk that he may never recover these fees, since the judgment debtor may ultimately be insolvent and unable to pay the judgment We have been advised by a former judge that there is a special collection unit in the Ministry of Justice tasked with the job of collecting judicial fees from losing defendants He further has stated that, although the court clerks often try to obtain court fees from judgement winners before they will issue an execution order, it is possible to get the Chief Judge of the court to order execution of a judgment without payment of the fees The trial lawyers in our office state, however, that, although an exemption of such fees can be obtained for low income individuals, it is virtually impossible to obtain an execution order in commercial cases without the judgment winner first paying the fees

5 30 Moreover, for a period of 5 years after the court fees become due, court officials may re-assess the value of the case If they discover that they originally underestimated the value of the case and consequently the amount of fees, they will issue a claim for the difference to the claimant In any case, as the 5-year statutory limit approaches, court officials will very often issue claims for additional fees simply to keep the period open Parties receiving the claims, in order to protect themselves will sue in order to keep from having to pay the additional fees claimed to the court Thus is yet another case added to the courts' rolls

5 31 Needless to say, estimating the value of a case becomes difficult in cases where the award is the determination of the ownership of property or an order for the return of property as opposed to monetary amount The problem then becomes that of ascertaining the actual value of the property Indeed, our office has one case where court officials have issued a claim for additional fees of L E 2 million based upon a reassessment of the value of an oil concession which the court had ordered returned to our client by the government

5 32 This same phenomenon occurs with respect to many other government fees and taxes For example, fees for land registration are 12 percent of the "value" of the land When a registrant approaches the land registry to register a piece of land, the registry officials estimate the value of the land and charge the applicant a nominal amount upon submission of his application Later, once the investigation procedures have been completed, but before the land will be registered, the full amount of fees must be paid Thereafter, land register officials have a total of five years to make a claim for a difference if they have under-estimated the value of the land

118

5 33 As in the case of court fees very often before the 5 years have expired, land registry officials will issue a claim for additional fees based on reassessment of the value of their land, these claims often are issued simply in order to keep the period open for reassessment In order to avoid having to pay the claim immediately, a land registrant will file a case against land registry officials, thereby further swelling the court rolls The same phenomenon occurs with respect to assessment of land taxes, income taxes and other government taxes and fees based on the percentage of the value of property or income Our office believes that there are thousands of such cases protesting additional assessments for court fees, government fees and taxes, which are clogging the court rolls

5 34 This system of assessing and re-assessing of government fees creates two major problems for private sector investment in business activity

- First, there is substantial uncertainty generated by a system which leaves open amounts due to the government for fees and taxes for a period of five years at a minimum and often for many years of indefinite duration after that, when the government issues additional claims, and

- Second, thousands of additional cases are added to the court rolls clogging the system and delaying resolution of other cases

5 35 The business uncertainty and the additional cases could be eliminated -- and business activity consequently encouraged -- by the following means

(a) For government fees, by changing to a system of flat nominal fees, or any other system of fees not based on estimating value",

(b) For taxes, by reducing the time period within which officials have to correct mistakes or re-assess value Whatever is lost in terms of government revenues will be regained many times over from an increase in business activity resulting from increased certainty and reduced pressure on the court system, as well as time, expense and efforts saved of governments officials Shorter periods and more certainty will save time and expense for the government as well as for private business

5 36 Another source of needless cases are the injunctions and restitution suits frivolously filed to delay enforcement of judgements as detailed below in Chapter 6 Substantial sanctions for frivolous suits could significantly reduce their number

(11) Lack of Judicial Specialization Orientation and Refresher and Advanced Training in Commercial Law Courses

5 37 Judges handling civil and commercial matters lack training, background experience and specialization in these fields As was noted in Chapter 1 above, Egypt's 20 years of socialism severely curtailed the experience of the Egyptian Judiciary with corporate and commercial litigation In addition, as the Egypt-U S Legal Exchange

119

Project has pointed out, members of the judiciary work their way up through the criminal justice system serving as prosecutors and, therefore, have no experience in litigating civil and commercial matters except in highly specialized circumstances such as those involving financial crimes[22] Despite an Egyptian legal requirement that 25 percent of the judges should be appointed from practicing private attorneys, this seldom occurs[23] Such a step, properly handled, conceivably could be a means of expanding significantly the number of judges coming to the bench with commercial law experience

5 38 Additionally, judges lack training as well as experience Although prosecutors have an initial 3 months' course in practical training at the Judicial Institute in Abbasya, courses relate to the practical aspects of becoming a prosecutor such as conducting investigations, questioning witnesses and preparing cases[24] Judges, however, receive no orientation to speak of and there are no refresher or advanced courses for judges in the commercial or civil law fields As a lawyer interviewed in the Fayoum told us

> "The judges are untrained and their judgments are based on nothing Filing a lawsuit is nothing more than engaging in a legal lottery "

5 39 As another lawyer interviewed by us in the Fayoum pointed out

> "Judges must be well prepared to carry out the functions required from them as judges It is not enough that they reach the age of 30 years for them simply to be transferred from the prosecution to the judicial system There must be special colleges for the judges to study to become prepared for the job "

5 40 Moreover, as noted in Paragraphs 3 12 and 3 13 above, although judicial specialization is required in theory, in fact, there is no specialized commercial law bench

5 41 Because they lack experience, continuing education and specialization about commercial law matters, judges are prone to rely on non-legal experts in the Ministry of Justice's Office of Expertise, to resolve both legal and factual issues as reported above in Subsection 8[25] As also previously noted, reliance on experts tends to prolong the resolution of commercial cases Even without relying on experts, judges inevitably take longer to resolve cases where the subject matter is unfamiliar than cases about familiar matters A lawyer interviewed by us in Alexandria cited the problem of untrained judges as a major reason for delay in the processing of court cases Judges who are more

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[22] Phase One Report, Id. at p 26-27, Phase Two Report, Id. at p 2

[23] Phase 1 Legal Exchange Report at p 27

[24] This course used to be for a full year, now, it has been reduced to 3 months

[25] See also Phase 2 Legal Exchange Report at p 19

familiar with, and better educated about commercial law matters should be able to resolve cases much faster and without invoking the aid of experts except on an exceptional basis Lack of knowledge and specialized experience also accounts for the lack of trust in the ability of younger judges to resolve commercial cases adequately and fairly, and the consequent willingness of appellate courts to rehear cases already decided at first instance virtually in their entirely[26]

5 42 A related serious problem is that there is very little no training for bailiffs, other court officials and even lawyers Lack of training, in turn, contributes to delays in, and sometimes prevention of effective service of summons and court orders, as well as effective enforcement of judgments Indeed, as reported to us by lawyers in Menia, lawyers also require training to speed up cases and improve the quality of justice In this regard, they suggested that the Bar Associations should set up intensive training for lawyers before registering them, in addition to requiring clinical training with law offices

(12) No Communications Channels between Lawyers and Judges

5 43 Another important area of concern identified by the Egypt-U S Legal Exchange Project is that there are no institutional means of communicating between judges and lawyers[27] As noted above, most judges are prosecutors before they become judges, and prosecutors regrettably are conditioned not to listen to private lawyers in the first place Often, attitudes of prosecutorial disdain towards private lawyers are carried with them to the bench Lawyers seldom are given the opportunity to plead cases orally, and judges take it upon themselves to monitor and conduct most aspects of taking evidence This includes the examination of witnesses which is conducted by judges rather than lawyers

5 44 To some extent, such disdain is reinforced by the fact that the legal profession lacks strong ethical standards which are strictly enforced Whereas lawyers in some jurisdictions in other countries are presumed to speak the truth and suffer grave consequences if they do not, lawyers in Egypt are able to say anything in court without suffering direct consequences Because of lack of time and distrust of what lawyers have to say, judges seldom listen to oral arguments and require litigants to file written arguments

5 45 A possible solution to the lack of formal communications channels might be regular commercial law seminars attended by both lawyers and judges Such seminars could cover existing specific areas of commercial law or recently enacted legislation and could also meet the need for advanced commercial law training for lawyers and judges Such seminars also could include other actors in the law and contract enforcement field such as law professors and concerned government officials

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[26] Phase 2 Legal Exchange Report at p 17

[27] Phase 1 Legal Exchange Report at p 27

121

(13) Incentives to Delay by Parties (Usually Debtors and Other Obligors)

5 46 Persons desiring to avoid paying debts or otherwise performing their contracts have a strong incentive to fight and delay cases even when they are clearly in the wrong because

(a) There either are no effective sanctions for frivolous dilatory tactics, or such sanctions as exist are too low to be an effective deterrent At most there are fines ranging between L E 1 and L E 20 which, as noted above in Paragraphs 4 09 and 4 16, are paid to the court and not to the party injured by the delay

(b) The losing party is not required to pay the actual attorneys fees and other costs incurred by the winning party in bringing the case Although the law provides for payment of costs, the court seldom awards them, and then only nominal costs not the real and substantial costs actually incurred Moreover, the nominal attorneys fees awarded -- up to L E 100 at most -- are paid not to the judgment creditor or its attorney but to the Lawyers Syndicate For example, when our office recently won a judgment at first instance after a hard fought case lasting almost three years, the court assessed the losing party attorneys fees which totalled L E 10

(c) Where the winning party is a non-bank creditor, the losing party does not pay actual interest equal to what a party would get if the amount of damages were deposited in a bank Rather

(1) Interest is awarded on money judgments for debts at the rate specified in the debt instrument, but not in excess of seven (7) percent according to the Civil Code, which was promulgated in 1948, when interest rates were much lower than current levels

(2) If the debt instrument does not indicate the interest rate applicable in case of default, the court would award interest at the level of four (4) percent in civil cases and five (5) percent in commercial cases Courts cannot award interest exceeding these levels except where the creditor establishes that a loss was incurred, in excess of the interest, due to the bad faith of the debtor In an economy where interest rates currently are running at around 13-15 percent per year on Egyptian Pound deposits and up to 20 percent on loans, a debtor has a clear incentive under these circumstances not to pay

(3) Moreover, unless specified in the contract, such interest accrues only from the time of filing suit or formal notice by court bailiff and not from the time of the breach

(4) Additionally, except where commercial customs and traditions permit -- e g , such as debts accruing to financial institutions -- interest on interest (i.e.,

compound interest) is not allowed, and the total amount of interest may not exceed the amount of principal

(d) Judgment winners are not otherwise compensated for losses in the value of their contracts due to inflation

5 47 Thus, so long as the rate of inflation exceeds the 4 to 7 percent limits imposed by the Civil Code on legal interest payable to non-bank creditors, every day of delay reduces the real value of the debt to the creditor and the real cost to the debtor of paying it back Accordingly, debtor have a compelling economic interest in delaying payment Banks are not subject to the civil code restrictions on interest The general counsel for one bank told us that as soon as suit is filed to collect money owed on a loan, bank interest ceases and the civil code provisions are applied because on the theory that the loan agreement has been broken and is no longer in effect Thus, debtors to banks sometimes are not required by courts in practice to pay the full interest called for by the loan agreement Instead, courts will often give a bank judgement only for the principle amount of the loan in response to pleas by the debtor that he has already paid large amounts of interest, thereby rewarding the debtor for defaulting (This of course pushes banks to seek even more collateral and security for loans and to focus on short -- rather than long -- term credit, thereby raising the costs of credit higher for the business community at large, a phenomenon which punishes small businesses especially hard)

(14) Numerous Delaying Tactics Available:

5 48 Not only are there powerful incentives to delay court cases, but the means to do so are plentiful as well -- i.e., given existing rules and procedures, the means for lawyers to delay cases are numerous Those desiring to escape the enforcement of contracts deliberately delay proceedings by presenting excuses to postpone the case, and the courts often accept these excuses Some of the most common examples are as follows

(a) The unreliability of the means of serving summons affords numerous opportunities for delay Thus, in the event that the writ was not delivered to the defendant in person, the law requires the bailiff to clearly indicate the reason of not serving the document on the defendant personally and to indicate on the deed of writ the name of the person who received the writ, his relation with the defendant and whether or not he is dwelling with the defendant in the same place Absence of any of such details would invalidate the process Lawyers then often claim invalidity of service of process and request postponement to produce evidence to support such claim For instance, if the bailiff states that the writ was delivered to Mr Ahmed who is the defendant's cousin dwelling with him in the same place, the lawyer may claim that such a person is not the defendant's cousin or that he is not dwelling with the defendant in the same place

(b) In all cases, if the writ of summons was not served on the defendant -- or the chairman or manager of a company defendant -- personally, the defendant's lawyer would not enter an appearance before the court at the first hearing in order that a postponement would be granted for re-servicing the writ

(c) Once the summons has been properly served, when appearing at the next hearing, the defendant's lawyer would request a postponement to produce a power of attorney which he would claim is still in process

(d) At any time during the hearings, any party may produce new documents which would cause the court automatically to grant postponements to enable other party to review the same and to produce such documents as he may deem appropriate to challenge the first document

(e) Denying accuracy of signatures on contracts or other documents which would cause such documents to be referred to experts for examination and reporting False denials in this connection are virtually never punished

(f) Requests to have foreign language documents officially translated

(g) Requests to refer cases or issues to experts as discussed in Subsection 8 above

(15) Lack of Judicial Facilities and Support Staff

5 49 Another serious problem which causes delays and affects the quality of justice delivered is simply that the courts lack adequate facilities and support staff, as described in the following paragraphs

(a) Ordinary Court Judges Lack Support Staff.

5 50 The Egypt-U S Legal Exchange Project has pointed out that the ordinary courts below the Cassation Court level do not have legal support staff capable or responsible to assist judges in legal research or other matters needed to prepare and process cases through to resolution[28] As a result, judges of the ordinary courts themselves must make all determinations regarding the case including minor aspects of procedural and routine manners, such as whether summons and notices were properly served Judges must conduct all of the legal research required themselves As noted above, these functions are handled for the Cassation Court in part by the General Prosecution and for the administrative courts of the State Council by the commissioner (see Chapter 4 above) As reported by the Egypt-U S Legal Exchange Project the ordinary courts formerly employed preparatory judges to perform similar functions but these positions were abolished 15 years ago Egyptian lawyers report that as employed, the preparatory judges were seen to delay, rather than expedite, case processing

5 51 In the U S , courts employ recent law school graduates to serve as law clerks for one or two years for such purposes A similar system could be considered for Egypt as an excellent way to meet the need of assisting judges to speed up the resolution of the disputes and could also serve as a vehicle for training new judges by having them serve

[28] Phase 1 Legal Exchange Report at p 25 - 26

124

as law research clerks At the Cassation Court level, this need is met in part by review and comment by the General Prosecutor Nevertheless, it would also be recommended to institute such a system in the Cassation Court as well, especially for top law faculty graduates in place of relying on the General Prosecution, since the General Prosecution will review a case from a specific point of view, namely that of the prosecutor But the Cassation Court as well as other courts needs law clerks to have the specific job of helping the judges, prepare their cases by providing them with the information needed to render decisions based on sound and thorough research

(b) Insufficient and Inadequate Courthouses and Courtrooms.

5 52 Our office has seen situations where a 3- judge court bench was seated in a room as narrow as 2 by 3 meters, overcrowded by lawyers and litigants, while the number of cases inscribed on the court's roll was 200 or more Such an atmosphere is hardly conducive either to efficiency or to justice Fortunately, the government currently is making an effort to build new court houses A properly administered system of justice on commercial cases requires that this be a sustained and continuing effort

(c) Judges Lack their own Offices.

5 53 A related problem is that ordinary court judges generally do not have offices but must do most of their work at home, a fact which deprives them of the opportunity to confer more often with their colleagues[29]

(d) Many Courtrooms Lack Air-conditioning.

5 54 Air conditioning could enable courtrooms to be used longer, perhaps with rotating benches of judges during the day and full time during the summer This could perhaps aid in ending the psychological overhang of the former long summer judicial holiday Judicial holidays could then be placed on a schedule which would allow the courts to remain fully in session all year round while judges take holidays throughout the year on a rotating basis

(e) There are No Modern Facilities for Transcription of Testimony or Trained Short Hand Court Reporters as Exist in the United States

5 55 Rather, in the rare cases which are referred to testimony, untrained clerks are simply called upon to write out what they hear in long hand As was noted by a lawyer in Fayoum, clerks have no facilities or training to record lawyers arguments in the minutes, much less, oral testimony of witnesses Such methods of transcribing testimony are time consuming and often inaccurate and inadequate

[29] Phase 1 Legal Exchange Report at p 26

125

5 56 Accordingly, the resulting record often is completely illegible or incomplete As an example, an attorney in our office who is currently preparing a final brief for a major case at first instance reports that he simply cannot read substantial portions of written testimony transcribed by hand by court clerks The lawyer interviewed in Fayoum suggested that transcriptions of statements in courts are so unreliable, that there should be a way for lawyers and parties to prove their statements in courts such as cassette tapes or other equipment Mistrust of the resulting transcription may be one of the reasons why judges are reluctant to take testimony and prefer to rely on documents for evidence

(f) There is a Lack of Judicial Access to Current Laws, Regulations, Published Court Decisions or Legal Commentary through either a Professionally Staffed Fully Stocked Libraries with Photocopying Facilities or through an Electronic Computerized Legal Database:

5 57 Rather, judges rely either upon their own libraries or upon lawyers for the parties to supply them with copies of laws, decrees or relevant cases

(g) Summary of Need for Better Physical Facilities.

5 58 In short, the dispensation of justice requires adequate physical infrastructure, just as modern business requires modern facilities for water, power, transportation, and communications Unquestionably, the quality of Egyptian justice has been adversely affected by the deterioration of the physical facilities in which is rendered Inevitably, the population will have less respect for, and confidence, in courts which render judgments in overcrowded, dirty and poorly maintained courtrooms Undoubtedly, judges themselves come to have a diminished view of themselves and their role in society if adequate offices, well-stocked libraries and other essential facilities are not provided

5 59 Therefore, the effort to build new courtrooms and judicial facilities and maintain them should be increased and sustained over time Such facilities include not only courtrooms, but, as noted, above libraries, judicial offices and conference rooms, air conditioning, facilities for transcription of testimony and well stocked and equipped libraries with books and computer terminals having access to an electronic computerized legal database Dispensation of justice is a fundamental function of government Where the public perceives that the government is failing in this function, confidence will inevitably be lost and political stability -- the fundamental prerequisite for private sector investment and business development -- could be adversely affected

(16) Low Pay for Judges and Court Officials

5 60 Finally, there is the problem that judges and court officials are substantially underpaid for what is asked of them -- i e , to deliver justice quickly, completely and effectively As a lawyer in the Fayoum noted to us

> "Judges need to be sufficiently well paid so that financial problems and financial difficulties are not interfering with concentration on their judicial

126

duties and so that their only concern is to apply the rule of law in dispense justice "

Section C Recommendations

5 61 A coordinated multi-pronged effort is required to reduce heavy case loads and case delays plaguing the Egyptian court system In this regard, the recommendations contained in the following paragraphs are respectfully offered for consideration

(1) **Require Specialization and Continuing Education of Judges, Lawyers and Court Officials·**

5 62 To reduce over-reliance on court "experts" and otherwise to speed processing of commercial cases, as well as to improve the overall quality of justice in the commercial field, consideration should be given to developing a cadre of judges highly experienced, specialized and trained in commercial law cases by

(a) Requiring judges to become specialized in commercial law (and other fields) in accordance with existing rules as described in Paragraphs 3 12 and 3 13 above, and

(b) Establishing and maintaining a rigorous, comprehensive and high quality program of orientation, refresher and advanced courses and seminars in commercial law for commercial law judges as follows

(1) All new judges would undergo a one year orientation course before taking the bench in the way that new prosecutors formerly underwent a one year orientation course[30], since reduced to three to six months Such a course would include such topics as

- A review of the overall commercial law framework
- Refresher courses on all major substantive areas of commercial law -- e g., contract rights and remedies, commercial paper, mortgages, leasing, loans, companies, taxation, etc
- Explanation of the importance of speedy and effective enforcement of contracts to the Egyptian economy
- A thorough analysis and explanation of the effects of inflation on the value of contracts where enforcement is delayed and whether and how

[30] One lawyer in Menia suggested that before being selected as a judge, a candidate should undergo intensive training in a special area of law such as civil or commercial law, criminal law, family law, etc for a period of 2 years

compensation for losses due to inflation could be awarded to a contract obligee or creditor under existing Egyptian law

- An explanation of the costs incurred by parties in pursuing litigation including the actual amount of attorneys fees

- Clinical training on conducting evidentiary hearings with live testimony, questioning lawyers, writing opinions and developing computer literacy and skills

- Clinical training on modern case management methods

(2) Judges would also have the opportunity and the requirement as their careers advance to participate in advanced seminars and courses which would systematically cover all key commercial law subjects In addition, required seminars would be conducted on major new commercial legislation within 90 days of publication of the new law

(3) Ideally, increases in judicial compensation and bonuses, as well as promotion, would be tied to attendance at and performance in orientation advanced and refresher courses

(4) Preferably, some refresher and advanced seminars and courses and seminars on new legislation could be conducted jointly with lawyers as a means of improving communications between lawyers and judges

(5) One lawyer interviewed by us suggested that judges also should attend annually practical training courses in certain special laws together with the officials responsible For example in the case of the Public Notary Law, judges could organize meetings and presentations with persons specialized in public notary work for example

(2) Reduce Incentives of Case Delays by Compensating Contract Obligees for Delay Losses from Inflation, as well as Attorneys Fees and Costs

5 63 Incentives to delay by contract debtors and obligors can be sharply reduced by the following measures

(a) Empower and mandate judges to award damages for losses in the value of contracts due to inflation based on the consumer price index or other reliable inflation index in addition to the principal amount of the obligation owed together with interest Again commercial law refresher courses and advance seminars for judges should illustrate how to calculate losses resulting from inflation and other factors caused by delays in contract performance

128

(b) Additionally, change the Civil Code interest provisions from the 4 5 and 7 percent limits now imposed to a formula which would allow payment of amounts equal to bank rates of interest on saving deposits

(c) Empower and mandate judges to impose effective sanctions on parties for frivolous tactics which would be paid to the other party For example, in a recent U S case in which our office was involved, the U S District Court ordered a lawyer to pay the other party court imposed sanctions of almost $ 3,000 for filing frivolous papers which wasted the time of the court and the other party By contrast, in Egypt, as noted in Chapter 4, the maximum sanctions are tiny fines payable to the court -- not to the injured party -- of between L E 1 and L E 20 (or between U S $ 0 30 and $ 6 00)

(d) Judges should be empowered and mandated to award actual attorneys fees and other costs incurred by the winning party in bringing a case instead of the nominal amounts now awarded -- certainly, in cases where the winning party's rights, or the losing party's obligations, are clear

(3) **Reduce Case Delays Through Modern Case Management Methods**

5 64 A modern effective system of case administration and calendaring should be introduced which would draw on the comparative experience of other countries as well as successful examples from the various court systems within Egypt Such a system would involve the following features

(a) Streamlining case filing procedures by reducing a number of steps and officials involved from 5 steps and for officials to one or two

(b) Requiring courts to establish a calendar for each case, which would specify deadline dates by which parties must submit documents and evidence As one business executive interviewed by us in Alexandria suggested

> "There should be a time limit for every step of the case procedure even if this means amending the procedural laws "

5 65 One solution might be to direct the clerks of the court not to accept papers filed after a calendar deadline similar to the Cassation Court clerk At the same time, the Cassation Court should calendar a response by the General Prosecution for a specific deadline failing which the response would be ignored if not filed on time Similarly in the Council of State, the Commissioner's report would also be subject to a case calendar Finally, all courts would set calendar dates in advance for issuing judgment

5 66 By way of supplement to a more effective case administration system as recommended above, various litigation shortening procedures -- such as summary adjudication procedures, stipulations by parties to agreed facts, and judicial encouragement of settlements -- could be introduced

5 67 The current summer judicial holiday should be replaced by a system whereby courts remain in constant session and judges have rotating holidays throughout the year

(4) **Change Appellate Process to Reduce Incentives to Appeal**

5 68 To reduce the delays caused by the existing appeal process, consideration should be given to

(a) Allowing appellate courts -- especially the Cassation Court -- to decline to consider cases and leave lower court judgements standing

(b) Limiting appeals to questions of law, rather than reviewing or retrying factual matters as well In other words, the scope of review for courts of appeal would be restricted primarily to questions of law as is the case with the Cassation Court This would end the duplicative procedures which now characterize the first level of appeal

(c) Reducing or eliminating the right of appellants to introduce new factual evidence and new theories and arguments for consideration by the court of appeal

(d) Empowering the cassation court, at its option either to reach a final judgment on the first appeal or to remand the case back to the court which made the error depending upon the requirements of justice under the circumstances

(e) Restricting the court of appeal only to issues, matters and arguments raised on appeal and not require them to consider arguments and matters raised at the lower court but not raised on appeal In other words, the "Appeal Carrying Effect" doctrine which requires the court of appeal to review the entire record of the case below would be eliminated

(5) **Allow Parties to Present own Expert Witnesses**

5 69 To improve confidence in the judicial system, consideration should be given to permitting the parties to introduce their own expert witnesses

(6) **Improve Efficiency of Service of Process**

5 70 To solve the problem of inefficient and unreliable service of process, the following could be done

(a) Provide for service by registered mail to the address of parties who are registered businesses in the Commercial Register (but without an envelop to avoid the claims made by some that, although they received the envelop, it was empty)

(b) In the case of companies authorize service by delivery to the company's registered address rather than to the company's chief executive or manager

(c) Provide for service of process by licensed private process servers as well as court bailiffs

(7) **Replace Excessively High Court and Government Fees with Low Flat Fees**

5 71 To eliminate cases concerning assessments for court fees and other government fees the current system of percentage fees based on the "value" of cases or land or other property should be replaced with a system of relatively low flat fees, similar to those obtaining in the United States courts At the same time, the period within which officials can reassess for taxes and fees should be reduced from 5 years to 1 year

(8) **Open Communications between Lawyers and Judges on Mutual Concerns**

5 72 The channels of communications between lawyers and judges on common problems of mutual concern could be substantially improved by

(a) Conducting joint seminars on commercial law topics as recommended above, and

(b) Providing for representation by the Lawyers' Syndicate on the general assemblies of court and the Supreme Judicial Council in the way that the General Prosecution is now represented Or, alternatively, develop a system of advisory boards of private lawyers for each level of courts and schedule a minimum number of meetings per year between the judges and such advisory boards Law professors could also play a part on such advisory boards

(9) **Increase and Improve Judicial Facilities and Staff**

5 73 As suggested by the Egypt-U S Legal Exchange Project[31], consideration should be given to providing judges with law research clerks These could be bright young law graduates who are considering careers as judges Such clerks could have the specific job of assisting judges to prepare cases by outlining issues, performing legal research and preparing proposed draft judgements Such clerks could be assigned for a one or two year period, similar to law graduates entering private practice who must work for a lawyer for two years As pointed out by the Egypt-U S Legal Exchange Project

> "This would provide a cadre of law clerks who could be of great benefit to the judges, give young lawyers an opportunity to see if they really want to become prosecutors and judges and give the judicial selection entity a chance to evaluate the performance of judicial applicants"[32]

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[31] Phase 1 Legal Exchange Report at p 25

[32] Phase 1 Legal Exchange Report at p 25

131

5 74 Consideration should be given to making substantial investments to improve the physical infrastructure of justice by

(a) Refurbishing and renewing old court houses and court rooms and building new ones Appropriate physical facilities are important to convey to judges, litigate and the public the vital message that delivery of justice is taken seriously by the authorities

(b) Providing judges with offices and office facilities where they can carry out their work in confer with colleagues rather than working at home

(c) Providing air conditioning which to enable courtrooms to be used longer, possibly with rotating benches of judges during the day and full time during the summer

(d) Obtaining modern equipment for the transcription of oral testimony and providing trained short hand court reporters for the purpose of operating such equipment

(e) Undertaking a program to develop, staff and equip libraries in court houses throughout the country each of which would contain a complete collection all of Egypt's published laws, regulations, treaties and published court decisions for the purpose of insuring that judges have easy access to the laws and regulations which they are interpreting and enforcing Preferably, such legal materials would be available both in hard copy, and, as discussed below in Chapter 8, electronically through computer terminals and computer diskettes

CHAPTER 6

ENFORCING JUDGMENTS

Section A Analysis

6 01 Even after a judgment is obtained, enforcement may be difficult or impossible An Alexandria business executive interviewed by us cited the unenforceability of judgments as a major problem, in substantial part because of the problems discussed below

(1) Lack of Fully Effective Court Procedures to Discover Judgment Debtors' Assets

6 02 A serious problem is the difficulty in enforcing a judgment -- once obtained -- where the judgment debtor fails to pay the judgment and hides assets This arises in part from the fact that there exists no means available to the judgment creditor to require the judgment debtor himself to reveal the nature and location of his assets It is possible to learn about the judgment debtor's assets in the hands of third parties believed to hold them such as banks This is done by getting the court to issue an order to the third party to report and conserve the assets Upon receiving the order, the third party is required and to report on the extent of the judgment debtor's assets held by it, if any, and conserve them But, the judgment creditor must have at least an idea of which third parties might happen to hold assets belonging to the judgment debtor

6 03 Accordingly, if the judgment creditor does not happen to know what assets are owned by the judgment debtor and where they are or where they might be, and the latter chooses not to pay, the judgment will go unenforced This means that the judgment creditor's only alternative then is to petition for involuntary bankruptcy where the judgment debtor is a trader or for civil insolvency where the judgment debtor is a non-trader A possible solution could be a legal procedure whereby judgment debtors who fail to pay can be subjected to oral examination or other discovery procedures by the court

(2) Ease of Shifting Assets to Relatives

6 04 In addition, assets are often transferred beyond the reach of creditors by debtors who put the assets in the name of their children, spouses and other close relatives Close family relationships in Egypt then allow the debtor in fact to treat the assets as his own even though theoretically the assets are owned by a relative A possible solution would be for the law to permit judgment creditors to seize and foreclose on assets which a judgement debtor has in fact treated as his own even though they are in the name of a relative

(3) High Amount of Court Fees Required for Judgement Execution Order

6 05 Related to the first two problems is that of the high amount of court fees plus contributions to the Judges Fund These are very substantial in Egypt relative to industrialized countries amounting to approximately 7 5 percent of the judgment amount -- i e, approximately 5 percent for court fees plus 2 5 percent for contributions to the Judges Fund[33] Lawyers in Menia stated to us that fees for cases should be reduced substantially A lawyer interviewed by us in Alexandria asserted also that high court fees are a major problem and that they should be reduced to reasonable limit Thus, for example, the total fees and contributions in respect of a judgment for L E 1 million will be almost L E 75,000 In an actual recent example, the general counsel for a major bank told us that the bank paid almost L E 700,000 in court fees to obtain an execution order for a judgement totalling almost L E 10 million[34]

6 06 For a judgment creditor, the problem is that the court fees must be paid before the court will issue the execution order needed to enforce the judgment, as already discussed above in Chapter 5 While the judgment debtor ultimately is liable to pay the fees, if the judgment debtor does not, as is usually the case, the judgment creditor must then pay them in order to obtain the judgment execution order and hope that the judgment debtor has the resources and assets to satisfy both the judgment and court fees If the judgment debtor then turns out to be insolvent, the judgment creditor loses both the value of his contract plus the court fees

6 07 The solution to the high fee problem could be that already suggested in Chapter 5 of replacing the current percentage fee system with a system of flat fees for filing cases or motions or applications to obtain court orders as is done in other countries such as the United of States Attachment 4 to this report shows the schedule of fees for the United of States District Courts for of California (a U S Federal trial courts or courts of first instance) and the United States Courts of Appeal for the 9th Circuit As can be seen, the maximum fee is U S $105 for filing a case in the federal district court whether it is for U S $ 10 thousand or U S $ 10 million A petition for review by the appellate court costs only U S $ 100, as does the fee for a writ of mandamus or court order again regardless of the amount in controversy

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[33] The "Judges Fund" is available for social purposes for judges including retirement car loans, education loans housing and many other benefits Judges, however, -- including a member of the Board of Directors of the Judges' Club -- have told us that the Judges' Club receives only one third of the amounts paid as contributions The rest goes to the general revenues of the State

[34] See also section 3 18 regarding the case in our office for L E 2 million in additional court fees

6 08 Also, appended is Attachment 5 which shows the schedule of fees for the California State Appellate Courts including the California Supreme Court and the Courts of Appeal where it can be seen that the filing fee for a notice of appeal is U S $ 200

6 09 Further appended as Attachment 6 is the schedule for California Superior Court filing fees where it can be seen that the filing fee for virtually any kind or major action is U S $ 182 Again, these fees are applicable whether the judgment is U S $ 10 thousand or U S $ 10 million or any other amount Thus, there is a dramatic difference between the low nominal court fees in the United States and the very steep court fees in Egypt For example, instead of the L E 700,000 court fees required for a judgment of L E 10 million in the example discussed in Paragraph 6 05 above, the fees in the U S in a similar case would have been $ 200 at most A system of reasonable relatively nominal court fees would accord with an Egyptian tradition that justice should be dispensed at low cost

(4) Inadequate Sanctions to Deter Dilatory Tactics.

6 10 Another problem is that sanctions are insufficient to deter the use of frivolous dilatory tactics by judgment debtors seeking to abuse judicial procedures in order to obstruct the execution of judgments against them Thus, for example, a judgment debtor may seek an injunction for a stay of execution of a judgment either with the court through normal procedures required for filing a court case, or directly with the bailiff assigned to enforce the judgment who would immediately set a date for considering the injunction by the judge of execution Once the injunction action is filed, execution would immediately be stayed until the court decision on the validity or invalidity of injunction is delivered If the injunction is dismissed, the court in its discretion may impose a fine of only L E 5 -- L E 20 on the losing party

6 11 Similarly, a judgment debtor will often connive with a third party to file a "restitution suit" in which the third party claims ownership of the judgment debtor's assets and asks to be awarded possession Such a suit has the effect of staying any judgment execution order directed against such assets until the restitution suit is resolved which can take a year Again, where the restitution case is denied, the court may in its discretion only fine the pleader between L E 5 and L E 20 to be paid wholly or partially to the judgment creditor without prejudice to his right of claiming compensation for damage actually suffered Obviously such low fines encourage frivolous use of these judicial processes by judgment debtors anxious to avoid payment The obvious solution here would be to allow courts to impose sanctions payable to the party injured by the delay and equal at least to the losses suffered as a result of the delay arising from inflation lost opportunities, etc In addition, court should be able to impose punitive sanctions and especially in egregious cases

(5) Slow, Cumbersome Mortgage Foreclosure Procedures

6 12 Cumbersome mortgage foreclosure procedures delay enforcement of secured loan agreements Bankers interviewed for this assessment report that completion of foreclosure

135

procedures can easily take five years Cumbersome procedures also increase legal fees and associated costs in connection therewith which in turn substantially impairs the value of the recovery for the creditor because the legal fees and costs are not covered by the mortgage security Existing mortgage foreclosure procedures should be replaced by streamlined methods following the example of other countries

(6) Lack of Police and Bailiffs Trained in Enforcement

6 13 In the countryside, enforcement of judgments has some special problems A lawyer interviewed us in Monofiyya Governorate told us that enforcement is in the hands of the police who are untrained in this task and do not have sufficient incentives to carry it out Moreover, there are difficulties in enforcing some judgments such as taking wrongfully occupied land by force because either the police lack sufficient force or the police fear revenge from the defendants Lawyers in Menia suggested that enforcement of judgments be carried out by a special cadre specially trained bailiffs under the supervision of a judge

Section B Recommendations

6 14 To improve enforcement of judgments, it is respectfully recommended that laws and procedures be revised as necessary in order to

(a) Provide for a means through court examination and cross examination of requiring a judgment debtor to reveal the nature and location of all of his assets as well as assets to which he has access through his children, spouse and other close relatives

(b) Enable a judgment creditor to seize and foreclose on assets which the judgement debtors has in fact treated as his own even though they are in the name of a relative

(c) As already recommended in Paragraphs 5 35 and 5 71, replace the current system of percentage court fees based on the "value" of cases with a system of relatively nominal flat fees similar to those obtaining in the United States courts

(d) Empower and mandate judges to impose effective sanctions for judgement debtors who frivolously file cases for injunctions for the sole purpose of delaying or avoiding execution of a final judgment and on third parties who file groundless restitution suits Such sanctions should be at least equal to the cost in terms of inflation or lost savings deposit interest and should be payable to the judgment creditor, not to the court

(e) Institute streamlined mortgage foreclosure procedures base on the best comparative experience of other countries suitably adapted to the Egyptian environment

(f) Provide high quality training to court bailiffs in judgment enforcement procedures and techniques

136

CHAPTER 7

ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION

Section A Analysis

(1) Advantages of Arbitration

7 01 At a stroke international and local private arbitration could provide solutions for many, if not all, of the problems regarding dispute settlement in the Egyptian courts In cases involving foreign investors especially, private arbitration provides the following particular advantages for commercial dispute settlement

(a) The possibility for disputes to be heard on neutral ground This removes the foreign investor's fear of the unknown about local court systems and procedures with which the investor is not familiar

(b) Reliable dispute settlement rules and machinery with which foreign investors and their lawyers are familiar and comfortable International businesses and investors today have several institutions available to them with familiar rules and proven machinery for selecting qualified and impartial arbitrators such as the International Chamber of Commerce in Paris (ICC), the London Court of Arbitration, the American Arbitration Association in New York (AAA), the International Convention for the Settlement of Investment Disputes Between States and the Nationals of Another State (ICSID) of the World Bank, the Rules for Commercial Arbitration of the United Nations Commission on International Trade Law (UNCITRAL) Indeed, Cairo itself is the site of the Cairo Regional Centre for International Commercial Arbitration which utilizes a slightly modified version of the highly respected UNCITRAL Rules

7 02 In addition, private arbitration provides the following advantages for both Egyptian and international investors and businesses in resolving commercial disputes

(a) The perception to many investors and business executives that arbitration resolves disputes more quickly than litigation in the courts for the following reasons

(1) Arbitrators are selected *ad hoc* for each case and therefore are not burdened by heavy case loads, giving them time to deal with the case for which they have been selected

(2) Arbitrations conducted within the specific institutional frameworks described in Paragraph 7 01 (b) above which have rules requiring that the arbitrators establish terms of reference and a calendar for managing the case

(3) Arbitrators are paid by the case and therefore have strong incentives to resolve each case with dispatch

137

(b) A means of having disputes settled by expert arbitrators who are in the subject matter of the dispute Investment and commercial disputes are often complex and difficult matters to understand and resolve Such disputes may place a difficult burden on a court which is not used to considering complex, highly specialized commercial matters In arbitration, on the other hand the parties and the institution administering the arbitration can select arbitrators who are experts in the subject matter to hear the case

(c) Payment of arbitrators, unlike judges, is not subject to the limitations of the government salary structure Usually, arbitrators are well paid, especially relative to Egyptian judges

(2) Egypt's Commitments to Arbitration:

7 03 Fortunately Egypt has made significant local and international legal commitments to private arbitration First, Articles 502-513 of the Egyptian Code of Civil Procedure specifically provide for local arbitration of disputes by agreement of the parties Further, Egypt has made a significant commitment to international arbitration by

(a) Adhering to the following international conventions

(1) The 1958 New York Convention on the Enforcement of Foreign Arbitral Awards which requires and enables the enforcement of arbitration awards rendered abroad pursuant to the terms of the Treaty, and

(2) The International Convention for the Settlement of Investment Disputes Between States and the Nationals of Another State (ICSID), an institution affiliated to the World Bank

(b) Establishing by Presidential Decree, pursuant to an international agreement, the Cairo Regional Centre for International Commercial Arbitration as described above

(c) Providing for the arbitration of investment disputes between foreign investors and the government and between foreign investors and private parties in Investment Law 230/1989 (as well as its predecessor Law 43/1974 Unfortunately, a backward step was taken from Law 43 by Law 230 in that Article 8 of Law 43 had provided advance government consent to arbitrate <u>all</u> disputes with investors whereas under Law 230 each dispute will have to be the subject of a separate agreement to arbitrate, which the government can refuse)

(d) Providing for arbitration of disputes between government entities and public sector companies -- where such arbitration is the only available method for settlement of the dispute -- and between public sector companies and private persons, companies and other entities, where the parties have chosen to use this method of arbitration under Law 60/1971 regarding Public Agencies

(e) Providing for compulsory arbitration for all disputes arising between parties to securities transactions under Law No 95/1992 regarding capital markets

(3) **Current Problems with Existing Legal Framework for Arbitration in Egypt**

7 04 Despite the impressive legislative and executive steps taken as described above, however, a cloud of uncertainty hangs over both local and international arbitration because of the following problems

(a) For local or international arbitrations not conducted within the framework of an international institution such as those described under Paragraph 7 01 (b) above, the rules set forth in the Code of Civil Procedures are sketchy, incomplete, old fashioned and inflexible relative to those of the ICC, AAA, UNCITRAL and the London Court of Arbitration

(b) For example, for an agreement to arbitrate to be enforceable in Egypt, Article 502 of the Egyptian Code of Civil Procedure requires the agreement to name the arbitrators specifically, whereas more modern rules allow the arbitrators to be named at the time the dispute arises in accordance with procedures described or designated in the agreement

(c) Under current Egyptian law, it is not clear that international or local arbitration awards can be enforced in Egypt quickly and effectively for the following reasons

(1) Enforcement may be denied if the arbitration agreement did not name the arbitrator as required by Code of Civil Procedure Article 502 as mentioned above It is not even clear whether awards by the Cairo Regional Center are enforceable where the arbitrators have not been named in the arbitration agreement

(2) The losing party may file an independent case to nullify the arbitration award under Code of Civil Procedure Articles 512 and 513 This is a full-fledged lawsuit which could take years to resolve even if it is without merit (again because there are no summary adjudication procedures for Egyptian courts that would allow the merits of the suit to be assessed early on and be dismissed if it appears to the court to be groundless) So long as the suit is pending, Egyptian law requires any action to enforce the award to be stayed until the nullification suit is finally determined -- which could take years if all appeals possible are exhausted

7 05 As a lawyer interviewed by us in Alexandria observed

> "Litigation is a painful experience for investors It is slow, courts are overloaded and laws are conflicting, numerous and difficult to follow for investors lawyers and courts Arbitration is not a cure so far as it is difficult to enforce arbitral awards

139

Section B Recommendation – Enact a Comprehensive, Modern Arbitration Law

7 06 Egypt's archaic and incomplete arbitration framework represented by Procedure Code Sections 502-513 should be replaced with comprehensive modern legislative machinery for both local arbitration within Egypt and international arbitration within Egypt and abroad In this regard draft legislation is now before the People's Assembly which is based on and similar to the UNCITRAL Model Law on International Commercial Arbitration According to Dr Mohamed Aboul Enein, Director of the Cairo Regional Centre for Commercial Arbitration, the draft Egyptian legislation would provide the framework for both international and local arbitration Passing and implementing this law is one of the most important steps which Egypt could take in the field of dispute resolution A number of other countries, as well as several states of the United States of America have successfully used the UNCITRAL Model Law as the basis for their own arbitration legislation

CHAPTER 8

PUBLIC LEGAL INFORMATION SYSTEMS

Section A Function and Importance of Legal Information Systems

8 01 Informing judges, lawyers and the public about laws is as important a task as making them Predictability of the legal consequences of economic transactions is essential for the healthy development and functioning of the private sector And predictability in turn depends upon those affected having ready access to the relevant laws, decrees and applicable court judgments and a reliable, well organized means of finding them after they are promulgated

8 02 As one business executive in Cairo pointed out to us

> "A major problem is that laws and regulations are often drafted in an incomplete manner, in that some contradictory regulations are often and specifically stated to be superseded but then others contradicting with new law or regulations are often overlooked and left standing "

8 03 This, the business executive believes, is due to a lack of efficient and effective means of determining all the laws and regulations which apply to a specific subject Thus, the lack of an effective legal information system adversely affects the government in the field of legal drafting as well as private businesses and lawyers

Section B· Possibilities for Improvement

(1) Hard Copy Improvements -- Indexes, Loose-leaf, Showing Changes

8 04 Fortunately, Egypt has developed the basic ingredients for a sound and comprehensive legal information and law finding system including the official and private publications described in Chapter 2 above More needs to be done, however, to provide an effective and complete law finding system such as developing comprehensive and detailed indexes to the Official Gazette and published court decisions In addition, consideration should be given by official or private publishers to publishing laws in loose-leaf form would enable both the government and the private sector to up-date them easily, in a manner which clearly shows the changes made by amendments to laws by, e g., strikeouts and underlining

(2) Electronic Full-text Legal Database

8 05 In addition, or as an alternative, to hard copy loose-leaf publication, serious consideration should be given to creating and maintaining an integrated full-text computer database of all extant laws, regulations and published court decisions using CD-ROM, or comparable, technology Such technology would allow easy and timely updating of laws, regulations and judicial precedents and their dissemination to judges, lawyers,

141

Government agencies and the public in both hard copy and computer disk form The database should be easily accessible to lawyers and judges for legal research purposes using a program similar to *Lexis* or *Westlaw* in the United States

Section C. Existing Situation

(1) The IDSC Legal Database

8 06 Ideally, such a computer database would be used for official publications of laws and decrees in the *Official Gazette* and the *Egyptian Bulletin*, as well court decisions In this regard, it is important to note that the Cabinet Information and Decision Support Center (IDSC) in the office of the Minister for Cabinet Affairs has developed a computer database of all present and past laws and regulations all the way back to 1824, totalling over 60,000 pieces of legislation -- i.e., laws, decrees and regulations These laws, regulations and decrees each have been scanned into the database as an image from the *Official Gazette* and the *Egyptian Bulletin* Consequently, a law can only be retrieved as an image by using key words which also have been entered to index the images by title subject type of legislative instrument (i e , law, decree, etc) and related legislation This is distinct from full-text entry, storage and retrieval, which apparently is the next step and which has been done for a few selected laws and decrees Legislators apparently had insisted to the Cabinet of Information and Decision Support Center that laws and decrees be entered as images because this removed the possibility of errors, corrections, additions or omissions being introduced (or corrected) by persons not empowered to do so

8 07 A full-text database would be a much more flexible and complete form for legal research Nevertheless, the Cabinet Information and Decision Support Center's work in this regard represent a tremendous achievement Importantly, the Cabinet Information and Decision Support Center plans to make access to the database available through a company to be formed and operated commercially

(2) Cassation Court and Council of State Precedents

8 08 In addition we understand that Cassation Court precedents as well as those of the Council of State have been entered onto a computer database It is not known, however, the extent to which either database is complete or is in an appropriate form for legal research, and, if so, whether it is or could be made easily accessible to judges and lawyers

(3) Current Needs

8 09 From the legal research stand point the problem is that the legislative and court precedent databases apparently have not yet been integrated into a single usable database accessible to judges and lawyers

8 10 Another problem is that for official publication purposes, laws, decrees and court decisions, continue to be printed as before by using standard typesetting methods, rather

than being entered into and then printed from an electronic database In turn this means that

(a) Official publication of legal materials using old fashioned type-setting methods is slower and probably less accurate than entry into, and printing from a computer database, and

(b) To get a full-text database of published legal materials now requires two costly, time consuming steps instead of one i.e., first, setting type to publish legislation and court precedents and, second, re-entering texts of laws into a computer database

Section D Recommendations

8 11 To render knowledge of Egypt's laws regulations and published court decisions easily accessible to judges, lawyers and the public, it is respectfully recommended to

(a) Convert official publication of the newly issued laws, decrees, and court decisions -- i e , the *Official Gazette* and the *Egyptian Bulletin* and published court decisions -- to printing from a database created by full-text entry of all newly issued laws, decrees and court decisions In this way, at least all future laws, decrees and court precedents will already be entered into a full-text database

(b) Create a full-text database for all past laws, decrees and court decisions which would be integrated with the official publication database described in sub-paragraph (a) above utilizing to the extent possible the valuable work already done by the Cabinet Information and Decision Support Center as well as the court decision databases developed by the Ministry of Justice and the Council of State

(c) Develop "user-friendly" software which will allow lawyers and judges to access the database for legal research purposes similar to *Lexis* and *Westlaw* programs developed in the United States

(d) Publish Hard copy laws, decrees, other legislative instruments and court decisions in loose-leaf form which would enable users to update and organize them by subject easily

(e) Provide optional, hard copy publications also should be done in a manner which shows the changes made by amendments to laws and decrees by devices such as strikeouts, underlining and/or bold face

(f) Develop comprehensive and detailed indexes to the *Official Gazette* the *Egyptian Bulletin*, and published court decisions for hard copy research

EGYPTIAN LEGAL AND JUDICIAL SECTOR ASSESSMENT

(CONTRACT NO. 263-0377-C-00-3103-00)

REPORT AND RECOMMENDATIONS

SUBMITTED TO

USAID/EGYPT

BY:

JOHN BENTLEY, J. D.

INTERNATIONAL LEGAL CONSULTANT

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IN ASSOCIATION WITH

KAMEL, YEHIA, ABUL ELA & SAKR

IN FOUR VOLUMES

VOLUME III:

MAIN REPORT

PART C.

CONSTRAINTS CREATED BY
SUBSTANTIVE COMMERCIAL LAWS
AND RELATED LEGAL INSTITUTIONS

PART D:

CONCLUSIONS AND RECOMMENDATIONS

FEBRUARY 1994

144

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MAIN REPORT - PARTS C & D

(CHAPTERS 9 THROUGH 21)

SUMMARY TABLE OF CONTENTS

PART C	CONSTRAINTS CREATED BY SUBSTANTIVE COMMERCIAL LAWS AND RELATED LEGAL INSTITUTIONS	-77-
CHAPTER 9	INTRODUCTION	-77-
CHAPTER 10	COMMERCIAL REGISTER	-79-
CHAPTER 11	1883 COMMERCIAL CODE AND 1948 CIVIL CODE	-89-
CHAPTER 12	COMPANIES LAW	-95-
CHAPTER 13	INVESTMENT LAWS	-130-
CHAPTER 14	EGYPTIAN TAXES, CHARGES AND INVESTMENT INCENTIVES	-154-
CHAPTER 15	CAPITAL MARKETS LAW AND REGULATIONS	-173-
CHAPTER 16	LAND REGISTRATION	-179-
CHAPTER 17	NOT-FOR-PROFIT ASSOCIATIONS AND CHAMBERS OF COMMERCE AND INDUSTRY	-182-

145

CHAPTER 18 LABOR LAW -186-

CHAPTER 19 ANTI-MONOPOLY, UNFAIR COMPETITION, CONSUMER PROTECTION AND TRADE LIBERALIZATION -193-

CHAPTER 20 INSTITUTIONAL REQUIREMENTS FOR COMMERCIAL LAW MAKING -197-

PART D & CHAPTER 21 CONCLUSIONS AND RECOMMENDATIONS -200-

EGYPTIAN LEGAL AND JUDICIAL SECTOR ASSESSMENT

REPORT AND RECOMMENDATIONS

VOLUME III

MAIN REPORT

PART C

CONSTRAINTS CREATED BY SUBSTANTIVE COMMERCIAL LAWS AND RELATED LEGAL INSTITUTIONS

CHAPTER 9

INTRODUCTION

9 01 Comprehensive review and modernization of substantive commercial laws are essential to realize fully the potential of Egypt's bold economic reforms of the past few years The Egyptian government has made great strides towards improving the business climate through far reaching economic reforms which have included liberalizing foreign exchange, reduction of subsidies, relaxing restrictions on imports and exports, reducing the government deficit, and freeing interest rates These dramatic measures have not had their full impact in stimulating private sector economic growth and job creation, however, in substantial part because of archaic or inadequate commercial laws

9 02 Therefore, Egypt urgently needs to modernize its substantive commercial institutions and laws for the following reasons

(a) Aspects of the infrastructure supporting the commercial legal system require modernization in the light of developments in computer technology which will render them far more useful such as the Commercial Register, the Land Register and, as pointed out above in Chapter 8 the *Official Gazette*

(b) Similarly, a number of Egypt's commercial laws are simply out of date For example Egypt's 1883 Commercial Code and 1948 the Civil Code do not adequately provide for the modern methods of carrying out and financing commercial transactions which have developed in recent years -- such as asset-based financing, for example

(c) Moreover legal reforms of the 1970's and 1980's aimed at transforming Egypt from a socialist command economy to a free market economy are incomplete and contain continued significant barriers to market entry, operation and exit -- such as the 1981

Companies Income Tax Stamp Tax and Labor Laws the 1989 Investment Law the 1992 Capital Markets Law and the 1993 Income Tax Law Amendment

9 03 A number of important recommendations for substantive commercial law reform already have been made in a 1992 two volume report by the World Bank entitled "Arab Republic of Egypt - The Private Sector Regulatory Environment" That report recommends reforming a number of laws to reduce or eliminate barriers which currently severely impede entry into the Egyptian market by new Egyptian enterprises and foreign investors as well as the efficient operation of enterprises in and their exit from the Egyptian market This report fully supports the recommendations for reform made in the World Bank Report Accordingly, the World Bank Report should be read in conjunction with this report to obtain a full picture of the policy and substantive reforms needed to facilitate and encourage private sector economic development and job creation in Egypt

142

CHAPTER 10

COMMERCIAL REGISTER

Section A. Overall Concept and Importance of the Commercial Register

10 01 Pursuant to Commercial Register Law 34/1976, no individual trader or a commercial company -- regardless of organizational form -- is permitted to transact commercial business in Egypt unless and until registered in the Commercial Register in the district or districts where such individual trader or company is doing business

10 02 Registration entails proving authorization for the business by the appropriate authorities and filing a form showing basic information about the business -- e.g., nature, name address, legal form owners authorized signatures directors and managers and their powers etc Upon registration the business receives a Commercial Register certificate and a registration number which should be prominently displayed on the business s premises and stationery For payment of a fee anyone may obtain an official extract about any registered business from the Commercial Register provided that the registration number is known

10 03 By way of example, appended hereto as Attachment 7 is a form of extract showing the very useful basic information currently about individual enterprises provided to the public by Egypt's Commercial Register -- such as its name, trade name, company form main office address branch office addresses, principal business, authorized managers, capital, registration numbers for trademarks, patents, and industrial drawings, dissolution or liquidation proceedings, mortgages or sale of the business, judgments and court orders related to bankruptcy, rehabilitation from bankruptcy, dissolution, etc

10 04 The Commercial Register potentially is a vitally important institution for promoting investment and developing the private sector because of its crucial role in providing essential information about individual enterprises to key actors in the market -- e.g., suppliers customers banks credit agencies, etc For the effective development of the private sector, both businesses and the public need a reliable and efficient means of obtaining as much relevant information as possible about the legal status and condition of entities with whom they are dealing Thus a well organized modern Commercial Register should enable the public efficiently to find out basic essential information about any enterprise in the market

10 05 On the other side of the same coin, the Commercial Register provides actors within the market with a means of preserving valuable commercial rights with respect to individual enterprises -- e.g., money judgments, sales of businesses, mortgages etc -- by putting the public on notice as to those rights through registration Similarly the Commercial Register provides the means for enterprises to protect their trade names by registration

10 06 In short a well conceived and well-run Commercial Register can be one of the most effective Government institutions to encourage and facilitate private sector business and investment by providing essential information on any firm in the market to other businesses and by protecting valuable commercial rights

10 07 Moreover if properly organized and modernized as recommended below, Egypt's Commercial Register would be an ideal instrument to carry out the reforms recommended by this Report in other areas of commercial law -- most notably companies law and secured transactions As previously noted, Egypt has an organized functioning Commercial Register which is fully open to any member of the public and from which valuable information can be obtained about any registered enterprise The Commercial Register however currently fails to realize its full potential to inform the public about firms in the market because of the defects outlined in the following Section

Section B Commercial Register's Constraints

(1) Not Cross-Indexed by name or Trade Name

10 08 A serious problem is that Egypt's commercial register is not cross-indexed A member of the public desiring to find out crucial information about a firm -- such as its legal form or authorized signatory -- must know the firm's commercial register number I.e., normally, it is not enough to know the name or the address Although businesses are supposed to display their commercial register number prominently in signs on their premises and in their stationery, many do not do so Needless to say, the need to know the commercial register number in order to obtain basic information about a registered enterprise business seriously reduces the overall usefulness of the Commercial Register It should be enough just to know the business name or trade name

(2) Organized by District -- Not Centralized for all of Egypt

10 09 Additionally, the Commercial Register is not centralized for Egypt but organized by the district in which the company is located This means that a member of the public, wishing to find out about a particular business, must go to the Commercial Register in the governorate where the company is located The Commercial Register in Alexandria cannot provide information about an enterprise in Aswan or Suez, for example

(3) Excessive and Burdensome Procedures for an Enterprise Register

10 10 Because of Commercial Register s vital information function, it is important for both the government and the public that business entities be able to register relatively easily Yet procedures are unnecessarily excessive and burdensome For one thing, applicants are required to prove that they have been authorized to carry out commercial business from the quasi-official chamber of commerce in their governorate or district a needless requirement complicated by the fact that chamber of commerce bureaucrats often apply their own arbitrary rules There are no unified rules applicable by all chambers, which causes needless confusion and delay

10 11 Moreover, an individual enterprise applicant must submit numerous documents including his lease contract a copy of his taxation card and a receipt showing that the electricity meter is supplied in the name of the applicant In addition, Commercial Register officials must inspect the location to insure that the applicant is actually occupying it and carrying on the registered trade before registration will be accepted

10 12 Registration of the branches of foreign companies carrying out contracts or other authorized businesses in Egypt are even more difficult in that approval of the Minister of Supply and Domestic Trade as well as the Minister responsible for the field of business which the applicant is working -- such as, e.g., the Ministry of Petroleum or the Ministry of Industry -- is required Our office knows of cases where oil service companies such as drilling companies have actually completed their contract over a three or four year period during which registration procedures for their branch were never completed because one of the ministers never got around to issuing an approval Thus, the purpose of protecting the public is completely lost in that many companies are doing business in Egypt but are never registered in a manner that allows the public to find out needed basic information

10 13 Making registration difficult simply increases the likelihood that enterprises will commence doing business without going to the trouble of registering, thereby leaving the public without a ready means of access to basic information about the enterprise Registration of enterprises including foreign branches, therefore, should be made easy by replacing the existing document submission and inspection requirements with a simple registration form plus articles of association for companies which would be filed with the Commercial Register and made available to the public as described in Chapter 12 on Companies There should be severe penalties for false statements and procedures for correcting in correct addresses or other false information as well as striking firms from the Commercial Register in cases where the information supplied is grossly incorrect Enforcement would rely on random qualitative post-registration inspections and inspections based on complaints or reports of market actors in place of comprehensive pre-registration inspections of all applicants

(4) Not all Entities are Now Required to be Registered

10 14 Moreover, not all entities are required to be registered even though they are dealing with the public These include representative offices which carry on liaison or market research activities but are not permitted to 'do business' in the sense of receiving income in Egypt, as well as non trading cooperative societies and not-for-profit foundations established for scientific or charitable purposes Further, independent professional practitioners such as lawyers are not required to register even if organized into a firm because such firms are considered to be 'civil' and not 'commercial' companies and therefore are not required to register at the Commercial Register In addition by practice USAID and U S military contractors often do not register and the Commercial Register so far has taken the position that they are not required to be registered

10 15 Exemption of USAID and U S military contractors as well as not-for-profit and representative offices from commercial registration may reflect a belief by Commercial Register and government officials generally that the principal purpose of the Commercial Register is to identify companies doing business in Egypt for tax purposes All this may have been the case during the socialist years As pointed out above, however the Commercial Register has a much more important role as an institution supporting the free market by providing basic information to the public and other market actors about enterprises and entities doing business Accordingly, since all of the aforementioned entities deal with the public, they should be registered in the Commercial Register so that any member of the public can discover their true status At the same time, perhaps the Commercial Register should be renamed the Civil and Commercial Register

(5) **Insufficient Information to be Registered:**

10 16 Consideration should be given to expanding the information which can be registered as well as the sources of information for registration, including concerned members of the public having appropriately authenticated documentation For example, currently, Law 11/1940 provides for registering commercial mortgages -- *fonds de commerce* -- but not other forms of mortgage, whereas there is no reason why all liens placed on the property of an enterprise including mortgages on land should not be recorded in the Commercial Register Similarly, the law allows for recordation of bankruptcy judgments coming from the court clerk, but, to be more effective, the receiver in bankruptcy or liquidator in a voluntary or judicial liquidation or even a member of the public with a duly authenticated abstract of judgment should be able to register such key information rather than to wait for the court clerks to act on their own

10 17 Further as a means to aid enforcement of judgments, the law should be changed to allow registration of unsatisfied money judgments upon presentation to the Commercial Register of a duly authenticated abstract of judgment by the judgment winner At the same time, provision would be made for registering the satisfaction of judgments Consideration should also be given to registering outstanding promissory notes, as well as their settlement

(6) **Modern Technology not Adequately Utilized to Realize the Commercial Register's Full Potential for the Public and the Market**

10 18 Until recently, the Commercial Register has been completely maintained by hand And this is still the case for the Commercial Register in most districts where all information and changes are inscribed by hand into a book In such districts when a member of the public applies to obtain an extract for a registered firm, the Commercial Register official laboriously copies out the information by hand onto a printed form This is both time consuming and error-prone

10 19 Computerization should be one of the most significant reforms that could be made with respect to the Commercial Register and would greatly expand the usefulness of the Commercial Register for members of the public, as well as for the government For

example computerization should enable business to be cross-indexed not only by name but by address by owners or partners by field of activity, etc This would enable members of the public to obtain an extract on an enterprise simply by giving the name or trade name instead of the Commercial Register number as is now required

10 20 At a minimum computerization should speed up the process of obtaining an extract which currently takes at least two days using the hand-written system It also should increase the reliability of the information on the extract (assuming that it was properly entered in the first place) and at least ensure that information which is recorded is not left out of the extract In short, computerization should reduce the opportunities for human error or omissions in preparing extracts

10 21 Indeed, once the Commercial Register is computerized, the type and range of information easily available to the public can and should be significantly expanded Even with only a fragment of enterprise's name, for example, Commercial Register officials -- for a nominal change -- could provide an applicant with a list of registered firms containing the name fragment which could in turn enable the applicant to identify the name of the enterprise for which he desires an extract Similarly, the Commercial Register could produce a list of all enterprises registered at a specific address In addition Commercial Register officials could produce a list of all firms in the country -- or a district - engaged in a particular industry or field, such as banking, for example, or the sale of electronic goods or the manufacture of soap Such a list could be extremely useful to a business or investor in developing commercial or investment opportunities Another possibility would be a computer list of the names and addresses of all enterprises in which a named individual is a founder or partner or manager Such information could be extremely useful to investors, lenders, or suppliers in dealing with a particular business or business executive

10 22 Further along these lines, computerization with cross-indexing by name would assist the Commercial Register in better performing its duty of ensuring that companies are not registered with names which are confusingly similar to other companies Currently, these rules are applied on the basis of each Commercial Register district, except for corporations and Investment Law prospects which are covered on a national basis Once the Commercial Register is computerized and centralized checking confusing names could be done more easily with less chance of error and on a national basis for all enterprises

10 23 Fortunately, according to the Cabinet Information and Decision Support Center, there are plans to computerize [illegible] commercial register offices by the end of 1994 -- the 3 offices located in Cairo [illegible] in Giza [illegible] Alexandria Indeed, 2 offices -- North and South Cairo -- already have been [illegible] The plan is to complete computerization of the other 4 offices by November [illegible]

10 24 Field tests conducted by lawyers from our office on the two Commercial Register offices where computerization has been completed -- i.e., North Cairo and South Cairo -- indicate that the only advantage that computerization achieves in the two offices

152

surveyed under current practice is to produce the extract much faster i.e., within minutes rather than within 2 days as has been the case under the manual system In addition, information should be more reliable so long as it was entered correctly in the first place and, at least nothing should be forgotten or left out Thus, human error should be substantially reduced with respect to the final extract

10 25 The field tests also show that the more important potential benefits of computerization as suggested above are not even close to being fully realized Thus, an extract on an enterprise still cannot be obtained by simply providing the name or trade name of the enterprise That is, the Commercial Register office cannot or will not produce an extract unless and until it is provided with the enterprise's commercial register number Much less can firms be identified by partial name or by address, nor can lists of firms be made by owner, director or field of activity

10 26 It is therefore strongly recommended that laws, regulations, procedures and practices should be changed to the extent necessary to

(a) Enable extracts to be obtained by name and trade name as well as by Commercial Register number, and

(b) Enable members of the public to obtain lists of names of enterprises

(1) Based on partial names or trade names

(2) At given addresses,

(3) In particular fields of activity, and

(4) Having the same owner, partner or manager

10 27 Moreover, once computerized, as already noted above, the Commercial Register would then become an ideal instrument with which to implement other important commercial law modernization measures by facilitating the streamlining of formation procedures for various forms of companies as discussed in Chapter 12 below, as well as enabling the development of a system for securing mortgages on all forms of movable property whether tangible or intangible as discussed below in Chapter 11 on Civil and Commercial Code modernization

(7) **Proliferation of Different Business Registers**

10 28 Additionally, computerization would enable the Commercial Register to be combined with many of the other registers which now must be separately maintained such as the Industrial Register the Importers Register, the Exporters Register, the Commercial Agency Register, the Trademark Register, etc

154

10 29 With a few exceptions -- most of which we have proposed eliminating - all enterprises must be registered in the Commercial Register In addition, enterprises engaged in various activities must be enrolled in at least one other register such as those listed above Once the Commercial Register is fully computerized, the enterprises registered by it easily can be sorted into the various categories of the other registers Thus such registers could all be maintained by the commercial register

10 30 Accordingly in order to eliminate duplicate and multiple registration by an enterprise in separate registers and the time wasted associated therewith, it is recommended that once the Commercial Register is computerized, the relevant laws, regulations practices and procedures be revised to allow for a single registration by all enterprises in the Commercial Register only The Commercial Register could then produce a list of all industrial companies, for the Ministry of Industry containing all relevant information for each industrial firm which could then constitute the industrial register Similarly, the Commercial Register could then produce an importers' register a commercial agents' register an exporters' register and so on

(8) **Commercial Register Enforcement Powers may Require Expansion or Change to Insure Maximum Compliance**

10 31 For the Commercial Register effectively to carry out its important role in providing the public with essential information about enterprises within the market, the law should be reviewed and revised if necessary to provide adequate enforcement powers available to the Commercial Register to ensure that

(a) Enterprises and other entities doing business register in the Commercial Register to the maximum extent possible and preferably before commencing business operations,

(b) All significant changes are reported and registered, and

(c) The information registered is accurate and complete

10 32 The enforcement policies and practices of the Commercial Register should be to carry out qualitative inspections based on a well selected random sample to encourage compliance or based on probable cause to believe that a violation has occurred based on reports from the public and other evidence This should replace the current policy of attempting to inspect the premises of every applicant before registration Such comprehensive inspection efforts delay and therefore defeat, what should be the primary purpose of registration -- namely to put the public on notice as soon as possible as to the existence of an enterprise doing or seeking to do business in the market Moreover, comprehensive inspection probably will become increasingly difficult -- and, therefore, cause even more delay -- as and if policies to encourage private sector development succeed thereby resulting in ever an increasing number of private enterprises applying to register

(9) Commercial Register Officials may Require Increased Training

10 33 Increased and better training may be essential to upgrade the quality of performance of Commercial Register employees Specifically, such training should focus on

(a) Orientation of all commercial register employees on the important role played by the Commercial Register in the Egyptian economy by providing essential information about the individual enterprises in the market to other market actors and to the general public

(b) The importance of the role played by each employee in carrying out the important mission of the Commercial Register and the importance of attending to the needs of applicants in making the process of registration and obtaining extracts as easy as possible

(c) Training inspectors to carry out inspections in a manner which will assist inspected enterprises to comply and to encourage other firms to comply as well

Section C Recommendations

10 34 It is respectfully recommended that the Commercial Register Law regulations practices and procedures be reviewed and revised in order to

(a) Radically simplify and streamline commercial registration procedures by replacing the present requirements for numerous documents and pre-registration inspection procedures with a simple process of filing a complete, but short registration/application form together with company articles Severe penalties would then be imposed for knowingly providing false information or material omissions All prior approvals by other government entities would be eliminated including the requirement of authorization by the local chamber of commerce or industry All foreign branches would be registered in a similar manner upon presenting the required form together with a duly authenticated certificate of registration from their home countries instead of the company s complete articles at association All enterprises -- including foreign branches -- would be registered unless the activity appears on a negative list as forbidden or requiring special review and approval

(b) Implement the recommendations made in subsequent chapters to streamline the investment licensing and company formation process by combining those procedures with registration in the Commercial Register and eliminating the requirement of prior approval by the Investment Authority or the General Organization for Industrialization (GOFI) again except for projects specified in a short clear 'negative list'

(c) Expand enforcement powers and replace pre registration inspections with post-registration inspections to ensure compliance with the requirements to register new enterprises and significant changes to enterprises already registered and to ensure that the information registered is accurate and complete

156

(d) Complete computerization of all offices of the Commercial Register and put them "on line" in such a manner that an extract on any enterprise can be obtained from any Commercial Office in the country rather than only from the Commercial Register office of the district where the enterprise is located and registered -- e.g., an applicant in Aswan will be able to obtain an extract or an enterprise in Suez

(e) Reorganize the Commercial Register either using computer technology or by hand so that at a minimum an extract can be obtained on an enterprise simply by providing the name or the trade name or even part of the name of the enterprise -- i.e., providing the commercial register number would no longer be the only means to obtain an extract of a registered enterprise

(f) Require the Commercial Register, once it is recognized and/or computerized, to provide many additional services, such as

(1) Providing names and commercial register numbers of enterprises registered at a particular address

(2) Producing lists of firms engaged in particular industries or fields

(3) Produce lists of all enterprises in which a named individual is a founder, partner or manager

(g) Expand the requirement to register in the Commercial Register to include all entities doing business in Egypt including representative offices, not-for-profit associations professional firms, non-trading cooperative societies and foreign contractors operating under the auspices or funding of USAID, the United States Foreign Military Assistance Program, the World Bank and other foreign and international donors, whether such contracts would be considered to be a single transaction or not

(h) Expand the information to be registered to include unpaid judgments or presented and unpaid promissory notes and possibly other matters

(i) Expand third party sources of information for registration to include bankruptcy receivers, company liquidators, and any concerned members of the public having appropriately officially authenticated documentation such as officials abstracts of court judgments Again, severe penalties would be imposed for registering fraudulent information

(j) Combine other business registers with the Commercial Register after the latter has been computerized including but not limited to the Industrial Register, the Importers Register, the Exporters Register, the Commercial Agency Register the Trademark Register etc

(k) Carry out a rigorous comprehensive program of training Commercial Register officials and inspectors to better appreciate and carry out the important role of the Commercial Register

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CHAPTER 11

1883 COMMERCIAL CODE AND 1948 CIVIL CODE

Section A. The Need for Comprehensive Review and Modernization of the Civil and Commercial Codes

11 01 As noted in Paragraphs 2 10 - 2 13 above, the 1948 Civil Code and the 1883 Commercial Code are the fundamental laws governing commercial transactions and contracts in Egypt While these laws provide a basic and comprehensive set of rules for commercial transactions and contracts they are outdated in many important respects and do not provide a sufficient legal framework for many modern forms of credit transactions and contracts Accordingly, a comprehensive review and modernization of the Civil and commercial Codes should be carried out in comparison with the best current international business and financial practices

11 02 By way of example, one of the most important gaps created by outdated Commercial and Civil and related laws is with respect to secured transactions -- i.e., transactions secured by mortgages on various forms of tangible and intangible properties which can be foreclosed on by the mortgagee in the event of a default in payment of a loan or other obligations Another important gap lies in the area of leasing These examples are discussed below

Section B. Analysis of Selected Problems

(1) Need to Provide for Modern, Inexpensive Forms of Registered Mortgages and Security Interests

(a) Overview.

11 03 In most states of the United States, the Uniform Commercial Code (as well as the modern commercial laws of many other countries) allows for a system whereby a security interest (or mortgage) can be perfected with respect to any form of property whether real or personal, movable or immovable, tangible or intangible -- simply by registration of the mortgage or security agreement in a public register maintained by the state Priority of creditors registering security interests with respect to the same asset(s) is determined by date of registration Flexibility flows from allowing mortgages or security interests in any form of property to be registered by any creditor or entity and is not restricted to banks (unlike the situation in Egypt with respect to commercial mortgages under Law 11/1940) Registration protects the public by enabling any subsequent creditor to know which property has already been mortgaged by the proposed debtor-mortgagor

11 04 As is discussed in detail below, however, under Egypt's Commercial and Civil Codes and related laws, mortgages are highly restricted with respect to the property which can be mortgaged the method of perfecting the mortgage, and who can have

beneficiary of such mortgage Thus real estate mortgages are provided for under Egyptian law but are at the same time prohibitively expensive to register With respect to a particular piece of movable or personal property, non-possessory security interests are possible only in highly restricted circumstances unlike in the case of the U S Uniform Commercial Code under which they are generally available to all bank and non-bank creditors and are easily perfected

(b) Prohibitively Expensive Real Estate Mortgage Registration Fees:

11 05 Under the Civil Code, mortgages of "immovable" property -- i.e., real estate -- are provided for and can be registered with the land register as in many other countries Moreover it can be registered by any bank or non-bank creditor and in this respect pretty much follows the usual rules and procedures of mortgages everywhere with respect to registration and foreclosure The problem in Egypt with respect to mortgages on real estate is the heavy cost for registering a mortgage Mortgage registration fees are equivalent to 1 5 percent of the amount which is being secured by the mortgage Accordingly, a mortgage to secure a debt of L E 10 million will cost L E 150 000 to register

11 06 Because of this very high cost for land mortgage registration, creditors attempt to avoid paying this amount by undertaking all steps necessary except registration Alternatively, they may seek to secure the loan by other means such as pledges of valuable personal property or by bank guarantees This substantially raises transaction costs for credit and thereby reduces access to credit for smaller, newer enterprises in favor of larger, better established richer firms Accordingly, the high percentage fees now required for mortgage registration should be replaced by reasonable flat fees instead -- such as, for example, L E 50 per feddan of mortgaged land

(c) Incomplete and Ineffective System for Mortgages on Movable and Intangible Property.

11 07 Although the Civil Code provides for pledges of personal property, the problem is that such pledges can only be effective if the creditor takes actual possession of the property Accordingly, it is not possible in Egypt to have a non-possessory mortgage or security interest in personal property except in a few limited cases such as a 'commercial mortgage" -- i.e., a mortgage of *fonds de commerce* -- which is discussed below Thus whereas in the United States a creditor can obtain a mortgage or security interest in -- for example -- the debtor s inventory, simply by registering it at the public register of the Secretary of State a creditor in Egypt must take actual possession of the inventory Since business executives obviously need their inventory in order to conduct their business, banks and their business debtors attempt to create fictional "possession" of pledged inventory in the bank through devices whereby an enterprise "leases" its warehouse to the bank The bank then posts signs on the warehouse proclaiming its ownership of the premises and posts a guard at the door who inspects each piece of inventory going in or out of the building Meanwhile, the enterprise carries on its business inside the warehouse in the normal way The transaction costs of going through

these various procedures tends to be high thereby reducing the circle of creditors to whom credit is available on this basis

11 08 The possibilities for a creditor to have a non-possessory security interest in tangible or intangible personal (movable) property are very limited For example, in the case of ships Law 8 of 1990 provides for mortgaging sea-going vessels by registration at the ships registry, such mortgages rank in order of time and date of registration in the normal way Similarly, airplanes can be mortgaged by registration at the civil aviation registry

11 09 Otherwise, the only way to obtain a non-possessory security interest in movable property is through a 'commercial" mortgage or a mortgage of the fonds de commerce, under Law 11/1940 The concept of mortgage of the fonds de commerce is not defined in Law 11 but is taken from the French commercial law and has no exact equivalent in English or American law It has been described as covering all of the tangible and intangible assets of a business including tools, equipment, materials, inventory, good will, trademarks patents, trade name and the lease of the place of business together with the right to its renewal Sensibly, this mortgage is perfected by being registered at the Commercial Register The problem with the commercial mortgage, however is that it is restricted to banks specifically authorized by the Central Bank and is not available to other creditors The second problem is that it does not enable the creditor to single out any particular assets of the business but simply applies to virtually all of them except for the real or immovable property owned by the business

(d) Inadequate System of Mortgages Reduces Finance for Egyptian Enterprises:

11 10 As a result of the inflexible and limited scope for mortgages and security interests in personal property for normal business creditors and because of the expense of, and delays in perfecting real estate mortgages through registration with the land register, there is excessive reliance by banks and other creditors on collateral guarantees This means high barriers for credit for smaller business and therefore constraints on lending In addition long delays in the court room makes enforcement of credit transactions and foreclosure difficult in resolving abuse or technical defaults by borrowers This raises the risks and transaction costs of doing business in Egypt for all concerned and tends to squeeze out small borrowers and businesses

11 11 As one banker whom we interviewed pointed out banks in Egypt do virtually no consumer financing for items such as refrigerators stoves etc This is because the law does not provide for the lender to repossess the property when the debtor fails to pay Again, this is because, to perfect a security interest in movable property under the existing Civil Code, possession by the pledgee is necessary Similarly, financing of individuals based on mortgaging homes is difficult or impossible because the law and the courts will not allow persons to be evicted from their homes if and when a mortgage is foreclosed

11 12 Thus modernizing the Civil and Commercial Codes would include at a minimum providing for a modern system of perfecting security interests by all creditors in all forms of property by simple registration The obvious mechanism for implementing a modern system of security interest/mortgage registration would be the Commercial Register Indeed as noted above the Commercial Register already serves the purpose of registering commercial mortgages under Law 11/1940 Modernization and computerization of the Commercial Register as recommended above would greatly facilitate its use for an effective system to register security interests and mortgages In fact such modernization and computerization would be essential, because registration of security interests requires being able to locate individual and enterprise debtors by name for the system to work properly That is, subsequent security interest registrants would need to check the names of their debtor mortgagors to see whether or not a security interest has already been registered for the property in question Moreover, security interests could be registered for persons who are not in business especially in consumer credit type cases Therefore it is essential that the Commercial Register be able to locate persons registered by name

(2) Inadequate Legal Framework for Commercial Leasing

11 13 Another area requiring reform and protection through registration is equipment leasing The main problem is that the Civil Code does not provide adequate protection for owner lessors from third party claims on their property where it is in the possession of lessees While Egyptian law recognizes the concept of a lease of personal property, the law does not recognize a lease commonly used in modern equipment and consumer financing whereby the rental payment would be accepted as going towards the purchase of the equipment by the lessee at his option at the end of the lease Egyptian law would treat such a 'full pay out/finance type lease or "hire purchase" as an instalment sale contract The problem then is that it is not possible to create and register a mortgage or lien on the movable property being sold Therefore, a third party purchasing the equipment the from instalment-sale customer or lessee in good faith will obtain good title to the property as against the original lessor or seller Property can be repossessed if it is still in the position of the lessee or buyer provided that a court order is obtained which can take up to two years or more (Apparently, it is possible to sell on a hire purchase basis in the case of motor vehicles because they are registered with the traffic department which provides a means of putting third parties on notice, similarly, such arrangements are possible for ships registered in the Ships Registry and planes in the Civil Aviation Registry)

11 14 Because of the above problems with hire purchase' leases and instalment sale contracts, a banker from a prominent foreign bank doing business in Egypt told us that his bank and leasing companies were unable to utilize modern methods of asset-based finance in Egypt Several years ago, a law was drafted at the Ministry of Economy designed to correct this problem to provide a legal framework to enable equipment leasing to be undertaken in Egypt This draft law, however, was never enacted Recently, the Capital Markets Authority has made unfortunate changes to the draft law by inserting mandatory high capital requirements when such requirements are best left to the founders

and shareholders of the leasing company Future legislation in this field should provide for registration of lease agreements with the Commercial Register as a means of protecting the lessor's interest by putting third parties on notice thereof

(3) Overall Comprehensive Review and Modernization of the Civil and Commercial Code is Required

11 15 The foregoing are two important examples of cases where modernization of the Civil and Commercial Codes would greatly improve the legal infrastructure for modern business and financial transactions in Egypt What is needed, however, is an overall comprehensive review of the Civil and Commercial Codes to determine the full range of what is required to provide enabling legislation to accommodate modern up-to-date international commercial business and financial transactions and practices which are efficient and have the overall effect of lowering transaction costs which in turn makes credit and finance more available and affordable to consumers and smaller enterprises than is now the case

Section C. Recommendations

11 16 It is respectfully recommended that a comprehensive review and modernization of the Civil and Commercial Codes be undertaken to provide the enabling legal framework needed for modern business and financial transactions in Egypt At a minimum these and other relevant laws regulations, practices and procedures should be amended and/or new laws and regulations promulgated in order to provide for

(a) A modern system of perfecting security interests and mortgages by all creditors - and not just banks -- in all forms of property including real property, personal property, and intangible property by simple registration of a security agreement in the Commercial Register

(b) Modern equipment leasing in a manner that protects the lessor's interests in the leased property as against innocent third party transferees fully and adequately by, for example registration of equipment leases in the Commercial Register which would protect the lessor's interest by putting third parties on notice

(c) Other financial and commercial transactions in accordance with modern international commercial and financial practice

(d) Replacing the current system of exorbitant percentage fees for registering mortgages with a system of very low flat fees such as L E 50 for each feddan of

mortgaged land to make credit less costly and more accessible to investors and businesses -- especially smaller ones"[5]

[5] See also Chapter 5 on litigation and resulting case delays created by high government fees, Chapter 14 on the constraints on investment and desirable economic activity posed by exorbitant government fees and taxes, and Chapter 10 on the disincentives to land [illegible]ration and security and clarity of land titles posed by excessive fees

CHAPTER 12

COMPANIES LAW

Section A. Introduction and Background

(1) Overview

12 01 The Egyptian Companies Law 159/1981 presents a prime example of an uncompleted business law reform from the standpoint of providing fully adequate enabling legislation to allow the free market to operate within an environment of appropriate legal protection for market actors and the general public Although representing a dramatic step forward from previous legislation, the 1981 Companies Law still suffers from numerous problems and gaps which cause unnecessary bureaucratic barriers to the entry, operation and exit of incorporated companies and which prevent such companies from realizing their numerous advantages as engines to mobilize capital for productive investment and create jobs

12 02 In its report on Egypt's Private Sector Regulatory Environment cited above in Paragraph 1 23 the World Bank has recommended extensive amendments to reform Companies Law 159/1981[36] Also, we understand that the government is seriously considering companies and investment law reform This report fully supports the reforms recommended in the World Bank Report, and recommends that a full scale review and reform of the Companies Law be carried out in consultation with all interested private sector business executives, accountants and lawyers

12 03 Any overall companies law reform should address fully the issues raised in the World Bank Report as well as certain unresolved concerns raised in the 1980 report of an IFC Capital Market Study Team on the draft companies law which later became Law 159/1981[37] and the suggestions, problems and gaps which are analyzed in more detail in the remaining sections of this Chapter Finally, such reform needs to be coordinated with review of the Capital Markets Law 95/1992 While Chapter 15 specifically addresses the latter because the formation capital structure and proper operation of joint stock companies are fundamental prerequisites for the capital markets, the Companies Law and the Capital Markets Law are inextricably linked and must be considered together

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[36] See, e.g., I World Bank Report at pp x-xii and pp 8-11 and 24 of Annex A and II World Bank Report at pp 45-47 51 94-95 122-123

[37] "Memorandum Concerning Draft Company Law" by the International Finance Corporation (IFC) Capital Markets Study Team (Unpublished paper dated November 6, 1980) (hereinafter referred to as 'The 1980 IFC Report")

12 04 Major points to be addressed in an overall reform of the Companies Law should include the following

(a) The overly complex, bureaucratic and time-consuming company formation procedure should be replaced by simplified registration in the Commercial Register as discussed in Section B below

(b) Unduly bureaucratic merger procedures should be revised and streamlined as discussed in Section C below

(c) The law should provide better protection and self-enforcement mechanisms for non-controlling shareholders (or 'minority shareholders') as discussed in Section D below

(d) To realize the full potential of joint stock companies for economic and business development, consideration should be given to introducing some modern developments and deleting unnecessary restrictions as discussed in Section E below as follows

(1) Provide a more flexible capital and finance structure for joint stock companies by eliminating minimum capital requirements

(2) Eliminate partially paid shares for joint stock companies

(3) Eliminate unnecessary restrictions on issuance and transfer of securities

(4) Provide for unlimited duration for joint stock companies

(5) Provide for interim dividends

(6) Allow for board action by unanimous written consent without meeting

(7) Eliminate excessive government interference in shareholders' meetings and replace with more appropriate and effective enforcement techniques

(8) Bring Companies Law provisions into line with Investment Law provisions by eliminating nationality requirements for founders and management

(e) Discrimination against incorporated companies in favor of unincorporated companies should be eliminated as is discussed in Section F below by

(1) Eliminating the annual proportionate stamp tax on capital , and

(2) Allowing shareholders to decide on the percentage of profits to be distributed to employees

(f) A reformulated Companies Law ideally would allow a more flexible form of incorporated joint stock company which could be either open or closed -- i.e., either publicly held or closely and privately held -- eliminating the need for the more rigid and less useful limited liability company and partnership limited by shares company forms as discussed in Section G below

(g) The rules and regulations concerning unincorporated companies could be amalgamated into a general companies law together with rules governing incorporated companies as discussed in Section H below

(2) The Economic Policy Role of Incorporated Companies:

12 05 Companies provide the legal means for investors to mobilize capital and to organize and operate investment projects as among themselves and with respect to third parties From the economic policy standpoint, a modern companies law should provide for both incorporated and unincorporated forms of companies and business organizations but should strongly favor the joint stock company (or business corporation as it is known in the U S) over other forms of companies for the following reasons

- First the joint stock company/corporation is one of the most effective legal mechanisms ever devised for mobilizing capital for productive investment purposes

- Second the joint stock company/corporation provides far more stability and continuity to economic and business life than any other form of company

- Third, the joint stock company is an extremely flexible form of organization which can finance and manage every size and kind of business form the most simple single enterprise to the most complex conglomerate spanning numerous industries

12 06 All of the foregoing economic policy advantages of the joint stock company or corporation flow from the unique legal privileges and characteristics granted to joint stock companies by most modern companies laws The most fundamental of these characteristics is that a well conceived companies law specifically and clearly recognizes the joint stock company as being a separate entity which has a legal capacity and existence entirely separate from its shareholder-owners The numerous advantages of the joint stock company include

(a) The potential of unlimited duration as a legal entity separate from the lives of its owners unlike partnership companies whose existence is limited by the life and financial solvency of the partners

(b) The limitation of liability of the shareholders to the price of their shares, unlike partnerships where the partners are fully liable for the company's obligations to the full extent of their assets

(c) Professional centralized management separate from ownership unlike partnerships where all partners have management power and responsibility

(d) The free negotiability of shares for publicly held joint stock companies, unlike other companies where transfer of ownership is restricted, together with the flexibility to have rights of first refusal to protect existing shareholders

(e) The potential of raising large amounts of capital and other finance through private and public issues of securities which is forbidden for other companies

(f) A potentially flexible capital and financial structure with the possibility of having authorized but unissued capital and numerous classes of kinds of shares as well as bonds and debt securities all of which facilitate raising capital through public issues

A well conceived modern companies law therefore is essential to facilitate and encourage investment

(3) **Overview of Legal Forms of Companies and Business Entities in Egypt**

12 07 Egyptian law provides for several forms of enterprises, companies, corporations, organizations and entities similar to those found in Europe and, to a lesser extent, in North America as described in the following paragraphs

(a) **Individually Owned Establishment (Sole Proprietorship or Sole Trader).**

12 08 As in Europe and North America any business can take the form of an individually-owned establishment (or sole proprietorship or sole trader) by registering as such in the Commercial Register

(b) **Unincorporated Companies -- General and Limited Partnership.**

12 09 General and limited partnerships resemble those in Europe and North America, and are governed in Egypt by the 1948 Civil Code, the 1883 Commercial Code and the Commercial Register Law 34/1976 Pursuant to the Commercial Register Law 34/1976, such companies require 51 percent Egyptian control and management, except for those organized under Investment Law 230/1989 As in the United States, general partners share full management power and have unlimited liability for all obligations of the partnership to the full extent of their personal assets, whereas limited partners are liable only to extent of their contributions but have no management powers

(c) **Incorporated Companies (Corporations).**

12 10 The Companies Law No [illegible] 159/1981 is the general corporate law of Egypt and provides rules for the formation [illegible] legal structure, management, merger, and dissolution of Egyptian incorporated companies (corporations) With a few exceptions, Companies Law 159 also governs incorporated companies established pursuant to

Investment Law 230/1989 Under Laws 159 and 230, three types of incorporated companies may be formed as follows

(i) The Joint Stock Company.

12 11 The joint stock company resembles a U S corporation or a French *societe anonyme* which is owned by shareholders who then elect a board of at least three directors to exercise management responsibility Apart from electing its chairman the board in turn usually appoints a managing director or general manager and other officers to manage day-to-day operations In principle, shares are freely negotiable, but may be subject to first refusal rights Upon application for incorporation at least 25% of the issued capital must be paid in with the remainder paid in over a maximum 10 years period The minimum capital required is L E 250,000, unless a higher amount is required by applicable laws or regulations A minimum of three shareholders is required There is no maximum number of shareholders

(ii) The Limited Liability Company.

12 12 The limited liability company which corresponds to the French *societe a responsibilite limitee* (S A R L) is like an incorporated partnership or somewhat resemble a U S close corporation or a British private limited company It is limited to a maximum of 50 shareholders or partners and the management structure is simpler The shareholder partners directly choose the management, although the managers may, if there are more than one, organize themselves like a board of directors in a joint stock company Such a board, however, is a joint stock company Unlike joint stock companies, limited liability companies do not issue share certificates and share transfers, while permitted, are subject to rights of first refusal by existing shareholders/partners A minimum of two founders and shareholders is required Upon application for incorporation, all of the capital must be paid in The minimum capital required is L E 50 000

(iii) The Partnership Limited by Shares

12 13 The partnership limited by shares corresponds to the French *societe en commandite par actions* and has no counterpart in U S law This form is a combination of a partnership and a corporation in which capital contributions are split between shareholders with limited liability and a general partner who manages the company and who is personally liable for the debts of the company

(d) Shared Characteristics of Incorporated Companies:

12 14 Except for the general partner in a partnership limited by shares, all of the above-described entities share in common the principle of limiting shareholder liability to the extent of the price paid or owing in respect of the shares They also have an existence independent of their owners, but the duration is limited to a maximum of fifty years

although this may be renewed by a vote of an extraordinary general shareholders' meeting These companies are all governed by articles of incorporation, and/or statutes (bylaws) which are foundation documents which can be altered only by an appropriate vote of the shareholders or partners pursuant to the law

(e) Branch:

12 15 Legally, a branch is simply part of the foreign or local company establishing the branch and has no separate legal existence A branch becomes legally authorized to do business in Egypt upon registration in the Commercial Register

(f) Representative Offices:

12 16 Companies Law 159/1981 provides that, upon the approval by the Companies Department and the Companies Review Committee, foreign companies may establish representative offices in Egypt "whose aim shall be confined to studying the market and the possibilities of production" Similarly, the Commercial Agency Law 120/1982 provides for the establishment by foreign companies of "scientific technical consultative and other service offices" after approval by the Import and Export Control Authority In other words, such offices may not exercise any commercial activities, but are limited to surveying the market research and representation, they are not registered in the Commercial Register

Section B. Replace Current Company Formation Procedures with Simple Registration in the Commercial Register:

(1) **Current Company Formation Procedures are Cumbersome:**

12 17 As recommended by the World Bank, the formation of companies should become a simple procedural matter of registration[38] This should replace the current approval process requiring time-consuming bureaucratic review of numerous documents For example to form a joint stock company recently, our office had to submit 29 separate documents to the Companies Department Extensive review of these documents by the Companies Department required several months -- including haggling over various provisions of the articles of incorporation, because articles of incorporation risk rejection or require extensive justification if they deviate from the model articles issued by the Minister of Economy Security checks by the Ministry of Interior on prospective founders and board members consumed several more months Further delays occur when a founder contributes property instead of cash to the new company's capital since current law requires in-kind contributions to be evaluated by a government committee Complicating matters is that formation of a joint stock company under Investment Law 230/1989 -- instead of the Companies Law -- also requires promulgation of a company's articles of incorporation by a ministerial decree and publication of such articles in the

[38] I World Bank Report at p xiv-xv

Official Gazette before the company can be registered in the Commercial Register and formed

12 18 Even the process for establishing a simple partnership or limited partnership requires time-consuming duplicative procedures and an unnecessary number of documents Thus a summary of the partnership articles of association must be deposited with the clerical office of the first instance court of the district within which the head office of the company is located to be recorded in a ledger held for this purpose This summary then must be posted at the court s notice board Thereafter, the summary contract must be published in a specialized newspaper Finally, the partnership must be registered in the Commercial Register where the applicants must present 10 to 12 separate documents as follows

(a) Copy of the company contract -- i.e., Articles of incorporation -- and copy of the contract summary posted at the court

(b) Authorization by the local quasi governmental chamber of commerce to do business

(c) Copy of the lease contract for the business location

(d) Minutes of surveying the lease location by Commercial Register inspectors

(d) Copy of the taxation card

(e) Copy of the newspaper in which formation of the company is published

(f) Copy of any required licence authorizing operation such as a GOFI licence in the case of industrial projects or GAFI in the case of Investment Law Projects

(g) Copies of partners' identity cards

(i) Copy of a receipt showing that electricity meter is installed in the name of the company

(j) Copy of the power of attorney in case the application is filed by an attorney

(k) Stamps as required by the Stamp Tax Law should be affixed on all documents

12 19 Clearly the registration and public notice procedures at the local court essentially duplicate registration in the Commercial Register, since the Commercial Register performs the function of notifying the public of the official formation of the company Probably, registration at the local court is a holdover from a time when the Commercial Register did not exist In any event there is no apparent need to retain these duplicative procedures any longer

171

(2) Companies Should Be Formed by Simple Streamlined Registration at the Commercial Register

12 20 Such cumbersome formation procedures are no longer justified for either incorporated or unincorporated companies in light of free market imperatives requiring rapid automatic procedures and in light of government expectations for Egypt's private sector to generate investment and employment Every day that a company is delayed in formation is a day in which such company is not engaged in productive establishment activity or generating jobs in the Egyptian economy In other countries, such as the United States and others company formation is a simple matter of registering the company by submitting -- at most - a one or two page registration form and the company's the articles of association with appropriate identification documents to an agency similar to Egypt s Commercial Register In other words, only a few documents are presented, rather than many Moreover, the registration officials in such countries do not review the entire articles of association but simply look to make sure that

(a) The name of the proposed company is not confusingly similar to that of another registered company,

(b) The company's objects appear on their face to be lawful,

(c) There is an address for service of lawsuits and court notices, and

(d) The articles specify the capital and share structure

Normally such review and registration takes less than an hour upon which the company is legally formed and existing

12 21 Egypt can and should easily move to a similar system of company formation by simple registration in the Commercial Register in place of the current bureaucratic review and approval process Under a company registration system applicants for a company would simply submit to the Commercial Register an application for commercial registration together with the company's articles of association and appropriate identification Thereupon, the Commercial Register official would

(a) Ensure that the application was complete, including address, etc

(b) Review the articles to ensure that the capital structure was described in the articles

(c) Check to see that the company s objects are not plainly unlawful

12 22 Assuming affirmative answers to the foregoing, the Commercial Register official would then proceed to stamp and date the submitted articles, register the company into the commercial register and issue a certificate of registration, which would be conclusive proof that the company is lawfully formed, existing and authorized to do business

statements would be subject to severe penalties, and qualitative random sample inspections together with inspections based on probable cause would promote compliance

12 27 Appropriate identification should continue to be required -- i.e., identity cards and passports for individuals and commercial registration certificates for founders which are local company founders For foreign company founders, it should be enough to require an authentic commercial registration certificate or certificate of good standing from its home country, it should not be necessary to supply articles of incorporation or other lengthy documents which must be translated into Arabic at considerable expense

(5) **Security checks not to Delay Registration**

12 28 As for security checks, company formation would no longer be held up pending the completion of security checks, but of course, the Ministry of Interior could carry out such checks at any time and there could be requirements to continue to inform the Ministry of Interior of all foreign founders and managers There is no reason to delay the formation of hundreds or thousands of companies while security checks are made Security checks would continue separately from the formation process and those found to be security risks could at any time be subjected to appropriate immigration and other relevant laws and regulations regarding that subject Thus, Egypt's security would not be compromised Currently the greater risk to Egyptian security appears to be from unemployment and time-consuming security checks which now delay companies from forming commencing operations and hiring employees

(6) **Eliminate Government Evaluation of In-kind Shares**

12 29 The treatment of in-kind contributions to capital in relation to shares also should be changed Currently, in the case of joint stock, and other incorporated companies, in-kind contributions are valued by a committee set up in the Companies Department, a process which invariably takes time Consideration should be given to the approach of accepting the value agreed upon by the founders and ratified by the shareholders at the first general meeting, with liability for any damage to shareholders or third parties caused by any misstatement in value Such liability would be determined by the court For shares issued in return for in-kind contributions after formation, the company's board of directors (excluding any interested party) could make the evaluation which would be allowed to stand unless there is evidence of fraud[39] as suggested by the IFC Team in 1980

12 30 In addition full disclosure of [illegible] shareholders of in-kind contributions and the shares issued in return therefore [illegible] be required to be made Should the company offer any of its shares for public subscription the contribution would then be required to be evaluated by an independent [illegible] any case In other words, the solution would again rely on the market judge[illegible] actors involved plus full disclosure with

[39] 1980 IFC Report at pp 12 13

173

penalties and liabilities for fraud rather than relying on government evaluation which makes such matters even more uncertain Moreover there is no guarantee that a government evaluation will be accurate, and there currently are no provisions for holding the government liable for an inaccurate evaluation

(7) **Minimum Review of Company Articles for Essentials Only**

12 31 As already proposed above, under new formation procedures, company articles would no longer be subjected to extensive official review and approval before the company s registered and established Rather, the law would clearly define the requirements for the articles -- i e , what can and what must be included -- and the articles, of course, would be required to conform to the law But enforcement of the law in this regard, would be left to the shareholders themselves and third parties through bringing lawsuits in the courts In fact, this already is the situation in Egypt Obviously, under the current system, if the reviewing Companies Department official misses one or more illegal provisions in the articles, such provisions would not thereby suddenly become legal Rather any shareholder can sue to have any illegal provisions in the company's articles declared null and void by the courts

12 32 Under Egyptian law, the articles of a company are considered to be a contract among the founders and shareholders of a company and should be enforceable to the extent that they do not contravene express provisions or principles of law Free market imperatives requires market actors to respond quickly to fast moving market developments In such circumstances, extensive governmental review of private contracts -- including articles of association of companies -- wastes valuable time After all, the government does not review other contracts between private parties -- such as, e g., apartment leases, sales of goods, etc Rather, the parties themselves review and enforce such contracts through the courts This should also be the case for articles of association except for the key provisions noted in subsection 2 above

12 33 To promote free market development, the preferable system for companies formation, then, is for the government to provide an efficient enabling environment for private enforcement of most of the companies law through court action together with minimum speedy government review and minimum procedures for formation of companies by registration at the Commercial Register Such registration puts the public on notice as to the existence of, and basic facts about, the new company and makes such facts easily available to any member of the public by providing extracts and copies of articles of associations upon payment of a modest fee I e., copies of the articles of each company (as they may have been amended) or a summary thereof in the case of partnerships would continue to be made easily available to the public along with Commercial Register extracts Then all concerned private parties and members of the public would have the tools needed to enforce the law through private lawsuits in the courts The authorities would become involved, of course, in cases of serious fraud or other clearly criminal conduct

194

(8) Companies Law Enforcement Framework

12 34 Shareholder enforcement could be effectively aided by promulgating clear and comprehensive rules for company articles and operations, which would require minimum standards for protecting the legitimate interests and rights of shareholders and the public but which otherwise would allow the founders freedom to structure their own company so long as the minimum requirements are met One approach could be to promulgate model articles and alternative model articles along the lines of the British Tables A and B Founders would be free to select such model articles or prepare their own articles in accordance with clearly state requirements in the law

12 35 Under a reformulated companies law -- rather than continue efforts at preemptive enforcement through the licensing system which currently delays the formation of new companies as noted above -- enforcement should rely heavily on

(a) Court actions by shareholders bondholders and third parties injured or threatened by violations of clearly stated rights and duties as suggested below, and

(b) Qualitative inspections by trained government inspectors on a random basis of a small, selected sample of companies or based on probable cause to believe that serious violations are being committed or are about to be committed Similarly, the Government must be empowered to act only when necessary at the operational stage and must have effective enforcement mechanisms and powers available to it Expert technical assistance will be most helpful in this area

(9) **Reduce Joint Stock Company Founders to Two:**

12 36 In addition, the number of founders required for a joint stock company should be reduced from three to two In many jurisdictions, one person could found a company There is no particularly strong policy reason to require three founders[40]

Section C Unduly Bureaucratic yet Incomplete Merger Procedures should be Revise and Streamlined

12 37 This report concurs with the World Bank Report's recommendation that company merger procedures be revised and streamlined[41] In this regard we propose the following for consideration

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[40] One of the reforms of Law 159/1981 was to reduce the number of founders from 7 to 3

[41] See I World Bank Report at p xxv, II World Bank Report at pp 118-119 and 122-123

175

(a) The basic rules and procedures governing mergers should be in the law and not left to the executive regulations to provide better protection to the concerned parties - e.g., shareholders, creditors and the public,

(b) Such rules should provide for appropriate protection of shareholders and creditors in the event of controlling share acquisitions or the transfer of major assets as well as mergers

(c) As in the case of in-kind share contributions, evaluations of the merging companies' assets should be left to private independent auditors or appraisers for the concerned parties -- and to the affected shareholders and other concerned parties themselves -- rather than to evaluation by government agencies or committees,

(d) Fraud and abuse would be guarded against by appropriate criminal penalties and empowering injured shareholders, creditors and other parties to obtain relief through court action,

(e) The requirement for approval of the minister should be eliminated and replaced by the opportunity for an autonomous government body or commission to review and approve mergers from the stand point of preventing, monopolies, oligopolies or other excessive concentrations of economic power which would threaten, rather than enhance competition and free market operations in accordance with a new more adequate anti-monopoly law[42] as recommended below

12 38 Such an autonomous body would be empowered to prevent a merger only if it found a substantial threat to fair and adequate competition in the market given all of the circumstances Mergers not presenting a clear danger of monopolistic or oligopolistic concentrations of economic power would not be reviewed and could not be prevented by such a body As recommended by the World Bank[43]

(a) Such an autonomous body should have properly and adequately trained staff

(b) The laws should clearly set out the grounds on which a merger should be denied, and

(c) If the concerned agency does not give a decision within a specified time the merger would be allowed to proceed There would be safeguards against the agency s taking actions within the time limit only to gain more time within which to continue investigation without reasonable cause

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[42] The World Bank Report also recommends review by an autonomous government body or commission from the stand point of preventing monopoly or oligopoly, Id

[43] Id at pp 122-123

Section D The Law Should Provide More Adequate Protection and Self-enforcement Mechanisms for Non-controlling Shareholders ("Minority Shareholders")

(1) Importance of Protecting Non-controlling Shareholders.

12 39 As suggested by the World Bank and 1980 IFC Reports, a reformulated companies law should provide stronger protection to minority shareholders than now exists With proper laws and regulations, the modern joint stock company or business corporation can be a highly effective legal mechanism with which to mobilize capital for productive investment purposes This is especially true when shares are offered and issued to the public, because joint stock companies may then expand the range of investors from a few entrepreneurs and wealthy investors to hundreds or even thousands of small investors By broadening the investment base in this way, not only are potential sources of investment funds vastly expanded, but the benefits of investment and economic growth may be spread more equitably as increasing numbers of small investors receive dividends and sell appreciated shares of stock for profit The base for investment and spreading wealth can be expanded even more broadly as and if mutual funds and money market funds are developed

12 40 For this potential to be realized however, small savers and investors must be encouraged to invest in joint stock company shares and other securities -- or, alternatively, in mutual funds comprised of such shares and securities This means in turn that small investors must be assured of at least minimum protection for their interests as small shareholders against abuses by large shareholders which could harm them and discourage their interest in investing in joint stock company shares and securities Therefore sound policy demands that the companies law provide small minority or non-controlling shareholders with an adequate level of protection and a framework for "self enforcement" to protect their interests Such a protection and self enforcement framework for small shareholders is essential to enable the joint stock company to reach its full potential to mobilize capital and thereby contribute to creating self-sustaining, equitable economic growth

12 41 First, a word on terminology

(a) Often small shareholders are referred to as "minority" shareholders and rights to protect them from abuse by "majority' shareholders are sometimes called "minority shareholders rights The focus, however should not be on minority or majority shareholders as such but on control or non-control of the company This is because in certain cases -- especially those of large publicly held joint stock companies where shares are widely held by thousands of shareholders -- control of the company may be in the hands of a single shareholder, or a small group of well organized shareholders, who actually owns a minority of less than 50 percent but a large enough block of shares to control the company by electing a preponderance of the directors as against a disorganized majority of small shareholders In other words, under certain circumstances, a minority of shares can constitute a controlling block of shares with respect to a

company Obviously, what consutute a controlling block of shares varies with circumstances and conditions from one company to another In same cases a block even as low as 20 or 25 percent of the issued shares may be enough for control In other cases -- especially those of closely held companies with a smaller number of shareholders, for example -- control may require a majority of 51 percent

(b) The point is that the amount of shares required for control of a company will vary from company to company and may sometimes be a minority Technically, then, the better terms may be controlling shareholder(s)' rather than 'majority shareholder(s)" and 'non controlling shareholder(s)' rather than 'minority shareholder(s)" Also applicable sometimes may be the somewhat less precise terms "large" and "small" shareholders

(2) Company Law Mechanisms or Changes needed to Protect Non-controlling Shareholders

12 42 For the cases cited above some legal mechanisms should be introduced or strengthened in a reformulated Egyptian companies law, to protect non-controlling shareholders as discussed in the following paragraphs

(a) Cumulative Voting for Directors

12 43 Ensuring that shareholders can be represented on the board of directors in proportion to their shares provides non-controlling shareholders the possibility of electing directors to represent their interests on the board This method also would ensure that a 51 percent majority shareholder would not automatically be able to elect all the directors of the board For example, if there are 1000 shares outstanding and 10 members on the board of directors, a minority holding 400 shares should be able to elect at least 4 directors instead of a shareholder having 501 shares being able to elect all 10

12 44 The best method for achieving the above purpose is to require "cumulative voting' for directors in which

(a) All directors would be elected simultaneously by plurality vote If directors have staggered terms -- i e, terms which begin and end on different dates -- larger shareholders obviously have more power in the election of directors to the disadvantage of minority shareholders,

(b) All shareholders would vote simultaneously

(c) Each shareholder would have votes equal to the number of his shares multiplied by the number of directors to be elected and

(d) Each shareholder could concentrate all of his votes for one candidate or spread them out as he sees fit

178

(e) Directors could then be removed only by a vote greater than the number of votes required to elect him in order to prevent removal of directors originally elected by non-controlling shareholders

(f) The board of directors would be forbidden to delegate all of its powers of management and supervision to a committee or a single director or officer to avoid scrutiny by the directors elected by non-controlling shareholders

12 45 While the model articles provide for Egyptian joint stock company shareholders to elect directors in proportion to their shares, a requirement set forth in the law re-cumulative voting provisions such as would provide the maximum amount of voting power possible for non-controlling shareholders to elect board members especially in the context of widely held joint stock companies[44]

(b) Shorter Board Member Terms

12 46 Article 77 mandates the term of three years for boards of directors and 5 years for the first board of directors who are appointed by the founders To ensure better control of shareholders it is important that

(1) The term of the first board of directors as appointed by the founders should be changed from 5 years to a period beginning with formation of the company and ending with the first general meeting of shareholders at which time directors would stand for election Five years is too long for the founders to exert control by their hand-picked board The board named in the articles should stay in office just long enough to get the company to the first shareholders' meeting Then the shareholders should be entitled to elect their own directors

(2) The three year period should be reduced to two years which should be viewed as a maximum term, but the articles could establish a lesser term

(c) Outside Directors

12 47 A successful principle of modern companies law in most industrialized and newly industrializing countries is the separation of share ownership from management, whereby shareholders are permitted to choose members of the board of directors from outside the company Article 91 of the current Companies Law requires that directors be shareholders except for two experienced experts who need not be shareholders In addition a director's shares must be deposited in a bank as a 'guarantee' until his term ends

12 48 This should be changed to permit shareholders to choose whomever they wish as directors including 100 percent non-shareholders if that is desired At the same time the

[44] See 1980 IFC Report at p 17

requirement of depositing "guarantee" shares should be abolished and replaced by a requirement that all dealings by directors in the company's shares and securities must be disclosed to the shareholders in a timely manner Shareholders need complete flexibility in choosing the company's management As a practical matter, it may be impractical to choose only shareholders as directors

12 49 Requiring that directors be shareholders either unduly limits shareholders choice or leads to time-wasting subterfuges for other shareholders to give directors shares for their tenure as directors and then take them back Limiting shareholder choice generally and in this way in particular inevitably weighs more heavily against non-controlling shareholders Of course, the shareholders -- or, indeed, the founders in drafting the articles -- may decide as a matter of policy in individual cases to have only shareholders as directors But the decision should be theirs and not mandated by the law

(d) Liberalize Proxy Rules

12 50 Under the existing Companies Law and regulations, proxies must be shareholders and a shareholder other than a director may not appoint a director to act on his behalf as a proxy Generally proxy choice should be left to the decision of the shareholders in order to allow sufficient flexibility and protection for non-controlling shareholders While closed companies should be able to limit proxies to other shareholders if stated in their articles public companies having to obtain another shareholder to act as proxy may be difficult especially for small shareholders Moreover, it should be a matter of who the shareholder trusts In the case of publicly held companies, therefore the shareholder should be able to appoint whomever he wishes as a proxy including a non-shareholder or a director

(e) Eliminate Board Power to Invalidate Shareholders' Meetings by Non-Attendance.

12 51 Article 60 of the current Companies Law requires the board of directors to be represented in the general meeting of shareholders "by at least 3 members of the board of directors including the chairman his deputy or one of the managing directors ' In other words, an otherwise valid shareholders' meeting is automatically invalid if the meeting is not attended by least 3 members and officers of the board as described In essence this gives members of the board -- and especially its officers -- the power to invalidate the meeting simply by not attending in sufficient numbers

12 52 Under Article 60 such invalidation forces the shareholders to call another meeting and if sufficient board members again are not present, the shareholders may terminate their appointment, elect new board members in their place, and then call yet a third meeting In other words if sufficient members and officers of the board of directors and managing directors do not cooperate the shareholders could be forced to hold 3 meetings before they could precede with their normal business Such a procedure would be especially disruptive for widely held joint stock companies with many shareholders and gives the directors and the chairman too much power in this respect especially if and

when the board and a significant portion of the shareholders are in disagreement Forcing shareholders to attend three meetings also could be a device for those in control of the company to harass and disrupt non-controlling shareholders

12 53 Accordingly it is very important that this provision should be revised to

(a) Leave in place the duty of board members to attend all shareholders' meetings and respond to shareholders' questions,

(b) But make clear that failure to attend by one or more board members will not invalidate the meeting

Otherwise board members acting in concert can paralyze the company, at least for the time that it takes to call and hold the three meetings

(f) Clear Statement of Duties to Shareholders by Directors, Officers and Majority Shareholders

12 54 As both the World Bank Report and the 1980 IFC Report have pointed out the current Companies Law gives insufficient attention to the duties of directors and officers as well as the duties of majority or controlling shareholders to minority or non-controlling shareholders[45] As suggested by the 1980 IFC Report, therefore, a newly reformulated companies law should include the following

(a) Provisions specifically forbidding majority or controlling shareholders from taking "abusive or repressive" action against minority or non-controlling shareholders,

(b) 'Provisions specifying the duty of directors and officers to act prudently for the best interest of the company and its securities holders This is an important protection for shareholders, because it can be used to threaten, or bring, legal actions against the directors and officers in case they act in ways apparently contrary to securities holders interests The concept that directors and officers have a fiduciary duty to the company and securities holders can have a potent cautionary effect '[46]

12 55 Currently, Article 76 of Companies Law 159 provides only for annulment of a decision of the general meeting of shareholders issued in the interest of a certain category of shareholders or to the detriment thereof or to the special advantage of members of the Board of Directors or others without due regard to the interests of the company " This needs to be taken out of the narrow confines of a shareholders decision and broadened A general duty of trust (also called a fiduciary" duty) to the company

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[45] I World Bank Report at p xiv xv & p 10-11 of Annex A, II World Bank Report at p 56 1980 IFC Report at p 26

[46] 1980 IFC Report at p 26

should be imposed on all directors officers and controlling shareholders to exercise their powers and conduct themselves in the best interests of the company as a whole and not to favor one group within the corporation to the detriment of another group or to detriment of the company Specifically, directors, officers and controlling shareholders would be prohibited from taking for themselves business opportunities which should be available to the company -- so called 'corporate opportunities -- whether by means of a decision of the general meeting of shareholders or otherwise

(g) Self Enforcement through Right of Injured Parties to Sue.

12 56 As suggested by the IFC team in 1980, a reformulated companies law should provide an adequate framework for 'self enforcement" by giving injured parties the right to sue for violations of duties, laws or regulations Article 161 of the existing law gives the right to injured parties to sue for damages for "any dealings or resolutions infringing the rules established by this law', but that article focuses on illegal action only by the board of directors and the general meeting of shareholders It should also be made clear that actions are available for violations of duties of the law by individual officers, directors and auditors as well as controlling shareholders who abuse their position wrongfully to the detriment of non-controlling shareholders

12 57 Further, Companies Law Article 160 appears to require a shareholders' resolution for suits against directors and auditors It should also be made clear that actions against directors and auditors -- as well as employees -- for damages for breach of duty to the company and its shareholders are not confined only to actions by the general assembly of shareholders, but that any shareholder injured by wrongful breach of duty can sue While the Civil Code in Egypt provides generally for the rights of an injured person to sue for any wrongful harm by another person, as the IFC team pointed out in 1980, it is important that 'special provisions be developed in the Companies Law specifying rights for harmed shareholders against directors, officers, and others" including controlling shareholders[47]

(h) Stronger Provisions Regarding the Independence, Powers and Liabilities of Auditors

12 58 As noted by the World Bank Report the current law

> ' is also inadequate in laying down the legal status and powers of auditors A powerful and independent auditing profession would do much to protect interests of shareholders and the community at large[48] "

[47] 1980 IFC Report at p 27

[48] 1 World Bank report at p xv, 2 World Bank Report at p 56

12 59 Similarly the 1980 IFC Report recommended that a clear requirement be stated in the law that auditors must be independent of the company and noted that

> Independence would be a question of fact to be determined from all the circumstances Independence certainly would preclude the accountant from owning securities in lending funds to or serving as an officer or employee of the company or acting as its book-keeper [49]"

12 60 Currently Article 104 requires certain aspects of independence of the auditors including provisions forbidding

> founding the company, membership of its board of directors or any permanent technical administrative or consultative work therein "

12 61 Additionally, Article 104 forbids the auditor from being a partner or relative to the fourth degree of a founder or director However, a general requirement of independence as suggested by the 1980 IFC Report would provide more far reaching protection in addition to allowing individual shareholders a clear right to sue auditors for harm from breach of duty The law should also make clear that the auditor must be independent of the majority or controlling shareholders and that non-controlling shareholders can sue directly for removal or harm as already noted above

(i) Independent Audit Committee.

12 62 As suggested by the IFC's capital markets study team in 1980[50], publicly traded joint stock companies could be required to have an independent audit committee of the board of directors controlled by directors elected by the non-controlling shareholders Such an audit committee would meet with the external independent auditors of the company to review -- and later report to the shareholders on -- problems or questionable practices observed by the auditors the adequacy of the company's internal accounting controls and procedures, accessibility of information during the audit and other relevant matters This approach is a double check in addition to the requirement that the company have an independent auditor whose report is reviewed and approved at the shareholder s meeting Experience has shown that auditors can be subject to pressure by the management and that ordinary shareholders do not have time to study the auditor's report thoroughly or the ability to question the auditor adequately and at length

(j) Balance Required.

12 63 Thus there are many ways in which the rights of small and non-controlling shareholders can and must be protected for the economic policy reasons stated at the

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[49] 1980 IFC Report at p 22

[50] 1980 IFC Report at pp 22 -

beginning of this sub-section At the same time non-controlling shareholder protection must be balanced against the need to allow the company to develop and carry on its business in an efficient dynamic way That is, too much small shareholder protection can kill the golden goose of entrepreneurial enterprise which generates the profits which benefit all shareholders both minority and majority, controlling and non-controlling Thus, for example if company officers and employees are kept constantly occupied with shareholder inspections or shareholder meetings on trivial topics, they will not have time to do their work Accordingly, balance clearly is called for since tyranny of the minority could be as bad or worse than tyranny of the majority for capital markets development in particular and private sector development in general

Section E. Measures to Realize Potential Joint Stock Company Advantages for Economic Development

12 64 As noted above in Paragraphs 12 05 and 12 06, the modern joint stock company - or business corporation -- offers many economic development advantages Various provisions of the existing Companies Law and regulations as well as governmental practices and procedures prevent many of these advantages from being fully realized Accordingly, it is strongly recommended that the measures recommended in this section be undertaken in order to fully develop the joint stock company mechanism as a powerful tool in private sector economic development

(1) Provide More Flexible Capital Structure by Eliminating Minimum Capital Requirements for Incorporated Companies

12 65 The joint stock company is one of the most effective mechanisms ever devised for mobilizing capital for productive purposes because of the negotiability of its shares, the potential for unlimited life the limited liability privilege available to the shareholders and other advantages To realize fully the joint stock company's potential for capital mobilization in Egypt, both the Companies and the Capital Markets Laws and regulations should be revised to allow joint stock companies to have a more flexible capital structure by eliminating provisions, requiring or authorizing the executive regulations to fix minimum issued capital levels for different types of businesses This should be left to incorporators and shareholders who are in a much better position to make determinations about whether the company has sufficient capital to engage in the activities which they contemplate than the government

12 66 Moreover, such minimum capital levels set forth in regulations and decrees tend to create a false sense of security For one thing, over time, inflation will erode them in all probability More importantly, the real concern of shareholders as well as third parties and the public should be with a company s overall financial position, of which the capital is only one element and not the most important element at that Rather, the financial strength of a company is best measured by its overall net worth and its future prospects For example, a company which has a paid in capital of L E 100 million may in fact have liabilities exceeding its assets, thereby rendering it bankrupt By the same token a company with a very small paid-in capital of, say, L E 50,000 may in fact have grown

and prospered to the point where it has a net worth of L E 50 million An actual example is that of the Gorman Rupp Company which was incorporated in the U S State of Ohio almost 60 years ago to manufacture pumps with a paid-in capital of only $1,500 or L E 5,025 Since then, the company has grown from a single factory in an old barn to seven modern manufacturing plants with net assets of almost $50 million Yet, the original $1 500 is the total amount of capital that has ever been paid in to the company Instead of obtaining more capital contributions from its shareholders, the company financed its capital expansion instead through re-investing its profits year after year Thus although today it is a publicly held company with over $70 million in annual sales, the Gorman Rupp Company never would have qualified to be a joint stock company in Egypt under Law 159 with capital of only L E 5 025, since the minimum capital for any Egyptian joint stock company is L E 250 000

12 67 Accordingly, for the amount of capital needed, reliance should be placed on those most concerned namely the founders and the shareholders As pointed out by the IFC Capital Markets Study Team in 1980

> "Often an enterprise starts out with only a fraction of the entire capital it will ultimately need Its initial goal is to obtain legal corporate status and then enter into negotiations with potential investors and lenders, to stop this process may well work against the goal of facilitating private enterprise and risk taking [51]

12 68 Far more effective than minimum capital requirements, for purposes of protecting the public is a means for the public to obtain reliable information about the true financial position of a any company with which it is dealing In many countries, this is accomplished through public disclosure of financial statements showing a company's financial position based on accounts maintained in accordance with a well formulated set of generally accepted accounting standards and audited by skilled auditors in accordance with proven auditing standards Failure to disclose honestly the true position of a company would lead to liability for any damages for those responsible

(2) Provide Sounder Capital Structure by Eliminating Partially Paid Shares

12 69 Currently, the Companies and Capital Markets Laws allow issued shares to be partially paid -- i e , as low as 25 percent upon issuance Partially paid shares raise many problems related to the rights and liabilities of the holder of partially paid shares and create uncertainty as to whether the shares will be paid Because of these and other problems many jurisdictions require that all issued shares must be fully paid Similarly, to eliminate such uncertainties in Egypt consideration should be given to requiring that issued shares of joint stock companies be fully paid upon issuance

[51] 1980 IFC Report at p 8

(3) Eliminate Unnecessary Restrictions on Issuance and Transfer of Securities and Allow more Freedom of Contract

12 70 Currently, Article 31 of the Companies Law prevents issuing shares at a higher price than the nominal value except in accordance with the Executive Regulations which in turn require that any premium over this value be justified by a report of the auditor As pointed out by the IFC in 1980 this is a novel requirement without clear justification [52] Normally, share prices are based on the market -- i e , the price at which a buyer is willing to pay and a seller to sell This in turn is based on the buyer's and seller s views of the prospects of profit by the companies which may or may not be related to an auditor's report Such restrictions can prevent the corporation from issuing shares at a time and in a manner to take advantage of a receptive and favorable market

12 71 Since the company should be free to obtain the best price in the market for its shares at any given time this restriction on sale at more than the nominal value should be removed The best protection for purchasers in the market is, as already noted above laws and regulations requiring and promoting adequate and honest disclosure of the company's financial position

12 72 As pointed out by the IFC Capital Markets Study Team in 1980, the current Companies Law reserves a number of other matters and decisions regarding issuance and transfer of securities to governmental regulations which should be left to the company articles or the parties concerned and to the market[53] Examples include

(a) Issuance expenses for shares (Article 31),

(b) Restricting in founders selling shares before publication of financial statements for two full fiscal years (Article 45),

(c) Restrictions on selling shares for more than the nominal value plus issuing expenses prior to the issuance of the first year s profit and loss account (Article 46),

(d) Rules, circumstances and conditions on issuing preferred shares (Article 35),

(e) Limiting the issuance of bonds to an amount not exceeding the value of the company's assets (Article 49)

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[52] 1980 IFC Report at pp 10 11

[53] 1980 IFC Report at p 11 & 14-15

(4) Clearly Provide that Joint Stock Companies have Unlimited Duration in order to Promote Economic and Business Stability

12 73 One of the principal economic policy advantages of the joint stock company or corporation is that it provides far more stability and continuity to economic and business life than any other form or type of enterprise This advantage flows from the fundamental concept of the joint stock company as being a separate entity which has a legal capacity and existence entirely separate from its shareholder-owners More specifically this concept means that as a separate legal entity, the joint stock company -- acting through its directors and officers -- can buy sell and hold property, enter contracts, conduct business and sue and be sued in courts of law in its own name and separately form its owners or shareholders

12 74 The existence of a joint stock company separate from that of its shareholders promotes and facilitates stability and continuity in business and economic affairs That is since the joint stock company's existence is separate from that of its human shareholder-owners the joint stock company and its business continues on as a separate legal person regardless of what happens to the owners or shareholders Even if all of the joint stock company s shareholders should perish together in a plane crash, for example, or simultaneously go bankrupt, or suddenly withdraw all at once by transferring their shares, these events do not legally affect or interrupt the joint stock company's existence, and it can continue to carry on its business as though nothing had happened

12 75 By contrast the existences of partnerships or sole proprietorships are tied to the existence and status of their owners -- that is, the partners or proprietors Thus, normally a partnership company and its business terminate with the death, withdrawal or bankruptcy of any of its partners, similarly, the business of a sole proprietorship terminates with the death or bankruptcy of the owner-proprietor

12 76 To promote economic and business continuity and stability even more effectively, the better conceived more progressive companies laws provide for unlimited duration for joint stock companies -- unless otherwise specified in their articles of incorporation or until the joint stock company fails or its existence is terminated by shareholder agreement or other legal action In countries having such laws, since the joint stock company is a legal entity, recognized as a person separate and distinct from its human owners and managers, it can outlast them and potentially go on indefinitely, thereby promoting business and economic continuity and stability There are some companies which are over 200 years old and many more which are over 100 years old Less well conceived laws provide for limited duration for companies (usually 25, 50 or 100 years) which can only be extended by amending the articles of incorporation Obviously, such laws do not promote business and economic stability and continuity as well as those which provide for perpetual life

12 77 The existing Companies Law 159/1981 places no limit on the duration of incorporated companies However, simply by administrative practice and without authority in the law the Companies Review Committee formed under Article 18 of the

Companies Law simply refuses to allow a duration of more than 25 years This then requires the extraordinary general assembly of the company to extend the duration before the 25 years expires A reformulated companies law should clearly provide that incorporated companies shall be presumed to have an unlimited duration (that is until dissolved or liquidated in accordance with the law) unless otherwise stated in the articles This would take advantage of one of the primary advantages of incorporated companies, promote business and economic stability, reassure investors and encourage the capital market

(5) Need to Provide for Interim Dividends

12 78 The laws provisions concerning distribution of profits appear to concern only distributions following the end of the fiscal year and do not provide for interim or quarterly dividends, a new law should make provision for interim and quarterly dividends

(6) Allow for Board Action by Unanimous Written Consent in Place of Board Meetings

12 79 Currently, Article 77 of the present law allows board members to represent other members as proxies by up to not more than one third of the members present and no board member may represent more than one other member Many countries allow board action by unanimous written consent without holding a meeting, such action to be officially recorded in the minute book To provide flexibility for company actions, it is recommended that a reformulated companies law permit such a procedure while proxies for board members would be eliminated

(7) Need to Reduce Excessive Government Interference in Company Shareholders' Meetings

12 80 Compared to most industrialized and industrializing countries, Egypt's Companies and Investment Laws currently require or permit excessive government intervention in company shareholders' meetings by requiring that

(a) Notices of such meetings be sent to the Companies Department and/or the Investment Authority and the Capital Markets Authority,

(b) Representatives of such agencies be permitted to attend shareholders' meetings, and

(c) Minutes of shareholders meetings be submitted to the Companies Department for review

12 81 While the Companies Affairs Department and the Capital Market Authority should have investigators and inspectors with proper police and investigatory powers, companies should not be required to invite or accept representatives from these bodies to attend

shareholder meetings nor send minutes to either of these agencies for approval in the normal course of business

12 82 Such requirements delay the efficient operation of companies and encourage those who wish more privacy in conducting business to utilize other forms of companies Clear requirements for the legality of meetings and minutes should be set out in the law and ultimate determination thereof left to the courts in the event of a dispute Intervention by the authorities should be reserved only for situations where the authorities have reasonable cause to suspect serious violations of the law

12 83 At most government inspectors could attend shareholders' meeting of publicly held companies on a random basis Similarly, government inspectors, could inspect the corporate books and records of companies selected randomly or as noted above in cases where there is reasonable cause to suspect a serious violation

12 84 The following observations of the 1980 IFC Capital Study Team are applicable today in considering the reformulation of the Companies Law with respect to government interference in company affairs

> In the first place we see the corporation itself as a principal mobilizer of capital and we believe it is now appropriate, even necessary, for Egypt to minimize direct government approvals and supervision of corporate formation and activity All of this is based on the premises that if private initiative is to be encouraged, it should be trusted, and that potential abuses can be curbed by establishing clear sanctions on the corporation and the individuals responsible for their violation "[54]

(8) Need to Bring Companies Law Provisions into Line with Investment Law Provisions

12 85 The World Bank Report recommends that Companies Law 159 provisions be brought into line with Investment Law 230 provisions by dropping the requirements that 49 percent of capital in joint stock companies be first offered to Egyptians and that a majority of board directors must be Egyptian[55]

12 86 These restrictions no longer make sense in light of the ability of foreigners to own and manage 100 percent of most investment projects under the investment law To the extent that it is desired to require a specified minimum Egyptian participation for a limited number of fields this could be done through negative lists as is described in detail in the Chapter on the Investment Law This report fully supports the World Bank's

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[54] 1980 IFC Report at pp ii-iii

[55] I World Bank Report at p xi p 15 of Annex A, II World Bank Report at p 14

recommendations to unify the Investment Law Companies provisions with those of the Companies Law

Section F: Discrimination Against the Incorporated Companies in General and the Joint Stock Company in Particular

(1) 10 Percent Profit Distribution to Employees

12 87 One of the problems which any reformulation of laws affecting companies should address is the discrimination by existing companies and tax laws against joint stock companies and other incorporated companies This discrimination sees out of place in light of the importance to the Egyptian economy of private sector development and the proven effectiveness of the joint stock company form in mobilizing capital for productive investment and job creation The primary forms of discrimination concern the requirement to distribute to employees 10 percent of dividends up to 100 percent of salaries and the annual 1 2 percent stamp tax on capital

12 88 Distribution of profits to the employees is required by Article 26 of the Egyptian Constitution which provides in relevant part as follows

> Workers shall have a share in the management and profits of projects "

12 89 To date however, this requirement has been applied only to joint stock and other incorporated companies through the companies and investment laws Thus, all Investment Law 230 and companies Law 159 joint stock companies and limited liability companies with a capital of L E 250,000 or more are required to set aside not less than 10 percent of the profits distributed in any financial year for the benefit of employees up to an amount not to exceed 100 percent of the company annual payroll Companies organized as partnerships or limited partnerships, however -- unlike joint stock or limited liability companies -- are not subject to this requirement

12 90 As it stands, therefore, the law clearly discriminates against incorporated companies in favor of unincorporated partnership and limited partnership companies

12 91 The best solution would be to return to the formula of the original Investment Law 43/1974 which required that "a percentage of the net profit of such companies is to be distributed annually among employees and labor" but left the exact amount to the discretion of the shareholders who would act upon the recommendations of the board of directors

(2) Annual Proportionate Stamp Tax on Capital

12 92 An equally serious discrimination against joint stock and other incorporated companies is stamp tax law 111/1981 which imposes an annual proportionate tax on issued capital shares of 1 2 percent of their value This is obviously a direct tax on capital of incorporated joint stock companies Because the stated policy of the Egyptian

government is to encourage the capital market which trades and the shares of incorporated joint stock companies, the Capital Markets Law 95/1992 exempts from this tax joint stock companies having at least 30 percent of their shares held by 150 shareholders or more But more closely held joint stock companies which remain subject to this tax should also be exempted since they are the seeds of future capital markets growth Meanwhile unincorporated companies such as partnerships and limited partnerships as well as individually owned enterprises, are not subject to the heavy fiscal burden of the stamp tax Thus, on the one hand, the government actively seeks to encourage capital market development but, on the other, leaves in place laws and policies which push investors towards unincorporated companies and away from joint stock companies which are essential for the further extension of the capital markets in Egypt To encourage full capital market development in Egypt, it is therefore recommended that discrimination against joint stock companies be ended by changing laws, regulations, procedures and practices in order to

(a) Eliminate the annual proportionate stamp tax on capital, and

(b) Require all companies to distribute 'a percentage" of share of profits to employees to meet the constitutional requirement but not specify maximum or minimum amounts and eliminate the current 10 percent absolute minimum requirement

Section G. Allow a More Flexible Form of Joint Stock Company and Eliminate the Limited Liability and Partnership Limited by Shares Company Forms

12 93 As noted above, the Companies Law currently provides for 3 forms of incorporated companies -- namely, the joint stock company, the limited liability company and the seldom used partnership limited by shares Because of the many advantages of the joint stock company for economic development in general, and capital mobilization in particular, Egypt should consider authorizing only one form of incorporated company -- namely the joint stock company but differentiated between privately held and publicly held joint stock companies The limited liability company and partnership limited by shares forms of companies would then be eliminated and businesses desiring to incorporate would choose either a privately held or publicly held joint stock company only

12 94 Under the existing law the limited liability form is very popular with investors because it is easier to form and invites less interference from the government as compared to the joint stock company These differences would disappear, however once proposals are adopted to make joint stock company formation a simple easy matter of registration and to remove excessive government intervention in most joint stock company affairs and decisions The main problem with the limited liability form is its inflexible capital and share structure in that

(a) The entire capital must be paid up upon formation -- i.e., there is no authorized but unissued capital,

(b) Therefore new issues cannot be issued unless the capital is increased upon the vote of the extraordinary general meeting of partners to amend the articles,

(c) There can only be one class of shares,

(d) if the company succeeds, new capital to finance expansion cannot be raised by issuing shares to the public and

(e) A limited liability company can never issue bonds

12 96 By contrast, the joint stock company is an extremely flexible form of organization which can finance and manage every size and kind of business from the most simple single enterprise to the most complex conglomerate owning and controlling numerous industries One of the most dramatic examples of the flexibility of the corporate form is Apple Computer, Inc , a corporation which provided the legal framework for financing and managing an enterprise which grew from a couple of college drop-outs building computers in their garage to one of the world's largest, most famous publicly held computer companies Certainly, the joint stock company is one of the most efficient and flexible vehicles ever devised for mobilizing capital and implementing investment projects This is because of the joint stock company's potentially flexible share structure, the easy negotiability of shares and the potential to raise large amounts of capital through public offerings

12 97 Because of its many socially and economically useful qualities, joint stock companies should be made easy to form in Egypt as already recommended above At the same time, standards and means for raising capital through public subscription should be carefully regulated through the Capital Market Law A privately held joint stock company then can easily move to become a publicly held joint stock company provided that the standards and requirements of the Capital Market Law are met, whereas changing from a limited liability company to a joint stock company must go through an complex procedure of significantly amending articles and obtaining shareholder and government approval

12 98 Moreover, there is no particular reason to have two forms of corporation having separate entity status and offering limited liability to the owners when a privately held joint stock company can offer shareholders everything that a limited liability company offers in the way of easier formation and less government interference once the reforms recommended by this report are adopted Thus, for joint stock companies with a small number of shareholders, the law could be amended to make the affairs of such companies to be as private as those of limited liability companies now are unless and until the company offered shares to the public In other words, under a reformulated companies law a privately held joint stock company would be allowed to operate as informally as a limited liability company now is and would not be required to register with the stock exchange Unlike a limited liability company, however, upon issuing shares, bonds or other securities to the public, however, a joint stock company would then automatically become a publicly held joint stock company which would be subject to more appropriate

regulations i.e., it would be required to register with the stock exchange and would have heavier public reporting and financial disclosure requirements than a privately held joint stock company

12 99 As the 1980 IFC Report pointed out entrepreneurs who are tempted to operate through a limited liability company rather than a joint stock company largely preclude the possibility of public offerings or trading in their shares, bonds and other securities They thereby reduce the potential supply of corporate securities to the capital market and restrict their own possibility for growth Specifically, the 1980 IFC Report noted

> Untettered use of the limited liability corporate form could retard development of the capital market A business executive seeking to incorporate may prefer this form, whereby he avoids some administrative restrictions is prohibited from making a public offering, and can prevent partners from selling shares to outsiders [56]"

12 100 At the time a particular company is formed it can never be predicted whether that company will grow to be successful or not As noted above, Apple Computer began in the garage of its founder with a very low capital But grew to become a multi million dollar company As it grew it obtained its capital needs through public offerings of shares and securities Similarly, the Gorman Rupp Company in the United States began with a capital of only U S $1 500 (or L E 5,025) Today, the Gorman Rupp Company, which manufactures pumps, has annual sales of almost $70 million and net assets of almost $50 million On the other hand, thousand of corporations formed in the United States never get past the small company stage By having a single company form greater flexibility and a greater potential supply of securities would be afforded for Egypt's capital market

12 101 Because of its potential for mobilizing capital, then, the law should encourage formation of joint stock companies by the following legislative actions

(a) Provide for an easy company formation system through registration as recommended above,

(b) Make privately held joint stock companies as flexible private and easy to operate as limited liability companies,

(c) When shares, bonds or other securities are offered to the public, subject companies to full public disclosure greater regulations reporting requirements, and closer regulation and official scrutiny,

(d) Eliminate all laws and rules which discriminate against joint stock companies for no justifiable reason namely

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[56] 1980 IFC Report at p 20

(1) Excessive government intervention in shareholder meetings as discussed above in Section E (7),

(2) The annual proportionate stamp tax on capital and shares by stamp tax law 111/1981 and

(3) The requirement to distribute an amount equal to 10 percent of all distributed net profits to the employees

12 102 In short, the preference should be for a single flexible form of joint stock company which can

(a) On the one hand, meet the needs of all investors desiring to have a company whether the number of shareholders are 2 or 2,000 or more, and

(b) Meet the need of Egyptian society to mobilize capital for productive investment and job creation

12 103 For these reasons, it is respectfully recommended that the limited liability company form and partnership limited by shares form both be eliminated in favor of a more flexible form of joint stock company which would function with much less government intervention in internal affairs, but more qualitative regulations on external matters relating to disclosure to the public, as well as the duties of directors and controlling shareholders to the company and non-controlling shareholders

Section H. Amalgamation of Incorporated and Unincorporated Companies into a General Companies Law

12 104 There are reports that the Egyptian government is considering an overall companies law reform which would unify the companies and investment laws In addition, the World Bank has recommended bringing various Companies Law 159 provisions into line with those of the more liberal Investment Law 230/1989 as part of a general reform of the companies law[57] In the context of an overall reform of the Companies Law, consideration should be given to bringing unincorporated partnerships and limited partnerships under a general overall companies law together with the incorporated companies Currently, provisions concerning unincorporated companies are scattered among the Civil Code the Commercial Code Investment Law 230 and Commercial Register Law 34/1976 In addition to creating a better organized legal framework for all companies, such a change would allow consideration of issues common to both unincorporated and incorporated companies -- such as, for example, the formation process and the fiduciary duties of boards of directors and managers of corporations to shareholders on one hand and managing partners to limited partners on the other

[57] I World Bank Report at p xi, p 15 of Annex A, II World Bank Report at p 94

12 105 The foregoing does not purport to consitute all of the needs and problems to be addressed by a new or reformulated companies law, but only the most obvious from the standpoint of encouraging private sector investment and development In addition, any project to prepare a new companies law should draw on past reports and recommendations including those referenced in this report Among them are the recommendations regarding companies law contained in the 1980 IFC Report and the 1992 World Bank Report In addition revision of the Companies law should be carried out in close coordination with the investment law and Commercial Register Law revisions as recommended by this report

Section I Recommendations

12 106 It is respectfully recommended that a reformulated companies law be enacted which will

(a) Simplify and streamline formation procedure for all companies both incorporated and unincorporated by replacing the existing complex bureaucratic and time-consuming procedures with simplified registration in the Commercial Register characterized by the following measures

(1) Reduce the documents to be submitted to no more than 3 -- an application form company articles and identification documents

(2) Minimum review of company articles to ensure only that the company's objects are not plainly unlawful, that there is an address, and that the capital structure is described in the articles In other words, clearly stated legal requirements for company articles would be set forth in the law but primary responsibility for the legality and enforcement of a company's articles would be left to the parties concerned, rather than detailed and time-consuming review by government officials

(3) Use negative lists to exclude unpermitted objects or activities by foreigners or the private sector generally

(4) Continue security checks but eliminate them as a pre-condition for formation

(5) Transfer responsibility and liability for evaluation of in-kind contributions to capital from the government to the parties concerned but require full disclosure

(6) Reduce joint stock company founders from 3 to 2

(7) Impose severe penalties for knowingly providing false information or material omissions

(8) Institute qualitative inspections of random samples and cases with reasonable grounds for suspicion to promote compliance

(b) Revise and streamline merger procedures by means of, inter alia, the following

(1) As in the case of company formation, transfer responsibility for evaluation of the merging companies' assets to the parties concerned and independent auditors or appraisers instead of government officials or committees

(2) Replace ministerial approval with the opportunity for review by an independent monopolies or free trade commission subject to strict time and other requirements and as part of a revision of the anti-monopoly law in Egypt as discussed below in Chapter 19

(c) Provide more adequate protection and self-enforcement mechanisms for non-controlling shareholders by the following steps

(1) Require cumulative voting for directors in joint stock companies

(2) Institute shorter terms for board members and especially reduce terms of board members appointed by the founders to no more than the time required to hold an election at the first general shareholders' meeting

(3) Permit shareholders to elect outside directors if they choose and eliminating the requirements that directors must be shareholders and must deposit guarantee shares

(4) Liberalize proxy rules to allow shareholders to name any one they wish as a proxy, including directors, with appropriate rules requiring full disclosure of material facts by those soliciting proxies

(5) Eliminate the rule invalidating shareholders' meetings when an insufficient number of board members or board officers attend

(6) Provide a clear statement of duty which forbids directors, officers, and majority shareholders from abusing non controlling shareholders by appropriating company opportunities for themselves and which requires them to act in the best interest of the company and all of its shareholders

(7) Provide a clear right of shareholders to sue for breach of duty by directors, officers and major shareholders independently of action by the shareholders' general meeting

(8) Strengthen requirements for the independence and power of auditors

(9) Require an independent audit committee of the board of directors elected by the non controlling shareholders for certain widely held companies

(10) At the same time, balance the need to protect non-controlling shareholders against the need to allow the companies to grow and carry on business in an efficient dynamic way

(d) Realize more fully the potential of the joint stock company form for economic development purposes by means of the following

(1) Provide for a more flexible capital structure by eliminating minimum capital requirements for joint stock companies

(2) Provide for a sounder and more certain capital structure by eliminating partially paid shares

(3) Eliminate unnecessary restrictions on the issuance and transfer of securities such as

- Preventing issuance by a company of shares higher than the nominal value except for a premium justified by the auditors report

- Restricting founders from selling their shares before publication of financial statements for two full fiscal years

Limiting issuance of bonds to the value of the company's assets except in exceptional circumstances

(4) Clearly provide that joint stock companies have unlimited duration unless otherwise specified in the articles in order to promote economic and business stability

(5) Clearly and fully provide for interim dividend distributions instead of only annual dividends

(6) Permit the board of directors to take action by unanimous written consent in place of board meetings

(7) Reduce excessive government interference in shareholders' meetings by eliminating requirements that notices of meetings be sent to government agencies, representatives of such agencies be permitted to attend shareholders meetings on a regular basis, and minutes of such meetings be submitted to the Companies Department or other agencies

(3) Bring Companies Law provisions into line with Investment Law provisions by eliminating nationality requirements for founders of joint stock companies and directors

) Eliminate discrimination in various laws against joint stock companies by

) Allowing shareholders to determine the percentage of profit to be distributed to the employees according to a formula similar to that of former Investment Law 43/1974 and

(2) Eliminating the annual proportionate stamp tax on capital

(g) Eliminate the limited liability and partnership limited by shares forms of incorporated companies leaving instead only the joint stock company form which could be either

(1) A publicly held joint stock company which will have a formal management structure and reporting and disclosure requirements mandated for such companies by the Capital Markets Law or the Companies Law, as appropriate, or

(2) A privately held joint stock company which could have a simpler, more flexible management structure and minimum reporting requirements which will enable investors to have all of the advantages of a limited liability company, but which can be easily changed to a publicly subscribed joint stock company when necessary and desirable to raise capital or other finance through issuing shares or other securities to the public by meeting management, reporting and disclosure requirements in accordance with the Capital Markets Law, but without changing the company form as would be required in the case of a limited liability company

(h) Amalgamate incorporated and unincorporated companies into a single general companies law which will allow for unified formation procedures and duties by managers and controlling shareholders and partners to outside investors and the public

Section J. Postscript

12 107 The foregoing does not purport to constitute all of the needs and problems to be addressed by a new or reformulated companies law but only the most obvious from the standpoint of encouraging private sector investment and development In addition any project to prepare a new companies law should draw on past reports and recommendations including those referenced in this report Among them are the recommendations regarding companies law contained in the 1980 IFC Report and the 1992 World Bank Report In addition revision of the companies law should be carried out in close coordination with the Investment Law and Commercial Register Law revisions recommended by this Report in Chapters 10 and 13

CHAPTER 13

INVESTMENT LAWS

Section A Overview

13 01 All of the laws analyzed in this report significantly affect investment in Egypt Nine basic laws however, directly address, and govern investment in Egypt by Egyptians and foreigners -- namely, Investment Law 230/1989, Industrial Licensing Law 21/1958, Hotels and Tourist Construction ("Tourism") Law 1/1971, New Urban Communities Law 59/1979 Companies Law 159/1981, Commercial Register Law 34/1976 Industrial Shops Law 453/1954 Income Tax Law 157/1981 as amended by Law 187/1993, and laws concerning land ownership and registration Despite recent reforms, as presently structured and applied, these laws still constitute or contain significant restraints on private sector investment in Egypt The Commercial Register and Companies Laws already have been dealt with in detail in prior Chapters above

13 02 In the past three years the Government of Egypt has instituted a number of reforms aimed at streamlining the investment licensing approval process These reforms include introducing a negative list, simplifying investment application forms and recently announcing automatic approval of all Egyptian investment projects having a capital of L E 5 million or less As detailed below this report recommends further measures along these same lines to complete the streamlining process as well as changes in the investment incentives system and developing a stronger internal and external investment promotion program Such reforms are strongly related to modernization of the Commercial Register and reformulation of the Companies Law discussed in preceding Chapters Similar reforms are recommended by the World Bank's 1992 Report on Egypt's private sector regulatory environment -- cited in paragraph 1 18 -- which should be read in conjunction with this report

13 03 In brief, it is recommended that legislation should be enacted, regulations promulgated and official actions taken regarding investment in Egypt, which will among other things

(a) Unify Egypt's confusing multiple investment regimes into a single system which will to the extent possible treat all investors equally whether Egyptian Arab or foreign discussed in Section B below

(b) Replace the bureaucratic multi-step and time-consuming investment approval process with the single step of registering an enterprise or company with the Commercial Register as already discussed in Chapter 12 except for a few highly sensitive projects which could be specified on a short negative list discussed in Section C

(c) Replace time-wasting discretionary approval of tax incentives prior to commencement of a project with automatic incentives based on subsequent enterprise performance -- preferably through comprehensive tax law reform which will eliminate

all existing tax exemptions and holidays and replace them with the best tax incentive of all namely, a stable low tax rate discussed in detail in Chapter 14

(d) Channel government human and financial resources saved by streamlining the investment licensing and incentive approval process as suggested above into

(1) Investment promotion abroad and within Egypt as discussed in Section D below and

(2) Qualitative improvements of enforcement of health, safety and environmental and land use regulations as detailed in Section D (4) below

Section B Egypt's Multiple Investment Regimes should be Unified

(1) Analysis

13 04 One of the principal problems with investing in Egypt is that there are confusing alternative regimes for investment by both foreign and local investors as follows

(a) Proceeding under Investment Law 230/1989 to obtain approval from the Investment Authority for an investment project in various fields and for company formation

(b) Proceeding under Companies Law 159/1981 to obtain approval for a joint stock or limited liability company and under Industrial Licensing law 21/1958 for approval of industrial project or under Tourism Law 1/1971 for a tourism project proceeding

(c) Establishment of either a Law 230 or a Law 159 company in one of the new urban communities -- i.e., special desert areas designated for industrial development -- under Law 59/1979 which also provide significant benefits to investment projects both similar to and different from, those available under Law 230 and Law 159 plus the advantage of prepared industrial sites with water, power and communications made available through the new community

(d) Most recently, President Mubarak has issued instructions that Egyptian owned investment projects with a capital of L E 5 million or less be allowed to proceed without obtaining advance approval of either the Investment Authority or the General Organization for Industrialization (GOFI)

13 05 Complicating the picture further is that in addition to the above mentioned laws, different tax and other incentives for investment are to be found in other laws including Income Tax Law 157/1981 as amended by Law 187/1993, Capital Markets Law 95/1992

and Customs Exemption Law 186/1986[58] Thus, taking the basic approaches together with the various incentive packages presents a variety of different possible investment regimes offering different procedures, different rights and guarantees, and different tax and other incentives

13 06 Thus each of the above general alternatives offers various advantages and disadvantages examples of which are as follows

(a) The advantages of proceeding under Investment Law 230 include the following

(1) Guarantees against arbitrary expropriation and confiscation which are additional to these already contained in the Constitution

(2) Immunity from administrative attachment

(3) Right to import production needs and export products directly and easier import and export regulations

(4) Greater tax incentives

(5) Clear right to repatriate capital

(6) Freedom from Companies Law Egyptian nationality requirements for the directors and managers of companies

(7) Freedom from Companies Law requirement to offer 49 percent of shares to Egyptian shareholders when forming a joint stock company

(b) The advantages of Companies Law 159 as supposed to Investment Law 230 are the following

(1) All legitimate business activities are open to investment through Companies Law 159 whereas only certain activities can be approved under Investment Law 230 (although bureaucratic and lengthy as printed out in Chapter 12 above)

(2) The approval and formation process under Law 159 is more automatic and certain than that under Law 230

(3) Law 159 Companies pay subsidized prices for utilities and energy whereas Law 230 companies pay unsubsidized or "world" prices

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[58] The various tax incentives are discussed below in the Chapter or Taxes Investment Incentives

(c) Law 230 companies have the right to own land regardless of the percentage of foreign participation whereas Law 159 companies with more than 49 percent foreign ownership must obtain the permission of the Prime Minister An additional complication is that the New Communities Authority insists on selling land rather than leasing it in the new communities This means that Law 159 companies with majority foreign ownership and without the Prime Minister's approval may not own new community land and they cannot lease it either because of New Communities Authority practice

(d) Obviously the new system of automatic approval for projects with a capital of under L E 5 million applies only to Egyptians and 100 percent Egyptian owned companies and is not available to companies with foreign participation

13 07 Egypt's multiple investment regimes should be unified into a single investment regime for all investors whether foreign or Egyptian The different regimes exist today for historical rather than sound policy reasons in that Law 43/1974, the predecessor law of Investment Law 230/1989, was the first major piece of legislation passed to implement the "open door" policy as already noted above in Chapter 1 Then, when the Companies Law was liberalized in 1981 it became possible for both foreigners and Egyptians to proceed under either law, even through the Companies Law still retains discriminatory features against foreigners with respect to joint stock companies Today, however, the different investment regimes cause unnecessary confusion which in turn causes investors to waste valuable time analyzing the costs and benefits of different approaches for the same project and sometimes trying a different approaches if one fails

13 08 Moreover the current system of treating foreign investment differently relative to national investment creates and invites distortions which clearly detract from the overall investment climate in Egypt Investment, like other activities, tends to follow the path which offers the greatest advantages and the least resistance Thus, in countries where foreign investment is favored by having more special privileges relative to national investment, the national investors find ways to invest through the investment law as foreign investors

13 09 This was the case in Egypt for several years under former Investment Law 43/1974 before the companies law was revised and before the New Communities Law 59/1979 was passed Indeed, Investment Authority statistics show that Egyptian investors were the largest group of "foreign" investors in Egypt under that law -- i.e., investors who invested foreign currency as opposed to Egyptian pounds At the same time, foreigners have often invested under Companies Law 159 when they felt that it was to their advantage to do so For example where foreigners wanted to undertake investments outside of the fields of activities authorized by Article 1 of Investment Law 230/1989 or to avoid Investment Law 230's usually longer and more uncertain approval process

(2) **Recommendation Created a Unified Investment Regime Based on Reformulated Companies and Investment Law·**

13 10 Accordingly, it is recommended that Egypt's existing multiple investment regimes be replaced by a single unified investment regime for all investors whether Egyptian or foreign Such a unified regime would be based on both the reformulated companies law as outlined in Chapter 12 above and a single new general investment law The new investment law would cover all fields of investment, would treat foreign and Egyptian investors as equally as possible, and would have the following features

(a) A unified, simplified and automatic investment registration process using "negative lists" which would be merged with, and the same as, the company formation process outlined in Chapter 12 as in detailed in the following Section

(b) A policy declaration that increasing private sector investment in Egypt by both Egyptian and foreign investors is a national priority and instructing all government officials to facilitate investment in order to create national wealth and employment opportunities for Egyptians

(c) Transformation of the Investment Authority and GOFI into Investment Promotion and investor service agencies as described below

(d) A set of guarantees applicable to all investors which could include the following

(1) A reiteration of the constitutional guarantees against nationalization confiscation and expropriation without prompt adequate and effective compensation and without a judicial order

(2) Free transfer abroad of payments for profits, interest, dividends, royalties, salaries, liquidation proceeds, sales of shares, payments for imports, capital repatriation, etc

(3) Freedom from controls on prices, profits and salaries

(4) Freedom to manage the business free of government interference including the right to hire, promote, compensate and lay-off or terminate employees in accordance with freely negotiated contracts or for a specified severance payment

(5) Guarantees against deprivation of licences or other rights without independent court review and due process of law,

(6) Freedom from administrative attachment or seizure without a court order

(7) Guaranteed access to the courts or to binding arbitration for disputes generally,

(8) Guaranteed arbitration of disputes with the Government similar to Article 8 of former Investment Law 43/1974 which was changed to the possibility of arbitration upon agreement by the government in each case under Law 230

13 11 Some of the foregoing guarantees are often a standard part of investment laws even when they are already provided for in other laws or in the country's constitution or in bilateral investment treaties as is the case with Egypt Indeed, Egypt has already entered into a number of bilateral investment treaties with foreign investment source countries which already contain similar guarantees and assurances to foreign investors

13 12 Finally, it is important to treat foreign, Arab, and Egyptian investors as equally as possible Given the need to create wealth and employment opportunities outside of the Government for a growing population of young people including increasing numbers of secondary school and university graduates, Egypt needs all the investment it can get to build a dynamic and diversified economy It is better, then, to treat all investment the same as much as possible Where it is desired to restrict foreign investment in, say sensitive industries, this could be done with "negative lists" in the context of a unified investment scheme as is explained more fully in the following Section In our view, however, the fewer differences there are between the treatment of wholly Egyptian and foreign and/or joint venture investment projects, the better the climate will be for increasing overall investment in the country Differences in the treatment of investment usually cause distortions -- often in the form of additional bureaucracy or evasive actions by investors

13 13 For Egypt, enacting a new investment law providing for equal treatment of investors and simplified procedures as described above would be a highly effective means of clearly signalling to investors -- both Egyptian and foreign -- that attracting increased private sector investment into the country is a national priority and that foreign investment is welcome A new law should also communicate this policy effectively to the country's bureaucracy Thus, a primary purpose of a new investment law will be a statement of policy to investors welcoming them and instructing the bureaucracy to facilitate investment

13 14 Another purpose of the proposed investment law is to provide a clear set of unified procedures applicable to all investment in all fields to the extent possible The following Section contains a detailed proposal to make investment procedures simpler, more automatic and unified It is recommended that the same procedures -- once agreed upon -- be applied to all fields of investment including industry, tourism and agriculture Unifying procedures for as many fields as possible will save time which is now wasted by multiple and confusing regulations and procedures

Section C. The Investment Licensing Process in Egypt should be Replaced by Simple Enterprise Registration at the Commercial Register

(1) Overview of Investment Licensing Process in Egypt:

13 15 To establish an investment project in Egypt the following licences, approvals, registrations and procedures at a minimum are required

(a) Investment project approval I e., approval for the investment project either from the General Authority for Investment (GAFI) pursuant to Investment Law 230/1989 or from the General Organization for Industrialization, pursuant to Industrial Licensing Law 21/1958 or from the Ministry of Tourism pursuant to Tourism Law 1/1971

(b) Company formation approval I e., approval for formation of a company to carry out the project either by the Investment Authority under Investment Law 230/1989 or by the Companies Department pursuant to Companies Law 159/1981 as already discussed above in Chapter 12

(c) Commercial registration at the Commercial Register pursuant to Commercial Register Law 34/1976 -- which in turn requires joining the local chamber of commerce or industry and obtaining a tax card -- as already discussed above in Chapter 10

(d) New Communities Authority or local government approval I.e., most industrial projects require approval from the New Communities Authority to establish themselves in one of the new communities pursuant to Law 59/1979 since this is a usual condition of obtaining licences from either the Investment Authority or GOFI and in any event because Law 59 offers substantial tax holidays and other incentives Alternatively, the investor must obtain approval from the local governorate to locate the project and construct buildings there As the World Bank notes, "In some local governorates, this, in essence, involves another investment licensing process" which entails submission of numerous documents and more substantial delays[59]

(e) Establishment and operations licence ("E&O") from the new communities or local authorities pursuant to Law 453/1954 on Industrial Shops to ensure industrial health and safety and private land use policy

13 16 As noted above, it is recommended that all of the above licensing steps be eliminated and replaced with simple automatic registration for each investment enterprise or company in the Commercial Register pursuant to a reformulated Companies Law as described in Chapter 12 above All enterprises or companies would be registered except for those contained on a short and specific negative list or which did not meet the simple objective requirements as outlined in Chapter 12 on Company Formation above Upon

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[59] II World Bank Report at pp 41-42, see also I World Bank Report at p xiii-xiv and pp. 5-6 of Annex A

registration, the enterprise could proceed with its project provided that it observe relevant laws and regulations governing health, safety, the environment and land use

(2) **Recent Reforms**

13 17 The Egyptian Government already has made substantial moves toward a simplified registration system but still needs to take the actions recommended in this Chapter to complete the process Thus, in 1991, the Egyptian Government instituted reforms in the licensing process by introducing a negative list of projects which are prohibited without prior approval by either the Investment Authority or GOFI In theory, then, projects not on the negative lists are automatically approved and may proceed Further, since it was first issued, the negative list of projects requiring special review and approval before licensing has been considerably liberalized by reducing or eliminating various categories such as local content rules

13 18 In addition, Investment Authority and GOFI investment project application forms have been significantly simplified For example, the previous 20-page investment application form has been reduced to 4 or 5 pages Further, the requirement for a feasibility study has been eliminated And, within the past few weeks, the government, has announced that 100 percent Egyptian projects with a capital of L E 5 million or less are automatically approved and proceed without formal Investment Authority approval[60]

(3) **Problems, Bureaucracy and Delays still Remaining Following Recent Reforms:**

13 19 While the foregoing reforms represent a significant improvement in theory, a number of legal and regulatory obstacles in practice have prevented the reforms from realizing their objectives of the fully streamlining investment process These obstacles are as outlined in the following paragraphs

(a) **Despite the Negative List, Investment Authority Approval is still Required by Law.**

13 20 First, although in theory projects not on the negative list are automatically approved by the Investment Authority, in fact, by the term of the negative list itself, such approval is "subject to existing laws and regulations" and Articles 47 and 52 of Investment Law 230 appear to require a resolution of the Investment Authority Board of

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[60] It is not clear why there is a limit on the capital of L E 5 million since this will encourage projects to keep their capital below this limit, which can be done by borrowing, shareholder loans, and other devices which discourage rather than encourage capital investment The government should want to encourage larger capital investments by simplifying registration procedures for larger projects as well, rather than hold them up by forcing them to go through the existing licensing process

Directors for project approval[61] In other words, while the feasibility study requirement has been eliminated and the long application form shortened, under the law, the Investment Authority Board must still meet and formally approve the project The main problem here is that the Investment Authority meets infrequently, and all too often several months go by without a Board meeting Thus, final decision can take two weeks to several months depending on the Investment Authority Board's meeting schedule Even the proposal to allow Egyptian projects with a capital of L E 5 million or less to proceed supposedly without approval has run into this legal snag We have been informed by the Investment Authority's Legal Department that the approval of the Prime Minister -- who is also the Investment Authority Board Chairman -- must be obtained for such projects I.e.,in effect the Board 's authority under Law 230 has been delegated to the Prime Minister for these projects

13 21 The Investment Authority has justified this approach by saying that even though a project is automatically approved in principle, an Investment Authority board resolution is still required to obtain the incentives For virtually all projects, however, the primary reason for proceeding under the Investment Law is obtain the incentives In practice, therefore, few, if any, projects do not apply for full Investment Authority approval in order to obtain the incentives[62] As discussed below in Chapter 14, these incentives should be made automatic and removed from the licensing process

(b) Fields of Investment are Limited under Law 230:

13 22 Second, by its terms, the Investment Law covers only the fields specified in Article 1 (A) -- namely, "land reclamation and cultivation of barren and desert lands, industry, tourism, housing and reconstruction " In addition, the Council of Ministers is empowered to add fields "required by the country's needs, and economic activities requiring modern technologies or aiming at increasing exports or decreasing imports, or maximizing the use of manpower [63]" Thus, the terms of Article 1 of Law 230 restrict the scope of application of the Investment Law to a few specified areas and, therefore, the projects which can be approved thereunder

(c) Disregard of Negative List and Restrictive Interpretation:

13 23 In addition, on occasion, the Investment Authority has further restricted the scope of Article 1 either by ignoring the negative list and refusing to approve projects included by Article 1 even though they are not listed as prohibited by the negative list or by narrowing the scope of Article 1 by interpretation For example, despite adoption of the

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[61] See also, I World Bank Report p 1 or Annex A

[62] See also II World Bank Report at p 69

[63] In 1991, the Council of Ministers added (1) Service and maintenance for vehicles, equipment, and water pumping stations, and (2) Oil services per P M Decree 22/1991

negative list, and despite the provisions of Article 1 (a) of Investment Law 230 as quoted above, the Investment Authority has made it plain that it will not approve projects for foreign investors in certain fields such as housing even though housing clearly is included under the Investment Law and is not prohibited by the negative list Similarly, the Investment Authority has made it plain that it will not approve restaurants despite the fact that Article 1 allows foreign investment in "tourism" and restaurants are not listed on the negative list The Investment Authorities justification for this position is that restaurants are not included in the field of tourism even though Tourism Law 1/1973 clearly does include 'tourist" restaurants and provides tax holidays and other incentives for them

(d) Excessive information required at GOFI:

13 24 For industrial investment licensing through GOFI, the negative list and registration processes also have been initiated Nevertheless, as pointed out by the World Bank

> "The registration process, however, still requires private investors to inform GOFI of the planned location and size of investment, list of equipment and required input materials, labor requirements, maximum installed production capacity and product mix "[64]

(e) Numerous follow-on approvals, licences, registrations and other procedures still required:

13 25 Moreover, GOFI or Investment Authority registration or approval is only the first step in the process Company formation and registration in the Commercial Register then follow as entirely separate processes As already discussed in Chapter 12 above, under of Investment Law 230, a joint stock company is formed by a review and approval process at the Investment Authority resulting in a decree by the Minister of Economy promulgating the companies articles which must be followed by publication in the *Official Gazette* and finally registration in the Commercial Register For companies pursuing industrial projects licensed or registered by GOFI, company formation takes place through the Companies Department under Companies Law 159/1981 Also, as already discussed above, all enterprises must be registered in the Commercial Register which in turn requires joining the local chamber of commerce or chamber of industry

13 26 Additionally, investors also must obtain an establishment and operations ("E&O") licence from either the local governorate or from the New Communities Authorities where the project is to be located As noted by the World Bank, E&O licensing is done on a case by case basis and requires substantial time and documentation basically aimed

[64] II World Bank Report at p 4

at ensuring that the investment project will comply with laws and/or regulations aimed at protecting residential and other land use, the environment, health and safety [65]

(4) **The Investment Licensing Process in Egypt Constitutes a Major Impediment to Investment and Imposes Heavy Costs on Investors and the Country:**

(a) Egypt's Investment Procedures still Excessively Bureaucratic by international Standards:

13 27 The multi-step system of licensing investments and forming companies as described above, together with the incidental and follow-on approvals, permits and registrations required to establish, operate or modify an investment project constitutes one of the most significant impediments to productive investment in Egypt whether by foreigners or by Egyptians Indeed, most of the foreign and Egyptian business executive, bankers, lawyers and consultants interviewed by us are of the view that the "bureaucracy" involved in obtaining government approvals is "at the top of the list" of impediments to investing in Egypt Virtually, all business executives and industrialists -- as well as the World Bank -- agreed that licensing, formation and registration procedures in Egypt are much too long and cumbersome when compared to other countries[66] in Europe, North America, Southeast Asia and as well as some Middle Eastern countries such as Tunisia, Morocco -- where streamlined and liberalized investment procedures enable investors to do in a few days what it takes several months or a year to do in Egypt

(b) Costs to Investors Imposed by Bureaucratic Investment Approval Procedures:

13 28 Bureaucratic procedures and delays such as those described above impose numerous costs on an investor, especially a foreign investor, as follows

(a) Personnel costs To prepare and follow up on licensing and foreign investment applications, can require substantial time from one or more executives over the six to eighteen month period required to obtain the approvals required before project construction, much less project operations, could begin A major western company serious about investment in Egypt usually finds it necessary either to post an expatriate executive to the country during investment approval and company formation application and review period or to send executives to Egypt on frequent follow-up trips In addition to the salary, travel, accommodation, and communications costs, the investor company loses the benefit of the executive's skills and services for that period of time which otherwise could be employed in ongoing profit-making activities or investment generation activities elsewhere -- i.e., the so-called "opportunity cost" for that executive

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[65] II World Bank Report at pp 41 and 42

[66] See II World Bank Report at p 42

209

(b) Professional assistance costs In addition, a foreign investor company usually must hire at considerable cost one or more local management consultants and/or lawyers and/or government relations consultants to guide the executive through Egypt's rules, regulations and bureaucratic maze

(c) Inflation During the investment approval and company formation period prior to project construction, inflation often raises the project start-up costs for equipment, machinery, initial raw materials and personnel inputs into the project

(d) Foregone gain Finally, there is the cost of lost economic gain for the project Every day spent in the investment approval and company formation process delays the day when the project commences production and starts making money

13 29 Many foreign companies simply do not have the time or resources to devote to Egypt's investment approval and company formation process and thus, will simply never apply, instead, they may go to "competitor countries" in the region with easier procedures such as Tunisia, Cyprus or Dubai or stay at home

13 30 Moreover, there is no way to predict with absolute certainty whether the approval will be granted or refused at the end of the process This uncertainty creates a substantial risk that the investor's money spent in studying the project, preparing the application and following it up may be spent for nothing

(c) Costs to Government imposed by Bureaucratic Investment Approval Procedures:

13 31 Egypt's system of project approval and company formation also imposes heavy costs on the government which must commit scarce human resources and skills to the tasks of processing applications, and other paper work, preparing reports and recommendations and making final decisions for each proposed project establishment or modification The knowledge and talents of GOFI, Investment Authority and Companies Department personnel could be better spent in counselling and assisting investors and gathering and disseminating to investors and potential investors important information needed by them to make investment decisions -- such as information about suppliers, customers, credit, competing imports, etc

13 32 The delays inherent in the existing system also inflict a heavy opportunity cost on Egypt and its government in that every day that a new investment project is delayed in obtaining its license delays the day when the project produces new goods, services, and jobs for Egyptians and taxes for the Government Even worse, such delays often kill projects when they are overtaken by events in the market as a result of delayed start-up For instance, after long delays, potential foreign investors in Egypt have cancelled projects in order to take advantage of new opportunities that suddenly arise in their own country or elsewhere, or even because they were acquired by new owners who had other priorities

13 33 By way of example, our office was handling 2 projects in Egypt where the foreign investors withdrew after some time because of outside events In the first case, a well-known international company withdrew from an industrial project after having spent over a year attempting to obtain approval because the company became the subject of a takeover bid in the United States and a resulting finance agreement with banks forbade the company from any foreign investments until after the loan had been paid off In another project, another prominent U S company withdrew from a project after 18 months of waiting for approval because its available resources were completely taken up by an unexpected opportunity to acquire another company in the same industry in the United States Thus, every day of delay increases the risk of cancellation by the investor

13 34 Moreover, anywhere in the world, slow, bureaucratic, license systems unfortunately create opportunities for favoritism and other abuses This not only imposes obvious high social costs on a nation, but usually subverts the original purpose of the licensing system itself -- that is, to weed out or prevent economically unsuitable projects Reducing the amount of discretion in the system by providing for automatic approvals for projects meeting clear criteria will significantly reduce time and costs, as well as the opportunity for abuse

13 35 Another unfortunate consequence of an investment licensing system is that enterprises who first receive licenses find themselves in a monopoly or semi-monopoly position Those first licensed in a particular industry then form a highly motivated pressure group which naturally seeks to prevent subsequent applicants in the same field from receiving licences so that they can continue to monopolize or dominate the market and make easy profits without the burden of competition

13 36 Even without pressure by existing licensees, a long and costly investment, licensing and company formation process in itself tends to create monopolies, semi-monopolies and highly profitable privileged economic positions for those who already have licenses This is because the costs of delays and compliance with bureaucratic licensing procedures tends to exclude smaller, less wealthy entrepreneurs in favor of larger richer enterprises which can afford to assign key executives and employees to devote substantial time to the formidable task of obtaining all of the approvals and authorizations needed This means that the smaller, less wealthy entrepreneurs are less able to obtain licenses and are thus denied equal access to the market which in turn reinforces the monopoly position of established larger enterprises

13 37 Further, Egypt's licensing system arguably discourages the very technological development which the country seeks from increased private sector national and foreign investment by

(a) Preventing the entrance of competitors with access to superior technology

(b) Protecting established firms from competition thereby giving them less incentive to seek and acquire or develop new technology in order to survive

13 38 To encourage technology development, Egypt should foster the development of the appropriate economic milieu -- namely, a diversified, dynamic, and competitive local industrial base which can best come about through competition and freedom and ease of market entry

13 39 Additionally, the uncertainty inherent in a bureaucratic licensing system tends to deter the development of more advanced technology by existing firms already in the market Thus, as noted by foreign investment expert Stephen E Guisinger in his article "Direct Controls in the Private Sector"

> "In some countries, the uncertainty associated with licensing has deterred innovation Licensing discourages basic research because there is no assurance that resulting products could ever go into production Moreover, product development is hampered because new licenses must be obtained each time a product is substantially modified Licensing only adds to the already existing riskiness in research and development expenditures and, thus, leads to a lower level of such expenditures overall than would otherwise be the case "[67]

13 40 Finally, it should be noted that the existing system discriminates against investment and in favor of trade By all accounts, for Egyptians at least, obtaining a commercial registration to engage in trading goods is far easier than obtaining an industrial license and all other approvals required to manufacture those same goods I.e., there is no review and approval by GOFI or the Investment Authority

Section D: Recommendation: Reduce Bureaucratic Delay by Replacing the Existing Approval Process with a Simplified, Streamlined Enterprise Registration System Using Negative Lists

(1) Overall Recommendation to Streamline the Investment Approval Process:

13 41 To improve significantly the legal and procedural framework for investment in Egypt, we recommend streamlining the investment approval process by amending the relevant laws, regulations, procedures and practices in a manner which will simultaneously

(a) Replace the above-described system of licensing and approvals by multiple Government agencies with a simple one stop registration system for enterprises and companies at the Commercial Register as described in the Section on company formation in Chapter 12 above In other words application would no longer be made to GOFI or the Investment Authority for approval or registration of investment projects Instead, investors would simply register enterprises or companies at the Commercial Register as

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[67] In Policies for Industrial Progress in Developing Countries (1980, published for the World Bank by Oxford University Press)

described in the Chapter 12 on company formation above Enterprises and companies would be automatically approved and registered for all lawful objects and all projects except for those few sensitive projects clearly described in a short, clear and precise "negative list" of projects

(b) Abolish establishment and operations (E&O) licensing and all other investment project approvals at the governorate and new community level now required by Law 453/1954 and instead provide for environmental, health, safety, land-use and other standards to be enforced by qualitative inspections during the construction and operational stages instead of through the licensing process as is discussed below in Subsection 3

(d) Redirect government personnel and resources redirect from the investment review, approval and licensing process into

(1) The investment promotion activities described in Section E below,

(2) The important task of enforcing health and safety environmental standards and regulations by inspections and spot checks during the project construction and operational stages instead of at the licensing stage detailed in Subsection 3 below

(c) Replace time-wasting discretionary approval of tax incentives prior to commencement of a project preferably by means of a thorough comprehensive tax law reform which will eliminate all existing tax exemptions and holidays and replace them with the best tax incentive of all, namely, a stable, low tax rate or, alternatively, with automatic, unified incentives based on subsequent enterprise performance, instead of requiring discretionary approval at the licensing or establishment stage as is discussed in detail in the following Chapter 14

13 42 An increasing number of countries are eliminating most permits, licenses and regulations affecting and impeding investment, and generally reducing bureaucratic interventions in investment activities Examples include Korea, Indonesia, the Philippines, Turkey, Tunisia and Morocco Such countries have followed earlier examples set by Thailand and Malaysia

(2) Operation of the Negative List:

13 43 Under a registration system using negative lists, the Commercial Register would register all companies or enterprises as is already required but <u>without</u> requiring the prior approvals of any other Government agencies <u>except</u> for a very few clearly areas described in a short, precise negative list of projects which would be prohibited outright or would require the prior review and approval of other Government agencies If used at all, such prior review and approval by other Government agencies should be reserved only for a very few categories of projects which are especially sensitive where tangible national security interests are at stake

13 44 The negative list system would operate as follows First, a new negative list would be issued to the public Then, instead of applying to GOFI, the Ministry of Tourism or the Investment Authority or any other ministry or agency for approval of investment project, investors would fill out and submit a short, simple registration form to the Commercial Register together with articles of association The concerned Commercial Register official would first examine the investor's completed declaration to determine whether the project is specifically prohibited according to the list of projects closed to all private investment If there is foreign participation, the official would next look to determine whether the project falls in a field reserved entirely to Egyptian investors entirely or fails to have sufficient Egyptian participation or otherwise fails to meet clear and specific negative list criteria

13 45 If found to be prohibited according to one or more negative list criteria, the project simply would then not be registered as an enterprise or company and the application would be rejected forthwith Since the negative list would be publicly available, however, requests to register prohibited projects should be rare If, however, the project falls into a category requiring special review and approval according to the negative list, it would be speedily referred to the relevant authority

13 46 If a project does not fall into any negative list category, the proposed enterprise or company would be registered on the spot and would immediately be issued a registration certificate Since this is a clerical act rather than a discretionary one, the official comparing the registration application with the negative list need not be higher ranking than the usual Commercial Register official who normally registers companies or enterprises For all purposes of a manufacturing project, the commercial registration certificate would have the same legal force and effect that an Investment Authority Board approval or industrial license from GOFI now has Using this system, most, if not all, projects applied for should be either registered or rejected within not more than one or two days at most compared to the current six to 18 months now required for investment approvals and company formation under the various applicable laws described above, thereby saving both investors and the Government precious time and money

13 47 All major changes in the project, such as changes in products produced, managers, signature authority, location, capital or other modifications of essential elements of the original project also would be required to be registered in the Commercial Register as is now the case using the negative list system In addition, the registration system can be supplemented by simple mandatory status reports to be filed every one or two years for each registered project which will enable the Government and the public to ascertain the status of a given project subsequent to registration with respect to commencement of operations, changes in directors, etc

13 48 A simplified, automatic system of registration and automatic approval (or rejection) using a negative list will drastically reduce the time and resources needed to process investment approvals for both investors and the Government Market entry will become simple, automatic and almost immediate for projects not clearly covered by the negative list The objective of this reform would be to move Egypt from a project-by-

project review and approval investment licensing and company formation system which can easily consume the four to 18 months to an automatic licensing system which would require one or two days for virtually all investment projects As discussed in more detail below, such a system will permit the agencies such as the Investment Authority and GOFI to redirect the time and resources spent on review and approval of applications for licenses to the all important tasks of promoting investment, including assisting registered projects with implementation

13 49 The experience of other countries demonstrates that such reforms can facilitate dramatic results One of the most recent examples is Indonesia, which implemented an automatic approval system using a negative list in 1987, statistics show that the new system facilitated an increase in approved foreign direct investment in Indonesia from U S $0 825 million in 1986, the year before streamlining the investment process, to U S $8 7 billion in 1991, an increase of over 10,000 times in only four years A number of other countries also have used the negative list system to streamline their investment approval process including Malaysia, South Korea, Thailand, Turkey, and Mexico In these countries also, while not in itself causing increased investment, streamlining investment approval processes has facilitated substantial increases in foreign and domestic investment in recent years Following these examples, Tunisia, and the Philippines recently also have adopted similar systems

(3) Concomitantly Abolish E&O Licensing and Replace with Improved Health, Safety and Environmental Enforcement Procedures:

13 50 As already noted, changing to a streamlined registration system for investment enterprises and companies system means, changing laws, regulations procedures and practices to eliminate virtually all prior approvals now required for investment projects including investment approvals at the governorate level and the establishment and operations (E&O) licensing process used by governorates and the new communities to enforce health, safety and environmental standards as well as to protect residential and other land use in urban areas As recommended by the World Bank[68] enforcement of such standards at the licensing stage would be replaced by more effective enforcement at the construction and operations stages through qualitative, periodic, on-site inspections All projects, therefore, would continue being required by law to conform to environmental, safety, health and land use standards and could be fined, suspended, shut down or closed for failing to do so just as they now are Compliance with all such standards would be effectively maintained and enforced by, first, land use building and zoning laws and regulations to ensure that manufacturing projects, for example, are only located in areas already zoned for industrial purposes Similarly, hotels and other tourist projects would be required by such laws and regulations to be constructed in a manner least disturbing to the neighborhoods or scenic areas in which they would be located

[68] II World Bank Report at pp 43-44, 112-113 and 121

215

13 51 Moreover, clear, complete and non-discretionary environmental, health, safety, land use, zoning and building standards can be enforced by regular inspections and/or spot checks, first during the construction stage of the project and then during project operations Personnel from the Investment Authority, GOFI, Governorates and the New Communities freed up from the investment and E&O licensing process could be redirected and retrained to carry out the important task of qualitative enforcement of health, safety, environmental and land use standards To the extent that existing health, safety, building and environmental standards and regulations are not clear, complete, and non-discretionary, they should be made so Well designed and well run industrial estates -- such as the new communities -- provide one of the best solutions to many problems including meeting environmental and health and safety standards

13 52 Building permits involving prior approval of building plans could be used to ensure compliance with building standards But these should be applied for only when the project is ready to construct a building, not at the initial licensing stage and in no way would involve approval of the project -- only the building Building permits should be approved quickly and should never be rejected for failure to meet any standard which is not objective or clearly set forth in written regulations easily available to the public

13 53 Concentrating enforcement of environmental, health and safety standards at the construction and operational stage instead of the initial project registration stage should result in better, more effective and efficient enforcement of such standards since many projects which are licensed never get to the stage of project construction or implementation In regard to the foregoing, this report fully supports the World Bank Report's recommendations[69] to eliminate local governorate investment approvals and E&O licensing and to improve procedures for administration of health, safety and environmental standards by overhauling the relevant laws Local Administration Laws 43/1979 and 145/1988 including regulations, procedures and practices, Labor Law 137/1981, Law 453/1954 as amended by Law 259/1956 on industrial shops, Law 10/1966 regarding food circulation, and Law 48/1941 regarding fraud in products as follows

(a) Abolish all investment approval requirements at the governorate and local levels

(b) Eliminate enforcement of health, safety and environment regulations at the licensing stage by abolishing establishment and operations licensing at the local level because it obstructs market entry and is relatively ineffective

(c) Eliminate the legal prescription for the administrative structure of companies operating factories for the purpose of health and safety monitoring including the requirement for an industrial safety committee

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[69] I World Bank Report at pp x, xii and pp 5-7 and 20-21 of Annex A, II World Bank Report at pp 43-44, 112-113 and 121

(d) Streamline and unify industrial health, safety and environment standards to make them more effective and easier to enforce

(e) Ensure that health, safety and environmental standards are realistic by establishing a level of standards which is compatible with the capacity of the concerned agency or agencies to enforce them

(f) Eliminate jurisdictional overlaps among competing agencies engaged in enforcing health, safety and environmental standards

(g) Improve enforcement of health, safety and environmental standards through more qualitative inspections which cover smaller samples and well publicized campaigns, and provide better trained to focus on helping companies to maintain the required standards instead of strictly on punishment, although effective sanctions would be available The recommended approach for the new legislation would be to support the efforts of enterprises to achieve the purposes of the legislation of protecting and improving industrial safety, health and the environment instead of focusing on licensing and procedural means which interfere with the market entry and operations of enterprises

(4) Revise the Tax Incentive System for Investment:

13 54 An important part of streamlining the investment approval process is to revise the tax incentives system for investment as suggested in the following Chapter 14 As noted above, approval for incentives is part of the original investment approval under Investment Law 230 In addition to replacing investment licensing with enterprise and company registration at the Commercial Register, therefore, discretionary approval of tax incentives should be eliminated from the licensing process and replaced by automatic performance based incentives as discussed in Chapter 14 below

(5) Summary of Investment Licensing Reform:

13 55 The foregoing principles should apply to all fields of investment i.e., the general principle would be that all projects are permitted provided that they register in the Commercial Register except for those not meeting the clear, precise and limited negative list criteria -- such as, for example, the extent of foreign participation permitted All other national and local government review, approvals, licensing and registration of investment projects would be abolished except for a short specific list of highly sensitive projects on the negative list E&O licensing would be abolished, and safety, health, environmental and land use standards for a particular industry or field would be enforced at the implementation and operational stages instead of the initial licensing stage through building standards and permits, land use and zoning regulations and qualitative inspections and spot checks The system is as applicable to agriculture, tourism, transportation, or education, for example as to industry Accordingly, a new investment law would apply the same system to all investment projects regardless of the field

257

Section E. Shift Investment Authority and GOFI Personnel and Resources to Investment Promotion

(1) Investment Promotion -- The Need.

13 56 To obtain the quantity and quality of foreign investment which it desires, Egypt needs a sustained, institutionalized investment promotion program Although too many substantial resources are devoted to bureaucratic procedures which delay and discourage investment, too few resources are directed toward investment promotion and investor services such as collecting and providing needed information To attract significant foreign investment, there is a compelling need for an on-going, well-organized investment promotion and investor services program to familiarize foreign investors with Egypt and provide investors with needed information and other services

13 57 A recent study by World Bank experts demonstrates that a well planned and implemented promotion strategy is a highly cost-effective means of increasing foreign direct investment[70] This would be especially so if Egypt adopts the recommendations in this Chapter and Chapter 12 to streamline bureaucratic procedures by replacing the current Investment approval and company formation system with a simplified registration system using negative list criteria In other words, to encourage investment, Egypt should decrease bureaucratic approval procedures and increase investment promotion and investor services The two strategies complement each other extremely well, and the government's personnel resources and energy saved by streamlining bureaucratic procedures can be channelled instead into investment promotion and investor services

(2) Investment Promotion Strategy Elements:

13 58 Accordingly, as recommended by the World Bank Report, the Investment Authority should be transformed into an investment promotion agency[71] Similarly, GOFI also could shift from reviewing and approval investments to assisting industrial investors It is strongly recommended that the Government design and implement a detailed international and national investment promotion strategy and program Such an investment promotion program might include some or all of the following elements and promotional techniques which have proved successful elsewhere

(a) The most important elements are investor services designed to

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[70] Wells, Louis T and Alvin G Wint, Marketing A Country, Promotion As a Tool for Attracting Foreign Investment (Foreign Investment Advisory Service Occasional paper 1 published by the International Finance Corporation and the Multilateral Investment Guarantee Agency, Washington, D C 1990)

[71] I World Bank Report at p xviii, II World Bank Report at p 94

(1) Respond to investor inquiries and provide information to potential investors

(2) Facilitate approval of investment proposals

(3) Facilitate implementation of approved investment projects

(4) Assist investment projects in operation to generate additional investment by existing investors

(b) The next most important are investment generation techniques to target and pursue specific investors in a specific sector

(c) Finally, image building techniques designed to promote a general image of Egypt within the world business community as an attractive place in which to invest

13 59 It is very important, however, that investment generation and image building techniques be undertaken only after an effective program of investor services is in place The best investment promotion tools always are investors already in place who are satisfied with their investment and their treatment by the authorities Well conceived efforts to keep existing investors happy, therefore, constitute the essential first and most important step in promoting investment

(3) Investment Promotion -- the Egyptian Public:

13 60 Also very important will be a national promotion campaign within Egypt to create awareness of the importance of private sector investment -- both foreign and national -- among the Egyptian business community and the public Thus, for example, publications could be developed and seminars conducted for Egyptian entrepreneurs and the public on how to invest, how to establish a business in Egypt, how to form companies, how to locate foreign partners, etc Such efforts could be complemented by a strong continuing campaign to create a broad public awareness of the importance of investment among the population at large To give credence to a public awareness campaign, it would be important for statements to be made at the highest level of Government and from the ministers and heads of Government agencies involved in the investment process on the importance of investment and the welcoming treatment needed to be given to investors

(4) Investment Promotion -- Egyptian Officals

13 61 Clearly, there also is a need for promoting investment among Government officials in general and those who deal with investors in particular Certainly, both foreign and Egyptian business executives, have cited the indifferent and sometimes hostile attitudes of Government officials toward investors and investment projects as an important impediment to investment in Egypt Although Government policy may welcome foreign investment, as will officials charged with attracting investment to Egypt,

investors inevitably will find themselves dealing with other Government officials and agencies including customs, tax immigration, labor offices, courts and police The public duties of these officials will not include promoting private investment, rather, their duties are to tax, regulate and control in accordance with relevant laws and procedures The goals of a promotion campaign within the Government would be to replace generally indifferent or negative official attitudes toward investors and investment projects generally positive ones This will require a well designed, effectively implemented program to educate relevant government officials on the importance of encouraging and facilitating investment to the country in general and to their own agencies and jobs particular

(5) Conclusion

13 62 Investment promotion is an ongoing process of providing information and services to potential investors, investment applicants, and approved and existing investment projects at all stages Such efforts have the potential to yield rich rewards not only in terms of substantially increasing new investors but also in harvesting the rewards of reinvestment and new investment from existing projects and developing small and medium national industries as reliable competitive suppliers of goods and services to investment projects

Section F: Recommendations

13 63 It is respectfully recommended that legislation be enacted, regulations promulgated and official actions taken regarding investment in Egypt in order to replace Egypt's confusing multiple investment regimes with a single unified investment regime for all investors based on both reformulated companies and tax laws as outlined in Chapters 12 and 14 and a single new unified investment law which will among other things

(a) Declare that increasing private sector investment in Egypt by both foreign and Egyptian investors is a national priority

(b) Treat all investors equally regardless of nationality

(c) Cover all fields of investment

(d) Provide for a set of guarantees applicable to all investors including

(1) Guarantees against nationalization, confiscation and expropriation without prompt, adequate and effective compensation and without a judicial order

(2) Free transfer abroad of payments for all purposes required including profits, capital repatriation and payments for -- e.g., -- imports, royalties and fees

(3) Freedom from all controls on prices, profits and salaries

220

(4) Freedom to manage the business free from government interference

(5) Guarantees against deprivation of licences or other rights without independent court review and due process of law

(6) Freedom from administrative attachment or seizure without a court order

(7) Guaranteed access to the courts or to binding arbitration for disputes generally

(8) Guaranteed arbitration of disputes with the government if the investor so chooses similar to Article 8 of former Investment Law 43/1974

(e) Replace the existing bureaucratic, time-consuming multi-step system of investment licensing and company formation by multiple national and local government agencies with a simple one-stop registration system at the Commercial Register -- as detailed in Section B on company formation in Chapter 12, Section D of this Chapter and the following Paragraph 13 64 -- where all enterprises and companies would be automatically approved and registered without prior GOFI or Investment Authority approval except for those few sensitive projects clearly described in a short, clear and precise "negative list"

(f) Transform the Investment Authority into an investment promotion agency with appropriate powers to promote and facilitate investment among both foreign and Egyptian investors and to create awareness of the importance of encouraging and facilitating investment among the Egyptian bureaucracy and the public at large

(g) Transform GOFI into an industrial investor service organization providing investors and potential investors with needed information about industrial suppliers, customers and markets in Egypt

13 64 To improve significantly the legal and procedural framework for investment in Egypt, we strongly recommend streamlining the investment approval process by amending all relevant laws, regulations, procedures and practices in a manner which will simultaneously

(a) Replace the existing complex, multi-step system of investment licensing and company formation approvals by multiple Government agencies with a simple one-stop registration system for enterprises and companies at the Commercial Register as described in Section B on company formation in Chapter 12 and in Sector D of this Chapter In other words, application would no longer be made to GOFI or the Investment Authority for approval or registration of investment projects Instead, investors would simply register enterprises or companies at the Commercial Register as described in Section B of Chapter 12 on company formation Enterprises and companies would be automatically approved and registered for all lawful objects and all projects except for those few sensitive projects clearly described in a short and precise "negative list" of projects

(b) Abolish establishment and operations (E&O) licensing and all other investment project approvals at the governorate and new community level now required by Law 453/1954 and instead provide for environmental, health, safety, land-use and other standards to be enforced by qualitative inspections during the construction and operational stages instead of through the licensing process as detailed above in Section D (3) of Chapter 13

(c) Replace time-wasting discretionary approval of tax incentives prior to commencement of a project preferably by means of a thorough comprehensive tax law reform which will eliminate all existing tax exemptions and holidays and replace them with the best tax incentive of all -- namely, a stable, low tax rate -- or, alternatively, with automatic, unified incentives based on subsequent enterprise performance, instead of requiring discretionary approval at the licensing or establishment stage as is discussed in detail in Chapter 14

(d) Channel government, human and financial resources saved by streamlining the investment licensing, company formation, and incentive approval process as recommended in this and the following Chapter into

(1) Investment promotion abroad and within Egypt, and

(2) Qualitative improvements of enforcement of health, safety, environmental and land use regulations through inspections during the project construction and operational stages, rather than at the investment approval and registration stage

CHAPTER 14:

EGYPTIAN TAXES, CHARGES AND INVESTMENT INCENTIVES

Section A: Overview

14 01 As briefly mentioned in the preceding Chapter, in addition to replacing investment licensing with enterprise and company registration at the Commercial Register, discretionary approval of tax incentives would be eliminated from the licensing process and replaced by automatic, performance based incentives

14 02 In this regard, the best tax incentive for encouraging long term investment is a low and stable tax rate Other incentives tend to encourage distortionary economic and business behaviour Accordingly, this report fully supports the World Bank Report's recommendations to reform the tax system comprehensively in a manner which would eliminate most if not all of the existing tax holidays and tax incentives and at the same time substantially lower overall tax rates We respectfully suggest that top rates for corporate profits and personal income tax not exceed 20 to 25 percent At the least, any tax or other incentives remaining under the Investment Law 230/1989, New Communities Law 59/1979, Income Tax Law 157/1981 as amended by Law 187/1993, Tourism Law 1/1971, Capital Market Law 95/1992 and other laws should all be unified

14 03 In addition, Egyptian business executives and professionals have identified the Egyptian system of taxes and tax administration as among the most serious constraints on private sector development in Egypt both to us and to the World Bank[72] Accordingly, any subsequent tax reform should render the tax system much more "investor friendly" by taking into account the findings and recommendations of both the World Bank Report and this report

Section B: Background - Tax System

(1) Brief Overview of Egyptian Tax System:

14 04 In brief, the major taxes and government charges and fees affecting doing business in Egypt are

(a) Stamp Taxes

(b) Registration and notarization fees

(c) Custom Duties

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[72] II World Bank Report at pp 97-102

(d) Sales Taxes

(e) Corporate profits and personal income taxes

(f) Capital gains taxes on securities transactions

(g) Social insurance contributions in respect of Egyptian employees based on their compensation

(2) Detailed Summary of Egyptian Tax System:

(a) Stamp Taxes:

14 05 Law 111/1981, as amended, imposes stamp taxes on legal documents, receipts, contracts The most critical of these for business and investment purposes are as follows

(a) There is an annual proportionate tax on shares in incorporated companies equal to 0 8 percent of their "value" for companies registered on the stock exchange and 1 2 percent for unregistered companies

(b) In addition, there are proportionate and per page stamp taxes due on contracts, letters of credit, and promissory notes as follows

(1) Loan agreements and declarations of debt payable at progressive rates on the principal amount rising to a maximum of 0 8 percent above L E 10,000

(2) Letters of credit payable jointly by the bank and its customer at a rate of 1 percent on the amount of the credit

(3) Promissory notes payable by the debtor at a rate of 0 6 percent of the amount

(4) All other contracts payable at a rate of 90 piasters per page Per Law 147/1982, the Duty for Development of State Financial Resources imposes an additional 5 piasters on each item subject to stamp taxes of more than 5 piasters

(5) Insurance premiums payable at rates ranging from 4 5 percent to 30 percent depending upon the type of insurance

(b) Registration and Notarization Fees:

14 06 Charges for registration and notarization services by the State Notary (i.e., the Notary Public which in Egypt is a government agency) are as follows

(a) Contracts for the purchase of real estate payable at progressive rates rising to 12 percent of amounts in excess of L E 4,000,

22

(b) Mortgage agreements payable at a rate of 1 5 percent on amounts over L E 2,000,

(c) Agreements or documents cancelling a mortgage payable at a rate of 0 75 percent on amounts exceeding L E 2,000

(c) Customs Duties.

14 07 Pursuant to Law 66/1963, customs duty is imposed on all imported goods unless specifically exempt with duty rates ranging between 5 percent and 160 percent for, e.g., large engine capacity cars

(d) General Sales Tax:

14 08 Promulgated by Law 11/1991, the General Sales Tax applies to sales of all industrial products whether locally made or imported Currently, the tax applies only to sales by industrial producers, importers and service suppliers who are designated by the law and its regulations as "collecting agents" In the future, the tax will apply to sales by wholesalers and retailers who then also will become sales tax "collecting agents" The General Sales Tax applies to taxable sales at a uniform rate at 10 percent except for specified products according to various schedules Sales of services are taxed at either 5 or 10 percent depending on the service

(e) Personal Income Tax:

14 09 Book I of Law 157/1981 as amended by Law 187/1993 subjects individuals to personal income tax Until very recently, this was a 2-tier tax The first tier concerned personal income from 4 defined sources -- namely, wages and salaries, business profits, income from professional services and income from "movable assets" The top tax rate for these various sources ranged from 22 percent on wages and salaries to 32 percent for the other schedules Individuals previously were also subject to a second tier of income tax known as the "General Income Tax" on all income received from the sources taxed under the above mentioned schedules plus some or all of their dividends received from incorporated companies, at progressive rates reaching to 65 percent on income of over L E 200,000

14 10 Recently, as this report was being prepared, Parliament passed Law 187/1993 which amends Book I of Law 157/1981 and unifies the 4 sources of personal income and the General Income Tax Law into a single unified global personal income tax Law 187/1993 also reduces rates but narrows brackets, so that the new top rate of 48 percent is reached at L E 68,000, except that the top rate for salaries is 32 percent on salary income exceeding L E 50,000 In addition, however, Law 147/1984 subjects individuals to an additional percent on income exceeding L E 18,000

(f) Corporate Profits Tax:

14 11 Book II of Law 157 imposes tax on the net profits of corporations at the following rates

(a) 32 percent for companies involved in industrial operations and export sales,

(b) 40 percent for those involved in commercial activity, and

(c) 40 55 percent for companies engaged in searching for and producing oil

14 12 As in the case of individuals, another 2 percent on corporate profits over L E 18,000 is added on by Law 147/1984

(g) Duty for Development of State Financial Resources:

14 13 As noted above, pursuant to Law 147/1984 regarding "The Development of State Financial Resources", a "duty" at the rate of 2 percent is levied on amounts exceeding L E 18,000 income from all taxable personal income sources, including salaries and wages earned by employees, as well as corporate profits

(h) Capital Gains Tax on Securities Sales:

14 14 Capital Market Law 95/1992 imposes tax on capital gains from the sale of shares and other securities at 2 percent

(i) Social Insurance.

14 15 Law 79/1975, as amended, prescribes a comprehensive system of social insurance for the benefit of employees covering old age, disability, work related injuries (i.e., workmen's compensation), medical care, employment termination indemnity, all of which is funded by monthly contributions from the employer and from the employee (but withheld and paid by the employer) as follows

(a) Non-Contractor Employers

(1) 40 percent of total regular compensation earned by each employee up to L E 3,000 basic salary per year -- 26 percent for employers and 14 percent for employees, and

(2) 35 percent of earnings in excess of the above amount ("variable" earnings) to a maximum of 150 percent of the "basic" L E 3,000 salary as mentioned hereinabove in item (1) or L E 7 500 per year which ever is less -- 24 percent for employers and 11 percent for employees as explained in more detail below

(b) Contractor Employers

The situation for contractors is different Contractors are required to pay social security contributions based on a certain percentage of the contract base price after various deductions at a rate of 18 percent of such percentage Such a percentage of the contract base price varies with the nature of the operation

Section C. Background - Incentives

(1) Overview·

14 16 As already noted above, there are numerous investment incentives mostly in the form of exemptions from some of the taxes and government charges outlined above These incentives are contained principally in Investment Law 230/1989, New Communities Law 59/1979, Income Tax 157/1981 as amended by Law 187/1993, Tourism Law 11/1971, Capital Markets Law 95/1992 and Customs Exemptions Law 186/1986 The main incentives are described briefly in the following paragraphs

(2) Investment Law 230 Tax Exemptions for Inland Projects:

14 17 Investment Law 230 companies are granted a 5 year tax holiday (which could be extended under special circumstances up to ten (10) years by a decision of the Council of Ministers) from

(a) The corporate profits and personal income tax on profits earned by the enterprise

(b) The annual 1 2 percent proportionate stamp duty on the total par value of shares (i e., the company's capital)

14 18 An additional 2-year tax holiday is accorded by Law 230 to any project which utilizes machinery, tools, and equipment, the local content of which exceeds sixty (60) percent

14 19 Moreover, to the extent that profits are reinvested, and the capital increased accordingly with Investment Authority approval, a 5 year tax holiday applies to the proceeds of the reinvested profits

(3) Investment Law 230 Exemptions for the Free Zone Projects

14 20 In addition to the inland investment Investment Law 230 also provides for projects to be located in "free zones" which are areas designated to serve both as traditional warehouse areas offering warehouse facilities and also as export industrial zones for manufacturing and assembling projects which would export most or all of their production out of both the free zone itself and Egypt The basic principle is that, for customs, taxation and trade law purposes, the free zones are treated as being outside of the country, although they remain part of Egyptian territory and subject to Egyptian

eignty Consequently, as a general rule, for purposes other than tax and customs, ian laws and regulations are also applicable to the free zones unless otherwise ically provided

In addition to enjoying most of the other privileges listed above for inland ment Law 230 projects, free zone projects enjoy permanent exemption from all e taxes and customs duties but must pay an annual duty equal to one percent of the e" of goods exported by them from the free zones

Income Tax Law 157 benefits for Certain Investments by Law 159 Companies and Others Enterprises:

Companies Law 159 Companies may also obtain a 5 year tax holiday from the rate profits tax under Tax Law 157 provided that

The object of the company is to carry out industrial activity, and

The company employs a staff of at least fifty (50) employees

Profits of Law 159 companies and/or other entities from the following activities empted from tax for the periods indicated

Activity	Exemption Period
Land reclamation	10 years
Poultry production	5 years
Livestock breeding	5 years
Fishing companies	5 years
Cooperative fishing projects	10 years
Bee keeping	permanent
Private insurance funds per Law 54/1975	permanent

Interest paid in respect of the following is permanently exempted from income

Loans from outside Egypt to all levels of the Egyptian Government and public entities

Foreign currency bank accounts in Egypt

(c) Savings deposits in registered banks in Egypt

(d) Publicly issued bonds and debentures

(e) Debentures issued by public sector banks

14 25 Following passage of Law 187/1993, all dividends from Egyptian incorporated companies are now exempted from income tax

14 26 Unlike Investment Law 230 companies, Law 159 Companies are not exempted from the stamp duty on shares, nor are they entitled to a tax holiday for the proceeds of reinvested profits as are Law 230 companies or to the additional 2 year tax holiday for local content

14 27 The tax holidays of both Law 159 and 230 Companies are extended to 10 years if located in one of the New Urban Communities as described below

(5) Tourism Law Tax Incentives:

14 28 Article 5 of Tourism Law 1/1973 exempts approved tourist establishments regardless of company form from the following taxes for 5 years

(a) Corporate, commercial and industrial profits tax, and

(b) Taxes on movable assets

(6) New Communities (Desert Cities) Law No. 59/1979 Tax Incentives·

14 29 The "New Communities Law" 159/1979 offers tax and other benefits similar to and, in some cases greater than, those provided by Investment Law 230 as follows

(a) A 10 year tax holiday from corporate profits tax,

(b) A 10 year exemption from building taxes (not available under Law 230),

(c) Exemption from taxes on interest for all loans to finance the project

14 30 Said incentives are to be enjoyed by any project established in any of the areas specifically designated for the development of new communities regardless of whether the project is in the form of an Investment Law 230 company or a Companies Law 159 company

14 31 While similar, the incentives under Investment Law 230 and Law 59/1979 also are different For example, Law 59 offers corporate profit tax exemptions to contractors who work on projects as well as the investors Also, Law 59 exempts projects from

building taxes which law 230 does not mention On the other hand, Law 230 unlike Law 59 offers the following

(a) Tax exemption for capital increases,

(b) Partial exemption from succession tax on the debt of shareholders,

(c) Exemptions of stamp taxes and notarization fees during the period of formation, and

(d) Protection from administrative seizure without a judicial order

(7) Miscellaneous Investment Incentives Available to Inland Investment Projects Under Income Tax Law 157/1981:

14 32 The following incentives are available under Income Tax Law 157 regardless of whether a company is formed under Investment Law 230 or Companies Law 159

(a) Write-off for New Replacement or Additional Equipment:

14 33 A one-time write off 25 percent of the cost of new replacement or additional machinery and equipment bought for production may be taken in addition to the regular depreciation allowance, in the first year the machinery or equipment is used in production

(b) Favorable Treatment of Inter-Company Dividends:

14 34 Intercompany dividends are not taxable regardless of when they are distributed provided that the distributing company has paid the corporate tax applicable to its profit or was exempted therefrom i.e., dividends to corporations are not subject to double taxation in Egypt

(c) Exemption from Corporate Tax for Portion of Profits of Joint Stock Companies Registered on the Stock Exchange:

14 35 Following the expiration of any applicable tax holidays, any Egyptian joint stock company registered with the Stock Exchange, whether formed under Investment Law 230 or under Companies Law 159, may be exempted from corporate profits tax on profits amounting to the percentage of the company's paid-in capital equal to the current interest rate on bank savings deposits, currently around 13 percent on Egyptian Pound accounts

(d) Lower Tax Rate for Industrial Companies:

14 36 Companies performing manufacturing activities and registered in the Industrial Register of the Ministry of Industry pay the corporate profits tax at a rate of 32 percent, those not registered in the Industrial Register such as restaurants, 40 percent

(e) Exemptions Under Capital Markets Law 95/1992:

14 37 Capital Markets Law 95/1992 offers the following

(1) Publicly held companies having not less than 30 percent of the total shares of the company held publicly by not less than 150 shareholders registered in the stock exchange are permanently exempt from the stamp tax due upon issuing the shares and from the annual proportionate stamp tax

(2) Distributed profits on such shares are exempt from personal income tax

(f) Lower Customs Rate for Investment Projects:

14 38 Law 186/1986 replaced all customs exemptions for investment activities with a single low customs duty rate of 5 percent for capital assets imported to establish investment projects

Section D: Analyses of Problems

(1) General The Existing Tax System Contains Serious Obstacles to Investment in Egypt:

14 39 According to most Egyptian private sector business executives and professionals interviewed, the existing tax system constitutes one of the most serious major obstacles to private sector investment in Egypt for the reasons which are discussed in detail in the following subsections

(2) Proportionate Annual Stamp Tax on Share Capital Discourages Use of Incorporated Companies

14 40 It is strongly recommended that the annual proportionate stamp tax on the value of corporation shares -- now 1 2 percent -- be abolished As a tax on capital formation, this is a direct tax on investment itself, the very act which Egypt is trying to encourage in order to create jobs for Egyptians and sustained economic growth for the future Anything which directly increases the costs of capital and the cost of establishing and maintaining a project in the form of an incorporated company reduces Egypt's competitive position for investment worldwide and should be eliminated What should be taxed are the results of operations of a project -- that is, either its net income or its sales -- but not the project's capital at a time when Egypt urgently needs to mobilize capital for productive investment

14 41 Moreover, this tax applies only to the capital of joint stock companies and other incorporated companies Unincorporated companies such as partnership are not subject to this heavy fiscal requirement which is imposed on corporations This will naturally lead investors to avoid the very form of company which the government should actively seek to encourage as the best mechanism for mobilizing capital for productive investment

and managing projects Thus, on the one hand, the government actively seeks to encourage the capital market and its development but, on the other, it leaves in place existing laws which push investors towards unincorporated companies and away from incorporated companies which are the best forms of company to promote economic growth and stability in Egypt

14 42 For example, one of our clients is a limited liability company originally formed under Investment Law 43/1974 which is wholly owned by foreign investors The company expanded by increasing its capital to L E 16 million, not realizing that a change in the Stamp Tax Law made the law applicable to the capital of limited liability companies as well as that of joint stock companies Now the company is faced with an annual stamp tax bill of L E 192,000, which is payable whether the company makes any profit or not The investors are now seriously considering changing the company's form to that of a limited partnership

14 43 The heavy burden imposed by this tax on capital formation and investment has been recognized by the government since various exemptions from the tax are offered in the Investment and Capital Markets Laws for limited categories of companies The better solution to encourage capital formation would be simply to eliminate both the tax and the exemption and rely instead on a base of taxation other than capital formation such as profits, sales, or value added

(3) All Stamp Taxes on Loans, Credits and Other Business Dealings and Contracts, as well as Registration and Notarization Fees, should be Abolished or Replaced by Low Nominal Amounts:

14 44 Together, the proportionate stamp taxes and registration and notarization fees outlined above impose heavy burdens on business transactions and contracts related to the establishment and operation of large investment projects For example, loans and mortgages can be in the millions of pounds This makes the taxes and fees large in absolute numbers even though the percentage may be small For example, if a company purchases land for an investment project for L E 10 million with a loan of L E 10 million secured by a mortgage on the land which is later cancelled after the loan is paid off, the stamp taxes and fees due in respect of the transaction will be over L E 1 5 million -- an enormous transaction cost -- as follows

Fee / Tax	Rate	Fee / Tax Amount
Registration fees for real estate purchase	12% of L E 10 million	= L E 1,200,000
Stamp tax on loan agreement	0 8% of L E 10 million	= L E 80,000
Registration fees for mortgage	1 5% of L E 10 million	= L E 150,000
Registration of mortgage cancellation	0 75% of L E 10 million	= L E 75,000
Total fees and stamp taxes		**L E.1,505,000**

14 45 Under the law, failure to pay stamp taxes and fees renders contracts and transactions unenforceable in court Obviously, therefore, at a minimum, the stamp taxes and the notarial fees have the adverse impact of discouraging investors from formalizing their contracts at a time when the country wants to encourage sound business practices and stability and predictability of legal relationships which are essential element in promoting economic growth Worse, the taxes and fees discourage investment and business activity which create jobs and economic growth especially for smaller, newer business Again, what should be taxed are the results of business contracts and business operations -- i.e., net income, turnover, or the individual sales of projects -- not the contracts and operations themselves which produces those desirable results Accordingly, it is strongly recommended that the stamp tax be abolished and that the high percentage state notarial fees be replaced by low, nominal, flat fees as already recommended above in Chapter 5

(4) Import and Sale of Machinery, Equipment and Other Productive Assets should be Exempted from Sales Tax:

14 46 As noted above, Egypt has instituted a sales tax pursuant to Law 11/1991 From the standpoint of encouraging investment, some experts have suggested that a reasonable sales and other consumption taxes are superior to taxes on business profits and personal income because such taxes tend to discourage consumption and encourage saving and investment, whereas income and profits taxes tend to encourage consumption and discourage savings and investment This assumes, of course, that the sales tax is reasonable and properly administered in that unreasonable, poorly administered taxes of any kind encourage evasion and distortive behaviour

14 47 The introduction of the sales tax, therefore, generally is laudable Regrettably, however, imposition of the tax at the customs point on imported machinery and equipment and other productive capital assets as well as domestic produced machinery and equipment has an adverse impact on investment In 1986, the government wisely provide a uniform, low customs duty rate of 5 percent on all capital assets imported for

233

the establishment of investment projects pursuant to Law 186/1986 Addition of the sales tax at the customs point has suddenly and sharply increased the cost of importing productive machinery and equipment by 10 percent While the government allows sales tax on imported machinery and equipment to be paid off in installments over seven years, the liability remains and acts as a drag on investment As one Alexandria business executive put it to us, the sales tax has had "a crippling impact" on the import of machinery and equipment Accordingly it is respectfully recommended that machinery, equipment and other capital assets be exempted from the sales tax

(5) Need to Improve Tax Administration Generally:

14 48 To improve the investor confidence needed to encourage investment, it is very important to improve tax administration Currently, tax administration is reputed to be heavy handed Business executives reported to us that Tax Department officials routinely and arbitrarily deny deductions for business expenses which should be permitted under the law This behaviour raises effective rates of taxation, encourages future evasive behaviour, discourages legitimate business activity and creates a climate of uncertainty among business enterprises since the law itself cannot be relied upon Tax administrators should seek to encourage a climate of trust and compliance rather than assuming non-compliance and treating all tax payers with distrust Moreover, such heavy-handed tax administration practices create a very bad image for a country among outside investors, and Egypt should therefore make every effort to improve tax administration and make it more efficient

(6) Need to Establish Shorter, More Definite Limitation Period to Reduce Tax Disputes:

14 49 Current tax administration practices unnecessarily create business uncertainty, breed litigation and raise transaction costs by leaving taxpayer liabilities open and unsettled for years Uncertainty springs in large part from the lack of a reasonable and definite limitation period after which tax matters are closed except for cases of criminal fraud Currently, the Tax Authority has an unreasonably long 5-year period within which to reassess taxpayer liability As already discussed in Chapter 5, this period often is extended indefinitely by reassessment claims issued by the tax administration shortly before the 5-year period expires Taxpayers then often file suits to challenge the reassessment[73] Thus, tax liabilities remain unsettled for years

14 50 Uncertainty is the enemy of a good investment climate, and the possibility that taxes could be recalculated and reassessed for an indefinite period of years or even decades after the tax year has closed poses a frightening prospect for investors and is therefore a clear deterrent to investment Investment in a changing world is uncertain enough without the prospect of unsettled tax liabilities for 5 or 10 year period Accordingly, a reasonable and strict limitation period of, say, one year should be

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[73] See Paragraphs 5 18 et. seq. above

imposed Such a period would give business the ability to plan future operations with the certainty required to develop and maintain the country's competitive economic edge

(7) Need to Replace Comprehensive with Selective Tax Audits:

14 51 One reason asserted for the 5-year assessment period is that the Tax Department currently attempts to audit all taxpayers comprehensively The difficulty of achieving this task even within 5 years causes tax officials to "buy time" by submitting ill-considered reassessments before the 5-year period expires Therefore, comprehensive auditing should be replaced by more qualitative auditing of selected samples of tax-payers Auditing selective samples of taxpayers qualitatively in a shorter time would speed processing and could promote better compliance and vastly improve the investment climate in Egypt[74]

(8) Tax Incentives should be Eliminated and Income Tax Rates Lowered Across the Board:

14 52 By far the best tax incentives for business are low, stable tax rates overall Egypt's nominal tax rates are much too high and its tax base is shot through with incentives and loopholes The obvious solution is to broaden the tax base and by eliminating all existing tax incentives and significantly lower the rates to, say, no more than 25 percent

14 53 While income tax law reforms in 1978, 1981 and 1993 reduced tax rates from their prior confiscatory rates of almost 95 percent at L E 10,000 before 1978, Egypt's income tax system imposes rates on personal income which are still very high for a developing country at relatively low thresholds of income Even with the latest reform under Law 187/1993, the rates remain much too high and the brackets too narrow Thus, the top tax rate of 48 percent is reached at only L E 68,000 which is a little more than U S $20,000 And with the 2 percent add-on under Law 147/1982, the rate in fact is 50 percent

14 54 By comparison, in the United States which has a long and successful record of taxpayer compliance

(a) U S $20,000 (equal to L E 68,000) would be taxed at only 15 percent instead of 50 percent as is now the case in Egypt, and

(b) The top tax rate is only 39 6 percent which is not reached until U S $250,000 (equal to L E 837,500) as opposed to Egypt where the top rate is 50 percent at L E 68,000 (equal to U S $20,000)

14 55 Taxes on corporate profits combined with the 2 percent State Financial Resources Duty reach 34 to 43 percent which also are high, especially for a country trying to

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[74] Also recommended in II World Bank Report at pp. 100-102, 119

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develop rapid, self-sustaining economic growth in competition with much more lightly taxed investment destinations At the same time, as discussed above in subsection 3, tax administration practices of arbitrarily disallowing many business deductions often raise effective tax rates substantially above the maximum level set forth in the law

14 56 High rates made higher by heavy handed tax administration encourages tax evasion and distortive tax avoidance behavior and discourages legitimate private sector investment and enterprise The government and the legislature know that nominal tax rates are too high as evidenced by the fact that many favored economic activities receive exemptions and other special tax treatment as outlined in Section C above As a result, the tax holidays and other incentives have drastically eroded Egypt's income tax base

14 57 At the same time, by providing loopholes, the tax incentives also invite evasion and distortive economic behaviour Business executives have reported to us during our interviews that many enterprises make efforts to liquidate and re-form their businesses or take other similar measures as tax holidays come to an end in an effort to renew them As one business executive stated to us

> "Projects that are implemented in new cities are exempted from taxes for 10 years Many of the factories benefiting from this exemption move their activity from one city to another by the end of the exemption period or else start the formation of new companies and/or factories Hence, the State never benefits from these projects Every business executive or investor prefers to pay reasonable taxes rather than to benefit of the exemption for 10 years then liquidate the business, as in the case in other countries [75]"

14 58 In a similar vein, the World Bank Report has noted

> "The tax incentives have to be seen in the context of high normal levels of taxation These, particularly the taxes paid on dividends in the hands of shareholders, constitute a very real investment disincentive Moreover, the greater opportunities for tax evasion in the trade sector are a deterrent to industrial investment except where tax holidays can be secured, it is one reason good returns are easier to make in the services than in the productive sectors "[76]

14 59 Eliminating tax holidays, differential rates, exemptions and other incentives would significantly increase the tax base which in turn would allow for the rates to be substantially lowered across the board The differential rates between "industrial" and "commercial" companies should be eliminated and all business corporations should be

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[75] Statement by Mohamed Ragab, Chairman of the Alexandria Businessmen's Council

[76] II World Bank Report at p 70

taxed at the same rate Eliminating incentives also would minimize distortive tax avoidance business behaviour and allow business executives to make long term business decisions without worrying about the tax impact At the same time lower rates would encourage investment and reduce the incentives to evasion By far the best tax incentive to encourage investment and private sector economic development is a well-conceived business tax system provided that is

- Broadly based
- Characterized by reasonably low rates -- say 20 to 30 percent -- which will be stable and predictable
- Fair and neutral with respect to business organization and nationality
- Having few or no exemptions or "loopholes" except for low income individuals
- Clear, certain and simple to administer
- Well administered

14 60 Given the above, it is clear that a comprehensive tax reform should be undertaken The overall shape of the reform would be to eliminate most existing exemptions and loopholes, thereby allowing income tax rates to be lowered substantially as the base is broadened to tax virtually all business enterprises and activities on an equal basis[77]

14 61 Indeed, the Egyptian Government already has carried out a similar successful reform in the customs area Prior to 1986, the Investment, Tourism, New Communities and other laws contained a variety of customs exemption possibilities for different investment projects and other activities Then, Law 186/1986 simply eliminated all customs exemptions for investment projects and instituted a low uniform rate of 5 percent for machinery, equipment and other capital assets for all investment projects regardless of the law under which they were organized We recommend a similar reform in the personal and corporate income tax area

14 62 At the same time, the separate 2 percent "add-on" to the personal and corporate income taxes imposed by the Duty for the Improvement of State Financial Resources under Law 147/1982 should be eliminated and folded into the tax itself Additional complexity of this sort having no meaning other than additional revenue generation confuses and irritates investors and sours the investment climate A sound investment climate demands tax simplicity, as well as reasonable rates

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[77] See also II World Bank Report at p 119

14 63 Similarly, the 2 percent tax on capital gains from the sale of securities imposed by Capital Markets Law 95/1992 should be eliminated If capital sales are to be taxed, they should be treated as income within the context of a global, unified tax, not separately Differential treatment of income for taxation purposes creates distortive behaviour

14 64 A comprehensive income tax reform for Egypt therefore should

(a) Significantly broaden the tax base by eliminating all tax incentives, including tax holidays, tax exemptions, and differential tax rates for different activities

(b) At the same time substantially lower the rates to no more than 25 percent for corporations and for individuals

(c) Abolish the 2 percent add-on to income and profits taxes by the Duty for State Financial Resources Improvement under Law 147/1982

(d) Abolish the 2 percent capital gains tax on securities sales imposed by Capital Markets Law 95/1992

(e) End heavy handed tax administration techniques such as disallowing reasonable business deductions

(f) Eliminate the considerable uncertainty created by the system of allowing the tax authorities 5 years within which to reassess taxpayer income, and then a further indefinite period by simply sending the taxpayer a reassessment before the 5 years is up, by mandating a reasonable period for reassessment -- say, 1 year -- after which a tax matter should be closed to further review by the tax administration except in clear cases of fraud

(g) Replace comprehensive auditing of all taxpayers with qualitative auditing of selected samples of taxpayers which will help reduce the period of time needed for Tax Department reassessment and inspection

14 65 To the extent that investment incentives are retained, they should at least be unified as among the Investment Law 230/1989, the Income Tax Law 157/1981 as amended by Law 187/1993, the Tourism Law 1/1973, the New Communities Law 59/1979, and the Capital Markets Law 95/1992[78] In addition, incentives should be clear, non-discretionary, automatic and awarded only upon the fulfillment of specified requirements rather than guaranteed at entry level[79] An example of such an incentive is that the 5-year tax holiday found in Tax Law 157/1981 for companies which are

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[78] See also I World Bank Report, Annex A at p 12

[79] See also I World Bank Report at p xviii

engaged in industrial activity registered in the Industrial Register, and have 50 or more employees Only enterprises meeting these simple and clear criteria qualify for the exemption is not considered at the licensing stage

14 66 Similarly, tax incentives could be geared to income from exports or other performance based tests Documentation and Government review should be reduced to the minimum required to determine eligibility Neither the tax system nor tax incentives should discriminate as between sub-sectors or between foreign and domestic investment Even with these improvements, however, retaining individual incentives which differentiate among taxpayers is definitely the "second best" approach By far the best solution is to eliminate all incentives and the bureaucracy that goes with administering them, and lower overall tax rates

(9) While an Advance, the New "Unified" Personal Income Tax does not Represent the Comprehensive Income Tax Reform needed for Egypt:

14 67 The new unified personal income tax promulgated by Law 187/1993 makes significant advances by amending Income Tax Law 157/1981 to unify all sources of personal income into a single global income tax It also lowers the overall rates imposed by the former 2-tier tax system described above For these reasons, the new law represents a substantial improvement It falls short, however, of the comprehensive income tax reform needed for the following reasons

(a) As already suggested in Subsection 6 above, the rates remains much too high and the brackets too narrow reaching 48 percent (50 percent with the 2 percent duty add-on imposed by Law 147/1982) at L E 68,000 (i.e., about U S $20,000) In a country with low tax-payer compliance, a 50 percent tax rate clearly invites evasion

(b) Moreover, the new tax does nothing to broaden the tax base as recommended by this report and the World Bank Report by eliminating existing incentives such as tax holidays, exemptions for interest and dividends, differential rates, etc

(c) Nor does the new law truly "unify" Egypt's income tax system in that it fails to eliminate extra income taxes such as the 2 percent add-on or the 2 percent capital gains tax imposed by Laws 147/1982 and Capital Markets Law 95/1992 respectively

(d) Moreover, the new tax continues a differential rate for employees whose top bracket is 32 percent instead of 50 percent

(e) The new tax relates to personal income only and does nothing to unify the differential rates for commercial and industrial companies or lower corporate taxes

(f) The new tax does nothing to curb high-handed tax administration or to eliminate the problems the uncertainty caused by comprehensive auditing and the 5-year tax reassessment period and years of unsettled tax claims.

Section E: Future Tax Reform Considerations

14 68 Regarding overall tax reform with the objective of encouraging investment as well as developing revenue for public finance, Egypt may wish to consider changing the form of taxation from a tax on business profits and personal income to a tax system which provides greater incentives to savings and investment Some commentators have suggested that taxes on net business profits and personal income penalize enterprise, encourage consumption and discourage investment, and that it is consumption and not profits which should be taxed Therefore, consideration should be given to replacing income taxes mostly or entirely with consumption taxes such as sales, turnover, and/or value added taxes with appropriate exemptions for basic necessities Egypt already has taken a major step in this direction by promulgating a general sales tax in 1992

14 69 Consideration should also be given to a relative new and flexible tax concept specifically designed to encourage savings and investment which is the "consumption-based income tax"[80] under which tax is levied on that portion of personal or corporate income and cash flow not directed to savings or investment Under this system, to calculate his tax basis, a taxpayer would add net borrowing and gifts received to all income for the year obtained from any source From this amount would be deducted all amounts saved or invested during the same year The resulting amount would equal the amount spent on consumption during the year, and this would be the amount taxed after subtracting exemptions for low income recipients at rates to be determined Such a system obviously would encourage investment and discourage consumption since investment expenditure would be deducted, thereby reducing the taxable basis whereas consumption spending would not be deducted

Section F: Recommendations

14 70 It is respectfully recommended that the following measures be undertaken to create a tax climate much more favorable to investment than now exists in Egypt

(a) The proportionate annual stamp tax on the share capital of incorporated companies should be abolished in order to encourage and facilitate capital formation and productive investment through incorporated companies

(b) All stamp taxes on loans, credits, and other business dealings and contracts should be abolished or replaced by very low, flat amounts

(c) All percentage State Notarial and registration fees for land transfers, mortgages and other transactions should be replaced by very low, flat fees as already recommended in Chapter 5 above

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[80] See Will, George F , "A Consumption-Based Income Tax" in *The International Herald Tribune* (October 6, 1992)

(d) The import and sale of machinery, equipment and other productive assets should be exempted from sales tax

(e) A comprehensive income tax reform for Egypt should be undertaken which would

(1) Significantly broaden the tax base by eliminating all tax incentives, including tax holidays tax exemptions, and differential tax rates for different activities and taxpayers

(2) At the same time substantially lower the rates to no more than 25 percent for corporations and for individuals

(3) Abolish the 2 percent add-on to income and profits taxes by the Duty for State Financial Resources Improvement under Law 147/1982

(4) Abolish the 2 percent capital gains tax on securities sales imposed by the Capital Markets Law 95/1992

(5) End heavy handed tax administration techniques such as disallowing reasonable business deductions

(6) Eliminate the enormous uncertainty created by the system of allowing the tax authorities 5 years within which to reassess taxpayer income -- and then a further indefinite period by simply sending the taxpayer a reassessment before the 5 years is up -- by mandating a reasonable period for reassessment of, say, 1 year after which a tax matter should be closed to further review by the tax authorities except in clear cases of fraud

(7) Replace comprehensive auditing of all taxpayers with qualitative auditing of selected samples of taxpayers

(f) To the extent that investment incentives are retained, they should be made automatic, performance-based and unified as among the various laws concerning and affecting investment including the Investment Law, the Income Tax Law, the Tourism Law, the New Communities Law and the Capital Markets Law, but again, the best solution for encouraging investment is to eliminate all tax incentives and lower tax rates substantially

(g) Consideration should be given to shifting taxation from income entirely to consumption possibly through a consumption based income tax to encourage savings and investment as opposed to consumption

CHAPTER 15:

CAPITAL MARKETS LAW AND REGULATIONS

Section A. Overview and Background

15 01 The Capital Markets Law was recently promulgated as Law 95/1992 and its implementing regulations only in 1993 as MD 135/1993 Even though it is early yet to assess fully the impact of new law, some issues already have been identified for consideration and action as outlined below

15 02 One of the most important actions that a Government can take to encourage and facilitate investment is to provide the proper legal infrastructure for a well-organized, well-regulated capital market for corporate shares, bonds, and notes, as well as mutual funds, government securities and other investment instruments Combined with the device of the joint stock company where management is separated from ownership and ownership takes the form of freely negotiable shares, capital markets have proved to be a highly effective means of mobilizing capital for productive private sector investment Promulgating the Capital Markets Law 95/1992 was therefore an important step in the right direction by the Egyptian Government

15 03 The purpose of the recommendations contained in this chapter is to build upon this step and to help make the capital market an even more effective instrument for mobilizing capital and facilitating investment The recommendations in this chapter should be read in conjunction with those in Chapter 12 on the companies law with which the capital markets are inextricably linked since joint stock companies are a primary source of securities for capital markets activity and growth

Section B: Overlap between the Companies and the Capital Markets Laws should be Eliminated

15 04 The Companies Law and the Capital Markets Law should be reviewed together and the numerous overlapping provisions eliminated to avoid confusion and possible conflict Rules relating to the formation, capital structure, management, operation, shareholder protection, liquidation and dissolution of joint stock companies should be left to the Companies Law Such rules must and should be formulated, however, with the capital market in mind

15 05 The appropriate area for regulation by the Capital Markets Law are offerings to, and solicitions from, the public in connection with shares, bonds or other securities As the Companies Law must be formulated with the Capital Markets in mind, so Capital Market regulations must be careful not to discourage the formation of joint stock companies through over-regulation As noted in the chapter on companies law, the formation of joint stock companies should be an easy and unencumbered process Not every joint stock company must or will offer shares or debt securities to the public but

all have the potential to do so As long as joint stock companies are privately held, they should be left alone by securities market regulations as much as possible

Section C: Overregulation should be Eliminated

15 06 Over-regulation can stunt or even destroy the very thing sought to be achieved by capital markets legislation -- i e., increased productive investment and economic growth The best securities market regulation in the world can never guarantee that every investment will be safe or profitable Rather, good capital market regulation can only help assure that outside investors will have as clear and fair an idea of the risks and potential of a proposed investment as those inside the company and that insiders may not take unfair advantage of outside investors using their special knowledge

15 07 The goal of securities market regulation must be a limited and carefully balanced one -- namely to protect investors by enabling them to have as much relevant, truthful information as possible about potential and actual risks of their proposed investment without the process being so burdensome and expensive as to discourage its use Regrettably, Capital Markets Law 95/1992 and its Executive Regulations MD 135/1993 do impose numerous rules and restrictions which amount to excessive regulation and government intervention Some examples of overregulation by Capital Markets Law 95/1992 are briefly described in the following paragraphs

15 08 Article 8 of the Capital Market Executive Regulations forbids a shareholder from representing more than 10 percent of the total shares of the company or more than 20 percent of the company's shares to be represented by proxy As already noted in the Companies Law Chapter, shareholders need freedom and flexibility to appoint whomever they wish to be their proxy in a shareholders meeting This is especially important in publicly held companies The Article 8 rule severely and artificially restricts the use of proxies Other countries have dealt successfully with potential abuses of proxies by requiring full disclosure by those seeking proxies and establishing appropriate and clear sanctions for fraud or deception along with clear rights of shareholders to hold their proxies accountable The lack of such protection constitutes a serious gap in the regulations

15 09 Article 17 of the Capital Market Executive Regulations restricts prices of shares issued for capital increases to an amount to be determined on the basis of the average income of the share among previous issues and from the value equivalent to the net worth of the company's assets at the time of issue as certified by the auditor As already mentioned in Paragraph 12 70 above, share prices should be determined by the market following full and honest disclosure of all material facts by the company Such disclosure should include an auditor's report and prices of previous issues These factors may or may not be considered to be relevant by the market, but should not restrict the market s decision

15 10 Similarly, Article 24 permits the issuance of preferred shares only after approval of the extraordinary general assembly based on an auditor's report concerning the reasons

justifying the use of preference shares for the capital increase, here too, many factors may affect a business decision to seek a capital increase through issuing preferred shares, not just the auditor's report

15 11 Article 34 restricts the amount of bond issues to the net value of the companies assets as determined by the auditor except where approved by decree of the Board of Directors of the Capital Markets Authority Again, this is an artificial limitation not found in most modern securities laws As the 1980 IFC Capital Markets Study Team noted when reviewing a similar provision in the then draft Companies Law

> "Nor is it clear why bonds may be issued only in an amount equal to the company's assets In many cases, a company with a small amount of assets may have legitimate need for a substantial loan, represented by bonds No such limitation applies if the company obtains a bank loan, which, being short term, may be less advantageous to the company This does not help develop the securities market "[81]

15 12 A better solution would be to require full honest financial disclosure about the company's financial position and future prospects to potential bond purchasers, and allow them to decide, the Capital Markets Authority is not equipped to make business judgments, nor are they able to guarantee that a given bond will be a good investment

15 13 Article 125 of the Capital Markets Regulations imposes minimum capital requirements for securities market companies and activities which are high and inconsistent from one activity to another As already pointed out in the Companies Law Chapter above, such absolute minimum capital requirements are meaningless and may give unsophisticated investors a false sense of security As one securities market expert stated, "Capital requirements should be a function of aggregate indebtedness not a particular activity " In any event the key factors are the ability, reputation and overall financial health of the company which may or may not be related to its capital As with bonds and proxy solicitations mentioned above, the best means of protecting the public is to require adequate, honest disclosure with appropriate penalties, and enforcement techniques

15 14 The law and regulations discriminate between mutual investment funds operated by investment companies and mutual funds operated by banks insurance companies and other financial institutions For reasons which are not clear, banks are allowed only "open ended" funds while other financial institutions are allowed only "closed ended" funds Additionally, bank sponsored funds are allowed to have a ceiling 20 times greater than the capital whereas other funds are allowed to have a ceiling only 10 times greater Such discrimination should be eliminated in favor of equal and adequate regulation and standards for all investment funds characterized by full disclosure to the public Moreover, restricting issuance of investment fund certificates of 10 times the paid capital

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[81] 1980 IFC Report at pp 18-19

7116

of the fund is misplaced Again, the capital is only one factor, and not necessarily the most important, in ascertaining the financial health of a fund The most important thing for a fund is its performance, marketability and overall ratio of assets to liabilities

15 15 The above are examples of overregulation through inflexible restrictions and excessive interventions in the market place Instead of rigid formulas, flat restrictions on, or governmental approval for, transactions, what is required instead are clear regulations regarding disclosure to the investors and the public of all material facts known to affect the particular company or transaction involved backed up by tough sanctions against fraud, together with qualitative inspections and investigations by well trained staff Then, armed with knowledge of all material facts, the investors and the market are better able to evaluate the company or transaction involved for themselves

Section D: Gaps in Regulation should be Eliminated

15 16 In addition to some overregulation by the new Capital Markets Law and Regulations, examples of which are cited above, there are also areas which are underregulated Some of the more obvious gaps are described below

(1) Lack of Clear and Complete Rules on Insider Trading:

15 17 The most glaring gap in the law is that there are no rules clearly or completely regulating or prohibiting "insider-trading" I.e., trading by persons using special knowledge about a company gained from their position as a director, employee, lawyer or auditor, for example, to gain an unfair advantage over "outside" investors in buying or selling the company's shares

(2) Overly Rigid Definition of "Public Offering":

15 18 The rigid definition of "public offering" excludes deserving transactions from regulation, but, at the same time, makes trading unnecessarily cumbersome for institutional investors The law defines public offering as one where the shareholders are not less than 150 and the number of shares offered to the public are not less than 30 percent of the company's total issued shares This definition does not distinguish between sophisticated investors and members of the public A public offering of shares to the members of the general public is one thing -- a highly appropriate subject of securities market regulation Transactions between insiders and arms length acquisitions of shares in a privately held joint stock company by sophisticated investors -- i.e., experienced business executives, wealthy individuals and investment institutions -- are something else and can be left to the parties

15 19 In many countries with sophisticated capital markets and capital markets regulations, regulators usually attempt to include any offering to an ordinary member of the investing public in the public offering category to ensure investor protection Those attempting to make private sales or issues of securities, then apply for exemptions from public offering requirements for offerings to a limited distribution of sophisticated

investors In the current Capital Markets Law 95, no distinction is made between the regular public on the one hand and the sophisticated investors such as investing institutions, experienced business executives or high net worth individuals By attempting to treat everybody in the same way, institutional transactions are made cumbersome At the same time, offerings of less than 30 percent of the shares or less than 150 shareholders to innocent, outside investors are not "public" regardless of the nature of the investor or the amount of money involved

(3) No Minimum Trading Volume as Listing Requirement:

15 20 There is no requirement for a minimum trading volume as one of the listing requirements As a local private sector securities market expert for a prominent foreign securities company noted

> "The integrity of the public stock exchanges is heavily dependent on liquidity This is the main reason major exchanges have a minimum trading volume as one of the listing requirements The law defines some requirements for a company to be considered a public company such as the number of shareholders being 150 and 30 percent of shares being offered to the public The absence of the trading volume requirement severely diminishes the confidence an investor would have in the trading and closing prices of listed securities "

Section E: Tax Incentives should be Eliminated

15 21 The Capital Markets Law exempts "publicly held" companies -- i.e., those with 30 percent shares offered to the public and 150 or more shareholders -- from proportionate annual stamp duty on share capital As already recommended in Chapter 14 on taxes, this tax should be abolished I.e., all joint stock companies should be exempted from proportionate annual stamp tax In any event, tax incentives should not be used and are not needed to encourage public offerings

15 22 In this regard, it should be kept in mind that the capital market is not an end in itself, but a means to the end of mobilizing capital for productive purposes If the goal can be achieved as effectively or more effectively by other means without threatening the public interest, there is no reason to force investors to use the capital market where they would otherwise not do so -- especially where its use might actually discourage productive investment because of expense and bureaucratic procedure Nor should investors be provided with tax incentives to use the capital market where they would otherwise not do so for sound business reasons apart from such incentives Rather, the purpose of Capital Markets Legislation should be that of enabling the capital market to exist and function properly, not to force its use

Section F: Recommendations

15 23 It is respectfully recommended that the Capital Markets Law and its regulations be reviewed and revised in coordination with review and revision of the Companies Law to achieve the following

(a) Overlapping provisions as between the Companies and Capital Markets Laws should be eliminated to avoid confusion and possible conflict

(b) Overregulation should be eliminated by replacing rigid restrictions on, and excessive government intervention in, market transactions with clear regulations regarding disclosure to investors of all material facts known to affect a particular company or transaction involved This should be supported by tough sanctions against fraud and deception, together with qualitative inspections and investigations of justifiably suspicious cases and random samples by well trained staff

(c) Gaps in regulation should be filled by, for example, providing for clear regulations on critical subject areas such as insider trading and requiring a minimum trading volume for listing on a stock exchange

(d) Finally, as already recommended in Chapter 14 on taxes and tax incentives, it is respectfully recommended that both the 2-percent capital gains tax and all tax incentives contained in the Capital Markets Law be eliminated along with other investment incentives in favor of a low, stable tax rate on business profits

CHAPTER 16

LAND REGISTRATION

Section A: Analysis

(1) Background:

16 01 Land is an indispensable element for every investment project Without obtaining clear and certain title to the land required, no industrial or agricultural project can be implemented Accordingly, the ease with which land can be located and proper title obtained becomes a crucial factor in the speed with which projects which exist "on paper" become implemented in reality

16 02 Fortunately, Egypt has long had a system of land registration to record and keep track of title, mortgage, lease and other rights with respect to land Moreover, Egypt wisely is moving to replace its old system of registration by land-owners with a modern system of registration by plat or address For investment purposes this is a far better system than a land register organized by the names of the landowners, because it enables investors to identify the owners of, and other interests in, the plots of land which they have identified as desirable for investment project purposes

16 03 With a system of land registration, Egypt has developed the key tools with which to

(a) Identify and locate land suitable for investment projects, and

(b) Transfer to such projects adequate, clear and certain title

Nevertheless, there are problems in this field which urgently require resolution Specifically, serious constraints on private sector development arise from two important problems as discussed in the following paragraphs

(2) Registration Delays:

16 04 There is an inordinate length of time required to complete registration -- usually at least six months -- due to the length of time required for government inspectors to complete a title search Consideration could be given to privatizing this process by encouraging and providing for the development of modern title insurance companies In addition, like the Commercial Register, land registration is all done by hand Computerizing the system would improve speed, efficiency and accuracy with respect to title searches

(3) Excessive Registration Fees:

16 05 The fees for registering land are prohibitively and inordinately high -- i.e., 12 percent of the value -- and mortgages -- i.e., 1 5 percent of the loan amount secured Such high fees discourage registration of such transactions when it clearly is in Egypt's interest to encourage registration Registration of land encourages economic development by enabling investors and the public to know easily and clearly the availability, status and ownership of land for investment purposes and should provide a means of ensuring security of land title Easy and inexpensive registration of mortgages is essential to increase access to finance for investment and lower transaction costs By discouraging registration of land and mortgages, the current exorbitant fees discourage investment, lower useful economic activity and growth and, thereby, reduce much higher revenues which the government would otherwise obtain from income and sales taxes

16 06 Fortunately, the government appears to be aware of this problem as indicated by Law 6/1991 which reduces the fee by 50 percent for those who effect land registration within three years of the law coming into effect Even this gesture, however, still leaves such fees at a prohibitively high figure and does not eliminate the problem of subsequent upward reassessment of the "value" of the land -- and consequently the fees -- by zealous officials as mentioned in Paragraphs 5 32 and 5 33 above A far better solution would be low reasonable flat fees of, say, L E 50 per feddan The important goal to be achieved in this regard should be registration of land to promote social and economic development and not obtaining revenue

Section B: Recommendations

16 07 Consideration should be given to encouraging and providing for the development of modern title insurance companies

16 08 Consideration should also be given to computerizing the land registration and title system to improve speed, efficiency and accuracy with respect to title searches

16 09 The exorbitant percentage fees for registration of land and mortgages should be replaced by very low, flat fees in order to encourage registration The goal of land registration law and policy should be not to raise revenue, but to encourage registration of all land and all titles and interests in land Perversely, the ultimate effect of high land and mortgage registration fees is to reduce not raise, government revenues This is because excessively high registration fees deter land and mortgage registration which means that relatively few land owners and mortgagees actually pay them, preferring to delay or avoid registration Moreover, incomplete land and mortgage registration discourages investment and overall economic growth and activity, and lower economic activity, in turn, reduces potential government revenues from income and sales taxes Conversely low, flat fees would encourage land and mortgage registration which in turn would facilitate investment and economic growth leading to higher government revenues from income and sales taxes. Additionally, as noted in Chapter 5, low, flat fees for land registration would reduce litigation relating to disputes over reassessments of fees for

land registration based on the "value" of the land Also, as noted in Chapter 11, low, flat fees for land transfer and mortgage registration will greatly improve the opportunities for long term credit financing of investment projects

CHAPTER 17:

NOT-FOR-PROFIT ASSOCIATIONS

AND CHAMBERS OF COMMERCE AND INDUSTRY

Section A. Not-for-Profit Associations

17 01 Currently, not-for-profit scientific, educational, and charitable organizations are formulated as associations under the jurisdiction of the Ministry of Social Affairs pursuant to Law 32/1964 Law 32/1964 requires extensive review approval by the Ministry of each such association In addition, the government has far reaching and -- by usual international standards -- excessive powers over each society For example, with respect to a not-for-profit association, the Ministry of Social Affairs has the power to

(a) Nominate 10 out of 30 members of the board of directors,

(b) Place items on the board agenda,

(c) Receive copies of all minutes of meeting,

(d) Be notified of nominees for the board of directors,

(e) Remove nominees from the list,

(f) Nullify board elections,

(g) Approve the general manager of the association,

(h) Interfere in the association's activities,

(i) Amend its statutes (by-laws),

(j) Have the associations final accounts for the year submitted to it,

(k) Dissolve the association on grounds of incompetence, fraud, or serious violations, seize its assets and apply them in any way the Ministry sees fit

17 02 This law evidently was passed at a time just after the nationalization of most industries and when the government apparently feared that charitable associations would be used to amass money for political purposes by opposition groups Such laws are no longer needed in a time when Egypt is moving towards greater democracy and freedom of association In addition, there is a great need to mobilize resources for scientific educational and charitable purposes as well as for making profit Accordingly, new legislation for forming not-for-profit foundations and associations should be enacted either separately or as part of a newly reformulated companies law

17 03 As in the case of profit making companies, such a law should make formation of not-for-profit charitable, scientific or educational associations a matter of simple registration at the Commercial Register[82] Enforcement would be by means of appropriate inspections based on a selected sample or on probable cause to suspect violations in order to ensure that such associations are not covers for illegal activities or making profits In the latter case, of course, one appropriate penalty would be simply to apply taxation laws

Section B: Chambers of Commerce and Business Associations

17 04 Related to the problem of not-for-profit organizations generally is the specific question of chambers of commerce and industry and business associations As noted above in Chapter 10, to be registered in the Egyptian Commercial Register, an enterprise currently is required by law to join the Chamber of Commerce or Industry in its district before it will be registered in the Commercial Register In turn, each local chamber belongs to the Federation of Chambers of Commerce or Industry Both the local chambers and the Federations are Governmental controlled entities, with directors, officers and with employees appointed by the Government

17 05 Thus, chambers of commerce come under the supervision of the Minister of Supply and Internal Trade who appoints half of the board of directors of every chamber with the other half being elected by the members The chambers of industry fall under the control of the Minister of Industry who appoints one third of the board of directors of each chamber, the rest being elected by the members The Minister, however, has the right to dismiss the board of directors

17 06 For a free market to operate most effectively, investors, businesses and industries must be free to make economic and business decisions unencumbered to the extent feasible by government involvement, interference or coercion Such business decisions should include whether or not voluntarily to join or to form a chamber of commerce or other business organization Like any market decision, the decision to join a chamber of commerce or business association should be based upon a determination by the investor or business executive that the benefits of membership are worth the price Accordingly, it is recommended that membership in the chambers of commerce and industry be made voluntary rather than mandatory[83] As noted above, this action would also remove one more bureaucratic hurdle in the approval process

17 07 In addition, chambers of commerce and industry and business associations enable both business and government, as well as the economy and the nation, to benefit from

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[82] As suggested above in Chapter 10, perhaps it should be renamed the Civil and Commercial Register

[83] Also recommended by the World Bank Report See I World Bank Report at pp xii & p 12 of Annex A, II World Bank Report at pp 114-115 and 121

a continuing free exchange of views about policies, laws and regulations in the business and investment field This, of course, is one of the purposes of such chambers Removing direct government involvement from the chambers -- along with making membership voluntary -- should render its contribution to policy discussions and policy making even stronger, freer and more credible for both the government and the membership

17 08 At the same time, business enterprises should be free to form other voluntary, not-for-profit associations within a new legal framework in place of the heavy government control and strictures of Law 32/1964, as suggested above As the economy continues to industrialize and grow, economic interests will become more complex and diverse The official chambers of commerce have now grown to have a membership of about 3 million members, and the chambers of industry have some 13,000 members Some businesses may feel lost in an organization of these sizes even within their districts If a group of business executives feel that their concerns are not being adequately represented by existing organizations, they should be able freely to form their own associations free of the heavy regulation now imposed by Law 32/1964 Additional organizations will contribute to the full and free exchange of ideas about policies and laws in the business field and help ensure that important concerns are not overlooked

17 09 Further, as symbols of a private sector, free market oriented economy, the chambers of commerce and industry can and should be privatized by withdrawing government involvement and supervision At the same time, such chambers should be subjected to free competition in the market by making membership voluntary and by allowing other business associations to be formed freely Withdrawing government support and subjecting the chambers to competition should strengthen their role, not weaken it As pointed out by a prominent Alexandria business executive interviewed by us, such actions are definitely required in order to make these organizations more effective By taking this step, the government, the business community and the economy should benefit from an even stronger and freer exchange of views and information with the private sector

Section C: Recommendations

17 10 A new law should be enacted for not-for-profit associations which would

(a) Make formation of not-for-profit association possible by simple registration -- preferably in the Commercial Register -- according to clear rules regarding the allowable purposes for such associations instead of requiring extensive pre-registration government review and approval

(b) Drastically reduce the direct government intervention now authorized by Law 32/1964 by utilizing instead qualified and selective post-registration inspections combined with suff penalties for fraud and abuse of not-for-profit status

17 11 The laws and regulations governing the chambers of commerce and industry should be reviewed and revised to

(a) Withdraw all government involvement and support and make the chambers completely free of the government,

(b) Make membership voluntary instead of mandatory, and

(c) Officially allow, enable and encourage businesses freely to form their own voluntary and private associations and chambers of commerce and industry according to clear rules regarding their purposes and operations

CHAPTER 18:

LABOR LAW

Section A: Overview and Background

18 01 A major goal of Egypt's drive to increase investment is to increase job opportunities for Egyptians The goal of the Labor Law also is to foster employment by inserting the Government into the recruitment process and other aspects of labor relations The experience of many other countries demonstrates that Government intervention is a powerful disincentive to hiring and training workers Such experience shows that investors faced with heavy regulation and bureaucratic hassles in connection with employees will be motivated to hire as few workers as possible Instead, employers will substitute labor saving machines which are not subject to labor laws and heavy government regulation for the workers which are

18 02 Thus, Egypt's Labor Law presents a classic case of a law producing the opposite result of its intended purpose through overregulation I.e., as it stands, the Egyptian Labor Law reduces employment opportunities for Egyptians rather than maintaining or increasing them This chapter presents recommendations for reducing bureaucracy and increasing freedom of contract in the labor relations field in order to increase employment opportunities

Section B: Hiring through Government Labor Offices deters Investment

18 03 The Labor Law sets out specific steps which an employer must go through in hiring an employee Such procedures include requiring the employee to have an "employment certificate" from, and be registered at, the district labor office and requiring an employer hiring ten or more employees to notify the labor office of vacancies and fill specified positions from labor office rolls (Investment Law 230 companies are exempted from any requirement to hire employees through the government hiring office) Once an applicant is hired, the company should send him to the district labor office to register his employment He will describe the particulars, and the labor office will issue a certificate that he has registered with their office This certificate should be kept by the employer in the employee's file and is one of the papers a labor inspector may check for in reviewing personnel records When the employment terminates, it is the employee's responsibility to register such fact with the same labor office.

18 04 Such rules deter investors, because industries operating in the dynamic milieu of a free market -- especially the international market -- need maximum flexibility to choose their workers and change their labor mix as market conditions require Overall, the labor law and related regulations, procedures and practices should permit firms to recruit

workers directly and free from Government intervention[34] At most, the recruiting functions performed by Government labor offices should be provided as a service only to those who freely want the service and not imposed upon those who do not In this regard, the Labor Law should be revised to make notification by an employer to the labor office of job vacancies voluntary instead of mandatory

Section C. Hiring through Labor Contractors and Employment Agencies should be permitted

18 05 Currently, having labor supplied by contractors is forbidden In addition, recruiting for overseas jobs must be done through licensed labor recruiters To increase further flexibility and mobility in the labor market, hiring through employment agencies and labor contractors should be permitted and licensing procedures eased Every possible channel should be opened for Egyptians to obtain jobs. Usually, private sector entrepreneurs are better equipped to supply a market than the Government, and this includes the labor market Sharp and illegitimate practices can be separately regulated by rules providing for disclosure, clear standards and effective enforcement mechanisms Discretionary prior Government approval is the poorest form of regulation for the reasons already cited in the discussion on investment licensing Accordingly, it is recommended that these restrictive requirements be eliminated

Section D: Freedom of Contract must be Expanded with Respect to Term and Working Conditions

18 06 As already noted above, in order to be able to compete effectively in the international market place, Egyptian industrial and commercial employers need maximum flexibility to change their labor mix as market conditions require This may mean shifting existing employees to new jobs, as well as possibly terminating others in the event of a business down turn or hiring new ones when business improves or new business or products are developed by the same employer It must always be kept in mind that if a business is unable to compete successfully, ultimately it will fail, and the jobs that it supported will be lost Thus, best guarantee of job security in Egypt is to provide Egyptian industries and enterprises with the legal flexibility they need in the labor market to compete effectively

18 07 The law provides that continuation of a contract after expiration of a limited or definite period contract results in an indefinite contract Thus, only one limited period contract can be made with an employee By law, if the employee is not terminated when the term of the first limited period contract ends, the employee will be considered permanently employed i.e., if the contract is renewed or the term extended for any period -- even for a single day or even a minute -- by operation of law, a contract of employment for an indefinite or permanent period arises

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[34] Also recommended by the World Bank Report I World Bank Report pp 16-17 of Annex A

18 08 Freedom of contract is the legal vehicle which makes a free market economy possible This is especially true in the field of labor relations where flexibility is essentially to meet competition in an ever changing international market place[85] Restricting limited period contracts to one time only before employment becomes indefinite is inconsistent with the flexibility and freedom of contract required While it is important to ensure that labor contracts meet minimum standards of fairness, it is difficult to see how this restriction is necessary for fundamental fairness in labor relations Job security should ultimately depend upon a worker's own skill and discipline and the ability of the employer to survive in a competitive world market place The term of labor contracts should be a matter of negotiation and removed from the law Similarly, overtime -- which is now rigidly controlled and may be increased above specified limits only with approval of Labor Office -- should also be made a matter of contract

Section E: Restrictions on Termination of Employment and Lay-offs Need to be Eased To Encourage Hiring More Egyptian Employees

(1) Overview and Background:

18 09 As already suggested above, freedom to lay-off workers when required by economic necessity or to dismiss incompetent or undisciplined workers is essential for industries to remain competitive in a world-wide market In addition, the experience of other countries has consistently indicated that the ability to dismiss workers freely actually encourages industries to hire more workers in the first place Conversely, where the law makes dismissal of workers difficult, investors tend to be reluctant to hire them in the first place

18 10 Egypt, for example, and certain countries in Western Europe, in order to protect job security, have passed laws making it difficult to fire employees In fact, such laws appear to have exactly the opposite result of their intent to create job security Thus, in a number of Western European countries, such as France and Spain, unemployment is substantially higher than in the United States, for example, where hiring, firing and laying off workers is governed by freedom of contract rather than being mandated by job security laws Thus, currently, unemployment in the United States is approximately 6 2 percent or as in France it is 11 4 percent and in Spain over 20 percent While many factors may combine to produce this result, indications are that enabling employers to lay-off or dismiss unneeded or non-performing workers ultimately provides better job security for more job seekers because industries will then not be afraid to hire them

18 11 A good example is the experience of Singapore In 1968, after a long a bitter political battle, Singapore repealed a law enacted several years earlier which had made firing workers difficult, if not impossible The new law made hiring and firing a matter of contract negotiation between industries and employees Although politically difficult, the Singapore Government stuck by the law despite fierce opposition, and the law has

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[85] See II World Bank Report at pp 8-10

remained in effect ever since Today, Singapore has one of the lowest unemployment rates in the world and the its people have the second highest standard of living in Asia, just behind Japan, and ahead of many European countries Removal of rigidities from Singapore's labor market by the 1968 law was a key factor in attracting investors and giving them the flexibility to remain competitive in the international market This in turn helped to create and maintain jobs

18 12 In Singapore, as in the U S A , investors readily hire workers when they need them because they know that they can lay them off if business turns down or dismiss them if they fail to perform at required standards In many parts of Europe by contrast, companies will not hire workers even when they need them in a business upturn, because of the fear that if business turns down, they will never be able to lay the workers off This is one of several reasons why Europe consistently has higher unemployment compared to the U S A and Singapore

18 13 A prime example in the opposite direction from Singapore is Spain where current labor legislation -- like Egypt's -- makes employee dismissals and lay-offs costly, difficult or impossible without the employee's consent As reported in the *International Herald Tribune*, "Joblessness has hit almost 23 percent, double the.EC [European Community] average"[86] As one observer said

> "With a rigid system like ours you do not create jobs You have two types of people Those with permanent contracts and the others, mostly young people, who are shut out by employers who do not want to hire under such conditions "[87]

18 14 Like Spain's, Egypt's labor law is highly protective of individual job security Dismissing an unsatisfactory worker or terminating an employment relationship must follow a narrow and sometimes tortuous route, as is more fully discussed below

(2) Elimination of Positions and Laying-off Workers:

18 15 Eliminating positions and laying-off workers are not simple matters in Egypt and require approval by a special government committee Accordingly, the decision to eliminate positions requires justification to the government and can involve inspection of financial records and other papers depending upon the reason for eliminating the position This is true even if the employer is closing its business completely

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[86] "Madrid Acts Against Job Security", International Herald Tribune (December 4-5, 1993) As the title of the article indicates, Spain is acting to change its labor laws to make lay-offs and firing easier and end the government's monopoly on job placement

[87] Id Egyptian Labor Law Provisions on termination and lay-offs

18 16 Failure to comply with this requirement can result in a penalty of imprisonment for three months to one year and determination that the action is invalid In this connection, it should also be noted that the employment relationship survives sale or merger of a firm, and the employer's obligations pass to successors in interest by operation of law

(3) Dismissal

18 17 The law severely restricts an employer's right to discharge an unsatisfactory employee, the only permissible ground for dismissal is the flagrant default of the employee

18 18 Even if an employee's act or omission falls into one of these grounds and the employer has given the required notices and taken all other required action, an employee cannot be dismissed unless complex procedures set forth in the law are followed Thus, before dismissing an employee, the employer must first interrogate the employee about the facts upon which the proposed dismissal is grounded to give the employee the opportunity to explain or defend himself Such interrogation should be in the presence of a witness and all questions and answers must be recorded in Arabic Once the interrogation is completed the employer then must prepare a written notice and application to be forwarded to the Labor Office for convening a three-member committee to consider the company's intention to dismiss the employee The three-member committee consists of

(1) The Director of the Manpower and Training Directorate (MTD) or his designee who is chairman of the committee,

(2) The employer or his representative, and

(3) An employee representative selected by the employee's trade union

18 19 The committee's decision is advisory only and not binding on the employer Accordingly, following consideration by and decision of the three-member committee, the employee may be dismissed Within one week of receiving notice of dismissal, an employee may apply be registered mail to the Labor Office within the district for suspension of dismissal

18 20 The Labor Office then tries to settle the dispute but if not resolved within two weeks, the dispute is referred to the appropriate summary court Within 3 days, the court must fix a date for hearing by the regular court If the court decides to suspend dismissal, as it usually does if referral has been timely, the court would order the company to pay the employee his salary until the dispute is adjudicated by the regular court to which the file would be forwarded by the summary court which could be several years The employer would be entitled by Law to discontinue direct payment to the employee and instead deposit his monthly salary with the court until the dispute is finally determined by the court Salary deposits with the court would start one month after the

59

date of the first scheduled hearing of the case before the regular court If the employee's claim is dismissed, the employer would recover the entire amount deposited with the court. If the employee is awarded damages, payments made directly to him would be deducted from the amount of damage awarded, and the balance would be paid out of the deposits made to the court Employees are exempted from court fees

18 21 Thus, Egypt's labor law makes terminating and laying-off employees difficult, if not impossible As noted above, experience in Europe and elsewhere demonstrates that such provisions discourage investors from hiring Egyptians in the first place Instead, investors will seek to obtain labor saving machinery and equipment which will enable them to reduce the number of employees they need to hire Machines, for example, can be stopped, stored or sold at will, whereas, under Egyptian Labor Law, employees cannot be laid-off or terminated without undergoing the heavy bureaucratic and legal obstacles described above

18 22 Accordingly, lay-offs and dismissals should be allowed pursuant to freely negotiated contracts or upon payment of a specified severance payment of, say, 3 to 6 months salary Or, severance payment could be calculated pursuant to a formula like that in the former labor law Two weeks pay for each year up to five years, then, one month per year

Section F: Union Membership should be Voluntary and Unions should be Free from Government Control

18 23 Currently, unions, like chambers of commerce, are dominated by the government An important change should be to free unions from government control in the same way as is recommended in Chapter 17 to free business associations so that employees and workers can freely organize unions according to clearly prescribed rules This will be an essential change if freedom of contract, collective bargaining, and the right to strike are all allowed

18 24 There have been reports in the press that the government is about to amend the Labor Law In this regard, such reports indicate that the right to strike, currently illegal, will be permitted In such case, it will be essential that unions be fully independent, rather than government affiliated or sponsored organizations, and that workers be free to join or not as they choose

Section G: Recommendations

18 25 It is respectfully recommended that the Labor Law and related regulations, procedures, policies and practices be reviewed and revised generally to make hiring Egyptians easier and more attractive to investors by providing for more freedom of contract and by eliminating unnecessary rigidities in the law, inter alia, as follows

(a) Allow employers to lay-off or to terminate employment relationships upon notice or payment of a reasonable amount according to contract and without bureaucratic interference or additional procedures being imposed

(b) Replace the rule that continuation of a limited period contract after expiration results in an indefinite contract with a provision and allow complete freedom of contract with respect to term and termination

(c) Eliminate the requirement to hire workers through a government labor office

(d) Make notification to the labor office of vacancies and newly hired employees optional instead of mandatory

(e) Permit employment agencies and labor contractors to operate freely

(f) Free unions from all government control and affiliation, make union membership voluntary and free, and allow employees to organize unions according to clear rules

18 26 The recommendations of this Chapter are to make labor relations -- including hiring, firing and dispute resolution -- easier and less encumbered with bureaucracy This is because a freer, less rigid labor market will provide greater incentives for investors both to invest and to hire Egyptians The existing Labor Law actually discourages industries from hiring Egyptians I.e., by making employment permanent after the first contract and by making termination and lay-offs difficult and expensive, the law creates powerful incentives to avoid hiring Egyptian employees in the first place

CHAPTER 19:

ANTI-MONOPOLY, UNFAIR COMPETITION,

CONSUMER PROTECTION AND TRADE LIBERALIZATION

Section A: Anti-Monopoly, Unfair Competition, and Consumer Protection Laws

19 01 Many countries which favor free market and free competition policies have found it necessary to introduce legislation to protect free market mechanisms from forces generated by the market itself which could destroy such market mechanisms or undermine consumer or investor confidence in their integrity The need for such legislation arises in part because of the paradoxes of the free market that

> "On the one hand, the market economy relies on individual self-interest [and the profit motive] as the dynamic force in the system On the other hand, business executives [driven by self-interest] may seek to increase profits by methods -- such as entering into price-fixing cartels -- which impair the market's performance Similarly, market forces may sometimes appear to work strongly in the direction of eliminating broad areas of economic opportunity or freedom of action by eliminating all but the largest or most efficient competitors "[88]

In certain countries such laws are known generally as "anti-trust" laws, in others, as "anti-monopoly" legislation

19 02 Accordingly, many countries have enacted anti-monopoly laws against restrictive and monopolistic trade practices, as well as consumer protection laws to protect consumers and the market from, e.g., unfair, deceptive, and unconscionable trade practices or lack of minimum essential information needed to make informed choices through labelling requirements for certain products

19 03 There a number of gaps in Egypt's legislative framework for protecting market mechanisms and free competition For example, although Law 241/1959 prohibits monopoly in connection with the distribution of locally made products, there is no comprehensive law against monopoly and monopolistic practices or restrictive trade practices

19 04 Similarly, although the Civil Code contains general provisions imposing liability for fault -- i.e., tort liability -- which could be used by a party injured by faulty products or unfair competition, and while other laws and regulations provide for some minimum product labelling and health and safety standards, more modern and comprehensive

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[88] Blake, Harlan M and Pitofsky, Robert, Cases and Materials on Antitrust Law (The Foundation Press Inc Brooklyn, New York, U S A , 1967), p 2

consumer protection legislation appears to be required For example, effective consumer protection calls for a flexible array of administrative and civil enforcement mechanisms in addition to criminal penalties In this regard, some countries have found it useful to establish a specialized consumer protection agency with well trained staff Such a consumer protection agency needs authority to ban, seize and prevent the distribution of goods which are not adequately labelled or are unsafe or unsanitary or are being sold using deceptive advertising or other unfair trade practices where misleading advertising is discovered, the enforcement agency should have power to require the false advertiser to run corrective advertising for a sufficient period of time to correct the false impression created

19 05 As in the case of protecting minority shareholders and outside investors, great care must be taken to guard against overregulation which interferes with, rather than protects, free market mechanisms and free competition Distinctions must be made, for example, between those consumers who have been cheated due to fraud or clearly deceptive advertizing and those who are simply unhappy with their purchase Similarly, distinctions must be made between aggressive but free competition on the one hand, and wrongful predatory efforts to crush competition and market mechanisms on the other -- i.e., between genuine victims who have been squeezed out of the market due to monopolistic or restrictive trade practices aimed at eliminating competition and those who have simply failed to compete successfully in the free market

19 06 Thus, balance and judgement by well-trained regulators is required to make the important distinctions needed truly to protect free market mechanisms and free competition

Section B: Trade Liberalization

19 07 Closely related to the matter of preventing monopoly is trade liberalization Free trade -- along with free market entry and exit for enterprises -- is the best antidote to monopoly In this regard, this report fully supports the recommendations made in the World Report for lowering or eliminating restrictions on the supply of intermediate inputs to private sector producers by the following measures

(a) Liberalize importation of imported inputs as part of an overall trade policy reform by lowering custom duties, and streamlining customs clearance procedures

(b) Reduce non-tariff barriers such as the requirement to obtain an approval to import from various agencies including the Industrial Monitoring Authority, Ministry of Military Production, the Investment Authority, The General Organization for Industrialization and possibly the Organization of Standards and Measurements, etc

(c) Abolish the quota system by which public enterprises allocate supplies to private enterprises and, instead, allow the private enterprises to obtain them directly through market competition

(d) Unify energy prices for all firms at international levels

(e) Privatize public enterprise suppliers and/or encourage private sector production of major inputs

(f) Study and institute anti-dumping procedures [89]

Section C. Recommendations

19 08 It is respectfully recommended that all existing laws and regulations relating to monopoly, anti-competitive business practices, unfair competition and consumer protection should be thoroughly reviewed in the light of Egyptian and international experience and comprehensive, modern legislation should be prepared and enacted with the aim of protecting the free market and the consumer as follows

(a) A law against unfair competition should be enacted which would clearly outlaw unfair, predatory, restrictive, anti-competitive and monopolistic trade practices Such a law should establish an independent, specialized anti-monopoly or free trade commission to review mergers as suggested in Chapter 12 and otherwise to guard against excessive concentrations of economic power and anti-competitive restrictive business practices which inhibit market mechanisms from operating freely to set prices and allocate resources

(b) Enact a new consumer protection law which would supplement and/or subsume existing laws and regulations and would achieve the following goals

(1) Protect consumers by prohibiting unfair, deceptive, fraudulent and unconscionable trade practices such as misleading advertising and practices

(2) Provide consumers with specified minimum essential information regarding certain products in the market to enable them to make informed choices through labelling requirements for certain products

(3) Define and set minimum required quality standards and specifications

(4) Protect consumers' health and safety from dangerous or potentially dangerous products

(5) Establish a suitable range of effective enforcement mechanisms such as inspections, cease and desist orders penalties, etc

(6) Provide appropriate remedies for injuries suffered

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[89] I World Bank Report at p XI and pp 18-21 of Annex A, II World Bank Report at pp 103-107, 119-120

Such legislation would also protect honest and fair competitors in the market as well as consumers Care must be taken, however, to guard against overregulation which would interfere with, rather than protect, free market mechanisms and free competition

19 09 In addition, the trade liberalization actions recommended by the World Bank to lower or eliminate restrictions on the supply of intermediate inputs to private sector producers as outlined in Section B above should be implemented in full

19 10 Also essential to promoting free and fair competition and consumer protection are the recommendations of Chapters 10, 12 and 13 of this report to reduce bureaucratic barriers to entry into the market by new firms and investors by replacing current investment approval and company formation procedures with simplified one-day registration in the Commercial Register and otherwise reformulating the companies and investment laws

CHAPTER 20·

INSTITUTIONAL REQUIREMENTS FOR COMMERCIAL LAW MAKING

Section A: The Need for Institutional Economic Policy and Law Analysis

20 01 Currently, there is inadequate coordination between economic policy making and laws and institutions As has been demonstrated in this report, outdated or inadequate commercial laws and institutions clearly impede the economic policy goal of stimulating economic and investment activity through market mechanisms Although many economic laws have been revised since economic policy reforms began, law reform has been done on an *ad hoc* basis as the need for introducing or changing a specific law becomes too pressing to be ignored The problems and constraints identified in this report, the World Bank report and the reports of the Egypt-U S Legal Exchange Project list a number of important problems But short term studies are never enough by themselves to identify and analyze all of the problems and the fulsome of possible solutions By their nature, such studies in the legal field can never be comprehensive or deep enough

20 02 Rather, what is required is to develop an institutional capacity in Egypt to develop or revise economic laws, regulations and institutions which support and implement the nation's economic policy, as well as the capacity for analyzing and determining when unnecessary legal, regulatory or institutional constraints impede private sector economic development and how best to eliminate them

Section B: The Need for Pre-Enactment and Post-Enactment Review of Economic Laws by the Private Sector

20 03 Related to the need for institutional policy and law analysis, is the need for regular private sector review and input with respect to proposed draft laws and regulations affecting the conduct of commercial business and investment in Egypt Currently, private sector review and input occurs on an *ad hoc* basis, if at all Sometimes, there is no opportunity at all for such review before the law is enacted Other times, there has been widespread private sector participation in the law-making process For example, open conferences were held in connection with the 1977 Investment Law 43 amendments and preparation of the 1981 Companies Law in which the private sector actively participated Yet, on other occasions, laws are circulated for review on a very limited basis as determined by the official responsible for the law -- such as in the case of 1989 Investment Law Regulations are virtually never circulated for review An exception was the case of the implementing regulations for the new capital markets law which were circulated for private sector review on a limited basis

20 04 In the United States and many other countries, administrative and legislative bodies publish proposed laws long before enactment and invite private sector input through public hearings which take testimony and written comments Similarly, in the United States, under the Administrative Procedure Act, proposed regulations also are published in advance and all interested parties including the private sector -- along with

the public generally -- are invited to provide input through written comments or testimony at public hearings

20 05 Institutionalized and regularized procedures and opportunities for private sector input on proposed laws before they are enacted serves several useful purposes For example, this process generates useful feedback to help the Government reduce the chances of mistakes creeping into the laws or regulations finally promulgated and reduce the chances of passing laws with unintended consequences In addition, by involving the private sector in the law and rule-making process, the government goes far towards gaining their commitment to new economic laws, regulations and institutions Moreover, better knowledge and understanding about new laws and regulations and their rationale before enactment should mean faster and better compliance after enactment

20 06 Following promulgation of new commercial or economic legislation or regulations, it would be useful to hold regular conferences and seminars for lawyers, judges, relevant government officials and concerned citizens to develop a shared understanding among all concerned parties of how the economic law -- together with any new regulations or institutions -- is intended to operate in order to promote economic development Such post-enactment conferences would enhance the opportunities to gain further private sector commitment and hence to improve the chances for greater compliance with the new rules

20 07 An important element of economic, policy and law analysis is post-enactment monitoring of new laws and regulations Thus, following promulgation of a new or revised commercial or economic law and its regulations -- including the establishment of any new or revised institutions -- it is important for the government to monitor carefully and completely the implementation, operation and enforcement of the law, regulations or institutions to ensure that they are achieving their economic policy objectives If not, technical amendments to the law or the regulations -- or changes in the relevant institutions -- may be promptly made to improve the chances of achieving the desired policy result Or other measures my prove necessary such as changes in administration or additional training of officials or judges The problem is that, again, such monitoring is at best spotty and usually non-existent in Egypt Thus problems with a new law may persist for years in an uncorrected state when a simple technical amendment could correct the problem

20 08 An example is the case of the Investment Law 230/1989 which first required incorporated companies to distribute to employees 10 percent of <u>all</u> annual net profits without limitation This placed Investment Law 230 incorporated companies in a relatively worse position than companies formed under Companies Law 159/1981 which are required to distribute to employees 10 percent of annual <u>distributed</u> net profits limited by 100 percent of total salaries It took 3 years to amend the Investment Law to conform its profit sharing provisions with those of the Companies Law With an effective post-enactment monitoring procedure, the matter could have been corrected by a technical amendment within weeks (Indeed, with adequate opportunities for pre-enactment private sector review, the discrepancy probably never would have occurred at all)

Section C: Recommendations

20 09 An institutional capability should be developed in Egypt to review, develop and revise economic laws regulations and institutions which support and implement the nation's economic policy as well as to analyze and determine when unnecessary legal, regulatory or institutional constraints impede private sector economic development and how best to eliminate them

20 10 Regular, broad-based private sector review and input should be obtained on an institutionalized basis with respect to proposed draft laws and regulations affecting the conduct of commercial business and investment in Egypt through advance circulation of such laws to chambers of commerce and industry and other business organizations The best solution would be advance publication in widely circulated newspapers with a minimum period of, say, 90 days for all members of the public to review and comment on the proposed laws or regulations This could be done through public hearings by administrative authorities and parliamentary committees which would take testimony and written comments

20 11 Following promulgation of new commercial or economic legislation or regulations, regular conferences or seminars should be held for lawyers, judges, relevant government officials, business executives and concerned citizens to develop a shared understanding about the new law or regulations

20 12 Systematic post-enactment monitoring of new laws and regulations should be instituted along with a system of technical amendments to correct defaults

EGYPTIAN LEGAL AND JUDICIAL SECTOR ASSESSMENT

REPORT AND RECOMMENDATIONS

VOLUME III:

MAIN REPORT

PART D

AND

CHAPTER 21:

CONCLUSIONS AND RECOMMENDATIONS

Section A: Conclusions

21 01 As explained above, the constraints imposed on the proper functioning of a market economy by Egypt's legal and judicial sectors currently prevent the country from fully and effectively realizing the benefit of the dramatic economic reforms instituted in recent years by the Egyptian Government[90] By way of summary and example, these constraints include the following

(a) Case delays, difficulties in enforcing judgments, inadequate arbitration rules, and other problems in the judicial sector impede adequate and effective enforcement of contracts which are essential to the operation of a free market economy (Chapters 5, 6 and 7)

(b) An inadequate, overcrowded university legal education system stresses memorization rather than legal analysis, legal writing, verbal communication skills and problem solving (Chapter 1 and 5)

(c) There is a dearth of organized and effective programs of post-degree orientation and continuing education for judges, lawyers and court and government officials involved in the commercial law enforcement and dispute resolution process (Chapter 5)

(d) Lack of a well-indexed law finding system or a complete, integrated full-text computerized database for laws, regulations and published court decisions make it

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[90] See also the Egypt-U S Legal Exchange Reports and the World Bank Report cited above in Paragraph 1 22

269

difficult for lawyers, judges and legislators -- much less the public -- to know and predict the rules governing private sector business and economic activity (Chapter 8)

(e) Antiquated technology, rules and organization prevent Egypt's Commercial Register from properly performing its role and fully realizing its tremendous potential in providing essential information about individual enterprises to the public and free market actors -- e.g., suppliers, customers, banks, credit agencies, or potential joint venture partners (Chapter 10)

(f) Outdated provisions of the Civil and Commercial Codes preclude Egypt from effectively benefiting from modern developments in business and financial transactions such as secured transactions, asset-based financing and equipment leasing because of the lack of a modern system of creating non-possessory security interests (or mortgages) in all forms of tangible and intangible property (Chapter 11)

(g) A highly bureaucratic investment approval and company formation process unnecessarily delays the investment and capital formation needed to create new jobs in Egypt, reduces the flow of investors because of the costs imposed, and leads to many lost opportunities for both private sector investors and the Egyptian economy (Chapters 10, 12 and 13)

(h) An outdated, overly bureaucratic Companies Law blocks full realization of the potential of the joint stock company as an engine for capital formation and economic growth (Chapter 12)

(i) While far too many resources are devoted to bureaucratic procedures which delay and discourage investment, too few resources are directed toward creating investment awareness in Egypt and promoting investment within the country and abroad (Chapter 13)

(j) Egypt's current tax system, while improved by Law 187/1993, nevertheless seriously deters healthy, long-term investment by means of excessively high tax rates on personal income and company profits, proportionate stamp taxes on capital and an incentive system of tax holidays and exemptions which erodes the tax base and encourages short-term distortionary business behaviour (Chapter 14)

(k) Excessive stamp taxes and registration, notarial and court fees discourage legitimate and sound private sector contracts, transactions and business practices and encourage evasive, unsound business practices (Chapters 11, 14 and 16)

(l) The new Capital Markets Law fails to provide the proper legal infrastructure for the sound development of a dynamic, well-functioning capital market for corporate shares, bonds, notes, mutual funds, government securities and other investment instruments because of overregulation and excessive bureaucratic intervention in many areas and serious gaps in regulations in other areas such as insider trading (Chapter 15)

(m) Exorbitantly high fees and slow procedures prevent the land register from adequately serving the vital function in a market oriented economy of providing clarity and security of land titles despite the Egyptian Government's wise move to a modern system of land registration by plat or address (Chapter 16)

(n) Excessive bureaucratic review and approval procedures and stifling government involvement and overregulation severely impede not-for-profit associations and chambers of commerce and industry in performing the useful role of mobilizing capital and human resources for scientific, charitable and educational purposes and providing private sector input to government decisions (Chapter 17)

(o) By making it excessively difficult to lay-off unneeded employees in times of economic downturn and dismiss incompetent employees, the Labor Law actually creates powerful incentives for investors to avoid hiring Egyptian employees in the first place and instead opt for capital intensive activities which utilize labor saving machines to avoid bureaucratic hassles and difficulties (Chapter 18)

(p) The legal system does not adequately protect free market mechanisms from monopoly, unfair competition, consumer fraud, predatory and restrictive business practices and uneconomic, administrative -- rather than free market -- methods of allocating production inputs (Chapter 19)

(q) Lack of well-developed institutional means of economic policy and law analysis and obtaining comprehensive input on commercial legislation from the private sector and the public all too frequently lead to ill-considered economic and business legislation which lacks understanding and support from the private sector and the public (Chapter 20)

Section B: Overall Recommendation -- Comprehensive Commercial Law Modernization Program

21 02 Overall, therefore, it is respectfully recommended that a full scale, comprehensive and coordinated program be undertaken to modernize the major elements of Egypt's commercial law and court system and infrastructure in order to eliminate or reduce the constraints on private sector economic development identified in this report, the Egypt-U S Legal Exchange Reports and the World Bank Report Such a program would consist of the following steps which are discussed in more detail in subsequent sections

Section C. Provide continuing post-degree commercial law education and training to judges, lawyers and court officials

Section D. Reduce incentives for case delay by compensating contract obligees fully for losses from inflation, as well as attorneys fees and costs

Section E. Reduce case delays by reducing incentives to appeal

Section F. Reduce case delays by streamlining civil and commercial justice administration through modern case management systems and other means

Section G. Modernize legal information and law finding systems

Section H. Modernize the Commercial Register

Section I. Modernize substantive commercial and investment laws to improve the legal framework for investment, job creation and economic growth

(1) Comprehensive modernization of Commercial and Civil Codes

(2) Companies law modernization

(3) Revision and streamlining of investment laws and procedures

(4) Tax laws and investment incentive reform

(5) Capital markets law revision

(6) Land registration reform and modernization

(7) Liberalize not-for-profit associations

(8) Free chambers of commerce and industry

(9) Revise the labor law to encourage investors to hire Egyptians

(10) Anti-monopoly, unfair competition and trade liberalization

Section J. Establish institutions for making and revising economic laws and regulations

(1) Institutional economic law and policy analysis

(2) Institutionalized private sector and public input

(3) Post-enactment education

(4) Post-enactment monitoring and technical amendments

Section C. Continuing Post-Degree Commercial Law Education and Training

21 03 To motivate judges, lawyers and court officials to process commercial cases more quickly, they must understand why it is important. Accordingly, a well-conceived program of mandatory post-degree orientation and continuing education of judges,

lawyers and court officials in the importance to the nation's economy of prompt, effective enforcement of contracts -- and the means thereof -- is essential The overall priority should be to develop the capabilities of existing legal training institutions to provide top quality, comprehensive commercial law orientation and continuing education first to judges and court officials, second to practicing lawyers and third to university law professors

21 04 Orientation training would consist of a mandatory, rigorous 1-year course for all new judges aimed at developing a thorough understanding and appreciation of

(a) The overall commercial law framework

(b) The importance to the nation's economy of prompt, effective enforcement of lawful commercial contracts

(c) The costs and damages to contract obligees and the economy resulting from delayed enforcement of commercial contracts in terms of inflation, lost opportunities, attorneys fees, litigation costs, etc

(d) Case management methods and procedural tools and powers available to judges to reduce case backlogs and delays including judgment enforcement procedures and techniques

(e) Appropriate comparative law materials to illustrate modern commercial law developments and case management practices in other countries

21 05 Following orientation, periodic continuing education programs should become a required integral part of the professional careers of judges, as well as court officials and lawyers Such programs would be similar to the those available to judges, law professors and lawyers in the U S on a regular basis through short courses The objectives of continuing education for judges, court officials, and lawyers would be to

(a) Provide short refresher courses on the full range of commercial law subjects over a given period of time

(b) Update judges, concerned government officials, lawyers and university law professors on recent legislation, regulations and important judicial decisions in the commercial law field through conferences and seminars

(c) Develop practical skills in case management, legal analysis, legal writing, etc in specific types of cases and areas of the law

(d) Conceivably provide regular institutionalized opportunities for informal communications and contacts among judges, court officials, lawyers, concerned government officials, law professors and/or graduate law students on substantive and procedural matters of common concern

21 06 An important legal training priority must be to develop further institutionalized training of bailiffs and court clerks At a minimum, such officials should be oriented on the importance to the economy of their own role in helping to enforce contracts and commercial law In addition, bailiffs and clerks should receive practical training in skills critical to their jobs -- e g., service of process, seizure of property, foreclosure sales, etc

21 07 A critical need also is to improve commercial law knowledge and -- even more important -- analytical and legal writing skills at the university level Because of the large number of students at the undergraduate level, efforts in this regard should be focused on graduate students taking a one-year diploma or an advanced degree in commercial law This would provide a manageable, self-selected target group which should have a demonstrated and clear commitment to the field In any event, as noted above, it might be desirable to involve university commercial law faculty and/or graduate students in the continuing education programs for judges and lawyers discussed above to the extent practicable

21 08 Orientation and continuing education of judges and lawyers in commercial law subjects and the role of commercial law in building the nation's economy is one of the most important steps that can be taken to reduce delays in case resolution Judges familiar with the subject matter and issues of the cases before them inevitably will be better able to resolve such cases more quickly than those who are not Moreover, with the self-confidence that comes from knowledge, they should not feel as great a need to refer cases to experts Additionally, appellate court judges should have greater confidence in the decisions of better trained lower court judges and will be better able to dispose of appeals by allowing lower court judgements to stand At the same time, trained lawyers should be better able to speed cases along by understanding their own cases better and by drafting clearer and more precise pleadings and briefs

21 09 Similarly, better trained bailiffs and court officials should perform important tasks such as serving papers and enforcing judgments more efficiently

Section D: Reduce Incentives for Case Delays by Compensating Contract Obligees Fully for Losses from Inflation, as well as Attorneys Fees and Costs

21 10 The following action should be taken to remove powerful incentives for delaying resolution of court cases by contract obligors and debtors

(a) Judges should be mandated and empowered to

(1) Award full, effective, compensation to contract obligees for damages for losses from inflation caused by case delays in order to remove a major incentive for contract obligors and debtors to delay case processing

(2) Award full, actual attorney's fees and other litigation costs incurred by the winning party especially in cases where rights and obligations are clear

(3) Impose effective sanctions on parties for frivolous delaying tactics including judgment debtors and third parties who institute groundless suits to delay or avoid judgment execution, and award them to injured parties

(b) Change Civil Code delay payment provisions to allow payment of amounts equal to the rates of interests offered by banks for savings deposits instead of the flat amounts now provided for -- i.e., 4 percent for civil cases and 5 to 7 percent for commercial cases

The foregoing measures would dramatically reduce incentives for parties to delay cases

Section E: Reduce Case Delays by Reducing Incentives to Appeal

21 11 To reduce the delays caused by the existing appeal process

(a) Allow appellate courts to decline appeals and leave lower court judgements standing

(b) Limit first level appeals to questions of law, rather than also reviewing facts.

(c) Reduce or eliminate rights to introduce new evidence and new theories for court of appeal consideration

(d) Restrict appellate courts to matters raised on appeal and not require appellate courts to review the entire record of the case below

(e) Empower the cassation court to reach a final judgment on the first appeal

Section F: Reduce Case Delays by Streamlining Civil and Commercial Justice Administration Through Modern Case Management Systems and Other Means

21 12 Rules, practices and procedures should be instituted to reduce delays and injustice resulting from existing case management procedures and other causes as follows

(a) Introduce a modern, effective system of case management and calendaring based on the successful experience of other countries as well as successful techniques within Egypt

(b) Replace the judicial summer holiday with a system of rotating holidays to leave the courts in full session throughout the year

(c) Provide for a more efficient and reliable system of serving court process through registered mail to registered company addresses and by other means as recommended in Chapter 5

(d) Reduce reliance on government appointed experts by allowing parties to introduce their own expert witnesses and challenge those of adverse parties

(e) Replace the current system of excessive percentage court and government fees with a system of low, flat fees

(f) Improve enforcement of judgments by, inter alia, providing a means of discovering judgment debtor assets and streamlining foreclosure procedures

(g) Substantially improve and upgrade judicial facilities and support staff

(h) Enact modern, comprehensive arbitration legislation

Section G: Modernization of Legal Information and Law Finding Systems

21 13 Appropriate mechanisms should be put in place which will transmit effectively, completely and easily knowledge of the laws relevant for business and investment to local and foreign business executives and investors, government officials, lawyers, judges and the public

21 14 Accordingly, the following is recommended to improve legal information and law finding systems for judges, lawyers and the public

(a) Convert publication of the *Official Gazette*, the *Egyptian Bulletin* and court decisions to publication from an integrated, full-text computer database

(b) Create a full-text database for all past laws, regulations and court decisions to be integrated with the official publication database discussed above

(c) Develop software allowing access to the database for legal research purposes similar to Lexis and Westlaw

(d) Publish hard copy laws, regulations and court decisions in loose-leaf form to allow easy organization and updating

(e) Show changes to laws and decrees by strikeouts, underlining and/or bold face

(f) Developed comprehensive, detailed indexes to the *Official Gazette* the *Egyptian Bulletin*, and published court decisions

Section H: Modernize the Commercial Register

21 15 Few institutional modernization projects have greater potential for improving the functioning of a market economy in Egypt than computerizing and centralizing the Commercial Register through an on-line electronic computer system so that·

(a) All businesses would be multi-indexed by name, trade name, registration number, address, product, and capital, as well as names of managers and partners instead of being indexed only by registration number

(b) Full extracts on any registered enterprise could be obtained from any Commercial Register branch in the country, not just the branch where registered

21 16 In addition to developing hardware and software requirements, as well as needed training for Commercial Register employees, relevant laws, regulations, procedures and practices should be changed to the extent necessary to

(a) Enable the public to benefit from the full range of possibilities offered by a fully computerized, multi-indexed Commercial Register by, for example, obtaining extracts of any enterprise by name, trade name or address as well as by commercial register number and to produce lists of enterprises sharing a common element such as product, industry, address, manager, partner, etc

(b) Combine other registers with the Commercial Register such as those for importers, exporters, commercial agents, industry, trademarks, etc

(c) Streamline commercial registration procedures by the following means

(1) Replace the numerous documents and pre-registration inspection now required with a complete, but short registration/application form along with company articles and identification

(2) Eliminate all prior approvals including chambers of commerce as well as the Investment Authority and GOFI, except for projects described in a short specific "negative list", in accordance with the recommendations for streamlining the investment approval and company formation process set forth in Chapters 12 and 13

(3) Accept certificates of registration instead of complete articles of foreign companies

(4) Impose severe penalties for knowingly providing false information or material omissions

(5) Expand enforcement powers and substitute pre-registration inspections with qualitative post-registration inspections of random samples and reasonably suspicious cases to promote compliance

(d) Require all entities doing business or performing activities in Egypt to register including not-for-profit associations, professional firms, representative offices and foreign contractors and change the name of the Commercial Register to the Commercial and Civil Register to accommodate registration of non-commercial entities

(e) Expand information to be registered to include such matters such as unpaid judgments and promissory notes

(f) Expand third party sources of information for registration to include members of the public having appropriately authenticated documentation such as official abstracts of court judgments

(g) Institute a rigorous, comprehensive program of training Commercial Register officials and inspectors

Section I: Modernize Substantive Commercial and Investment Laws

21 17 Another critical need is substantive law modernization For the reasons outlined above, many aspects of outdated and incomplete commercial and investment laws form significant barriers to market entry and otherwise prevent the private economy from functioning smoothly and developing to its full potential as an engine of job and wealth creation for the country Without well-conceived and modernized commercial and investment laws, the benefits of Egypt's economic reforms will not be fully realized or as widely distributed as they should be

(1) Comprehensive Modernization of Commercial and Civil Codes:

21 18 A comprehensive review and modernization of the Civil and Commercial Codes should be undertaken to provide the legal framework needed for modern business and financial transactions in Egypt including, at a minimum the following

(a) A modern system of perfecting non-possessory security interests (mortgages) in all forms of real, personal, and intangible property by simple registration in the Commercial Register for all creditors and obligors, not only banks

(b) Modern equipment leasing to protect the lessor's interests fully by registration of equipment leases in the Commercial Register to put third parties on notice

(2) Companies Law Modernization:

21 19 A reformulated companies law should be enacted which will

(a) Replace complex bureaucratic, time-consuming company formation procedures with simple, streamlined registration in the Commercial Register with the aim of reducing the time required to establish a company as a legal entity authorized to do business from weeks or months to one day This would be achieved as follows

(1) Reduce required documents to an application/registration form, company articles and identification documents

278

(2) Confine official review of company articles to ensuring only that a few minimum requirements are met, leaving responsibility for overall legality and enforcement to the concerned parties and the courts, rather than extensive review by government officials

(3) Use negative lists to exclude unpermitted objects or activities by foreigners or the private sector

(4) Continue security checks but eliminate them as a pre-condition for formation

(5) Transfer responsibility for in-kind share evaluation from government committees to the parties concerned, but require full disclosure

(6) Reduce joint stock company founders from 3 to 2

(7) Impose severe penalties for knowingly providing false information or material omissions

(8) Institute qualitative inspections of random samples and reasonably suspicious cases to promote compliance

(b) Revise and streamline merger procedures by, inter alia, the following

(1) Transfer responsibility for evaluation of merging companies' assets from government committees to the concerned parties and their auditors

(2) Replace ministerial approval with the opportunity for review by an independent monopolies or free trade commission subject to strict time and other requirements as part of a new anti-monopoly law as discussed in Chapter 19

(c) Provide more adequate protection and self-enforcement mechanisms for non-controlling shareholders by, inter alia, the following means

(1) Require cumulative voting for directors in joint stock companies

(2) Institute shorter terms for board members

(3) Permit shareholders to elect as many outside directors as they choose and eliminate the directors' guarantee shares requirement.

(4) Allow shareholders to name any one they wish as a proxy, but require full disclosure

(5) Eliminate the rule invalidating shareholders' meetings when insufficient board members attend

(6) Provide a clear statement of duty by directors, officers, and majority shareholders to act in the best interest of the company and all of its shareholders

(7) Provide a clear right of individual shareholders to sue for breach of duty on their own without authorization by the general shareholders' meeting

(8) Strengthen the independence and power of auditors

(9) Require an independent audit committee for widely held companies

(10) At the same time, balance the need to protect non-controlling shareholders against the need to allow companies to carry on business efficiently

(d) Realize more fully the potential of the joint stock company form for economic development purposes by the following means

(1) Eliminate minimum capital requirements

(2) Eliminate partially paid shares

(3) Eliminate unnecessary restrictions on the issuance and transfer of securities such as

- Issuing price restrictions

- Restricting founders from selling their shares before two fiscal years financial statements

- Limiting bond issuance to the value of company's assets

(4) Provide for unlimited duration unless otherwise specified

(5) Clearly and fully provide for interim dividend distributions

(6) Permit board of directors' action by unanimous written consent

(7) Reduce excessive government interference in shareholders' meetings

(8) Bring Companies Law provisions into line with Investment Law provisions by eliminating nationality requirements for founders and directors of joint stock companies

(f) Eliminate discrimination against joint stock companies in various laws by

(1) Allowing shareholders to determine the profit percentage to be distributed to employees as in former Investment Law 43/1974

(2) Eliminating the annual proportionate stamp tax on capital

(g) To gain more benefits for the national economy from the advantages of the joint stock company as the best corporate vehicle for capital formation and capital markets development, other forms of incorporated companies should be eliminated in favor of two forms of joint stock company

(1) The publicly held joint stock company with formal management structure and reporting and disclosure requirements, and

(2) The privately held joint stock company with a simpler, more flexible management structure and minimum reporting requirements which would have all of the advantages of a limited liability company, but which can easily change to a publicly subscribed joint stock company by meeting management, reporting, and disclosure requirements without changing form

With these two forms of the joint stock company in place, the limited liability and partnership limited by shares forms of companies would be eliminated because they are less advantageous for national economic growth than the joint stock company

(h) Amalgamate incorporated and unincorporated companies into a single companies law

(3) Revision and Streamlining of Investment Laws and Procedures:

21 20 To improve significantly the legal/procedural framework for investment in Egypt, all relevant laws, regulations, procedures and practices should be amended in a coordinated manner which will

(a) Replace Egypt's confusing multiple investment regimes with a single unified investment regime for all Egyptian and foreign investors based on reformulated companies, investment, tax, and other laws as outlined in Chapters 12, 13 and 14

(b) Declare that increasing private sector investment in Egypt by both Egyptian and foreign investors is a national priority

(c) Treat all investors equally regardless of nationality

(d) Cover all fields of investment

(e) Provide specific guarantees to all investors including, e.g.

(1) Guarantees against deprivation of licences or other property or rights without independent court review, due process of law or adequate, effective compensation.

(2) Free transfer abroad of profits, capital repatriation and payments for project needs

(3) Freedom from all controls on prices, profits and salaries

(4) etc

(f) Replace the multi-step system of investment licensing and company formation with simple, one-stop registration system at the Commercial Register where all enterprises and companies would be automatically approved and registered as described in Chapters 12 and 13 without prior GOFI or Investment Authority approval except for those few sensitive projects clearly described in a short, clear and precise "negative list"

(g) Abolish E&O licensing and all other local and governorate approvals now required for investment projects and instead provide for enforcing clear environmental, health, safety, land-use and other standards by qualitative inspections during project construction and operations

(h) Replace all existing discretionary tax incentives, holidays and exemptions with the best tax incentive of all -- i.e., a stable, low tax rate -- or, alternatively, with automatic, unified incentives based on performance, instead of requiring discretionary approval at the licensing stage as discussed in subsection 4 below and in Chapter 14

(i) Channel government resources saved by streamlining the approval process for investment licensing, company formation, and tax incentives into·

(1) Investment promotion abroad and within Egypt; and

(2) Qualitative enforcement of health, safety, environmental and land use regulations through inspections during project construction and operations

(4) Tax Laws and Investment Incentive Reform:

21 21 The following measures should be undertaken to create a favorable tax climate for investment

(a) Abolish the annual proportionate stamp tax on company share capital to encourage capital formation and productive investment through incorporated companies

(b) Abolish or replace with very low flat amounts all stamp taxes on loans, credits, and contracts and dealings

(c) Replace all percentage State Notarial fees with low flat fees for land and mortgage registration and all other purposes -- e.g., L E 50 per feddan of registered land

(d) Exempt from sales tax the import and sale of machinery, equipment and other productive assets

(e) Undertake comprehensive income tax reform for Egypt which would

(1) Significantly broaden the tax base by eliminating all tax incentives, holidays and exemptions and all differential rates for various activities

(2) At the same time, substantially lower tax rates to no more than 25 percent for corporate profits and individual income

(3) Abolish all other taxes on income, such as the 2 percent State Financial Resources Improvement Duty under Law 147/1982 and capital gains tax on securities sales under Capital Markets Law 95/1992

(4) Make any remaining investment incentives unified, automatic and performance-based as among various laws concerning investment

(5) End heavy handed tax administration techniques

(6) Reduce the period for Tax Department reassessment and inspection from 5 years to 1 year in order to end uncertainty

(g) Consider shifting taxation from income entirely to consumption possibly through a consumption based income tax to encourage savings and investment as opposed to consumption

(5) **Capital Markets Law Revision:**

21 22 The Capital Markets Law and its regulations should be reviewed and revised in coordination with review and revision of the Companies Law to

(a) Eliminate overlapping provisions as between the Companies and Capital Markets Laws

(b) Eliminate overregulation by replacing rigid restrictions and excessive government intervention with clear, adequate rules and disclosure requirements, supported by tough sanctions for fraud and deception and qualitative investigations by trained staff

(c) Fill gaps in regulation by, e.g., providing for adequate regulations on critical subject areas such as insider trading and a minimum trading volume listing requirement

(6) Land Registration Reform and Modernization:

21 23 Consideration should be given to

(a) Providing for the development of modern title insurance companies

(b) Computerizing the land registration and title system

(c) Replacing percentage fees for registration of land and mortgages with low flat fees in order to encourage land registration and the resulting security and clarity of title

(7) Liberalize Not-for-profit Associations:

21 24 A new law should be enacted for not-for-profit associations which would

(a) Make formation possible by simple, streamlined registration according to clear rules regarding the allowable purposes for such associations instead of government review and approval,

(b) Replace the drastic direct government intervention now permitted by Law 32/1964 with clear rules of law and qualitative post-registration inspections

(8) Free Chambers of Commerce and Industry:

21 25 The laws and regulations governing the chambers of commerce and industry should be reviewed and revised to

(a) Withdraw all government involvement and support and make all chambers private and completely free of government,

(b) Make membership voluntary instead of mandatory, and

(c) Enable businesses freely to form their own voluntary and private associations and chambers of commerce and industry

(9) Revise the Labor Law to Encourage Investors to Hire Egyptians:

21 26 The Labor Law and related regulations, procedures, policies and practices must be revised to encourage investors to hire Egyptians by providing more freedom of contract and by eliminating unnecessary rigidities in the law, inter alia, as follows

(a) Allow employers to lay-off or terminate employment relationships upon notice or payment of a reasonable amount according to contract without bureaucratic interference

(b) Institute complete freedom of contract regarding term and termination, and eliminate the rule that continuation of a limited period contract after the first expiration results in an indefinite contract

(c) Eliminate the requirement to hire workers through government labor offices

(d) Make notification to the labor office of vacancies and new employees optional instead of mandatory

(e) Permit employment agencies and labor contractors to operate freely

(f) Free unions from all government control and affiliation by making union membership voluntary and allowing employees to organize unions according to clear rules

A freer, less rigid labor law will provide greater incentives for investors to invest and hire Egyptians, whereas the existing labor law actually discourages hiring Egyptians by making termination and lay-offs difficult, time-consuming and expensive

(10) Anti-Monopoly, Unfair Competition and Trade Liberalization:

21 27 To protect free market mechanisms from predatory anti-competitive conduct by enterprises themselves, the following actions should be taken

(a) All existing laws and regulations relating to anti-monopoly, anti-competitive business practices, unfair competition and consumer protection should be thoroughly reviewed in the light of Egyptian and international experience and comprehensive new legislation in those fields be prepared including provision for an independent anti-monopoly or free trade commission to guard against predatory restrictive business practices and excessive concentrations of economic power which prevent market mechanisms from operating freely Care must be taken, however, to guard against overregulation which would interfere with, rather than protect, free market mechanisms and free competition

(b) The actions recommended by the World Bank to lower or eliminate restrictions on the supply of intermediate inputs to private sector producers as outlined in Section B of Chapter 19 should be implemented

Section J: Establish Institutions for Making and Revising Economic Laws and Regulations

(1) Institutional Economic Law and Policy Analysis:

21 28 An institutional capability should be developed in Egypt to review, develop and revise economic laws regulations and institutions which support and implement the nation's economic policy as well as to analyze and determine how best to eliminate

unnecessary legal, regulatory or institutional constraints which impede private sector economic development

(2) Institutionalized Private Sector and Public Input:

21 29 Regular, broad-based private sector review and input should be obtained in a clear institutionalized manner regarding proposed draft laws and regulations affecting commercial business and investment in Egypt by advance circulation of such laws to business organizations and the public, followed by public hearings

(3) Post-enactment Education:

21 30 Following promulgation of new commercial legislation or regulations, regular conferences or seminars should be held for lawyers, judges, relevant government officials, business executives and concerned citizens to develop a shared understanding among all concerned parties about how new commercial laws, regulations and institutions are intended to operate in order to promote compliance and ensure success

(4) Post-enactment Monitoring and Technical Amendments:

21 31 Systematic post-enactment monitoring of new laws and regulations should be instituted to ascertain whether they are achieving their economic policy objectives and, if not, to prepare needed technical amendments to correct defaults or make changes in relevant institutions or take other corrective actions as necessary, such as changes in administration or additional training of officials, judges and lawyers

Section K: Recommendation Priorities

21 32 As a prominent Egyptian Minister of Economy once stated:

> "Our priorities in Egypt are like an inverted pyramid They are all at the top "

Similarly, all of the above recommendations are critical to establishing a well-functioning commercial law system which would facilitate and promote a properly functioning market economy instead of imposing the many constraints identified in this report All, therefore, are priority actions which should be undertaken as soon as possible If forced to choose, however, the author would put the following priorities at the top of the pyramid·

(a) Rapidly develop Egyptian courts to the point where they are able to enforce contracts fully, effectively and quickly, because contract enforcement is vital to the proper functioning of a market economy Accordingly, the following must be done to improve the overall quality of justice and reduce the case delays which now hamper effective contract enforcement

(1) Develop and provide commercial law orientation and continuing education to motivate and equip judges, court officials and lawyers to enforce contracts promptly and effectively

(2) Change laws, practices, procedures and practices to

- Compensate contract obligees fully for losses from inflation, frivolous delay tactics, attorneys fees and costs to remove overwhelming incentives for delaying cases by contract debtors and obligors.

- Streamline civil and commercial justice administration through modern case management systems and calendaring to give judges the tools needed to speed up case resolution

- Reduce incentives to appeal

(3) Develop a modern comprehensive, well-indexed hard copy and computerized legal information and law finding system

(4) Substantially increase and improve judicial facilities and support staff.

(b) Modernize and strengthen the Commercial Register so that it can fully and properly carry out its vital mission of providing basic information about registered enterprises to market actors and the public by the following actions

(1) Computerize and centralize the Commercial Register through an on line electronic computer system so that it can be multi-indexed by name, trade name, address and other key elements, as well as by registration number;

(2) Radically streamline commercial registration by reducing documents and procedures required, and

(3) Expand and expand the sources and type of information registered

(c) Revise the Civil and Commercial Codes to create modern systems of equipment leasing and non-possessory security interests in all forms of property by all creditors by simple registration of leases and security agreements in the Commercial Register

(d) Replace the time-consuming multi-step system of investment approvals and company formation with streamlined, one-stop, one-day registration at the Commercial Register where all enterprises would be automatically approved without prior GOFI or Investment Authority approval except for a few sensitive projects clearly described in a short, clear and precise negative list

(e) Abolish establishment and operations licensing and all other local and governorate approvals required for investment projects and provide instead for enforcing health,

safety, land-use and environmental standards by qualitative inspections during the project construction and operations

(f) Undertake comprehensive tax reform in a manner which would.

(1) Significantly broaden the income tax base by eliminating all tax incentives, holidays and exemptions and differential rates.

(2) At the same time, substantially lower income and profits tax rates to no more than 25 percent while abolishing all other taxes on income including the 2 percent State Financial Resources Duty and the tax capital gains from on sales of securities

(3) Abolish the annual proportionate stamp tax on company share capital

(4) Abolish or replace with very low, flat amounts all stamp taxes on business and financial transactions and the very high court fees and fees for land and mortgage registration

(g) Revise the Labor Law to encourage investors to hire Egyptians by allowing employers to lay-off or terminate employment relationships upon notice or payment of a reasonable amount according to contract without government interference and by allowing freedom of contract regarding term and termination in employment agreements.

(h) Revise and modernize the Companies and Capital Markets Laws in a manner which fully realizes and promotes the potential of the joints stock company form as an engine for capital formation and economic growth and which removes existing unnecessary bureaucratic and legal impediments to ordinary company operations

(i) Enact comprehensive legislation protecting free market mechanisms from monopoly, unfair competition, anti-competitive business practices and consumer fraud

(j) Free not-for-profit associations and chambers of commerce from excessive government controls over formation and operations

(k) Establish institutions for economic law and policy analysis, private sector and public input to economic legislation, and post-enactment public education, monitoring and correction of laws and regulations affecting commerce and investment

EGYPTIAN LEGAL AND JUDICIAL SECTOR ASSESSMENT

(CONTRACT NO. 263-0377-C-00-3103-00)

REPORT AND RECOMMENDATIONS

SUBMITTED TO·

USAID/EGYPT

BY:

JOHN BENTLEY, J. D.

INTERNATIONAL LEGAL CONSULTANT

KAMEL LAW OFFICE

IN ASSOCIATION WITH

KAMEL, YEHIA, ABUL ELA & SAKR

IN FOUR VOLUMES

VOLUME IV·

ATTACHMENTS

GLOSSARY OF TERMS

SELECTED INTERVIEW NOTES AND MEMORANDA

FEBRUARY 1994

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VOLUME IV

ATTACHMENTS

TABLE OF CONTENTS

Glossary of Terms

Attachment 1	Legal and Judicial Sector Assessment (Scope of Work)
Attachment 2	List of Participating Lawyers from Kamel Law Office and Kamel, Yehia, Abul Ela & Sakr
Attachment 3	List of Persons Interviewed
Attachment 4	Fee Schedule United States Court of Appeals -- North Circuit
Attachment 5	California Appellate Courts Schedule of Fees
Attachment 6	California Superior Court Fee Schedule
Attachment 7 (a)	Form of Commercial Register Extract (English Translation)
Attachment 7 (b)	Form of Commercial Register Extract (Arabic)

Selected Interview Notes and Memoranda

1 Mohamed Abdel Fattah Ragab, President of the Businessmen's Association of Alexandria

2 Salah El Taweel, Chairman of Board, STRAPCO

3 Hatem N Moustafa, Chairman, Nimos Engineering Co

4 Omar El-Hadidy, Esq , Adel El-Far, Esq and Khairy Fawaz, Businessman.

5 Fathi Mohamed Yousef, Esq , Fouad Daniel, Esq , Ismail Hassan Schalakamy, Esq and Zarif El-Abar, Esq

6 Walid Abu-Taleb, Esq and Farouk El-Mahalawi, Esq

7 Ahmed Abdel-Fatah, Esq and Mahmoud El-Hawary, General Trustee of the Lawyers Bar in Fayoum

8 Report on the legal problems that are found in the courts of North of Egypt

9 Aly El-Tahry and Alaa Saba

10 Mohamed Ozalp, General Manager, MIBANK

11 Adel El Senoussy, General Manager, Legal Department, Egyptian American Bank

12 Marcelo Giugale, Resident Economist, The World Bank

13 Mohamed Aboul-Enein, Director of Cairo Regional Centre for International Commercial Arbitration

14 Omar Mohanna, Deputy General Manger & Head of Corporate Finance and Investment Operations, Misr Iran Development Bank

15 Mahmoud M Fahmy, Legal Advisor - Attorney at Law, Corporate and Investment Law Expert

16 Ahmed Fouad El-Ghannam, Former Director, National Centre for Judicial Studies, Helmy and Hamza (Baker & McKenzie)

17 Hamdy Lasheen, Head of the General Litigation Section, Legal Department, MIBANK

291

EGYPTIAN LEGAL AND JUDICIAL SECTOR ASSESSMENT

(CONTRACT NO 263-0377-C-00-3103-00)

REPORT AND RECOMMENDATIONS

VOLUME IV

ATTACHMENTS

GLOSSARY OF TERMS

GLOSSARY OF TERMS

ENGLISH	ARABIC TRANSLITERATION	ARABIC	MEANING
Open door policy	Siyasat Al-Infitah	سياسه الانفتاح	Policy proclaimed by President Sadat in October 1973 to liberalize the private sector and open the economy to foreign investment
Constitution	Al-Dostour	الدستور	Self-explanatory
Village Chief or Head	Al-Omdah	العمدة	Self-explanatory
People s Assembly	Maglis Il Shaab	مجلس الشعب	Parliament or Legislator
Consultative Council	Maglis Il-Shura	مجلس الشورى	Like a Senate or Upper House of Parliament which reviews and advises on legislation and policies but has no legislative power or veto partly elected and partly appointed by the President of the Republic
Governor	Al-Mohafez	المحافظ	Chief Political and Executive Official of a Governorate or Province
Governorate	Al-Mohafza	المحافظة	Province or State
Regional People s Councils	Al-Maglis Al-Shaaby Al-Mahaaly Lel-Mohafza	المجلس الشعبى المحلى للمحافظة	Council of a Governorate
Local People s Councils	Al-Maglis Al-Shaaby Al-Mahaaly	المجلس الشعبى المحلى	Council of a town or a locality
Islamic Law	Al-Shariah Al-Islamiya	الشريعه الاسلاميه	Self-explanatory
Grand Mufti	Mufti Al-Diar Al-Misrya	مفتى الديار المصرية	Top Islamic Law Counsellor of the State
Law / Statute	Al-Qanoon	القانون	Self-explanatory
Ministerial Decree	Karar Wezary	قرار وزارى	Self-explanatory

Official Gazette	Al-Garida Al-Rasmiva	الجريده الرسميه	Official Publication of all laws decrees of both the President and the Prime Minister and Supreme Constitutional Court decisions
Egyptian Act	Al-Wakaa Al-Misrva	الوقايع المصريه	Official Publication of acts of ministers governors and other high ranking officials
Commercial Register	Al-Sigil Al-Tugarv	السجل التجارى	Register of all lawful business maintained bv the Ministrv of Supply and Internal Trade
Council of State	Maglis El-Dawla	مجلس الدوله	An independent judicial department concerned with settlement of administrative disputes and discipline claims in addition to other activities For example giving opinions to government departments
Administrative Court	Al-Mahkama Al-Edariva	المحكمة الادارية	Courts concerned with administrative disputes
Supreme Administrative Court	Al-Mahkama Al-Edariva Al-Olia	المحكمه الاداريه العليا	Court concerned with the appeals raised from the administrative courts
Ordinary Court	Al-Mahkama Al-Adiva	المحاكم العادية	Courts concerned with civil commercial and criminal disputes
Court of Summary	Al-Mahkama Al-Goziya	المحكمة الجزئية	Courts concerned with civil commercial and criminal disputes
Court of First Instance	Al-Mahkama Al-Ibtedaiva	المحكمة الابتدائيه	Courts concerned with civil commercial and criminal disputes
Court of Appeal	Mahkamat Al-Istenat	محكمه الاستئناف	Courts concerned with appeals raised from the courts of first instance
Court of Cassation	Mahkamat Al-Nakd	محكمه النقض	Self-explanatorv
Supreme Judicial Council	Al-Maglis Al-Aala Lel-Kadaa	المجلس الاعلي للقضاء	Council concerned with the affairs of judges
General Prosecution	Al-Niyaba Al-Amma	النيابه العامة	Self-explanatorv
Permanent State Securitv Court	Mahkamat Amn Dawla	محكمه امن دولة	Courts established for certain crimes set out in Law 105/1980 establishing these courts

Emergency State Security Court	Mahkamat Amn Dawla Tawaree	محكمه امن دوله طوارى	Courts established in a state of emergency
Military Court	Al-Mahkama Al-Askariya	المحكمة العسكريه	Self-explanatory
Ministry of Justice	Wezart El Adl	وزاره العدل	Self-explanatory
Minister of Justice	Wazeer El-Adl	وزير العدل	Self-explanatory
Company	Shirka	سركه	Self-explanatory
Joint Stock Company	Shirka Mosahma	شركة مساهمه	A form of company formed by three or more natural or juristic persons
Limited liability Company	Shirka that Masoliya Mahdodah	شركة ذات مسئولية محدودة	A form of company entity which is equivalent to a French SARL or a UK private company
Partnership Company	Shirkat Tadamon	شركة تضامن	Self-explanatory
Limited Partnership Company	Shirkat Tadamon Basita	سركة توصيه بسيطه	Self-explanatory
Partnership Limited by Shares	Shirkat Tousiya bel-Ashom	شركه توصية بالاسهم	Self-explanatory
Bailiff	Mohdar	محضر	An official responsible for serving writs and notices
Greffier / Court Clerk	Kateb bi-qalaam El-Kottab	كاتب بقلم الكتاب	An official responsible for court fee assessment setting dates for first hearings determination of court bench passing court orders to bailiffs for execution
Court Hearing Secretary	Amin Sir Il Maglis	امين سر الجلسه	An official responsible for writing the statements spoken in the court
Expertise Office	Maktab Al Khebra	مكتب الخبرة	An office affiliated to the Ministry of Justice concerned with giving expert opinions to the court
Expert	Khabeer	الخبير	An official appointed by the court to give his expert opinion in certain cases

EGYPTIAN LEGAL AND JUDICIAL SECTOR ASSESSMENT

(CONTRACT NO 263-0377-C-00-3103-00)

REPORT AND RECOMMENDATIONS

VOLUME IV

ATTACHMENTS

ATTACHMENT 1

LEGAL AND JUDICIAL SECTOR ASSESSMENT (SCOPE OF WORK)

P.20

4) conflicts must be resolved through binding decisions of an independent judicial body or through arbitration,
5) there are known procedures for amending the rules when they no longer serve their purpose.

In an AID-supported study "Reform of the Legal, Regulatory and Judicial Environment: What Importance for Development Strategy" (1991) the author identifies three pillars of the legal system that underlie every market economy

1) security of private property
2) enforcement of contracts
3) assignment of liability for wrongful damage

USAID/IDS is seeking proposals to undertake an assessment of the legal and judicial sector in Egypt using the above frameworks. The main purpose of the assessment will be to provide USAID/IDS with a better understanding of the existing legal and judicial system and to identify major constraints within this system which slow or inhibit entry into the market economy, and which are conducive to programmatic assistance from the donor community.

METHODOLOGY

1 The assessment should examine the questions through discussions with representatives of the private sector, judiciary and legal communities. Within the private sector, the study should primarily address the problems of the domestic private sector and should take care to include the needs and problems of all, including small and medium sized, entrepreneurs as well as large scale private businessmen An effort should be made to look at these issues regionally, that is, are the problems different outside the metropolitan area of Cairo/Alexandria, are there differences between Upper and Lower Egypt?

2. USAID/Cairo has sponsored several visits by judges associated with the Mayo Group, and has also gathered information on the judicial system though a series of interviews with officials in the Ministry of Justice, the Supreme Constitutional Court, and the Court of Cassation. The person or persons who undertake the assessment should examine reports and minutes generated from these meetings and include information from them where relevant.

3. As activities in the legal-judicial area are new for USAID and may be considered sensitive within the GOE, the assessment should be based primarily on the researcher's own existing knowledge and understanding of the situation in Egypt, and on informal discussions with colleagues and contacts already established.
A World Bank study on the Egyptian regulatory system will be made available and major findings and recommendations which reflect on the legal and judicial system should be incorporated.

MAJOR ELEMENTS OF THE ASSESSMENT

1 A thoughtful analysis/discussion of the legal and judicial system now existing in Egypt, in light of the points raised above Special attention should be given within this analysis to

- problems created by backlogs in the resolution of disputes,
- the level of understanding, or training, judges and lawyers now have in fields related to business law, or other aspects of particular interest to the private sector such as contracts, mergers, bankruptcy and protection of patents, trademarks and copyrights,
- the administration of the court system and use of personnel within it,
- the alternative mechanisms now existing and in use to resolve disputes within the commercial sector;
- the extent to which existing laws or constitutional provisions support the new economic measures encouraging entry into the market economy;
- mechanisms used to enforce laws, decrees and court decisions

2. Identification of the major constraints posed by the court system, existing legal practices or the regulatory environment which discourage entry into the market economy;

- Are commercial cases considered and resolved within the court system in a timely fashion? If not, what consequences does this have? What could be done to improve this?
- What protection does a private business man have under the law regarding personnel, property, contract enforcement? Is there a mechanism for determining and enforcing extra-contractual liability (torts)?
- How is compensation determined and is it adequate to deter violations of laws?
- Do small and large businesses have equal access to the courts?
- Do the arbitration/mediation mechanisms now existing in Egypt serve the domestic private sector? Is there equal access to these facilities? Are arbitration/mediation practices widely used and understood in Egypt?
- Are there regional disparities in access to and delivery of dispute resolution within or outside the formal court system?
- Is the business community aware of its rights and of services available to it? How does this work? Could it be improved?
- How does the private sector communicate with the GOE to express its views or needs for change within the system?

3 What practical, technical solutions could be offered by the donor community to improve or reduce the constraints identified in #2 above?

DELIVERABLES

Drawing on professional familiarity with the legal and judicial sector in Egypt, available materials and informal interviews, the consultant(s) will be guided by the following time schedule in undertaking the assessment.

1) End of week 1 An outline and 2 to 4 page work plan to be discussed with USAID.

2) End of week 4 A draft of the assessment which will provide a thoughtful analysis of the legal and judicial system now existing in Egypt, identify constraints posed by the court system, existing legal practices or the regulatory environment which discourage the functioning of a market economy, and make tentative recommendations for GOE and USAID/Cairo consideration. The assessment is expected to be from 25 to 35 pages, single-spaced, introduced by an executive summary of two to three pages, and will be discussed with USAID mission members

3) End of week 6 Final assessment prepared after consultation with IDS/USAID/Cairo on the draft outlined above

4) All materials are to be drafted and presented in English.

EGYPTIAN LEGAL AND JUDICIAL SECTOR ASSESSMENT

(CONTRACT NO 263-0377-C-00-3103-00)

REPORT AND RECOMMENDATIONS

VOLUME IV

ATTACHMENTS

ATTACHMENT 2.

LIST OF PARTICIPATING LAWYERS FROM

KAMEL LAW OFFICE AND

KAMEL, YEHIA, ABUL ELA & SAKR

ATTACHMENT 2

LIST OF PARTICIPATING LAWYERS FROM KAMEL LAW OFFICE

AND

KAMEL, YEHIA, ABUL ELA & SAKR

Following are the lawyers from Kamel Law Office and Kamel Yehia Abul Ela & Sakr Attorneys-at-Law who conducted legal research and interviews and made valuable contributions from their knowledge and experience all of which was essential to the assessment of the Egyptian legal and judicial sector which is set forth in the Report

- Dr Mohamed Kamel
- Mr Abdel Halim Abul Ela
- Mr Mohamed Sakr
- Mr Gamil Shehata
- Mr Mahmoud Wahba
- Mr Abul Fadl Hosny
- Mr Yehia Selim
- Mr Moustafa Mohamed Moustafa
- Mr Sayed Ammar
- Mr Mohamed Abdel Raouf
- Mr Tarek Zahran
- Mr Joseph Morcos
- Mr Ahmed Zahran
- Ms Rawya Amer
- Mr Sherif El Atty
- Mr Emad Helmy
- Mr Mohamed Ibrahim Amin

EGYPTIAN LEGAL AND JUDICIAL SECTOR ASSESSMENT

(CONTRACT NO 263-0377-C-00-3103-00)

REPORT AND RECOMMENDATIONS

VOLUME IV

ATTACHMENTS

ATTACHMENT 3

LIST OF PERSONS INTERVIEWED

ATTACHMENT 3

LIST OF PERSONS INTERVIEWED

FOR USAID/IDS

AHMED ABDEL-FATAH
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5 SAAD ZAGHLOUL STREET
FAYOUM

MOHAMED ABDEL-RAOUF
LAWYER
KAMEL LAW OFFICE
4 EL-SHAHEED AHMED YEHIA IBRAHIM STREET
MOHANDESSEEN GIZA

WALID ABU TALEB
LAWYER
MONOFIYYA

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CAIRO UNIVERSITY

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DOKKI GIZA

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LAWYER
ADLI YAKAN BASHA STREET
MENIA

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PROCTOR & GAMBLE EGYPT
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GOMHORIA STREET
MENIA

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VICE PRESIDENT
CITIBANK
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ALEXANDRIA

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FORMER DIRECTOR NATIONAL CENTRE FOR JUDICIAL STUDIES
HELMY & HAMZA (BAKER & McKENZIE)
56 GAMEAT EL DOWAL EL ARABIA STREET
MOHANDESSEEN GIZA

OMAR EL-HADIDY
ATTORNEY-AT-LAW
2 HORIA ROAD
ALEXANDRIA

MOHAMED EL-HAWARY
LAWYER AND GENERAL TRUSTEE
LAWYERS BAR
FAYOUM

FAROUK EL-MAHALAWI
LAWYER
MOUNOFIA

HISHAM EL-SHERIF
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& MINISTER OF STATE FOR ADMINISTRATIVE DEVELOPMENT
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CAIRO

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LEGAL DEPARTMENT
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CHAIRMAN
STRAPCO
5 AHMED ORABI STREET
1ST FLOOR EL MANSHEYA
ALEXANDRIA

SAMEH TORGOMAN
JUDGE
MINISTRY OF JUSTICE
CAIRO

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SUPPORT CENTER (IDSC)
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CAIRO

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COMROK
ALEXANDRIA

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12 MIDAN EL SHEIKH YOUSSEF
7TH FLOOR
CAIRO

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CHAIRMAN & MANAGING DIRECTOR
OTIS ELEVATORS COMPANY EGYPT
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CAIRO

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MOHANDESSEEN GIZA

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& HEAD OF CORPORATE FINANCE AND INVESTMENTS OPERATIONS
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NILE TOWER BUILDING
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GIZA

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CHAIRMAN
NIMOS ENGINEERING COMPANY
26 SHERIF STREET
1282 IMMOBILIA BUILDING
CAIRO

RONALD G NARDI
CHAIRMAN & MANAGING DIRECTOR
GENERAL MOTORS EGYPT
3 ABOU EL FEDA STREET
17TH FLOOR
ZAMALEK CAIRO

MOHAMED OZALP
GENERAL MANAGER
MISR INTERNATIONAL BANK S A E (MIBANK)
54 EL BATEL AHMED ABDEL AZIZ ST
MOHANDESSEEN GIZA

ANTHONY PATTERSON
GENERAL MANAGER
PHILIP MORRIS SERVICES INCORPORATED
35 GEZIRET EL ARAB STREET
MOHANDESSEEN GIZA

MOHAMED A F RAGAB
CHAIRMAN
ALEXANDRIA BUSINESSMEN S ASSOCIATION
52 HORREYA ROAD
ALEXANDRIA
ALSO
CHAIRMAN
RAGAB IMPORT & EXPORT CO
11 HORREYA ROAD
ALEXANDRIA

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GARDEN CITY CAIRO

FATHI M YOUSEF
LAWYER & FORMER DEPUTY OF THE LAWYERS BAR
ADLI YAKAN BASHA STREET
MENIA

EGYPTIAN LEGAL AND JUDICIAL SECTOR ASSESSMENT

(CONTRACT NO 263-0377-C-00-3103-00)

REPORT AND RECOMMENDATIONS

VOLUME IV

ATTACHMENTS

ATTACHMENT 4

FEE SCHEDULE. UNITED STATES COURT OF APPEALS

NINTH CIRCUIT AND UNITED STATES DISTRICT COURT

3'

Federal Courts

UNITED STATES COURTS

UNITED STATES COURT OF APPEALS—NINTH CIRCUIT

GREGORY B WALTERS Circuit Executive
CATHY CATTERSON Clerk

Headquarters
Circuit Executive
Two Rincon Center
P O Box 193846, San Francisco, CA 94119-3846

Pasadena
U.S. Court of Appeals Building
125 South Grand Avenue
Pasadena, California 91105
Telephone (818) 405-7000

Clerk
Two Rincon Center
P O Box 193939 121 Spear St San Francisco CA 94119-3939
Telephone (415) 744-6150 (Circuit Executive)
(415) 744-9800 (Clerk—General Information)
Staff Attorney's Office (415) 744-9860
For information regarding appeals from Southern and Central California cases contact: Southern Appeals Unit (415) 744-9750

UNITED STATES DISTRICT COURT

Central District
LEONARD A. BROSNAN, Clerk
U S. Courthouse
312 N Spring Street, Rm G-8
Los Angeles, California 90012
Civil Code Information: (213) 894-3533
Criminal Code Information (213) 894-3646

Northern District
RICHARD W WIEKING, Clerk
450 Golden Gate Avenue, Box 36060
San Francisco, California
Telephone: (415) 556-3031

San Jose Office
RONDA A. GIBBS
Divisional Office Manager
280 S 1st Street, Rm 2112
San Jose, California 95113
Telephone (408) 291 7783

Southern District
U S. Courthouse
940 Front Street, Rm. 1N20
San Diego, California 92189
Telephone (619) 557-5600

Eastern District
Sacramento Office
JACK L. WAGNER, Clerk
PAT SANDLIN, Deputy-in-Charge
650 Capitol Mall
Sacramento, CA 95814
Telephone (916) 551-2615

Fresno Office
MARY ANN GOLDSBERRY Deputy-in-Charge
U S Courthouse Bldg
1130 "O" Street, Rm 5000
Fresno, California 93721
Telephone: (209) 487 5083

FEE SCHEDULE

(All fees are subject to change at the direction of the Court)

Docketing fee (filing fee)	$105 00
Paid in district court, FRAP 3	
Attorney admission fee	$40 00
Certificate of Good Standing*	$2 00
Duplicate certificate (admission certificate)**	$1 00
Certifications (Court Seal)	$5 00
Copying fees, per page (10 page limit)	$ 50
Docket Sheets*	$3 00
General Orders**	$5 00
Opinions, Sales of*	$2 00
Oral argument tapes, reproduction of**	$15 00
Petition for review	$100 00
Record search and certification	$15 00
Returned check due to lack of funds	$25 00
Rules, Ninth Circuit**	No charge
Sanctions	Court directs amount
Writ of Mandamus	$100 00

* Send self-addressed stamped envelope with request.
** Send self-addressed label with request.

CALIFORNIA APPELLATE COURTS

SUPREME COURT

ROBERT F WANDRUFF Clerk / Administrator

303 Second St South Tower
San Francisco, CA 94107
Telephone (415) 396-9400

Library & Courts Building
Sacramento CA 95814
Telephone (916) 322-5957

Ronald Reagan Bldg
300 So Spring Street
Los Angeles, CA 90013
Telephone (213) 897 5158

COURTS OF APPEAL

First Appellate District
RON BARROW Clerk
303 Second St. South Tower
San Francisco, CA 94107
Telephone (415) 396-9666

Second Appellate District
JOSEPH A LANE Clerk
300 So Spring St., 2nd Floor
Los Angeles, CA 90013
Telephone (213) 897-2307

Third Appellate District
ROBERT L LISTON Clerk
914 Capitol Mall, Rm 100
Sacramento, CA 95814
Telephone (916) 654-0209

Fourth Appellate District
STEPHEN M KELLY Clerk

Division One
750 "B" Street, Suite 500
San Diego, CA 92101
Telephone (619) 237 7271

Division Two
303 West 5th Street
San Bernardino, CA 92401
Telephone (714) 383-4441

Division Three
925 N Spurgeon Street
Santa Ana CA 92701
Telephone (714) 558-6777

Fifth Appellate District
KEVIN A. SWANSON Clerk
2525 Capitol Street
P O Box 45013
Fresno, CA 93718
Telephone (209) 445-5491

Sixth Appellate District
MICHAEL J YERLY Clerk
333 West Santa Clara St Suite 1060
San Jose, CA 95113
Telephone (408) 277 1004

SCHEDULE OF FEES

Filing Notice of Appeal, civil case for each such notice of appeal	$200 00
Filing Original Proceedings for Civil (criminal fee)	200 00
Filing Petition for Rehearing	no fee
Filing Petition for Rehearing in Supreme Court	*
Filing Petition for Writ of Supersedeas, before or after filed in reviewing court	*
Filing Motion or Stipulation to Dismiss Appeal, after record filing	*
Filing Motion to Dismiss Appeal, if record not on file in reviewing court	*
Issuing Certificate of Fact of Admission and Continued Good Standing as Attorney	1 00
Issuing Certificate of Clerk Under Seal	1 00
Copy of any Record or Document, per folio	(prevailing commercial rates)
Comparing any Document Requiring a Certificate, per folio	05
Comparing by Supreme Court Clerk of Carbon Copies or Duplicate Print for Certification, per folio	05
Each Paper Filed in Connection with Appeal to or Certiorari from Supreme Court of the U S	*
Any Official Service in Connection with Review of Workman's Compensation Appeal Board	*

EGYPTIAN LEGAL AND JUDICIAL SECTOR ASSESSMENT

(CONTRACT NO 263-0377-C-00-3103-00)

REPORT AND RECOMMENDATIONS

VOLUME IV

ATTACHMENTS

ATTACHMENT 6

CALIFORNIA SUPERIOR COURT FEE SCHEDULE

316

1993 EDITION

CALIFORNIA COURTS DIRECTORY AND FEE SCHEDULE

Includes listings for all
California Municipal & Superior Courts

Justice Courts • Appellate, Trial & Bankruptcy Courts
County Clerks • Recorders
District Attorneys • Sheriffs • Marshals
Court Code Numbers • Judicial Districts
Administrative Office of the Courts

THE ASSOCIATION OF MUNICIPAL COURT CLERKS OF CALIFORNIA INC.

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315

SUPERIOR COURT FILING FEES

(Total Fee Shown)

Gov't Code	Key	Description
26820 4	A	Complaint or petition in civil action special proceedings, except adoption proceedings
26820 4	B	Petition for Dissolution Nullity, Legal Separation
26826	C	First paper on behalf of a defendant, intervenor respondent, or adverse party, whether separately or jointly except for the purpose of making a disclaimer
		Multiply amount by number of defendants joining in first paper
	D	For each additional party appearing jointly
26830/ 26862*	E	Post judgment motion (includes judgment exams) Plus $15 00 if modification of custody or visitation
26827	F	First petition for Letters of Administration Testamentary Guardianship, Conservatorship
26827	G	Subsequent petition for Letters of Administration Testamentary Guardianship, Conservatorship in the same proceeding or to contest any will or codicil by a person other than the original petitioner
26827	H	First accounting of a Testamentary Trustee by a person other than original petitioner

* Local Rules may affect fees

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Alameda	182	182	182	182	14/15	182	182	182
Alpine	182	182	182	182		182	182	182
Amador	182	182	182	182		182	182	182
Butte	182	182	182	182	*	182	182	182
Calaveras	182	182	182	182	*	182	182	182
Colusa	182	182	182	182	*	182	182	182
Contra Costa	182	182	182	182		182	182	182
Del Norte	182	182	182	182		182	182	182
El Dorado	182	182	182	182	*	182	182	182
Fresno	182	182	182	182		182	182	182
Glenn	182	182	182	182	*	182	182	182
Humboldt	182	182	182	182		182	182	182
Imperial	182	182	182	182		182	182	182
Inyo	182	182	182	182		182	182	182
Kern	182	182	182	182		182	182	182
Kings	182	182	182	182	*	182	182	182
Lake	182	182	182	182	*	182	182	182
Lassen	182	182	182	182		182	182	182
Los Angeles	182	182	182	182	*	182	182	182
Madera	182	182	182	182		182	182	182
Marin	182	182	182	182		182	182	182
Mariposa	182	182	182	182	*	182	182	182

* Local Rules may affect fees

BEST AVAILABLE COPY

County	A	B	C	D	E	F	G	H
Mendocino	182	182	182	182	14/15	182	182	182
Merced	182	182	182	182		182	182	182
Modoc	182	182	182	182	-	182	182	182
Mono	182	182	182	182		182	0	0
Monterey	182	182	182	182		182	182	182
Napa	182	182	182	182		182	182	182
Nevada	182	182	182	182	-	182	182	182
Orange	182	182	182	182		182	182	182
Placer	182	182	182	182		182	182	182
Plumas	182	182	182	182		182	75	75
Riverside	182	182	182	182		182	82	182
Sacramento	182	182	182	182		182	82	182
San Benito	182	182	82	182		182	182	182
San Bernardino	182	182	182	182		182	182	182
San Diego	182	182	182	182		182	82	182
San Francisco	182	182	182	182		182	82	182
San Joaquin	182	182	182	182		182	182	182
San Luis Obispo	182	182	182	182		182	182	182
San Mateo	182	182	182	182		182	84	82
Santa Barbara	182	182	182	182		182	182	182
Santa Clara	182	182	182	182		182	84	82
Santa Cruz	182	182	182	182		182	182	182

* Local Rules may affect fees

BEST AVAILABLE COPY

County	A	B	C	D	E*	F	G	-
Shasta	182	182	182	182	14/15	82	182	182
Sierra	182	182	182	182		82	182	182
Siskiyou	182	182	182	182		182	182	182
Solano	182	182	182	182		182	182	182
Sonoma	182	182	182	182		82	182	182
Stanislaus	182	182	182	182		182	182	182
Sutter	182	182	182	182		182	182	182
Tehama	182	182	182	182		182	182	182
Trinity	182	182	182	182		82	182	82
Tulare	182	182	182	182		182	182	182
Tuolumne	182	182	182	182		182	182	182
Ventura	182	182	182	182		182	182	82
Yolo	182	182	182	182		182	182	82
Yuba	182	182	182	182		182	182	82

* Local Rules may affect fees

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SUPERIOR COURT FEES

MISCELLANEOUS CIVIL FILING FEES

	Code Section	TOTAL FEE DUE*
Confession of Judgment	CCP 1134	$15 00
Certified copy of complaint from other county and affidavit for examination of a third party indebted to defendant	CCP 491 030	2 00
Abstract of judgment for purposes of proceedings supplemental to execution when filed in a county other than where judgment roll is filed	CCP 722	12 00
Filing any notice of motion or other paper requiring a hearing subsequent to the first paper or notice to move for new trial of any civil action or special proceeding	GC 26830	14 00
Notice of motion for summary judgment	GC 26830(B)	100 00
Filing first paper on behalf of State of California, county city district or other political subdivision or any public officer or board or body acting in his or their official capacity	GC 6103	No fee
Writ of execution against a dwelling house when there is no pending proceeding (in addition to fee for issuance of writ)	CCP 704 750	12 00
Filing an OSC Re Modification after trial	GC 26830 GC 26862	14 00
Filing a subsequent paper requiring a court hearing (does not apply to petitions filed pursuant to subdivision (b) of GC Sec 26827)	GC 26827 4	4 00
Petition for adoption per individual	HS 10619	19 00

MISCELLANEOUS FEES

	Code Section	TOTAL
Transmission of transcript and papers when the venue is changed (plus total fee for filing in court to which transferred)	GC 26823	$14 00
Issuing writs of attachment, execution, mandate, restitution, possession prohibition or any writ of enforcement or any order of judgment	GC 26828	5 50
Issuing an abstract of judgment	GC 26834	50
Issuing of duplicate marriage license	GC 4203	5 00
Issuing marriage license	GC 26840 7	60 00
Issuing confidential license	GC 4215	70 00
Filing bond of Notary Public	GC 26849	7 00
Plus fee for recording bond	GC 8215	5 00
Filing and entering certificate of appointment of humane officer	GC 607	5 00
Certificate of registration of process server (effective 2 years) plus bond	B&P 22350-59 (Plus fee for recording B&P 22353	00 00
Filing and indexing all papers for which a charge is not elsewhere provided except those filed in actions or special proceedings, official bonds, certificates of appointment	GC 26857	4 25
Recording or registering any license or certificate, or issuing any certificate in connection with a license, for which a charge is not otherwise prescribed	GC 2685	4 25
Searching records per file	GC 2685	5 00
Taking acknowledgment of any deed or other instrument, including certificates, for each signature	GC 2685	2 25
Taking affidavit, except criminal or adoption case	GC 26853	4 25
Filing and entering award under Workmen's Compensation Act	GC 26850	2 25
Issuing Order of Sale	GC 26829	7 00

*Fees may vary with each county

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SURETIES

	Code Section	TOTAL*
Filing a power of attorney revocation, cancellation, annulment, or suspension of a certificate of an admitted surety insurer if one name	GC 26855 1	$3 50
If more than one name, for each name	GC 26855 1	2 25
Filing a financial statement of an admitted surety insurer	GC 26855 2	3 50
Issuing a certificate re justification of sureties	CCP 1057 GC 26855 3	3 50

APPEALS FEES

Filing notice of appeal or cross appeal—appellant should deliver filing fee to the Clerk of the Superior Court, which fee in turn will be forwarded to the Reviewing Court (CHECK OR MONEY ORDER MADE PAYABLE TO THE CLERK OF THE COURT OF APPEAL) ($50 00 to County Clerk—GC 68926 1)	CRC Rule 1	$250 00
Deposit for Transcript or indexing, check with court		
Certificate for Court of Appeal or Supreme Court on filing notice of motion prior to filing or record on appeal	GC 26838	14 00

CERTIFICATION AND COPYING FEES

Photocopying document, per 8-1/2" x 13 page or fraction thereof	GC 26831	See Footnote
Certifying a copy of any original paper record or proceeding on file in the Office of the County Clerk	GC 26833	$1 75
Certifying copy of final judgment		6 00
Comparing with original when prepared by another and presented to Clerk s certificate (per page)	GC 26837	75
Exemplification of record paper or proceeding (in addition to preparing or comparing)	GC 26839	7 00
Certificate of Authority of Notary Public	GC 26852	2 25
Every certificate for which the fee is not otherwise fixed	GC 26836	1 75
Certifying a copy of a marriage record or a marriage dissolution record prepared by the Office of the County Clerk, per document	H&S 10605	6 00
Certify Abstract of Judgment		3 50

FICTITIOUS BUSINESS NAME FEES

Filing fictitious business name statement, and furnishing one certified copy	B&P 17929a	$22 00
For each additional name on the same statement	B&P 17929a	5 00
Filing statement of abandonment of use of a fictitious business name	B&P 17929bc	22 00
Filing statement of withdrawal from partnership operating under fictitious business name	B&P 17929c	22 00
Fee for certified copy of any statement on file re fictitious business name	B&P 17926b	2 50
Filing affidavit of publication of notice of dissolution of partnership (Notice o Dissolution not to be filed)	Corp C 15035 5	2 00

JURY REPORTER, WITNESS FEES

Deposit for the first day's jury fee, payable at least 25 days prior to tria	CCP 1[illegible]6	
(Check with Clerk of the Court for amount of deposit required)		
Jury payment for each subsequent day plus mileage set by individual counties	GC 26850	
Reporter's fee for each day after first day of trial	GC 68086	100 1/2 Day
Witness fee for each day plus mileage traveled both ways	GC 68093-4	35 00
Mileage set by individual counties		
Deposit on issuance of subpoena for any peace officer as defined in Chap 4 5 (Beginning with Sec 830) or Title 3 of Part 2 of the penal code—the amount of one hundred fifty dollars ($150 00) shall be deposited with the public entity and proof of that deposit shall be filed with the clerk of the court	GC 68097 2	150 00

[1] Per county reporter's fee *Fee may vary with each county

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EGYPTIAN LEGAL AND JUDICIAL SECTOR ASSESSMENT

(CONTRACT NO 263-0377-C-00-3103-00)

REPORT AND RECOMMENDATIONS

VOLUME IV

ATTACHMENTS

ATTACHMENT 7 (a)

FORM OF COMMERCIAL REGISTER EXTRACT (ENGLISH TRANSLATION)

(a) Type of trade

OR

(b) Object of the company incorporation or the cooperative society

(4)

(a) 1 The date the trader commenced his trade in the A R E

2 Date of licen permitting trade

(b) Date of company start up and date of termination date of license permitting trade or the approval of the Investment Authority

(c) Date of branch or agency inauguration

(5)

(a) Trader s main addre

(b) Addres s of the company headquarter r c f ratre c ciety

(c) Registration number of the main office or headquarters (in the case that the branch is registered)

(6)

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322

TRANSLATION

MINISTRY OF SUPPLY AND INTERNAL TRADE

COMMERCIAL REGISTRATION AUTHORITY

GENERAL DIRECTORATE FOR COMMERCIAL REGISTRATION

COMMERCIAL REGISTRY OFFICE

GOVERNORATE OF CAIRO

EXTRACT OF THE COMMERCIAL REGISTER

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(1)

(a) Deposit number
(b) Deposit date
(c) Registration number in the Commercial Register

(2)

(a) Deposit number of request for renewal
(b) Date request for renewal was submitted
(c) Date of renewal

(1)

(a) 1 Trader s name
2 Business's name
3 Name under which the trader exercises his business

(b) 1 Company form
2 Address and name of the company or name of the cooperative society
3 Trademark

(c) Trademark of the branch

(2)

(a) Trader name title date and place of birth and nationality

(b) Names and titles of the partners responsible for the partnership in partnership or commandite companies date and place of birth and nationality of each one of them

(c) Names and titles of the partners or others entrusted with the company management and those who are entitled to sign for the company the capacity date and place of birth nationality and powers in the management and signature of each one of them

(d) Names and titles of the members of the Board of Directors stock companies or cooperative societies and their managing representatives the capacity date and place of birth nationality and powers in the management and signature of each or of them

(e) Name and titles of the manager of the main branch or the general agency in the A R E date and place of birth and nationality (if the company s headquarters is abroad)

(3)

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(a) Addresses of the branches or agencies affiliated to the main office or headquarters

(b) Address of the branch or agency (in the case that the branch or the agency is registered)

(7)

(a) Delegated agent

(b) Manager of the branch or the agency (name and title and date and place of birth and nationality of each one of them)

(8)

(a) Capital invested in the trader headquarter and the affiliated branches and agencies

(b) The company or the cooperative society capital

1 Paid in capital
2 Capital to be paid by the partners
3 Proportion of the silent partners share
4 In kind share (if any)

(c) Balance of the branch indebted to the company headquarter

(9)

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326

(a) The place the trader had in the past

(b) The place he shall have

1 Within the jurisdiction of same office

Within the jurisdiction of other office

(10)

Registration Number of

(a) Trademarks

(b) Patents

(c) Industrial drawing and designs

(11)

(a) Marital financial arrangement

(b) Trade competence

(c) All contracts providing for the dissolution or setting the company under liquidation

(12)

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Remark

(c) The judgement [illegible] impo[illegible] a declaration of legal incompetence on the trader or appointing representatives or agents for the absent [illegible] by [illegible] them or by removing the declaration of legal incompetence

(d) The judgement [illegible] is related to bankruptcy

(e) Judgement for rehabilitation

(f) Judgement imposing a criminal penalty

(g) Judgement [illegible] divorce separation whether financial or otherwise [illegible] well [illegible] decisions granting license to trade or the cancellation [illegible] thereof

(h) Judgement [illegible] the dismissal and removal from office of partners and managers [illegible] well [illegible] judgments dissolving or abrogating companies or [illegible] the [illegible] of liquidators or the removal thereof

(i) Data regarding the [illegible] the commercial lien or the pledge thereof for want to law 11/70

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228

EGYPTIAN LEGAL AND JUDICIAL SECTOR ASSESSMENT

(CONTRACT NO 263-0377-C-00-3103-00)

REPORT AND RECOMMENDATIONS

VOLUME IV

ATTACHMENTS

ATTACHMENT 7 (b)

FORM OF COMMERCIAL REGISTER EXTRACT (ARABIC)

وزاره الموس والتجاره الداخليه

مصلحه السجل التجارى

الاداره العامه للسجل التجارى

مكتب السجل التجارى

محافظه

مستخرج

من السجل التجارى

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وزارة التموين والتجارة الداخلية

مصلحة التسجيل التجاري

الادارة العامة للسجل التجاري

مكتب السجل التجاري

(١)	(٢)	(٣)	(٤)	(٥)	(٦)
(أ) رقم الايداع (ب) تاريخ الايداع (ج) [illegible]	(أ) [illegible] (ب) [illegible] (ج) [illegible]	(أ) [illegible] (ب) [illegible] (ج) [illegible]	[illegible]	(أ) [illegible] (ب) [illegible] (ج) تاريخ [illegible]	(أ) [illegible] (ب) [illegible] (ج) رقم [illegible]

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(١١)

(١٢)

(١٤)

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تابع لخانات البيان بالصفحة السابقة

تابع رقم	
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تابع رقم	

اسم الطالب المسجل
وقد سددت الرسوم وقدرها
جنيه في من شهر سنة ١٩٩ موجب ق من شهر سنة ١٩٩
أمين مكتب السجل التجاري ق من شهر سنة ١٩٩

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EGYPTIAN LEGAL AND JUDICIAL SECTOR ASSESSMENT
(CONTRACT NO 263-0377-C-00-3103-00)

REPORT AND RECOMMENDATIONS

VOLUME IV
ATTACHMENTS

SELECTED INTERVIEW NOTES AND MEMORANDA

1 Mohamed Abdel Fattah Ragab President of the Businessmen s Association of Alexandria

2 Salah El Taweel Chairman of Board STRAPCO

3 Hatem N Moustata Chairman Nimos Engineering Co

4 Omar El-Hadidy Esq Adel El-Far Esq and Khairv Fawaz Businessman

5 Fathi Mohamed Youset Esq Fouad Daniel Esq Ismail Hassan Schalakamv Esq and Zarif El-Abar Esq

6 Walid Abu-Taleb Esq and Farouk El-Mahalawi Esq

7 Ahmed Abdel-Fatah Esq and Mahmoud El-Hawarv General Trustee of the Lawvers Bar in Fayoum

8 Report on the legal problems that are found in the courts of North of Egypt

9 Alv El-Tahry and Alaa Saba

10 Mohamed Ozalp General Manager MIBANK

11 Adel El Senoussv General Manager Legal Department Egyptian American Bank

12 Marcelo Giugale Resident Economist The World Bank

13 Mohamed Aboul-Enein Director of Cairo Regional Centre for International Commercial Arbitration

14 Omar Mohanna Deputy General Manger & Head of Corporate Finance and Investment Operations Misr Iran Development Bank

15 Mahmoud M Fahmy Legal Advisor - Attornev at Law Corporate and Investment Law Expert

16 Ahmed Fouad El-Ghannam Former Director National Centre for Judicial Studies Helmv and Hamza (Baker & McKenzie)

17 Hamdv Lasheen Head of the General Litigation Section Legal Department MIBANK

Mohamed Abdel Fattah Ragab
President of The Businessmen's Association of Alexandria

THE LEGAL SYSTEMS RESTRAINING THE DEVELOPMENT PROCESS IN EGYPT

The adopted laws during the time of the former socialistic system in Egypt are the main problem facing businessmen and investors nowadays Up till now, these laws are not updated to cope with the international development applying to a free economic system or market economy

Such laws are hindering investment in Egypt They give businessmen and investors a feeling of insecurity

The following are merely some examples of the required amendments of the law

1 The Constitution.

Though the Constitution is the law, the Egyptian economic system is a socialistic one The public sector owns the means of production which are the backbone of the economy

The constitution states that parliaments should have 50% of the representative of workers and farmers Yet, this contradicts the rights of every citizen to have representation and leads to inefficiency of these parliaments since some of those elected are not educated enough to monitor the government and fulfill their parliamentary duty

Therefore it seems as if the current constitution was made out for another age or another

country, and that it is totally incompatible with the present time This leads to unclear vision of the guidelines of the system and to insecurity of businessmen and investors, since they find that there is no constitution compatible with the development of the society and its future movement

2 **Delays of Court Cases.**

It has been agreed upon that wherever there is freedom and justice, there must be development and wealth, and the delay in enforcing justice is unjust Although the Egyptian judiciary is a fair and honest one, yet it takes years to reach final decision The loss of so many years between the committing a crime and punishment, makes it lose the required effect on the society

I think that we can achieve a quicker justice by following these ideas

a Having a time limit for every step of the procedure, even if this means amending the procedural laws

b Increasing the number of judges and improving their standards of living Also modernizing the courts and the filing system, on the condition that the defendants bear the costs

c Applying the arbitration system through commercial chambers, industrial unions and businessmen associations We can also benefit of the experience of the retired judges to run such a system This would certainly decrease the number of case at the courts

3 **Delays of the Execution of the Court Judgment.**

It has been noticed that, over the past few years, the governmental bodies usually delay the implementation of legal judgments, though they should be setting an example for the rest of the bodies This leads to the mistrust of businessmen and investors in the ability of regaining their rights easily Hence, strict penalties should be adopted to face any delays in the enforcement of

judgment

4 **The Abolish of Socialist Prosecutor Post:**

This is one of the residues of the socialistic system Back then, it was meant to overcome any who opposed of the regime, but now this contradicts the current judicial system leading the investors to mistrust justice in Egypt It only makes man wonder, how the socialism is over and yet there is a post of Socialist Prosecutor

5 **Tax Laws:**

One of the main hinders to the flourish of Egyptian economy is the tax laws, for the following reasons

a Tax rates have increased incredibly For example, the taxes for a commercial profit is 42 5 percent and the general income tax reaches up to 65 percent, i e for a profit of 400,000 --, the taxes implemented reaches 107 5 percent, meaning that a businessman not only pays his profit but also pays part of his capital

b Projects that are implemented in new cities are exempted of taxes for 10 years Many of the factories, benefiting this exemption, move their activities from one city to another by the end of the exemption period, or else start the formation of new companies and/or factories Hence, the State never benefits of these projects

Meanwhile, doing this, the State discriminates projects benefiting of the exemption with other of the same line of work and near the new cities but does not have this privilege

Every businessman or investor prefers to pay reasonable taxes not exceeding 30 percent, than to benefit of the exemption for ten years then liquidate the business, as the case in the rest of the countries

c As for joint venture companies, the State collects stamp taxes reaching 12 5 for every thousand, which is imposed by he starting of the company formation Some companies need more than 5 years to start gaining profit on their projects, nevertheless, they would be paying lump sums as stamp taxes This is unreasonable and unacceptable

d Usually the sales tax is only paid by the final consumer, i e it should be paid when selling of goods Yet, the sales tax in Egypt is collected upon the importing of the goods and paying customs It is calculated according to the importing prices in addition to the customs taxes

Such a tax system burdens the importer tremendously, since he is the one paying the sales tax, yet, will not profit till he sells the goods, which may stay for some time unsold in his stores By then he would have paid the sales tax and the customs taxes, in addition to paying the interests to the bank This importer could be a merchant or a factory Therefore, we believe in the abolishing of this system and having the consumer pay for the goods upon purchasing to the seller who, in turn, would pay it to the Taxation Authority

e The said sales tax is also imposed on machines, so instead of encouraging the purchase of machines and equipment that increase production, the state impose a sales tax of 10 percent, though the original tax was only 5 percent

The importers of these equipment and machines complained, so the State decided that they can pay the sales tax in 7 year-period-installments But, what is really required is that such a tax would be abolished since the imported goods are meant to increase production

f As in developed countries, the Egyptian law should be amended to exempt the businessmen of paying taxes for the profits gained on the condition that these profits are used in the implementation of other projects

g The Egyptian taxation system has various unlimited taxes The income is subject to commercial profit tax, industrial profit tax, transferred value tax, taxes on real estate or agricultural tax, etc , in addition to the general income tax

In other countries, one is subject to only one kind of taxes Perhaps the said unified tax will be the solution to the taxation problems, then one will only pay a maximum of 30 percent taxes This might lead to minimize the evasion of taxes, increase in production and eventually increase the final profits

6 **Education Regulations:**

We believe that education is the prime investment for Egypt, since it is the only way to use the increasing population as a working force capable of increasing production The downfall of the standard of education is one of the major crisis Egypt faces It is the main cause of current unemployment problem

Building oneself is totally pending to the kind of education one gets to develop one's cultural, social and linguistic capabilities

The renaissance in Japan, Europe and U S A is due to the modernizing of the education methods This is not the case in Egypt Because of little facilities and since the State is undertaking all the education expenses, the buildings are deteriorating and the teachers' main concern became their part-time jobs, whether these jobs are private lessons or consultancy, as it is the only way to make money, because their salaries are so little Also the classrooms, whether in schools or in universities, are three times full than it should be, leading to an impossible education mission Hence, the law should be amended to agree with the following

a The gratuitousness of education should only be in the primary or basic stage, after that students should bear the actual fees required for the preparatory and secondary school and the university education Yet, we can promote talented ones by giving them half or

full scholarships

b The private sector can establish schools of very high quality By this they would be covering 50 percent of the investments required in this domain which amounts to billions of pounds Yet, the current educational law gives the officials of Ministry of Education the right to determine the amount of fees for these schools, making the investors believe that schools are not a good investment

We believe it is best to let the investors set the fees according to the supply and demand principle for their schools and the role of the Ministry of Education be limited to the supervision on the syllabuses and the education process itself This would give way to a competition between investors to give a better education at good fees Perhaps this is the way to having a high quality education

This also goes for the institutions and universities

c If an official claimed that a school went against any of the regulations, the current law gives the Ministry of Education the right to take control of this school, hopefully, this would be amended so as it would be through a legal judgment and not an official decision

<u>Unemployment problem:</u>

This is the most serious problem facing Egypt It is the cause of the extremism and terrorism as well as the crime wave

To overcome this problem we need to amend some laws to promote investment and encourage the creation of new job opportunities Some of these required amendments are

a The current environmental and construction laws prohibit starting new industrial business

inside the cities, and also forbid the small enterprises inside the city from expanding or else the workshop or the small factory would be shut down These laws aim to the well being of the environment Unfortunately, they ignore the fact that there is no other place outside the city for the small industrial business These small businesses consists of one to 15 workers and are based on dealing with the members of the city If it was sent outside, it won't have a market and would eventually die Studies state that there are about 300,000 workshop in Egypt So if one could stabilize these industries through financing them, each can create 1 or 2 job opportunities annually, also there would be a possibility to establish not less than 50,000 new small establishment in new industries in the cities

It is well known that in New York there are hundreds of high buildings on 7th Street filled with small industries Also in Hong Kong, all the streets are filled with hundreds of building crowded with industries, with no one bothering or trying to move them out, as the case in Egypt, especially in Alexandria

Through our experience in the development of small industries in Alexandria, we found out that creating a new job opportunity happens faster when supporting the already established business, as for each loan of L E 1,900 --, a new job opportunity is created But, it needs at least L E 20,000 to L E 30,000 to start a new establishment if the place was available, and the chances of success are not guaranteed

Therefore, we request amending the current laws to sponsor these industries instead of chasing them out

b Industries of large employments, e g exporting ready-made clothes, can create new job opportunities for millions of workers, as these industries have no place in the developed countries because of the high wages of the labour over there, i e the need to import ready-made clothes has increased tremendously Such industries moved to the developing countries where the labour is much cheaper

These industries can be exported to European and American countries for billions of pounds

Since the labour population is concentrated in the old cities, and since the transportation of this labour population to the new cities is almost impossible and most exhausting for the laborers and affect their performance, the issue requires establishing these industries in the old cities and giving them the same tax advantages granted to the industries held in the new cities Also, we need to amend the current construction laws which prevent establishing such industries inside the old cities

We believe that this issue is vital and should be applied as soon as possible

7 **Privatization.**

This issue is the backbone of the economical reform The goal is to convert 65 percent of the economic activity in Egypt into a developing activity instead of being a burden to the economy All experiments in other countries and the nature of human beings certify that any attempt to maintain the public sector is domed to fail and is only hindering the reform process
The first step towards this process is by establishing an independent authority Its job is only to transfer the ownership of the property It should be organised by regulations controlling the selling process, as the continuation of the economic activity and the size of investment it should have the right to give an exemption tax period of, at least, 5 years, on the condition that the selling should be announced and according to the "Troyand" of Germany, especially since the holding companies cannot perform the selling process due to the presence of conflict of interests

8 **Judicial Supervision over Elections.**

Egypt is one of the few countries where the election process is not as honest as it should be, while we see in countries like Nigeria and Pakistan the honest elections that can eject the governments that called for elections We believe that a judicial body, independent of the

government, should be established to be responsible for the election process This body should be under the supervision of the Judicial Authority

9 **Abolition of Government Monopoly.**

Socialism used to assign almost every project to the public sector and the government There are still some residues of this system, for example

a The public sector monopolizes sea transport services and agencies for vessels carrying cargos over than 400 tons, which is the majority The public sector is represented in the companies shipping and unloading cargos at the ports, receiving and storing containers These companies are being paid large amounts mounting to doubles what the actual services cost the Businessmen Association in Alexandria proved that the expenses reaches 10 percent of the actual cost of the industrial commodities and its import, this is all being bore by the Egyptian consumer and eventually leads to the increase of costs of manufacturing in Egypt and the inability of exporting What we need is to amend the laws to give way to the private sector to perform the sea transport services and agencies for all kinds of vessels to achieve competition with less prices and better service

b Monopolizing the import and export of oil through Ministry of Petroleum, so that no private sector can interfere as if the operation is one of the government's top secrets Hence, we request to give way to competition between both sectors, on the condition that all the dealings become public

10 **Customs Duties (Tariff).**

a People are complaining of the absence of logic when it comes to the Tariff, for example the duties on a raw material is sometimes higher than that on the full manufactured product The law should state a regulation to make all parties benefit and to decrease the costs to enable the manufacturers to export their products

b In all exporting countries, the customs fees paid when importing the materials, are being repaid when exporting the commodity A study is made for each commodity and its components to pay the customs fee back when exporting it

11 <u>Housing Laws.</u>

These laws are the cause of the investors decision against investing in building houses The laws were issued some time ago We think that the solution to this should be as follows

a Abolish all laws and decrees limiting the rents or prohibiting having advances and letting it be according to supply and demand, also the landlord should have the right to raise the rent according to the inflation or as agreed upon with the tenant

b As for building built before 1960, the landlord should have the right to increase the rent by 100 percent annually, as for the ones built before 1970, the rent should be raised by 60 percent annually, and for those built after 1960, the rent should be increased by 40 percent annually for five successive years, then the landlord should have the right to increase the rent annually according to the inflation rates or according to the annual increase in salaries decided by the State

c The rents for old buildings, built for commercial and industrial purposes should be determined according to supply and demand, and afterwards the increases suggested during the successive 5 years should be applied

d We suggest that the law increase the real estate tax by an additional 1 percent, to be paid for those proven to be unable to pay the increase of rent, only for the duration of one generation of tenants, i e that present when the law is amended

e The law should abide the tenants to repair the building once every 5 years at their expense and according to the instructions of the official housing departments The

landlords should not be the ones to do this

12 **Import and Export Laws:**

a The export laws give any ministry the right to stop the exporting of any commodity that it thinks the local market needs it This might cause an instability in our market place abroad Therefore, it should be left to the supply and demand issue to settle what is to remain to be sold on the local market and what is to be exported

b The export laws should allow the exporting of any commodity produced locally as long as there is a demand for it in the foreign market What currently happens is that no commodity can be exported without the approval of the ministry involved along with that of the Ministry of Economy This can take months

c Exporters demand the abolition of the form, by which they confirm the regain the value of the exported commodity during a certain period of time This should no longer holds, specially as the foreign currency is admitted with no limitation

d The current law states that if an importer imports a commodity and was rejected by any supervising authority, he have to produce a letter of guarantee for 25 percent of the value of the commodity and to promise importing another commodity for the same amount Should the second commodity could be refused as well, then the importer would lose the 25 percent for nothing of his doings Therefore, we demand the abolition of this law

e All articles stating the import of commodities or materials from certain places or certain bodies should be abolished Such a monopoly can prove to be of no use For example Importing potato seeds should be either through the Potatoes Cultivating Society or the Exporters Union, this could result in the deterioration of the production of potatoes Also importing from Sudan can only occur via El Nasr for Import and Export Company, such a monopoly is uncalled for

f Ministry of Economy should have the final saying on what is to be imported or exported after checking with the importers and the exporters and taking their opinions into consideration No other ministry should have the right to stop the import or export

13 **Free Zones Laws:**

These zones are in Alexandria, Cairo and Port Said They have such a bureaucracy, though they are meant to have a wider domain to move in, to benefit the country The laws state that the imported goods should be unloaded in the free zone, while it would be more faster to hand it over from the vessel to the importer The Zone would definitely, even then, gets what is rightfully its Such laws need to be amended

14 **Labour Laws.**

These laws were issued to stand for the offended workers But now, there are unions to support the workers

Countries with laws stating that the employer can dismiss the employee at any time are countries caring for the employees and training them to do the job efficiently, since they acknowledge that the employer pays a salary to get a high quality product Therefore, the law in Egypt should be amended giving the employer the right to dismiss the employee, as this would make the employee work even harder to keep his job The current law is a residue of socialism, it gives the employee all the guarantees of keeping his job, and this eventually is the reason for the deteriorating of the production level

15 **Laws of Governorates:**

These laws give the Governor the upper hand, leaving the rest of the officials of no real use This sometimes hinder the performance of the required to be done jobs, and is time and effort consuming

Such laws need a radical changing, they need to hold fight against centralism The Secretarv General of the Governor should have almost the same powers as the Governor himself, meanwhile, his duties are to be distributed among the whole administrative body

Also the Public Councils should have more power to be a more effective supervising bodv and to be a reflection of the people's requirements

But, as a result of the current status, departments are doing favors to the Governor himself, to gain his friendship or trust, as the case with the Full Planning Departments and the Construction Planning Department These departments hinder every project using the excuse that it does not abide by the planning, and no one can do anything but to abide

16 <u>Laws of the Committees affiliated to the Ministry of Social Affairs.</u>

The current law gives the Governor, according to a memo from the Ministry of Social Affairs, the right to impose through one of the officials on any charity or non-profitable organization, and suddenly the founders of the organization find themselves under the authority of an official running their organization

We demand the amendment of this law, so no one would have the right to disband the Board of Directors of any organization, unless there is a legal judgment

Also, it is incredible that the law governing the Deceased Transport Committees is the same one governing the Businessmen Association This is not right, charity organizations should be affiliated to the Ministry of Social Affairs, but those serving the members and the community should be affiliated to other bodies, as the Ministry of Economy

17 <u>Residues of Socialistic Laws.</u>

a For example, the Youth Centers affiliated to the Ministry of Youth are not allowed to

increase its fees, despite the inflation in prices and expenses So instead those places collect more fees under various names

b Also, the laws governing hospitals, prevent them from charging extra fees or expenses for medical coverage This leads to the deterioration of the hospitals standards, as they become unable to maintain the equipment or buy their requirements

These laws need to change radically to give space for the organizations to become independent and be able to support themselves and their staff The General Assemblies of these organizations should have the final saying in any decision and not any other official bodv

18 **Registration at the Commercial Register:**

This is a very complicated issue and is time and effort consuming Hence, we suggest the change in the laws of selling and registering through using NOTARY system, which is applied abroad

19 **People's Representatives supervising the Government:**

It is a pity that the law permits an employee of any ministry or one of the public sector companies to be a representative at the parliament This should be amended immediately because of the following reasons

a This employee is under the authority of the Government, which he is to supervise This might lead him to the loss of sight

b If this representative is one of the employees or chairman in a company, then he is spending too much time attending parliament any sessions and not enough time at his job This might eventually lead to the deterioration of his status of the company and the hindering of the decisions required i e he neither benefited his country as a representative nor his company as an employee This should be amended

20 **Laws of the Commercial Chambers and Industrial Unions.**

It is only natural that the commercial chambers and the industrial unions should have general assemblies, but the case now is that the commercial chambers are affiliated to the Ministry of Supply and the industrial unions to the Ministry of Industry, which appoints presidents for the unions, as well as half the Board of Directors, it also supervise the activities and decisions This definitely needs to be amended to make this organizations more effective

Also no law or economical decree should be adopted unless is approved by the various parties representing this domain, as the case in the developed countries

We hope that these ideas are of help for the reform

Mohamed Abdel Fattah Ragab
President of the Association

Mr Mohamed Ragab
Chairman, Alexandria Businessmen's Association
Chairman, Alexandria Automatic Company (Formaly Ford Motor Co Egypt S A S)
Chairman, International Import and Industrial Co

Mr Salah El Taweel
Chairman of Board
STRAPCO
5 Ahmed Orabı Street
1st Floor
El Mansheya
Alexandria

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WORK LAW AND REGULATIONS

THE EXISTING WORK LAW AND REGULATIONS WHICH CONTROL THE RELATION BETWEEN LABOURS AND OWNERS HAD BEEN ISSUED DURING THE YEARS OF NATIONALZATON AND SOCIALISM SINCE MANY YEARS OUR AUTHORITY IS APPLYING OPEN DOOR POLICY AND FREE ECONOMY BY ENCOURAGING THE PRIVATE SECTOR FOR INVESTMENT
BUT TILL NOW THE SAME OLD LAWS AND REGULATIONS ARE APPLIED WITHOUT CHANGE

FUTURE PLANNING

FUTURE PLANNING IS A FUNDAMENTAL ISSUE FOR ANY MANUFACTURER TO ADAPT HIS PRODUCTION ACCORDING TO THE MARKET POTENTIAL AND REQUIREMENTS AS WE ARE PASSING A TRANSMITION PERIOD, DUE TO CHANGING ECONOMY POLICY , AND ACCORDINGLY THE LAWS AND REGULATIONS ARE SUBJECTED TO CHANGE FROM TIME TO TIME SOME LAWS IN FACT ARE NOT WELL STUDIED BEFORE ISSUING , ALSO THE SAME LAW COULD BE CHANGED SEVERAL TIMES WITHIN RELATIVE SHORT TIME SUCH SITUATION LEADS TO UNSTABLE ATMOSPHERE AND FUTURE EXPECTATION COULD BE IMPOSSIBLE

PERSONNEL PERFORMANCE

PERSONNEL PERFORMANCE DEPENDS ON TWO MAIN FACTORS , FIRST IS THE EDUCATION SYSTEM AND THE SECOND IN THE TRAININC POLICY AS THE EDUCATION SYSTEM IS DEPENDING MORE ON RECALLING, IT IS NOT POSSIBLE TO HAVE CREATIVE PERSONNEL WITH ADVANCED IMAGINATION
ALSO IN ABSENCE OF GOOD CONCEPT FOR THE IMPORTANCE OF TRAINING FOR EVERY TASK, THEN IS POOR WORK PERFORMANCE WILL BE ACHEIVED

SUPPLEMENTARY INDUSTRIES

MAJORITY OF FACTORIES DEPEND ON SEVERAL OTHER PRODUCTS, TO HELP THEM TO PRODUCE AND INTRODUCE THEIR PRODUCT IN THE FINAL SHAPE IN MANY CASES THES SUPPLEMENTARY PRODUCTS ARE NOT AVAILABLE , OR NOT AT THE SAME QUALITY LEVEL OF THE MAIN PRODUCT SOME MANUFACTURERS ARE OBLIGED EITHER TO IMPORT OR TO ESTABLISH SECONDARY LINES OF PRODUCTION, BOTH SOLUTIONS ARE EXPENSIVE AND HAS EFFECT ON THE PRODUCT FINAL COST

TECHNICAL STANDARIZATION

ADVANCED INDUSTRIAL COUNTRIES PRODUCE THEIR PRODUCTS ACCORDING TO THE INTERNATIONAL TECHNICAL SPECIFICATION, BESIDE THEIR LOCAL STANDARIZATION THIS SYSTEM TO ASSURE PRODUCING PRODUCTS AT HIGH TECHNICAL QUALITY

UP TO THE PRESENT TIME WE DID NOT ESTABLISH LOCAL CLEAR AND DEFINED STANDARD TECHNICAL SPECIFICATIONS FOR MAJORITY OF OUR DIFFERENT PRODUCTS, BESIDE THE FACT IN MOST OF CASES THE INTERNATIONAL SPECIFICATIONS ARE NOT COMPULSIVE FOR MANUFACTURERS TO APPLY

THIS SITUATION HAS A VERY DANGEROUS INFLUENCE ON SERIOUS INDUSTRY ,AS THE PRODUCT WITH HIGH TECHNICAL SPECICATIONS WILL FACE HARD COMPETITION AGAINST LOW QUALITY PRODUCT, PRICE WISE

ACCORDINGLY SOME MANUFACTURERS ARE OBLIGED TO DECREASE THEIR PRODUCT COST ON THE ACCOUNT OF QUALITY

STATISTIC

THE LACK OF GOOD STATISTIC AND THE DIFFICULTY OF OBTAINING IT , IN CASE OF ITS EXISTENCE, IS CONSIDERED ONE OF THE MAIN PROBLEMS TO KNOW AND STUDY THE MARKET

BEAUROCRACY

BEAUROCRACY IS NOT ONLY CONSIDERED AS AN UNDEVOLOPED SYSTEM, BUT IN FACT IT IS SYSTEM THAT WASTE THE WEALTH AND EFFORT OF ANY COUNTRY APPLIES IT THE LONG AND DIFFICULT PROCEDURES TO OBTAIN THE REQUIRED OFFICIAL PAPERS TO FINALIZE ANY PROJECT IS NOT A PLEASANT JOB BY ANY MEAN SOME INVESTORS MIGHT GIVE UP PROCEEDING IN THEIR PROJECTS AFTER FACING HARD EXPERIENCE

CENTRALIZATION

MAJORITY OF THE GOVERNMENTAL OFFICIES ARE LOCATED AT THE CAPITAL,WHERE DECISION ONLY COULD BE TAKEN, ACCORDINGLY MORE WASTE OF TIME AND EFFORT

INFRA STRUCTURE

IN THE ABSENCE OF WELL DEVELOPED INFRA STRUCTURE AT A CERTAIN STANDARD,WILL TREMENDOUSLY EFFECT BADLY ON INDUSTRY DEVELOPMENT FOR ONE EXAMPLE REPETITION OF ELECTRICITY SUPPLY INTERRUPTION,WILL CREATE A REMARKABLE LOSS TO FACTORIES THAT NOT EASY TO BE COMPENSATED

MEMORANDUM

To USAID / IDS FILE

From John Bentley

Date Tuesday, 23 November, 1993

Re **INTERVIEW WITH.**

HATEM N. MOUSTAFA
CHAIRMAN
NIMOS ENGINEERING COMPANY
26, SHERIF STREET
1282, IMMOBILIA BUILDING
CAIRO

Date of Interview 23 November, 1993

Mr Moustafa stated that businessmen make decisions assuming that there is no judicial system which will enforce contracts quickly and effectively This is because of the delays involved in reaching judicial decisions Part of these delays is due to the use of courts by experts to "look into the matter" Another problem is doubt among businessmen as to the qualification of these "experts" For these reasons, businessmen assume that legally contracts are not worth the paper they are written on Therefore, they decline to take risks, insist on money being paid up-front rather than in installments or over time

There is also a feeling that agreements with the government, businessmen have no recourse and that the government have all the cards

Similarly, in customs cases, when the goods come in and customs officials insist on a settlement, businessmen simply pay rather than contest the matter because they believe there is no quick way they can obtain an injunction They also believe that there is no affective written instrument regarding customs which will protect them Finally, a big problem is that laws and regulations are often drafted in an incomplete matter, where in certain old regulations are superceeded but others are over looked and left standing This, he believes is due to lack of an efficient and effective means of determining all of the regulations which apply to a specific subject Thus, the lack of an effective legal information system adversely affects the government as well as private business

MEMORANDUM

TO John Bentley

FROM Yehia M Selim

DATE Tuesday 16 November, 1993

RE USAID/ Comments from interviewees

Dear John

Mr Abul Ela gave me three reports from two lawyers and a businessman whom he interviewed in Alexandria They wrote him back some of their comments these comments could be summarized as follows

1 **Omar El-Hadidy, Esq**
2 Horia Road- Alexandria

Mr Hadidy practices in Alexandria and he is registered before the Court of Cassation He believes that in light of the fact that Egypt faces severe international competition to attract investors it must reform its legal system Aside from known bureaucratic problems, he mentions litigation as a painful experience for investors It is slow, courts are overloaded and laws are conflicting, enormous and difficult to follow for investors lawyers and courts He also mentions that Arbitration so far is not a cure as it is difficult to enforce Arbitral awards He recommends nevertheless to use Arbitration more and hopes that the new draft law for Arbitration provides a solution for this problem Mr Hadidy also believes

that the tax system in Egypt is very complicated and it is quite impossible for investor to know in advance what is his exposure He explains how the problem gets even worse when the investor decides to check his file at the tax department as different tax offices then start to write each other asking for information on the file This process takes at least six months, while the same could be done in minutes if there is a computerized tax accounting system

In addition, he mentions that tax rates are very high and when the tax holiday given under the investment law is over, many investors consider to leave the country because of those high rates He mentions an example where some investors hired him to advise on the Egyptian legal system and their first question was Is it true that a tax law was issued with a retroactive effect ? He says that although we all know that the answer is that this has actually happened he tried to comfort them and convince them that this will not happen in the future but, nevertheless, this was one of the major reasons for them not to invest in Egypt

Mr Hadidy also believes that labour laws are one of the major impediments to investment in Egypt and he mentioned some of the famous problems of labour law

2 **Adel El-Far, Esq**
2 Horia Road- Alexandria

Mr El-Far believes that investors hesitate to invest in Egypt, although it has all what is needed for good investment due to the existing legal system which was introduced during the totalitarian social regime He gave the examples of labour laws and how it favors labours and increases the cost of production He also addresses the tax problems in general Mr El-Far also addresses the problems of delayed litigation, such as untrained judges and insufficient means He believes that high court fees should be reduced to reasonable limits and corrupt bailiff departments must be modernized and reformed

In concluding his notes, he makes the following recommendations

1- Improve court houses and facilities
2- Train judges and establish an effective system of incentive and punishment
3- Revise court fees and make them more just
4- Improve the current micro-film system used in courts as it causes in his opinion, many problems and does not include old cases before it was started
5- Insure that each court secretary has a place to work near the Chambers of his court and to

provide adequate facilities for the safe keeping of case files

3 **Mr Khairy Fawaz, a businessman**

Mr Fawaz states that obstacles of investment in Egypt and competitiveness of Egyptian products abroad are as follows

1- The big number of approvals required from various government entities to establish a business although they could be obtained from one entity

2- Labour laws and difficulties facing redundancy of employees

3- Slow justice and un-enforceability of judgments specially on the government and public companies

4- Sales tax and its effect on the liquidity of producers

5- Continuous increase of prices of utilities

6- Annual bonuses to employees and increases of wages forced by the government which increases cost of production

7- Continuous modification of custom duties on raw materials and the delays in paying back the temporary custom duties paid by producers under the draw back system

8- The state control of maritime transportation and the monopoly of its companies which increases transportation cost

9- The state does not give any favorable tax treatment to exporters and keeps a very complicated system for export control

10- Lack of trained workers and their low productivity

11- High tax rates and Arbitrary practices of the tax authorities

MEMORANDUM

FROM Sherif El-Atfy

TO Yehia M Selim

CC John Bentley

DATE November 29, 1993

RE **Some of the legal problems that is found in the courts of the South of Egypt (El-Menia) A report prepared by Joseph Morcos after meeting in person with**

1 Mr Fathi Mohamed Yousef (lawyer and a previous deputy of the lawyers bar in Menia) (located at Adli Yakan Basha St)

2 Mr Fouad Daniel (lawyer) (located at Adli Yakan Basha St)

3 Mr Ismail Hassan Schalakamy (lawyer) (located at Adli Yakan Basha St)

4 Mr Zarif El-Abar (lawyer) (located at Gomhoria St)

Most of the comments set out by the above mentioned lawyers is a repetition of the ones set out in my previous memorandums However, there are some new views stated by the said lawyers which are as follows

First **<u>The preparation of lawyers</u>**

The reason for most of the problems and obstacles that the lawyers face during their work are caused by the lawyers themselves since most of them lack the required expertise and the knowledge of the existing laws

Therefore, according to the above mentioned lawyers

1 The lawyers bar association must before registering lawyers at the Bar, prepare them in both practical and academic manner, by setting up intensive training courses for them

2 The lawyers bar association must refuse any of the judges or prosecution men who want to enlist as lawyers after leaving their positions if it is proven that their dismissal was resulted for their corruption

Second **<u>The procedural and legal problems</u>**

1 Certain directives should be issued as to permit for lawyers to receive official copies from both the police and prosecution office report

Instead of printing by hand all the said reports which
- is a great waste of time

2 The enforcement of the judgements issued from the courts must be organized by a special authority which shall be responsible for its enforcement in a small period of time and subject to a judge supervision

3 The ministry of justice must reduce the charges payable when filing a case and abolish totall to additional charges

MEMORANDUM

FROM	Sherif El-Atfy
TO	Mr John Bentley
DATE	December 7, 1993
RE	Some of the legal problems that is found in Mounofia A report prepared by Mr Tarek Zahran after meeting in person with A) Walid Abu Taleb (lawyer) B) Farouk El-Mahalawi (lawyer)

Most of the comments set out by the above mentioned lawyers is a repetition of the ones set out in my previous memoranda However, there are some new views stated by the said lawyers which are as follows

First The enforcement of judgements

The problem is raised concerning the enforcement of civil judgements, since the police who enforce the court judgements, do not have a incentive to function this task in a complete way

Moreover, the said police force faces a lot of difficulties in enforcing some kind of judgement (e g retaking of land by force), due to the reason that it does not have enough force to enforce those said judgements, and even if it has enough force there is the fear of revenge from the defendants

362

Second Judges

The problem concerning judges, is that some judge depend in issuing their judgements on what lawyers state in the pleading only, and do not have enough time to look into the documents of the case, due to the fact that most of the courts sessions have many cases that the judge is supposed to look into, which is a very hard task to him and sometimes impossible

As a result, the said lawyers, ask that the juridical supervise on judges must as a principle rule supervises the judges and punish them on their defaulted judgements

MEMORANDUM

FROM Sherif El-Atfy

To Yehia M Selim

Date November 25, 1993

CC John Bentley

RE Restructing the juridical system in Egypt

A report made by Mohamed Mostafa after meeting in person with both Mr Ahmed Abdel Fatah (lawyer) located at 5 Saad Zaghloul st (referred here below as first lawyer) and Mr Mahmoud E-Hawary (lawyer and general trustee of the lawyers Bar in Fayoum) referred here below as second lawyer

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First Lawyer

The comments set out by him regarding the above mentioned subject is as follows

Initially speaking, the starting point with which the restructing of the juridical system is supposed to start with is the judge himself who enforces the rule of the law in addition to some laws which I will set aside for now

In my point of view, the judges

1 must be well prepared to proceed the functions required from them as judges It is not enough that they reach the age of 30 years to be transferred from the prosecution office to the juridical system There must be special colleges for the judge to study and be prepared for the job

2 must not preform their duty solely unless he is rated as a court chairman level -A-, and has passed as a member in the higher courts circuits for a period of several years even if

this process needs the changes of the law arranging it as to allow that lower courts judge's are rated as level -A- The important point here is to apply justice before the financial or promotion considerations

3 should have all their financial problems and/or difficulties solved and brought out of their minds, so that all their concern is to apply only the rule of law and/or justice

4 must attended yearly, practical training courses in some or even all the special laws, e g public notary law etc They should organize meetings and presentations with people specialized in public notary work, Phrenzik science and jurist

5) must be distributed all around Egypt The point is that it is better for justice to be served that a judge is located in a city outside his own, in order not to be subject to any family or any kind of influence that can affect his judgement

6) should be subject in their appointment, to different opinions from several departments Also, the psychological medicine must have a say in his appointment from the beginning

7) must be subject to intensive training in a special area of law, e g civil, commercial, criminal, etc , for a period of two years or more before being selected as a judge

Second Lawyer

The comments set out by him regarding the above mentioned subject is as follows

1) Initially the problem of notices and how it is done the summoners responsible for its proceedings He noted that there

must be another method beside the summoners to inform the parties through the employers court office outlining the claimant, number of the case, and the date is scheduled to be heard and where Moreover, the court should check that the said notices have been received by the parties Also, there must be a severe punishment against the summoners who violates the law in this regard and whom did not follow the right proper channels

2) He raised the issue of guarantees which the law must include in accordance with the lawyers and disputed parties in proving their defense statements and/or pleading in the court memo, and stressed upon the importance that the judge should allow them to prove their defense in the said court memo

Also, he stated the importance that the court writer should write the statements spoken in the court in clear and readable letters and a method must be found to help both the lawyers and dispute parties to prove their statements in the court, e g by cassette tapes, computer or any tool that can achieve this task

3) He also, raised the subject of orders issued by the judge, and asked that the methods that the civil Egyptian Procedure Code set for the appeal against these kind of orders must be changed Furthermore, the judge must not refuse to issue this order once the condition laid down by the said code is found, so that it does not become a useless way of litigation and prolongs the disputes

Those are the points mentioned by the above lawyers regarding the obstacles that are found in the juridical system in Egypt and which results in reducing the speed of concluding the case in courts

MEMORANDUM

FROM Sherif El-Atfy

TO Yehia M Selim

CC John Bentley

DATE November 28, 1993

RE Some of the legal problems that is found in the Courts of the North of Egypt
A report prepared by Mr Abdel Raouf (lawyer)

First In relation to the public notary and the working proceeding related to it

1 Special regulations organizing the issuing of power of attorneys must be laid down, since, according to the present status, it is easy to fraud power of attorneys Mr Abdel Raouf suggests that no person should be allowed to issue a power of attorney on behalf of someone else, and that proof of a certain person can be either through his identity card or as a replacement, two witnesses incase the said card is lost

2 The new issued law concerned with the public notary and its new charges, will increase the register charges approximately three times more than what it was before As a result, 90% if not more from the public will stop the process of entering in the proceedings of registering their titles A process which is very needed for the stability of titles in Egypt The only way to correct all this at present is by abolishing the above mentioned amendment concerning the increase in charges Furthermore, there should be more flexibility in the register proceedings, and the part of publishing required by the law for the achievement of the final step in registration in the official newspaper must be abolished

3 In accordance to the area measurement authority which is affiliated to the ministry of justice, all its old maps must be face lifted, so that it relates to the present situation of the land fallen under its jurisdiction, for e g land locations land measurements etc

Second In relation to the Phrezik science office and the different proofing methods

1 Special regulations must be laid down in the Phrezik office for the speeding of the procedures involved in the appeals related to fraud, concerning deeds or documents This regulations must either help to improve the existing offices or open new ones in the courts, and not just excluding them in cities

2 Also regulations must be laid down for hospitals, and the powers invested in them concerning the battery offense, to produce medical reports for injured people, so that these said reports will be issued upon true facts and under strict supervision, for their importance as methods of proof in the court

Third In relation to police stations

1 There should be an increase in the number of offices in police stations, and they must be given the job of investigating and drafting police reports, instead of the less qualified deputies that are doing this job at the present time

2 The law must give the citizen the right to bring his witness and the right for them to speak and to be heard since according to the law at present this right is subject to the investigator to determine

MEMORANDUM

TO John Bentley

FROM Yehia M Selim

DATE Monday 15 November, 1993

RE Interview with Aly El-Tahry and Alaa Saba

Dear John

-- and Alaa believe that their major problem is bureaucratic approach of government officials They had many problems to register their representative office in Egypt Registration was delayed for long time for security clearance that could be easily done in a day They are now facing more difficulties when they decided to establish a portfolio management company under the investment law The investment authority will not approve a project of this nature as it says that such company should be formed with the Capital Market Authority, which will not give any of the investment law privileges

They are considering to form the company as an offshore company in a tax haven and operate their business from there They believe that through this short-sighted approach Egypt could loose the opportunity to stimulate its Capital Market though this type of companies which could help in creating a strong Capital Market

The also believe that the new Capital Market Law and its executive regulations are vague in many respects, such as the tax holiday given to public companies were the company could be subjected to taxes at one time and then exempted again for the mere fact of the decrease of the number of its shareholders below a certain limit

MEMORANDUM

To USAID / IDS File

From John Bentley

Date Monday, 20 September, 1993

Re **INTERVIEW WITH:**

MOHAMED OZALP
GENERAL MANAGER
MISR INTERNATIONAL BANK, S.A.E. (MIBANK)
54 EL BATEL AHMED ABDEL AZIZ ST., MOHANDESSEEN
GIZA, CAIRO

Date of Interview

Mr Ozalp stated that the main problems concern the costs of registration of mortgages at 1 5 percent of the secured amount in the length of time it takes to perfect such mortgages -- i e approximately 6 months

Also a serious problem is the enforcement of a mortgage -- i e , foreclosure -- takes about 5 years

Another problem is that the laws do not provide enough penalties to dirtier bad cheques

Another problem is that often in court cases, the debtor will offer to pay the entire principle but plea that he already paid enough interest and judges will often agree and not require him to pay further interests This basically means that banks lose the benefit of their bargain -- i e , payment on time and interest over time for delayed payment

He also indicated the problems with using warehouses to hold security and questioned whether it will always work Another problem is that there is no flexibility in security with respect to personal property since it has to be possessed

Question What has been the experience on enforcement of commercial mortgages?

MEMORANDUM

To USAID Legal Assessment File

From John Bentley

Date Tuesday, 9 November, 1993

Re **MEETING WITH:**

MR. ADEL EL SENOUSSY
GENERAL MANAGER
LEGAL DEPARTMENT
EGYPTIAN AMERICAN BANK, S.A.E.
4 HASSAN SABRI STREET
ZAMALEK, CAIRO

Date of Interview 9 November, 1993

1 Mr Senoussy cited as a major problem the high fees required for registering a mortgage (1 5% of the principal amount of the loan secured) He stated that nobody -- including the Government -- benefits from these high fees because lenders and borrowers would do everything to avoid using them by avoiding registration or at least delaying it until the last possible minute This means that ultimately the government does not collect the fees in most cases, and lenders do not have the protection of mortgage In many cases, the bank will do everything up to the point of registration -- apply for registration, go through the title search -- except actually register, then, it may take a power of attorney from its client to register the mortgage or even sell the property But these devices are not fully satisfactory since the mortgage is not perfected until registration In the meantime, the property can be sold

2 The banks like and depend heavily on commercial mortgages which require simple registration in the commercial register, provided that the bank has been approved for commercial mortgages by the Central Bank

3 Another big problem is the delay in obtaining judgments even in a simple case, such as a suit on a clear unequivocable letter of guarantee one case involving the bank took 5 years to obtain a judgment at first instance Now the case is in its third year of appeal

4 It is easy for the defending lawyer to obtain postponements and the courts are all too ready to grant them because of their huge case load which can range between

150 and 450 in a single day

5 Another problem is that the court considers that the bank rate of interest stops once the bank goes to court Thus, if 15% interest, say, is charged under a loan agreement, once the bank goes to court to collect any unpaid payments of principle and/or interest, that interest rate is suspended and the legal interest rate under the Civil Code of 5 to 7 percent takes effect The theory is that the loan agreement itself is suspended or disrupted by the action of going to court In other words the agreement is not in effect and the party is going for compensation rather than enforcing an existing contract In addition, under the civil code total interest may not exceed the amount of the principle, although banks are exempted of this because of "commercial custom"

6 When the bank does gets a judgment, usually the defendant delays by obtaining injunctions against enforcement and further delays

7 Another problem is the high court fees Mr Senoussy cited a case where they had obtained a judgment for 2 million Sterling Pounds To obtain an execution order they had to pay court fees of over L E 600,000 In another case, very prominent individual in the Cairo business community who signed promissory note to the bank, simply claimed that they were forgeries This required the court to appoint experts to determine the claim Even if they are found to be accurate, the party claiming forgery need not fear any retribution by the courts or the criminal law

8 Finally, Mr Senoussy cited the problem of increasing corruption both in the bureaucracy and in the judiciary because of low salaries

Mr Abul Ela later elaborated on the corruption problem to note that corruption has several effects all of which distort the decision making process with respect to the private sector

(a) The government official who is corrupt will make a decision because of the financial or monitory reward which he received from making the decision

(b) Many officials fear being seen as corrupt and therefore refuse to make decisions which will benefit a private sector company or will delay them

(c) Other officials will create committees which will make the decision thereby taking the responsibility off of the official's shoulders, but which will require time and effort For example, in a case in our office, a foreign shareholder transferred shares of an Egyptian company which he owned to a U S company An Egyptian purchaser then bought the shares of the U S company and liquidated it causing the Egyptian company shares to be

distributed to him When, a shareholders meeting was called for, the Egyptian Company, the Companies Department declined to permit the meeting to go forward until the Exchange Control Authorities certified there was no violation of Egypt's exchange control regulations Ultimately, the committee formed by the Chief of the Exchange Control Department agreed that there was no violation of the currency regulations and so informed the Companies Department that the meeting could proceed while favourable, this decision to allow the shareholders meeting to proceed took over one year to reach Meanwhile, the company and its assets had sat idle all during this time waiting for a shareholders' meeting which would elect a new board of directors to move forward

9 As far as the banking law is concerned, Mr Senoussy said that there were few problems except recently the law was amended to require that any general manager of a bank must be approved and accepted by the Central Bank He pointed out that even under Egypt socialist period such interference in a bank's operations were not sanctioned This was an over-reaction, Mr Senoussy felt, to the BCCI scandal

10 The problems of the bankruptcy laws are that bankruptcy proceedings which should take only several weeks or only a few months in fact take years, at the end of which there is nothing to distribute to the creditors Controls on receivers are inadequate which sometimes encourage corruption Finally, Mr Senoussy cited the problem that in recent times laws has been badly drafted For example, recent capital market law is very difficult to read and follow His bank would like to participate in the capital market but the new law imposes many obstacles

MEMORANDUM

To USAID / IDS FILE

From John Bentley

Date Sunday, 28 November, 1993

Re **INTERVIEW WITH:**

MARCELO GIUGALE
RESIDENT ECONOMIST
THE WORLD BANK
1191 CORNICHE EL NIL ST.
15TH FLOOR, BULAK, CAIRO

Date of Interview 17 November, 1993

Mr Giugale stated that the World Bank has conducted over 500 interviews with businessmen to identify constraints on private sector investment and development

In addition, the World Bank conducts a monthly survey of a sample of 50 companies similar to a study that the Bank does on a regular basis for some 20 countries The Bank has discovered that there are considerable constraints within the Egyptian regulatory environment and that the cost to a businessman or business in learning how to deal with the system on regular basis to minimize ongoing costs itself represent a substantial investment in time and money He referred to such costs as "sunk" costs Those who had learned the system did not necessarily support changing the regulatory environment since it benefitted them by raising the costs for competitors to enter the market In other words, the costs in learning the system keeps out competition for those who are already in

He recognized that while there were difficulties with the commercial and land registers, he felt that a much bigger problem is that very few companies within the system have a "decent" balance sheet because of the lack of detailed and uniform accounting principles for the private sector (Mr Abul Ela and Mr Yehia Selim pointed out that the government does have the Unified Accounting System For the Public Sector) Mr Giugale suggested that for example there were no accounting standards to govern the appreciation of assets and that balance sheets where not commendable because of the lack of unified accounting standards and methodology

Mr Giugale pointed out that the labour laws are a major constraint on companies entering the market especially foreign investors and especially Japanese because of the difficulty in laying off workers during economic down turns or firing incompetent workers

He also stated that intellectual property rights in Egypt currently were not sufficient to protect technology and that foreign investors were therefore reluctant to transfer technology to Egypt He referred specifically to an adequate protection for computer software under the copyright laws and to the lack of patent protection

Mr Giugale was surprised to learn from Mr Abul Ela that there are price controls on imports, that is, importers could not charge and retailers could not charge a certain percentage more than the cost of the import Mr Abul Ela pointed out that there were hundred of decrees regulating this area and that it was very difficult to find out what the rules where because of this proliferation of decrees

Mr Giugale stated that intellectual property rights in the field of trade marks, copy rights and patents are real restraints to investment and transfer of technology to Egypt

He also pointed out the lack of anti-trust laws and ongoing collusion in restraint of trade particularly with respect to banks who all set identical charges for services not to mention interest rates

Mr Giugale also mentioned the highly restrictive foreign trade regime consisting of very high tariffs as well as non barrier tariffs to imports which restraint private sector development

He stated that their surveys showed that very small business did not grow bigger because small businessmen did not feel that their partnerships would be effectively endorsed

MEMORANDUM

To USAID / IDS FILE

From John Bentley

Date Sunday, 28 November, 1993

Re **INTERVIEW WITH:**

DR. MOHAMED ABOUL-ENEIN
DIRECTOR OF CAIRO REGIONAL CENTRE
FOR INTERNATIONAL COMMERCIAL ARBITRATION
3 ABU-EL-FEDA ST.
ZAMALEK, CAIRO

Date of Interview 18 November, 1993

Dr Aboul-Enein pointed out that Sections 501 through 513 of the code of procedures governing arbitration are far from being favorable or adequate for commercial arbitration

He stated that Egypt had joind the 1958 New York Convention on Enforcement of Foreign Arbitral Awards as early as 1959 and that this was a secure part of Egyptian law

He also stated that there was a pressing need for reforming Egypt's arbitration laws following economic liberalization In June of 1985, the Cairo Regional Centre suggested to the Ministry of Justice that a new law be drafted on international commercial arbitration based on the UNCITRAL model law on the subject Accordingly, a committee was formed to draft a new law chaired by Professor Mohsen Shafik

Dr Aboul Enein expects passage of the new law before the beginning of the new year Among other things, the new law will end the problem of claims under Code of Civil Procedures, section 502 that the choice of arbitrators by a third party is contrary to public order The new draft law confers on the parties the right to agree on how arbitrators will be chosen as well as the place and language of arbitration The new law will give the national courts a minimum degree of supervision and will empower the Cairo High Court of Appeal to be the appointing authority unless the parties chose another appointing authority Moreover, the arbitrators award will be final and there will be no means to the courts to change it The parties will only be able to submit reasons for nullifying the award

In addition, arbitration will be required to be conducted according to certain fundamental principles Otherwise, arbitration tribunals and the parties will be free to determine the procedures For example, if under the fundamental principles will be as follows

1 Each party will be given the opportunity to be heard and to state a defence

2 All evidences and proof must be conveyed to the other party which will have an opportunity to contradict such proof

3 Arbitrators will be independent and not have any relationship to parties

The new law will apply to "commercial" arbitration The new law defines "commercial" as including any "economic transaction"

Importantly, the law will apply to domestic as well as international arbitration and will abrogate sections 501 through 515 of the code of civil procedures which currently govern arbitration in Egypt The law also provide simplified procedures for enforcement

MEMORANDUM

To USAID / IDS FILE

From John Bentley

Date Wednesday, 17 November, 1993

Re **INTERVIEW WITH:**

OMAR MOHANNA
DEPUTY GENERAL MANAGER
& HEAD OF CORPORATE FINANCE AND INVESTMENTS OPERATIONS
MISR IRAN DEVELOPMENT BANK
NILE TOWER BUILDING
21/23 GIZA STREET
GIZA, CAIRO

Date of Interview Tuesday, 16 November, 1993

Mr Mohanna stated that leasing is still not adequately protected under Egyptian Law and that adequate protection for lessors that was the purpose of the draft law prepared in 1986 by the Ministry of Economy and Messrs Sayed Omar, Legal Counsellor to the Ministry, and Mr Mahmoud Fahmy

The main problem addressed by the leasing law is the problem often found in Civil Law countries according to Mr Mohanna that the lessor is not protected from third party claims on the property which is in the possession of the lessee

Another problem is that the Capital Market Authority has now written in an unreasonably large amount as the required capital for a leasing company under the law

MEMORANDUM

To USAID Legal Assessment File

From John Bentley

Date Tuesday, 9 November, 1993

Re **INTERVIEW WITH:**
MAHMOUD M. FAHMY
LEGAL ADVISOR - ATTONEY AT LAW
CORPORATE & INVESTMENT LAW EXPERT
3, ABUL FEDA ST., 14TH FLOOR
ZAMALEK, CAIRO

Date of Interview 8 NOVEMBER, 1993

Mr Fahmy is a private lawyer and former Vice President of the Council of State and Legal Advisor to the Ministry of Economy

Mr Fahmy complained about many practical difficulties regarding lack of cordination among the capital's market law, the public sector law, the companies law 159, etc For example the executive regulations of the new capital's market law incorporate a number of provisions which are almost identical to companies law 159 provisions and those of its executive regulations

He pointed out that the fees for establishing companies dealing in the capital market are prohibitive For example, establishing an underrunning company will cost a total of L E 55,000 -- in fees to be paid to the Capital Market Authority Thus, there is a fee to obtain the approval to establish the company in addition to a separate license fee and separate registration fees all of which together total about L E 55,000 -- Moreover, he suggests that the fees violate the constitution which establish the principle of the unity of the government budget and the capital markets law attempts to exempt the Capital Markets Authority from this unity In other words, most fees and other government charges must be paid to the treasury rather than to the Authority which collects them

Mr Fahmy pointed out that the equipment leasing law was killed in 1986 after report by the technical bureau of the Ministry of Justice charged that it was an "imperialistic" law which will enable foreign companies to take over the economy of Egypt The law was meant to address a number of problems existing in Egypt's laws effecting leasing, such as Civil Code Article 240 and certain tax problems He pointed out that Mr Hazem Zaki Hassan, a prominent accountant and Mr Omar Mohana of Misr Iran Development Bank, helped in preparing the original draft law

MEMORANDUM

To USAID / IDS FILE

From Yehia Selim

Date Sunday, 28 November, 1993

Re INTERVIEW WITH,

AHMED FOUAD EL GHANNAM
FORMER DIRECTOR, NATIONAL CENTRE FOR JUDICIAL STUDIES
HELMY & HAMZA (BAKER & McKENZIE)
56 GAMEAT EL DOWAL EL ARABIA STREET
MOHANDESSEEN, GIZA

Date of Interview

Mr El Ghannam stated that the Ministry of Justice is attempting to liquidate the Centre They have already reduced the course of prosecutors from one year to six months and the Ministry of Justice refuses to allow the Centre to participate with centers in other Arab countries

He stated that the course for Omani judges is the last to be offered for foreign judges

Indeed, some prosecutors no longer go to the Centre but are sent to the Centre of Criminal Studies at the Ministry of Social Affairs

Moreover, the Minister of Justice opposed the establishment of a regional center for judicial studies among Arab countries Mr El Ghannam believes that the best way to improve the quality of judges is to improve the quality of university law training of law students

He stated that it was at one time the Centre conducted computer courses for administrative assistance and secretaries to judges but all of this has stopped

MEMORANDUM

To USAID / IDS FILE

From Yehia Selim

Date Sunday, 28 November, 1993

Re **INTERVIEW WITH:**

HAMDY LASHEEN
HEAD OF THE GENERAL LITIGATION SECTION
LEGAL DEPARTMENT
MISR INTERNATIONAL BANK, S.A.E. (MIBANK)
54 EL BATEL AHMED ABDEL AZIZ ST., MOHANDESSEEN
GIZA, CAIRO

Date of Interview

Mr Lasheen contradicted other findings that the courts restrict interest to the civil code amount from the time that the court case is filed by a bank He stated that full interest is amended on the agreement and the courts also award compound interest (that is, interest on interest)

This however contradicts earlier statements by the General Manager of MIBANK regarding the unwillingliness of courts to award interest after the case has been filed