

## NOTE

# THE DEVELOPMENT OF FOREIGN INVESTMENT LAW IN EGYPT AND ITS EFFECT ON PRIVATE FOREIGN INVESTMENT\*

## I. INTRODUCTION

Since 1973, the Egyptian government (GOE) has actively sought to attract foreign investment. Heavy reliance has been placed on the creation of a legal framework sufficient to induce foreign investors to view Egyptian opportunities positively. The Foreign Investment Act, Law 43, as revised by Law 32 (and subsequently interpreted by Executive Regulation No. 375), now provides a reasonable framework for foreign investment projects in Egypt. Two principle types of investment activities exist within the scope of Law 43. The first type of project is located in a Free Zone and is designed to manufacture products for sale or shipment outside the country. The second type of project is located within the domestic marketplace and is designed to manufacture products for sale locally. Indeed, the Law requires that products of these inland (or import-substitution) projects be sold within the country.

This Note emphasizes the impact of Law 43 on the second type of investment, the inland projects. Many of the Law's provisions will have an equal effect on both types of projects and where different treatment is accorded a Free Zone project this will be pointed out for the purpose of comparison. However, the Law provides some exemptions and guarantees to Free Zone activities which are outside the scope of this Note. It is the general opinion of the vast majority of persons with whom the author has spoken that inland projects hold the most promise for a foreign investor. This consensus is based on a number of factors including: Egypt's domestic market of 40 million people, the largest in the Middle East; the GOE's desire (expressed both in Law 43 and in recent public appearances by its officials) for an increase in the number of inland projects; and the apparent availability of large amounts of Egyptian capital for joint venture projects aimed at the domes-

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tic market. Accordingly, this Note is primarily limited to a full and frank discussion of the Law with regard to inland projects.

Part II of this Note reviews the historical development of the legal framework for foreign investment in Egypt. This includes the effect of President Nasser's regime in the 1950's and 1960's, and President Sadat's virtual reestablishment of a foreign investment policy during the first years of the 1970's as codified by Law 65 of 1971 and Law 43 of 1974. The present-day legal framework for foreign investment projects is analyzed in Part III and major improvements to the original Law 43, pursuant to amendments contained in Law 32 of 1977, are explored. A discussion of the following topics is included: the investment approval considerations by the GOE; the guarantees, privileges and exemptions available to approved projects; and both the positive and negative aspects of the amended Law 43 as they bear on a project's success. Part IV of the Note presents a summary of improvements to Law 43, which include: a single free-floating exchange rate; an expansion in the range of permissible activities; alternative methods available for dispute settlement; exemptions from burdensome provisions in the labor and company laws; greater flexibility in the use of foreign currency bank accounts; and the clarification of existing tax laws.

## II. THE EVOLVING LEGAL FRAMEWORK OF FOREIGN INVESTMENT

Prior to the Free Officer's Revolution of 1952, foreign investors in Egypt enjoyed the unfettered control of all major financial and commercial sectors of the economy.<sup>1</sup> The legal and financial institutions which serviced this control of the economy were fashioned primarily after systems existing in France and Great Britain.<sup>2</sup> However, with the Revolution of 1952 and the proclamation of Gamal Abdul Nasser as president of the new republic, private investors in Egypt began to witness a pervasive nationalization of industrial, commercial, and agricultural activity which would continue for the next two decades.<sup>3</sup> As Arab socialism spread, the

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<sup>1</sup> Salacuse, *Egypt's New Law on Foreign Investment: The Framework for Economic Openness*, 9 INT'L LAW. 647, 648 (1975).

<sup>2</sup> *Id.* at 648.

<sup>3</sup> In 1954 Nasser forced the removal of British troops from the Canal Zone of Suez, and in 1956 the Canal was nationalized. Additionally, in 1956 the personal and real property of all British and French citizens was seized by the government for public use. This included all of the major banks in Egypt. Beginning in 1960, what little private sector activity remained became tightly controlled by the expanding socialist bureaucracy. *Id.* at 648.

public sector flourished and the private sector waned.<sup>4</sup> Unfortunately, economic, technological, and social development lagged as the public sector was unable to provide the necessary impetus for President Nasser's dream of a national prosperity free of foreign influence.<sup>5</sup> With the death of Nasser in 1970 came the realization by his successor, President Anwar el-Sadat, that a redefined foreign investment policy was critical to a strong and broad economic foundation.<sup>6</sup> Moreover, foreign capital and expertise were sorely needed for Sadat's goal of establishing Egypt as a major center of finance in the Middle East.<sup>7</sup>

#### A. *Reestablishing a Foreign Investment Policy: Law 65*

Law 65 of 1971<sup>8</sup> was a tenuous first step toward establishing President Sadat's new policy.<sup>9</sup> The law created the General Authority for Foreign Investment and Free Zones<sup>10</sup> as the main implementing entity. To this day, the General Authority is responsible for approving foreign investment projects and administering applicable laws.<sup>11</sup> Law 65 sought to establish a system of incentives, guarantees, and privileges for foreign investors in Egypt, and it created a legal framework for the establishment of Free Zones where export-oriented industrial and financial projects could be established. While a few projects were begun, the law contained too many shortcomings to attract a significant number of investors. After a lengthy and candid appraisal by the Egyptian government, Law 65 was repealed in 1973. In its place, President Sadat issued Law 43.<sup>12</sup>

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<sup>4</sup> Roy, *Private Industry Sector Development in Egypt: An Analysis of Trends, 1973-1979*, 1 J. S. ASIAN AND MIDDLE EASTERN STUDIES 29 (1978).

<sup>5</sup> D. Roy, *Economic Liberalization and the Private Industry Sector in Egypt* (April, 1977) (unpublished manuscript at Center for International Affairs, Harvard University).

<sup>6</sup> *Id.* at 7.

<sup>7</sup> Roy, *supra* note 4, at 30.

<sup>8</sup> Enacted by President Sadat on September 23, 1971, and published in the Official Gazette, September 30, 1971.

<sup>9</sup> Law 65 resulted from Sadat's disenchantment with the policies of Nasser, his concern for Egypt's mounting economic problems, and his realization that part of the solution lay with the rapidly accumulating oil revenues of several Middle East nations. Salacuse, *supra* note 1, at 649. However, a foreign investment policy, per se, did not emerge until 1973, when Sadat wrote his historic October Paper, setting forth his concept for "infitah" or openness and inviting foreign investors to actively participate in building Egypt's socioeconomic future. Roy, *supra* note 5. For the full text of the October Paper, see *al-Ahram al-Iqtisadi*, supplement, May 1, 1974.

<sup>10</sup> Hereinafter cited as the General Authority.

<sup>11</sup> ARAB REPUBLIC OF EGYPT, THE GENERAL AUTHORITY FOR INVESTMENT AND FREE ZONES, LEGAL GUIDE TO INVESTMENT IN EGYPT 45 (1977).

<sup>12</sup> ARAB REPUBLIC OF EGYPT, GENERAL AUTHORITY FOR INVESTMENT AND FREE ZONES, (1974). Published officially in issue No. 26 of June 27, 1974, of the *Jarida Rasmia* (Official

### B. *Improving the Legal Framework: Law 43*

The initiation and passage of Law 43 marked the true beginning of Egypt's "Open Door" policy. The goals of this law were to expand the types of desired investments and to provide incentives and guarantees beyond those previously afforded foreign investors. Policy makers began actively to encourage foreigners to consider an investment in Egypt's economic future.

The initial response was encouraging. Viewing Law 43 as a significant improvement over Law 65 and envisioning access to both an inexpensive labor force and a virtually untapped market of 40 million people, many investors visited Egypt to explore the details of the investment situation.<sup>13</sup> They were not pleased with their discovery. Ambiguities in the law, insufficient fiscal incentives, administrative confusion, and the political considerations of the Egyptian-Israeli conflict combined to produce a rather poor picture, reducing the potential investors' initial optimism. Many proposed projects were either abandoned or postponed.<sup>14</sup>

By the same token, Egyptian officials were uncomfortable with what they perceived most investment proposals to be; namely, thinly-veiled attempts to peddle technology as quickly as possible, receive a 25-40% return on the investment each year, and exist the country in no more than five years. Such an approach was not considered to be in the best interests of Egypt's newly-established plan for socio-economic development.<sup>15</sup> Each side had much to learn about the other.

In fact, the problems incident to the 1974 law were of sufficient magnitude to discourage most investments. The law listed such vague project titles as "industry, mining, energy, tourism, transportation and other fields."<sup>16</sup> No clear priority was placed on any

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Gazette). LAW NO. 43 OF 1974 CONCERNING THE INVESTMENT OF ARAB AND FOREIGN FUNDS AND THE FREE ZONES.

<sup>13</sup> Salacuse & Parnall, *Foreign Investment and Economic Openness in Egypt: Legal Problems and Legislative Adjustments of the First Three Years*, 12 INT'L LAW. 759 (1978).

<sup>14</sup> *Id.* at 760.

<sup>15</sup> See note 9, *supra*. Additionally, in a major speech presented in Alexandria, July 1974, President Sadat stated: "We have also adopted an open-door policy. This open-door policy is not only economic but also intellectual and psychological. As much as we are keen on securing for our country the material resources which enable it to conduct the building process, we should also provide the scientific and intellectual resources which enable people to promote themselves and perfect the building process." Salacuse, *supra* note 1, at 650 n.5 (citing The Egyptian Gazette, July 28, 1974, at 4, col. 1).

<sup>16</sup> ARAB REPUBLIC OF EGYPT, THE GENERAL AUTHORITY FOR INVESTMENT AND FREE ZONES, LAW NO. 43 OF 1974 CONCERNING THE INVESTMENT OF ARAB AND FOREIGN FUNDS AND FREE

area and no real guidance was provided by the General Authority. Given that the General Authority was the final arbiter of investment proposals, this lack of guidance during the planning stage was very unsettling to potential investors.

While most foreign companies' interests lay in production for the large inland market, Law 43 showed a clear preference for export-oriented projects.<sup>17</sup> Privileges and incentives accorded Free Zone projects were not extended to import-substitution projects.<sup>18</sup> For example, it was highly unlikely that inland projects could obtain locally the foreign exchange necessary for both debt servicing abroad and the repatriation of net profits unless they were designated as "basic" projects by the Authority. Yet, from 1974 to 1977, no such designations were granted.<sup>19</sup> Additionally, due to the imprecise wording of Law 43, the possibility existed that a dual rate of exchange would be applied to incoming (invested) and outgoing (repatriated) capital and equipment.<sup>20</sup> In 1974, Egypt had both an "official" or fixed rate of exchange valued at approximately LE 1.00 = \$2.50 and a "prevailing" or parallel rate valued at approximately LE 1.00 = \$1.50. The law stated that incoming capital was to be valued at the official rate. However, it was not clear whether outgoing capital was to be valued at the fixed rate or the parallel rate.<sup>21</sup> Thus, an investor ran the risk of having his invested capital valued at \$2.50 per pound and his repatriated capital valued at \$1.50 per pound, resulting in a loss of 40 percent on his investment. Furthermore, the provision in the law regarding the repatriation of profits did not mention what exchange rate would be applied.<sup>22</sup> This, too, caused great concern among investors<sup>23</sup> because there existed the same potential loss of 40 percent on an initial investment if two different rates of exchange were applied to incoming invested capital and outgoing profit.<sup>24</sup>

Tax incentives were usually either ambiguous or of no benefit to U.S. investors.<sup>25</sup> For example, the five-to-eight-year tax holiday

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ZONES AS AMENDED BY LAW No. 32 OF 1977, article 3(i). Published officially in Official Gazette, June 9, 1977.

<sup>17</sup> Roy, *supra* note 4, at 25.

<sup>18</sup> Salacuse & Parnall, *supra* note 13, at 763.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 764.

<sup>21</sup> *Id.* at 764-765.

<sup>22</sup> See Law No. 43 of 1974, *supra* note 12, at 15.

<sup>23</sup> Roy, *supra* note 4, at 22.

<sup>24</sup> Salacuse & Parnall, *supra* note 13, at 765.

<sup>25</sup> LAW NO. 43 OF 1974, *supra* note 12, at 11.

accorded an import substitution project's profits was forfeited if a non-Egyptian tax authority imposed a tax on these profits "as a consequence" of the tax holiday.<sup>26</sup> Since United States law required a taxation of profits on a direct Egyptian investment, and a tax holiday would result in increased profits, American investors feared that the U.S. tax would be viewed as a consequence of the Egyptian tax holiday. Egyptian officials added to the uncertainty by refusing to clarify this provision.<sup>27</sup> The investment law failed to specify whether distributed earnings would be exempt from the Egyptian General Tax on Income, even during the tax holiday period.<sup>28</sup> Moreover, while the foreign directors, employees, and consultants of export-oriented projects enjoyed a complete exemption from Egypt's individual income tax, the foreign staff of inland projects were faced with a severe rate of taxation on personal income received in Egypt, reaching a maximum rate of 95%. Apparently in order to recruit foreign staff for these import-substitution projects, companies had to guarantee salary bonuses, paid outside of Egypt, for each foreign employee to compensate for the salary loss which occurred within the country.<sup>29</sup> The situation clearly had become both bothersome and costly.

### III. THE INVESTMENT LAW TODAY: ITS IMPACT ON PROJECT DEVELOPMENT AND THE APPROVAL PROCESS

In response to criticism from abroad, Egyptian officials undertook a revision of Law 43 in 1976. After soliciting the advice of investors and a lengthy debate by the parliament, the government approved Law 32, amending Law 43.<sup>30</sup> While the original law's basic framework remains intact, a number of key provisions were added and most of the troublesome provisions were either clarified or eliminated.

#### A. *Investment Approval Considerations*

The Egyptian government now bases its decision on whether to approve an investment proposal by addressing three questions:

1. What is the nature of the invested capital?
2. To what projects will it be applied?
3. What organizational form will it produce?

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<sup>26</sup> *Id.*

<sup>27</sup> Salacuse & Parnall, *supra* note 13, at 766.

<sup>28</sup> LAW NO. 43 OF 1974, *supra* note 12, at 12.

<sup>29</sup> Salacuse & Parnall, *supra* note 13, at 766-67.

<sup>30</sup> For the English translation of the full text of LAW NO. 32, see note 16, *supra*.

After a preliminary definition of the term "Project" in article 1,<sup>31</sup> the framers of the new Law 43 respond to these questions in articles 2-4 by setting forth the criteria to be met by the investment proposal. What type of investment project is subject to Law 43 is, ultimately, a discretionary question left to the General Authority.<sup>32</sup> However, the Authority will utilize articles 2-4 as a framework for its decision.

### 1. *Nature of Invested Capital*

Article 2, as amended, requires that invested capital be either monetary or non-monetary in nature.<sup>33</sup> Monetary capital is defined as any free foreign currency, i.e., one which is easily convertible into other currencies. Subject to prior approval by the General Authority's Board of Directors, monetary capital may also take the form of preliminary research expenses, purchases of land, and reinvested profits.

The conversion of foreign currency into Egyptian pounds, and back again, will be made "at the highest rate prevailing and declared by competent Egyptian authorities."<sup>34</sup> As mentioned earlier, prior to the 1977 amendments, a high "official" rate was applied to imported capital while the lower prevailing rate was used for exported capital. With the passage of Law 32, foreign businesses became exempt from any application of the official rate. In January 1979, the Egyptian government completely abolished the official rate of exchange. All currency transactions are now based on a free-floating value for the Egyptian pound, formerly known as the "parallel" rate of exchange. Investors need no longer fear that a vexing policy of dual exchange rates might somehow be applied to them.

Non-monetary invested capital includes machinery, equipment, imported raw materials and commodity requirements which are necessary for the establishment or expansion of the project as well as intangible assets such as patents and trademarks. The provisions and policies on exchange rates which apply to monetary capital apply also to non-monetary capital.

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<sup>31</sup> LAW No. 32 OF 1977, *supra* note 16, at 4.

<sup>32</sup> *Id.*

<sup>33</sup> LAW No. 32 OF 1977, *supra* note 16, at 4-5.

<sup>34</sup> *Id.*

## 2. *Range of Permissible Activities*

The range of permissible activities has been expanded. Article 3 encourages the reclamation and cultivation of barren land as well as construction projects outside existing cities.<sup>35</sup> Government officials have promoted this goal in recent public appearances as well.<sup>36</sup> Beyond these two areas, article 3 lists "industrialization, mining, energy, tourism, transportation, and other fields."<sup>37</sup> Technical consultant activities are permitted if they are related to the range of activities outlined in article 3, are in the form of joint stock companies and have an Egyptian equity participation of at least 49%.

Egyptian officials have stressed that they seek projects which meet several needs at one time. It is assumed that all projects will, to some degree, increase the inflow of foreign capital and provide employment. However, special priority will be given to project proposals which also seek to do one or more of the following: increase exports, encourage tourism, reduce the need for imports, require advanced technological expertise, and make use of internationally recognized patents or trademarks. Indeed, the phrase "and other fields" in article 3 is said to allow the Council of Ministers to permit investment in other activities provided they require the use of international expertise or foreign exchange.<sup>38</sup> While the expansion of the range of permissible activities indicates increasing flexibility on the part of the Egyptian government, officials stress that social amelioration is still of paramount importance. For example, in a recent effort to boost levels of local employment and training, the government ignored an investor's request to use imported high grade raw materials. Instead, it insisted on the use of local materials of much lower quality.<sup>39</sup>

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<sup>35</sup> LAW NO. 32 OF 1977, *supra* note 16, at 5-6.

<sup>36</sup> In an address to the U.S.-Egypt Business Council in October, 1978, President Sadat ranked agribusiness and housing construction projects as Egypt's first and second priorities. The Council was established in 1974 by the Secretary of the Treasury Simon for purposes of expediting and promoting U.S. investment in Egypt. It is comprised of U.S. and Egyptian businessmen and conducts a variety of programs designed to stimulate interest in the investment potential in Egypt.

<sup>37</sup> LAW NO. 32, *supra* note 16, at 6.

<sup>38</sup> LEGAL GUIDE TO INVESTMENT IN EGYPT, *supra* note 11, at 27.

<sup>39</sup> The use of local raw materials need not be to the investor's detriment. As one corporate official explained, "We prefer to use local raw materials for several reasons. First, for our purposes, they are of sufficiently high quality. Second, by using them we are able to further assist the local economy. Third, and most importantly, we have convinced government officials that our use of local raw materials necessitates an application of higher customs tariffs, at least for a few years, on imported raw materials of comparable quality." Private conversation with a U.S. corporate official whose company is a member of the U.S.-Egypt Business Council (July, 1979).



The bureaucratic interpretation of both the range and scope of permissible activities certainly will be influenced by the national development plan. The current plan was drafted to encompass the years 1978-1982. During last year's meeting of the U.S.-Egypt Business Council,<sup>40</sup> Egyptian delegates stated that this plan is to be reviewed and revised annually.<sup>41</sup> Thus, a modified five-year plan will be adopted each year in order to improve the investment planning process.

In an independent effort to improve Egypt's climate for American investments, the U.S.-Egypt Business Council recently identified a fairly large number of potential projects. The list includes 35 new joint ventures which may be appropriate for implementation. The specific projects fall within the general headings of Food and Agriculture, Pulp and Paper, Chemicals, Textiles, Rubber Projects, Glass, Electrical Products, Heavy Manufacturing, Iron and Steel, and Ship Support Projects.<sup>42</sup> Additionally, other American investors have noted that, given a sizeable segment of the Egyptian population with disposable income beyond the minimum subsistence level, there is great potential for light manufacturing and a wide variety of consumer products.<sup>43</sup>

### 3. *Organizational Form of Investments*

According to article 4, an investment is usually required to take the form of a joint venture.<sup>44</sup> Should the investor desire that his project be a wholly-owned subsidiary which would exclude Egyptian capital, article 4 requires a two-thirds majority approval by the General Authority. Their deliberation will include the questions of whether the project or technology is high on Egypt's list of priorities and whether local equity participation is feasible. Egyptian officials have expressed the view that, while the national plan is flexible enough to allow for wholly-owned subsidiaries, investors should realize that it is a discretionary question and enters the negotiation process as a bargaining element.

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<sup>40</sup> See note 36, *supra*.

<sup>41</sup> See U.S.-Egypt Business Council, Fourth Joint Meeting, Joint Communique, Washington, D.C. (October, 1978), at 2.

<sup>42</sup> See Egypt-U.S. Business Council, Background Paper on Promotional Activities, Joint Executive Committee Meeting (May 7-8, 1979), at 2-3.

<sup>43</sup> Private conversations with U.S. investors currently engaged in joint venture projects in Egypt.

<sup>44</sup> LAW NO. 32, *supra* note 16, at 7-8.

Otherwise, the investor must choose his partner from either the public or private sector.<sup>45</sup>

Generally, the search for private sector participation is not an easy one. Although the situation appears to be improving since the inception of the Open Door policy, potential foreign investors have found the private sector to be generally lacking in both capital and entrepreneurial talent. The problem of capital availability, while potentially serious, has not proven insurmountable. Financial institutions from the public sector (banks and insurance companies) are loaning capital to the private sector partners of foreign investors.<sup>46</sup> Additionally, it may be possible to equate Arab capital with Egyptian capital.<sup>47</sup> This can greatly facilitate the search for private equity participation. More than twenty years of Nassar-era socialism took its toll on private sector talent. A new generation of entrepreneurs is beginning to fill the gap left by those who expatriated in the 1950's and 1960's, but a shortage probably will persist for the next few years.

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<sup>45</sup> The following list of organizations may be of assistance in the search for a joint venture partner:

1. Joint U.S.-Egyptian Business Council  
U.S. Chamber of Commerce  
1615 H Street, N.W.  
Washington, D.C.
2. U.S. Embassy  
Commercial Attache  
Cairo, Arab Republic of Egypt
3. U.S. Agency for International Development  
Industry Officer and Capital Development Division  
U.S. Embassy Compound  
Cairo, Arab Republic of Egypt
4. Government of Egypt  
General Authority for Foreign Investment and Free Zones  
8 Adly Street  
(Mail: P.O. Box 1007)  
Cairo, Arab Republic of Egypt
5. Government of Egypt  
Ministry of Industry  
General Organization for Industrialization  
Cairo, Arab Republic of Egypt

Most major U.S. banks have representative offices in Cairo and are excellent sources of current investment information.

<sup>46</sup> Private conversation with a U.S. corporate official whose company is a member of the U.S.-Egypt Business Council (July, 1979). Furthermore, other mechanisms for the financing of private sector development have begun to emerge in recent years. For example, most major U.S. banks have established representative offices in Cairo and the Egyptian stock exchange has been reactivated. See Roy, *supra* note 4, at 30-32.

<sup>47</sup> See Hodgkins, *Doing Business in Egypt*, in SOUTHWESTERN LEGAL FOUNDATION, PRIVATE INVESTORS ABROAD—PROBLEMS AND SOLUTIONS IN INTERNATIONAL BUSINESS 209 (1978).

An important advantage to private sector participation in joint ventures, in the opinion of foreign investors, is the relative ease of decision-making. Most decisions reached with the private sector, including those from the early negotiations regarding equity involvement to the later discussions regarding the use of profit, are made with relative ease compared with those negotiated with the entrenched bureaucracy of the public sector.

Perhaps the single most attractive aspect of public sector participation is the availability of capital. Once the Egyptian government decides that the investment proposal has merit, it will offer the investor a choice among several well-financed public enterprises. Currently, there are a number of public sector banks, insurance companies, and business which seek American joint venture partners for more than a dozen projects in both large and small scale manufacturing.<sup>48</sup> Problems do arise in dealings with the government, however. The Egyptian bureaucracy tends to impede the flow of information along decisional lines. Also, there is the need, often encountered in dealing with governmental networks, to remain alert to the sensitivity of both those who are in positions of power and those who merely believe themselves to be.<sup>49</sup>

Law 43 serves as the foundation for the General Authority's governing of a project. Additional rules and regulations are found in various labor, commercial, exchange control, tax and company codes; these provisions also must be taken into account in determining the proper form of investment. These codes are problematic because many are written only in Arabic, and most have been influenced by both Islamic and European laws. Thus, prior to negotiations with either the General Authority or a joint venture partner, the web of laws and regulations regarding private sector activities must be analyzed in light of their potential legal and financial impact on the proposed project.<sup>50</sup> Because of this, as well as an apparent Egyptian willingness to negotiate nearly every

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<sup>48</sup> Journal of Commerce, Aug. 2, 1979, at 15, col. 4.

<sup>49</sup> Not all investors find such difficulties with public sector participation. As one corporate spokesman explained, "We were told by the ministry that they would deal with the bureaucracy every step of the way. After a year of operation we have yet to experience any major problems." Private conversation with the Chief Executive Officer of a U.S. Corporation (June, 1979).

<sup>50</sup> See Hodgkins, *supra* note 47, at 223:

It is quite possible, I am sure, to walk in off the streets to the offices of the General Authority. However, it would be unwise to do so without a thorough understanding of the investment system and, above all, of the applicable related laws . . . . It is therefore highly advisable to establish relations with local counsel

aspect of the investment proposal, experienced professional assistance is a virtual necessity.

### B. *Guarantees, Privileges, and Exemptions Available to Approved Projects*

The remainder of Law 43 consists of the guarantees, privileges and exemptions to be applied to projects which have met the criteria of articles 1-4 and have been approved by the General Authority. These aspects of the projects' operations have been further defined, interpreted, and qualified by the Law's executive regulations<sup>51</sup> and by the General Authority itself.<sup>52</sup> They are offered to foreign investors as incentives to enter the country, establish projects and begin production.

#### 1. *Expropriation*

Article 7, dealing with expropriation, provides that projects may not be nationalized or confiscated.<sup>53</sup> However, it should be noted that the Egyptian constitution allows for the expropriation of private enterprises for public purposes in return for fair compensation. The General Authority has indicated that article 7 must be read within this framework.<sup>54</sup>

#### 2. *Dispute Settlement*

Investment disputes, according to article 8, are to be decided by one of the following methods:<sup>55</sup> according to the preferences of the participants; as determined by agreements between Egypt and investor's home country;<sup>56</sup> as set forth in the Convention on the Set-

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and public accountants . . . . The time for establishing such contacts and retaining such advice is before making an approach to the General Authority, so that negotiations will not include commitments which cannot be carried out within the existing legal framework or to avoid making commitments that are unnecessary under the law.

<sup>51</sup> See ARAB REPUBLIC OF EGYPT, GENERAL AUTHORITY FOR INVESTMENT AND FREE ZONES, DECREE OF THE MINISTER OF ECONOMY AND ECONOMIC COOPERATION, No. 375 OF 1977, FOR ISSUING THE EXECUTIVE REGULATIONS FOR THE LAW OF ARAB AND FOREIGN INVESTMENT AND FREE ZONES (1977). See also LEGAL GUIDE TO INVESTMENT IN EGYPT, *supra*, note 11.

<sup>52</sup> LEGAL GUIDE TO INVESTMENT IN EGYPT, *supra*, note 11.

<sup>53</sup> LAW No. 43 OF 1974, *supra* note 12, at 8.

<sup>54</sup> LEGAL GUIDE TO INVESTMENT IN EGYPT, *supra* note 11, at 30.

<sup>55</sup> LAW No. 43 OF 1974, *supra* note 12, at 8-9.

<sup>56</sup> For example, the governments of the United States and Egypt have agreed that upon the Egyptian government's approval of the investment proposal of a U.S. national that the government of the United States "may guarantee such investment." Should the American investor encounter insurmountable obstacles in his attempts either to settle claims or to

tlement of Investment Disputes between States and Nationals of Other States;<sup>57</sup> or by arbitration. The arbitration procedure under Law 43 is as follows: once the parties agree to this method of dispute settlement, a three-person arbitration committee is formed. Each side selects one member and a chairman is selected jointly. Should the parties fail to agree on a chairman, the Supreme Judicial Council of Egypt will make the selection from the membership of the Egyptian judiciary. By agreement of the parties, the Committee will address one or all disputes connected with the investment project's activities. The Committee's decision is by majority vote and its decree is binding.<sup>58</sup> The advice of one corporate officer is to include an arbitration clause in the joint venture agreement and try to keep clear of Egypt's courts. Arbitration appears to be the preferred method of dispute settlement.<sup>59</sup>

### 3. *Private Sector Laws Apply*

Article 9 provides that for the purposes of projects coming under Law 43, all parties will be considered part of the private sector.<sup>60</sup> This exempts public sector participants from all laws or regulations by which they are normally governed. For example, a publicly-owned company which enters into a joint venture with a foreign partner may reorganize, for purposes of the project, into one of six forms of business associations recognized by Egyptian law only in the private sector: the partnership; the limited partnership; the partnership limited by shares; the joint stock company; the limited liability company; and the profit-sharing association.<sup>61</sup> Several U.S. investors who have engaged in joint venture projects with publicly-owned companies have voiced the opinion that, because of the choices offered by article 9, many potential public sector partners are eager to participate in joint ventures under Law 43.

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convert Egyptian currency or any property then he may transfer these claims, rights or currency to the United States government pursuant to the guarantee. The government of the United States, as transferee, will then pursue these claims in negotiations with the government of Egypt. See Agreement Between the United States of America and the Arab Republic of Egypt: Investment Guaranties, June 29, 1963, 479 UNTS 207, T.I.A.S. No. 5383.

<sup>57</sup> Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, *submitted to governments* Mar. 18, 1965, 17 U.S.T. 1270, T.I.A.S. No. 6090, 575 UNTS 159. Egypt acceded to the Convention with the passage of LAW No. 90 OF 1971.

<sup>58</sup> LEGAL GUIDE TO INVESTMENT IN EGYPT, *supra* note 11, at 40-41.

<sup>59</sup> Private conversation with the General Counsel of a U.S. corporation (July, 1979).

<sup>60</sup> LAW No. 43 OF 1974, *supra* note 12, at 8-9.

<sup>61</sup> LEGAL GUIDE TO INVESTMENT IN EGYPT, *supra* note 11, at 42-43, 55-59.

#### 4. *Labor and Company Laws*

As mentioned earlier, various other laws apply to foreign investment projects unless exempted by articles 10-12 of Law 43. The Labor Code, No. 91 of 1959, is one such law. According to Law 91, individual employment contracts may be probationary, for a specified period of time or for an unspecified period of time. The period of notice required to be given by either party prior to termination of employment (from 0 to 30 days) is usually determined by the type of contract in force.<sup>62</sup> The work week may not extend beyond six days or 42 hours.<sup>63</sup> Labor union activity is permitted.<sup>64</sup> An employer may not discharge an employee either for joining a union or for failure to do so (it should be noted, however, that union activity does not appear to be very well organized).<sup>65</sup> Grounds for dismissal without notice or payment of indemnity include: revealing work secrets, absence without excuse for more than twenty separate or ten consecutive days during the year (illness appears to be the only bona fide excuse), disobeying safety or security regulations, obtaining employment by trick, and causing serious material damage.<sup>66</sup>

The minimum wage is determined by the General Assembly, as authorized by Law 91. According to 1978 figures, the minimum was set at LE 15.00 per month (approximately U.S. \$35.00). Given current market and social conditions, however, an investor can expect to pay more than twice the minimum amount as well as biannual bonuses totaling two months' salary.<sup>67</sup> Cost of production estimates should include this higher figure. As one corporate official explained,

Current minimum wage rates cannot sustain the typical Egyptian laborer and his family. Consequently, one usually discovers that those workers who are being paid at the minimum rate will hold down a second job. Such a situation will usually produce both fatigue and job dissatisfaction. If an investor hopes to receive maximum performance and meet production schedules, then he must be willing to provide sufficient fiscal incentives for his local employees. Furthermore, social and religious customs dictate large expenditures twice yearly (in the Fall and at the

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<sup>62</sup> *Id.* at 60-61.

<sup>63</sup> Hodgkins, *supra* note 47, at 230.

<sup>64</sup> *Id.* at 232.

<sup>65</sup> *Id.*

<sup>66</sup> LEGAL GUIDE TO INVESTMENT IN EGYPT, *supra* note 11, at 61-62.

<sup>67</sup> Hodgkins, *supra* note 47, at 231.

New Year) for food and clothing in preparation for the high holy days of the Islamic faith. Consequently, the bonus system has become fairly well entrenched.<sup>68</sup>

With regard to the Egypt's systems of social security and workers' compensation, Law 43 does not exempt the foreign investor from his obligations under Law 79 of 1975 (the Social Insurance Law).<sup>69</sup> The Law seeks to protect local employees (expatriates are excluded) from work-related injuries, illness, unemployment, old age, disability and death.<sup>70</sup> Each month the employer must contribute the equivalent of approximately 20% of each worker's wage into a fund controlled by the General Organization of Social Insurance.<sup>71</sup> It should be emphasized that this sum may not be deducted from the employee's salary; the employee must make his own monthly contribution of approximately 12% of his wages.<sup>72</sup>

Articles 95 and 96 of the Companies Law<sup>73</sup> should be of particular interest to the investor because they are not exempted by Law 43.<sup>74</sup> Article 95 requires that at least 75% of the employees in a joint stock company shall be Egyptians and that they shall receive 65% of all salaries. Although article 96 exempts the project's foreign employees from these percentages, they must be employed as technicians, division heads, specialists or advisors only if qualified Egyptians are unavailable.<sup>75</sup> The application of these articles could inhibit the formation of either capital-intensive or high technology joint stock companies, both of which have relatively little need for local labor. However, it appears that the investor may be able to negotiate these percentages with the General Authority.<sup>76</sup>

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<sup>68</sup> Private conversation with the Associate General Counsel of a major U.S. corporation currently engaged in both licensing and joint venture operations in Egypt (July, 1979).

<sup>69</sup> It should be noted, however, that the investment project may be exempted from Egypt's social insurance system if the foreign investor offers a better system for his employees. The General Organization of Social Insurance may waive the requirements of LAW 79 if the investor's plan is better than the national system, weighing the costs and benefits of each one. LEGAL GUIDE TO INVESTMENT IN EGYPT, *supra* note 11, at 62-63.

<sup>70</sup> Hodgkins, *supra* note 47, at 232.

<sup>71</sup> LEGAL GUIDE TO INVESTMENT IN EGYPT, *supra* note 11, at 63.

<sup>72</sup> Hodgkins, *supra* note 47, at 232.

<sup>73</sup> LAW NO. 26 OF 1954.

<sup>74</sup> LAW NO. 43 OF 1974, *supra* note 12, at 10.

<sup>75</sup> Hodgkins, *supra* note 47, at 233.

<sup>76</sup> *Id.*

While Law 43 fails to relieve investors from the duties described above, articles 10-12 do provide exemptions from several of the more onerous provisions of these same (and other) labor and company codes.<sup>76</sup> The approved project is exempt from those sections of Laws 113 of 1958 and 91 of 1959 which normally require that vacant positions shall be advertised prior to hiring a replacement,<sup>77</sup> that employees shall be hired by referral from the government hiring office,<sup>78</sup> and that a ceiling of LE 5,000 shall be applied to the salaries of the project's directors.<sup>79</sup> The project is exempt from article 10 of Law 73 (1973) which requires labor representation on the company's Board of Directors.<sup>80</sup> This exemption is qualified, however, by Law 43 (article 10) which conveys the right to the General Authority to require some degree of participation by labor in the company's management.<sup>81</sup> The degree to which this right is exercised appears to be a matter of negotiation between the Authority and the project's directors.

Law 43 exempts approved projects from several provisions of the Companies Law (No. 26). Among the exempted provisions are: article 11 of Law 26 which requires that 49% of the shares of joint stock companies be made available to Egyptians;<sup>82</sup> article 28 which requires that Egyptians hold a majority of the seats on the Board of Directors;<sup>83</sup> and article 14 which requires that almost 25% of the company's net profits be distributed annually among the employees.<sup>84</sup> Law 43 amends this last requirement to allow the project's Board of Directors to determine the rate of profit distribution, subject to approval by the General Assembly.<sup>85</sup>

### 5. *Foreign Currency Accounts*

The 1977 revisions to Law 43 provided the foreign investor with greater flexibility in his maintenance and use of foreign currency bank accounts. Article 14 provides that these accounts are to be used for such debt-servicing functions as: payments for imported spare parts and raw materials; repayments of foreign currency loans; and the purchase of Egyptian pounds for the project's local

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<sup>77</sup> LEGAL GUIDE TO INVESTMENT IN EGYPT, *supra* note 11, at 32.

<sup>78</sup> *Id.*

<sup>79</sup> LAW NO. 43 OF 1974, *supra* note 12, at 9-10.

<sup>80</sup> LEGAL GUIDE TO INVESTMENT IN EGYPT, *supra* note 11, at 31.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 31.

<sup>84</sup> Hodgkins, *supra* note 47, at 233.

<sup>85</sup> LAW NO. 43 OF 1974, *supra* note 12, at 10.



expenditures.<sup>86</sup> The accounts also must serve as depositories for foreign currency which is obtained by loans, by export or local sales, or through purchases from local banks (at the highest rate prevailing and declared for that foreign currency).<sup>87</sup>

The account must be maintained at those local banks which are registered with the Central Bank of Egypt.<sup>88</sup> The General Authority must receive an annual report, certified by a public accountant, which includes a description of the activity in each account as well as any other information which may be required to ensure that the use of the account has not extended beyond the limits and purposes set forth in Law 43.<sup>89</sup>

Despite this statutory permission to obtain foreign exchange locally (by selling one's project to the local market for foreign currency or by selling local currency to banks), there is no assurance that foreign currency will, in fact, be available. While, at present, there seems to be an ample supply of foreign exchange, many investors are concerned about its future availability. Should the already unstable free money market become overburdened with an increased demand for working capital, investors fear that they will be unable to pay for imported raw materials and spare parts, and that they will have difficulty repatriating both capital and profits. In this regard, the Egyptian government may soon be asked to guarantee the availability of foreign exchange for Law 43 projects. According to a plan proposed by the U.S.-Egypt Business Council, if a project's sponsors are unable to obtain foreign currency locally, they could withdraw required capital (for debt-servicing, etc.) from a government-controlled reserve fund.<sup>90</sup>

## 6. *Repatriation of Capital*

Normally, invested capital may not be repatriated until five years have elapsed from the date of importation.<sup>91</sup> This requirement may be waived by the Authority if, after the importation of capital, exceptional circumstances arise which necessitate the project's termination.<sup>92</sup> Once the five year period has been reached, article 21 allows the investor to repatriate the full amount immediately, in one transaction, either to the limit of the credit

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<sup>86</sup> *Id.* at 11.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 11-12.

<sup>90</sup> Journal of Commerce, August 2, 1979, at 1, col. 3.

<sup>91</sup> LAW NO. 43 OF 1974, *supra* note 12, at 14-15.

<sup>92</sup> *Id.*

balance in the project's foreign exchange account or to the extent that the capital was liquidated in exchange for free foreign currency.<sup>93</sup> The General Authority requires only that it be notified of such transfers.<sup>94</sup>

In all other cases (such as the sale of invested capital for local currency, or where the credit balance is insufficient to cover the transfer) prior approval from the Authority is required.<sup>95</sup> The repatriation is then made in five equal annual installments at the highest rate prevailing and declared for foreign currency at the time of each transfer abroad.<sup>96</sup> While the investor may repatriate the full amount of capital realized from the sale or liquidation of his investment, he is not required to liquidate capital which was imported in kind.<sup>97</sup> For example, capital in the form of precision instruments and machinery which are imported for use in a project could be repatriated in kind, subject to the General Authority's approval.

Article 21 also guarantees that the buyer of the capital shall enjoy all the rights conferred upon investments by Law 43. The sole exception is that if the invested capital is exchanged for local currency, the buyer will lose the right to transfer capital or profits abroad. This limitation is probably in response to the fact that, for many years, Egypt has been faced with a chronic shortage of foreign exchange. Consequently, Law 43 is viewed by the government as a means to provide the foreign currency which is necessary for the country's development.<sup>98</sup> Assuming that the purchaser of invested capital sold for local currency is likely to be an Egyptian national, to then allow the purchaser an additional transfer of funds abroad would be an unjustifiable exacerbation of the country's foreign exchange problems. With regard to the repatriation of earnings by foreign consultants and employees, article 20 guarantees that they shall be permitted to transfer up to 50% of their gross annual income.<sup>99</sup>

### 7. *Repatriation of Profits*

At some point during the approval process for an import-substitution project, the General Authority will set limits on the repatri-

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<sup>93</sup> *Id.*

<sup>94</sup> LEGAL GUIDE TO INVESTMENT IN EGYPT, *supra* note 11, at 35.

<sup>95</sup> LAW NO. 43 OF 1974, *supra* note 12, at 14-15.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> Salacuse & Parnall, *supra* note 13, at 763.

<sup>99</sup> LAW NO. 43 OF 1974, *supra* note 12, at 14.

ation of profits. Article 22 is decidedly vague on what the investor can expect in this regard.<sup>100</sup> The General Authority has informed investors that the purpose of the 1977 revisions to articles 14 and 22<sup>101</sup> was to encourage the servicing of Egypt's domestic market by import-substitution projects.<sup>102</sup> Furthermore, in its discussion of article 22, the General Authority repeatedly reminds investors that under article 14 the foreign currency necessary for profit transfers may be obtained in the domestic market by the sale of the project's product, through purchases from local banks, and through local loans.<sup>103</sup> While it is encouraging to know that the GOE supports the establishment of inland projects and seeks to facilitate the process of obtaining foreign currency for profit repatriation, the disturbing fact remains that the actual transfer of profits will be subject to the General Authority's approval. Although the Authority is empowered to allow for a full transfer of profits, the answers to such questions as "how much?" and "how often?" must be determined through the negotiation process.

The vague treatment of profits from inland projects may be nothing more than the natural result of the ongoing criticism by some of Egypt's leaders in business and government that foreign investment under Law 43, and import-substitution projects in particular, will result in a dismantling of public sector activities.<sup>104</sup> Indeed, in actual practice it appears that the requirement of prior negotiations for profit repatriation will not necessarily create a barrier to a reasonable return on one's investment.<sup>105</sup> But investor uncertainty will continue as long as the statutory treatment of such key issues amounts to little more than an open invitation to come to Egypt and negotiate a deal.

The statutory treatment of profits from export-oriented projects stands in sharp contrast to the imprecise guidelines for inland projects. Article 22 assures investors engaged in export activities that they may repatriate the full amount of their profits up to the limit of the credit balance in their foreign exchange accounts. The only other requirement in article 22 is that the exports must generate enough capital to meet all operating costs, thereby achieving self-sufficiency in the project's foreign currency require-

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<sup>100</sup> *Id.* at 15-16.

<sup>101</sup> See LAW NO. 32 OF 1977, note 16 *supra*.

<sup>102</sup> LEGAL GUIDE TO INVESTMENT IN EGYPT, *supra* note 11, at 34-35.

<sup>103</sup> *Id.*

<sup>104</sup> See Roy, *supra* note 4, at 11 n.17.

<sup>105</sup> Hodgkins, *supra* note 47, at 215.

ments. Thus, unlike the situation with inland projects, neither the rate nor the time frame for the transfer of profits from export activities is subject to negotiation with the General Authority.

### 8. *Taxes*

The 1977 revisions to articles 16 and 17 have clarified or eliminated most of the troublesome tax provisions found in the original Law 43.<sup>106</sup> It should be noted, however, that the Egyptian government is currently engaged in a thorough review of its tax laws.<sup>107</sup> Forthcoming legislation is likely to alter the impact which current tax exemptions will have on approved projects.

Article 16 provides a five year tax exemption to the project's net earnings, to the distributed and undistributed profits, and to any revenue from reinvested profits or special reserves. Specifically, the project's retained profits will be free from the basic tax on commercial and industrial profits (17.0%) as well as four additional taxes: the Defense tax (10.5%); the National Security tax (8.0%); the War tax (2.5%); and a Municipal tax (1.7%).<sup>108</sup> Thus, a combined tax rate of 39.7% normally would be applied. The project's distributed profits, such as dividends, will be exempt from the same taxes described above with the exception that the Municipal tax is 2.55% rather than 1.7%. Thus, a total tax rate of 40.55% normally would be applied.<sup>109</sup> The exemption period begins to run with the tax year which follows either the commencement of production or activities beyond the initial investment.<sup>110</sup> At the conclusion of the tax holiday period, undistributed and distributed profits will be subject to these rates (39.7% and 40.55%, respectively).

In addition to an exemption from the taxes described above, article 16 provides the project's distributed profits with a five year tax holiday from both the tax on income from movable property and the general tax on income.<sup>111</sup> The tax on income from movable property is normally applied to income from securities as well as

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<sup>106</sup> LAW NO. 43 OF 1974, *supra* note 12, at 13-14.

<sup>107</sup> Interviews with Egyptian economists and attorneys at the Fourth Annual Seminar on Foreign Investment in Egypt, Harvard Law School (July, 1979).

<sup>108</sup> Ball & Walsh, *Tax Consequences of U.S. Investments in Select Middle Eastern Countries: Saudi Arabia, Egypt and Iran*, 37 NEW YORK UNIVERSITY INSTITUTE ON FEDERAL TAXATION, ch. 8, at 8-24 (1979).

<sup>109</sup> *Id.* at 8-27.

<sup>110</sup> LEGAL GUIDE TO INVESTMENT IN EGYPT, *supra* note 11, at 36.

<sup>111</sup> LAW NO. 43 OF 1974, *supra* note 12, at 12-13.

to interest income from debts, deposits and guarantees.<sup>112</sup> The rate is computed in the same manner as the tax on distributed profits (described above) and totals 40.55%.<sup>113</sup> The general tax on income is applied only to individual investors, not to companies, so the exemption will not be important to most foreign investment projects.<sup>114</sup> This tax is applied at progressive rates beginning at 9% for taxable income of LE 1,000 and reaching 80% for taxable income in excess of LE 100,000.<sup>115</sup> The tax is imposed on individual investors who are domiciled in Egypt and is applied to any income realized in Egypt by an individual domiciled outside the country.<sup>116</sup> The holiday from the general tax on income will be forfeited if another country levies a similar tax with no credit given for the amount of tax which would have been paid by the recipient of the profits had he not received the exemption.<sup>117</sup> Currently, it appears that the exemption would not apply to a U.S. citizen who invests in Egypt because the U.S. taxes worldwide income.<sup>118</sup>

Assuming that this exemption is not forfeited, the recipient (shareholder) of these distributed profits will be subject to the annual general tax on income upon completion of the holiday period. However, article 17 qualifies the application of this tax. The shareholder's tax liability will extend only to those profits which exceed the equivalent of 5% of his original investment. Thus, a shareholder who initially invests LE 100,000 and to whom profits of LE 10,000 are distributed in any one year, will be subject to a tax on the second LE 5,000 at a rate somewhere at the lower end of the range described above (from 9% to 80%). By using these hypothetical figures, the exemption appears to be extremely beneficial because effectively 50% of the shareholder's profit goes untaxed and the remainder is taxed at a fairly low rate. The exemption begins to lose its luster, however, when applied to a shareholder whose financial interest in a project involves a relatively small initial investment and a large return of profits (a seemingly ideal combination). The small initial investment would result in a relatively miniscule exemption of 5%. Furthermore, a profit which greatly exceeds the initial exemption would subject the share-

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<sup>112</sup> Ball & Walsh, *supra* note 108, at 8-27.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 8-35.

<sup>115</sup> *Id.* at 8-30.

<sup>116</sup> *Id.*

<sup>117</sup> LEGAL GUIDE TO INVESTMENT IN EGYPT, *supra* note 11, at 37.

<sup>118</sup> Ball & Walsh, *supra* note 108, at 8-34.

holder to Egypt's high tax rates, reaching 80% of these "excess" profits if they exceed LE 100,000.

The law provides the investor with the opportunity to negotiate an extension of the holiday from the normal five years to eight years.<sup>119</sup> The Council of Ministers<sup>120</sup> may approve an extension once such action has been recommended by the General Authority. Factors to be considered are the project's geographical location, the volume of its capital, its exploitation of natural resources, and its importance to economic development.<sup>121</sup> Article 16 also provides for a ten year tax exemption for investment projects involving reconstruction, the establishment of new cities outside the agricultural area and the perimeters of existing cities, and land reclamation. The tax holiday for these projects may be extended to fifteen years upon the recommendation of the General Authority's Board of Directors and with the approval of the President of the Republic.<sup>122</sup> Finally, article 20 guarantees that all wages and other compensation received by the project's foreign employees shall be forever exempt from the general tax on income.

#### 9. *Miscellaneous fees*

Article 23 levies an Endorsement Fee on the contracts which establish the investment project.<sup>123</sup> The fee is limited to either 1/4 of 1% of the project's capital or LE 1,000, whichever is lower. However, all loan agreements, mortgages, construction contracts, contracts for the purchase of real estate and machinery, and all other contracts relating to the establishment of the project are exempt from state duties, registration and publication fees for the first year after the commencement of the project's operations.

#### 10. *Customs Duties*

According to article 16, all of the project's imported machinery and equipment may be completely exempted from customs duties by agreement of the General Authority. Article 50 of Decree No.

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<sup>119</sup> LAW NO. 43 OF 1974, *supra* note 12, at 13.

<sup>120</sup> The Council of Ministers was established under Article 153 of the Constitution and consists of the Prime Minister, his deputies, all other ministers and their deputies. Included among its many functions are laying down the general policy of the State and issuing administrative decisions in accordance with the laws and decrees. *See* LEGAL GUIDE TO INVESTMENT IN EGYPT, *supra* note 11, at 8-9.

<sup>121</sup> *Id.* at 37.

<sup>122</sup> LAW NO. 43 OF 1974, *supra* note 12, at 13.

<sup>123</sup> *Id.* at 17.

375 permits the Authority to grant an exemption if the proposed project can meet one of the following criteria: the project will assist in the development of one of Egypt's remote areas; it will introduce advanced or improved technology into the industrial sector; its projected rate of return is low compared to that of similar projects; or the project involves activities which are strategic or otherwise vital to the public interest.<sup>124</sup> Should goods be imported under the customs exemption and then sold locally within five years, the exemption will be forfeited for those items and the tax will be paid.

### 11. *Import Licenses*

Article 15 provides that import licenses shall not be required for machinery and equipment necessary for the operation of the project.<sup>125</sup> However, customs inspection will take place to determine whether the imported goods are compatible with the project's activities. Accordingly, it is advisable to establish a very detailed list of all materials necessary for the operation, to submit this list to the General Authority for approval, and then to present it to the Bureau of Customs for their use in this regard. The investor can expect delays in the processing of imported goods by customs officials. However, the establishment of a detailed list of anticipated imports leaves very little open to bureaucratic interpretation and thereby simplifies the customs process.

## IV. SUMMARY AND CONCLUSIONS

Law 43, as revised by Law 32 and interpreted by Executive Regulation No. 375, appears to provide a reasonable framework for foreign investment projects in Egypt. Major improvements over prior laws have been made in a number of important areas:

1. All evaluations of the project's capital and equipment are computed by the use of a single free-floating exchange rate.
2. The range of permissible activities has been expanded and further clarified.
3. A variety of alternatives is offered for purposes of dispute settlement.
4. The project is exempt from a majority of the burdensome provisions found in the Labor and Company laws.
5. Greater flexibility is accorded the use of foreign currency

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<sup>124</sup> DECREE NO. 375, *supra* note 51, at 20.

<sup>125</sup> LAW NO. 43 OF 1974, *supra* note 12.

bank accounts. Fewer requirements are placed on the reporting of the activities of such accounts.

6. Efforts are now underway to revise and improve Egypt's tax laws which should benefit foreign investors.

While there continues to be some disagreement, most investors agree that the present statute's provisions are adequate to stimulate investment interest. Where inconsistencies or vagueness of specific provisions exist, negotiation with the General Authority often can resolve the situation with no major threat to the project's success. Examples of requirements, the negative effects of which have been lessened by the negotiation process, are as follows: the necessity of a joint venture partner; the use of local raw materials; participation of labor in the company's management; the rate of profit distribution to employees; the rate and time frame for the repatriation of profits; and customs duties on imported raw materials and equipments.

Assuming that the project's directors are successful in their negotiations regarding legal impediments to investment, there are other potential difficulties for the investor. Institutional, cultural, economic, administrative and bureaucratic factors can and do affect a project's success. All may pose problems which are non-negotiable, unavoidable, and ongoing. Thus, beyond such critical factors as formulating a strategy into a well-conceived proposal, seeking the assistance of competent and experienced local legal counsel, and gaining the approval of the General Authority, the project's success will depend upon the investor's awareness of these barriers and his ability to confront them with patience and understanding.

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## **II.**

# **REGIONAL EXPERIENCES**

