

## I. Egypt at a Glance

Name:	Arab Republic of Egypt
Population:	76.5 million (June 2006 estimate)
Currency:	Egyptian Pound (LE)
Language:	Arabic (official), English and French widely understood by educated classes
Religion:	Muslim 90%, Coptic Christian 9% and other 1%.
Capital:	Cairo
Geography:	Egypt is located in the north-eastern corner of Africa and south-western Asia. It is bounded on the north by the Mediterranean Sea, on the east by Palestine and Israel, on the south by Sudan, and on the west by Libya.
Legislative Power:	Egypt has a bicameral legislature, made up of the elected People's Assembly (Maglis al Shaab) and the Advisory Council (Maglis al Shoura). The Advisory Council is a consultative organ, whereas the People's Assembly functions as the main representative law-making body
Member of International Organizations:	Egypt is a member of ABEDA, ACCT, AfDB, AFESD, AMF, AU, BSEC (observer), CAEU, COMESA, EBRD, FAO, G-15, G-24, G-77, IAEA, IBRD, ICAO, ICC, ICt (signatory), ICRM, IDA, IDB, IFAD, IFC, IFRCS, IHO, ILO, IMF, IMO, IMSO, Interpol, IOC, IOM, IPU, ISO, ITSO, ITU, LAS, MIGA, MINURCAT, MINURSO, MONUC, NAM, OAPEC, OAS (observer), OIC, OIF, OSCE (partner), PCA, UN, UNAMID, UNCTAD, UNESCO, UNHCR, UNIDO, UNMIL, UNMIS, UNOMIG, UNRWA, UNWTO, UPU, WCO, WFTU, WHO, WIPO, WMO, WTO (Source: CIA World Factbook, as of December 18, 2008)

## II. Overview of Legal System

The Egyptian legal system was initially modeled on the French Civil Code System (Code Napoleon), but later developed its own legal principles and structures. The system has greatly influenced the legal systems of many other Middle Eastern countries. Many civil codes of other Arab countries are closely modeled on the Egyptian Civil Code. Egyptian jurists are also influential in most Arab countries. The Egyptian legal system, similar to most continental civil code systems, is based on a civil code that covers personal rights, the law of contracts, obligations and elements of tort law.

In addition, there are specific codes dealing with other areas of law, such as the Commercial Code, which complements the Civil Code in certain areas of commercial law, and the Code of Civil Procedures. These Codes refer basically to private law and public law, which includes administrative legal matters relating to the functions and legal relations of state bodies, whether between themselves or with private persons.

In the realm of public law, there is an extensive jurisprudence of Egyptian administrative law. Egyptian administrative law is closely modeled on French administrative law.

The Egyptian court systems are divided into civil and administrative courts. The civil courts have jurisdiction in matters of private law, whereas the administrative courts have jurisdiction in matters of public law. The hierarchy of the administrative courts is referred to as the State Council (Conseil d'Etat).

Egypt also has a written constitution that sets out constitutional principles to which all legislation should adhere. A constitutional court handles constitutional challenges to legislation and conflicts between civil and administrative court's judgments.

## III. Foreign Investment

Investment in Egypt, whether for foreign investors or Egyptian investors, is governed and regulated by Companies Law No. 159 for 1981 ("Companies Law"), Investment Law No. 8 for 1997 ("Investment Law"), and Capital Market Law No. 95 for 1992 ("Capital Market Law").

In general, foreign investors can invest in Egypt without any restrictions after obtaining security clearances from the national security agencies. However, the following activities are not open to direct investment by foreign investors:

- Importing for the purpose of trading in Egypt

- Acting as a commercial agent

In addition, certain regulatory approvals are required for foreign and local investments in Egyptian banks and insurance companies exceeding 10% of the issued shares. All foreign investment in the Sinai region is also subject to regulatory approval. Foreign investment in certain aviation activities is also restricted. In certain cases, foreign investors with significant commercial activities in Egypt may need to establish a legal structure in Egypt under the supervision of the Egyptian Authorities (See Section VI for further detail).

## **IV. Investment Guarantees and Incentives**

Pursuant to the Investment Law, entities (whether partnerships or companies) established in Egypt as of the date of the coming into force of the law that are active in certain fields enjoy certain guarantees and benefits. The fields in question include the following: land reclamation, animal production, manufacturing and mining, hotels, motels, hotel apartments, tourist resorts, tourist transportation, cold storage and transportation of agricultural and industrial products, air transportation and services relating thereto directly, maritime transportation, petroleum services supporting drilling, exploration, and transportation and delivery of gas, housing projects for non-furnished and non-office rental, infrastructure projects for potable water, sewage, electricity and communications, hospitals, medical centers which provide 10% of their capacity for free treatment, and computer software programs and systems.

If an entity has, in addition to the activities covered under the Investment Law, other activities, the guarantees and incentives would only be applicable to the activities covered under the law.

The guarantees and benefits provided under the Investment Law include without limitation:

- Immunity from nationalization or expropriation;
- Immunity from administrative attachment or freezing of assets;
- The right to acquire ownership of land and buildings required for carrying on the activity in question or increasing its scope;
- The right to directly import equipment, raw materials, and transportation vehicles appropriate for the nature of its activity;

- The right to export directly;
- Exemption from certain provisions of the Companies Law (including the distribution of 10% of profits to employees);
- Exemption from stamp tax;
- Exemption from notarization and registration fees on the company's articles of incorporation, and loan and mortgages agreements related to its business, for a period of five years starting from the date of its registration at the Commercial Registry;
- Registration of title of land required for the company's activities is also exempted from the same taxes and fees; and
- A unified customs duty of 5% on import of all machinery, equipment, and tools used to set up the company.

The General Authority for Investment and Free Zones (GAFI) has authority over the application of this law, and issues decrees for the establishment of entities benefiting from the Investment Law.

## V. Exchange Controls

Egypt adopted, in 1976, a liberal foreign exchange policy, enacting Foreign Exchange Law Number 97 of 1976. This has been replaced by Law Number 38 of 1994 which was consequently replaced with the Banking Law Number 88 of 2003. The Law gives any natural or juristic person the right to retain and transact with foreign currency generated from operations in Egypt. Such transactions must be done through banks registered with the Central Bank of Egypt (the "CBE") or franchised dealers. However, the Egyptian pound, although effectively floated, is still not transferable or convertible outside Egypt.

## VI. Direct Investment: Business Vehicles

Direct investment in Egypt (except for Free Zone investment) is subject to the general corporate and commercial system in Egypt; and in certain cases, the entity in question may benefit from additional investment guarantees and incentives pursuant to the Investment Law if it invests in certain fields. The most common legal vehicles used by foreign investors in Egypt are:

- Limited liability companies

- Joint stock companies
- Foreign branch office
- Representative Office

The following is a brief summary of each category and the limitations and rules that apply to each type of arrangement.

## **Limited Liability Company**

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An Egyptian limited liability company is a closed company where the liability of each of its shareholders is limited to the value of their shares in the company.

### *1) Registration*

Limited liability companies have to be registered in the Commercial Registry and are subject to the supervision and inspection of GAFI. Any amendments to the articles of incorporation and by-laws must be reported to and approved by GAFI.

### *2) Scope of Activities*

Limited liability companies are precluded from activities in the areas of insurance, banking, savings, and investment management. Apart from the preceding areas of activity, limited liability companies can carry out legal commercial activity similar to other business entities, subject only to the general limitations of applicable laws and regulations.

### *3) Management and Control*

There is no express provision indicating a maximum ceiling for ownership of capital by foreigners. Hence, a limited liability company may be 100% foreign owned. However, it should be noted that, under Egyptian law, a limited liability company cannot be wholly owned by one entity. Consequently, there must be at least two shareholders. With respect to management, it is carried out by managers appointed by the shareholders. There may be one or more managers. In all cases, there must be at least one Egyptian manager. Major decisions are taken through the shareholders' meeting, wherein either a simple majority or a super majority may be required.

Managers and persons who are considered representatives of the company can be held personally liable for breach of their fiduciary duties and for certain violations of the law by the company.

Parent companies cannot be held liable because of their separate and independent legal personality. Furthermore, the corporate veil of Egyptian companies cannot be pierced.

#### 4) *Capital*

There is no minimum capital for a limited liability company. Shares can be issued for non-cash consideration with the approval of a shareholders' meeting. However, a formal valuation is required in certain cases where the value of the capital exceeds LE 1,000,000.

#### 5) *Taxes*

Limited liability companies are subject to tax on companies profits.

#### 6) *Profit-Sharing*

As long as the capital of the limited liability company does not reach LE 250,000 (which is the minimum capital for a joint stock company), there is no obligation for the distribution of part of the profits to employees. If the capital reaches the aforementioned figure, 10% of the net profits is to be distributed to employees, provided that such 10% does not exceed the annual total value of salaries and wages payable to such employees. The entitlement of foreign employees to such distribution is subject to legal debate.

## **Joint Stock Company**

An Egyptian joint stock company may be a closed company or a listed company, where the liability of its shareholders is limited to the value of their shares in the company.

#### 1) *Registration*

A joint stock company must be registered in the Commercial Registry and is subject to the supervision and control of GAFI, like limited liability companies. The Egyptian Financial Supervisory Authority (EFSA) should be informed of the issuance of any stocks or bonds, which should only be issued if EFSA has not objected within three weeks of its notification. Public issues are supervised by EFSA. Furthermore, the registration of companies working in certain fields such as securities or factoring requires a license from EFSA. Any amendments to the articles of incorporation and by-laws must be

reported to, and approved by GAFI (and the competent authority, in the case of banks and insurance companies). Moreover, The company must keep accounts and publish its semi-annual or annual audited accounts and financial statements, duly audited by a qualified Egyptian auditor.

## 2) *Scope of Activities*

A joint stock company can carry out all commercial activities subject to the limitations imposed by applicable laws and regulations.

## 3) *Management and Control*

There must be at least three shareholders. The management of the company is effected through a board of directors comprising at least three members elected by the shareholders for a three-year term. The first board of directors is elected by the incorporating shareholders and has a term of five years. A corporate or other legal entity could be elected as a member of the board, in which case a representative of the legal entity is to be nominated to attend the board meetings.

Directors can be held personally liable for breach of their fiduciary duties. In addition, persons who are considered legal representatives of the company, such as the chairman or the managing director, can be held personally liable for certain violations of the law by the company.

Parent companies cannot be held liable because of their separate and independent legal personality. Furthermore, the corporate veil of Egyptian companies cannot be pierced.

## 4) *Capital*

Shares may be closely held or offered to the public. The minimum issued capital required for a company not offering its shares to the public is LE 250,000, of which 10% is to be paid at the time of incorporation, to be increased to 25% within three months, and the remaining amount of the nominal value of the shares is to be paid up within five years. The minimum capital of a joint stock company offering its shares for public subscription is LE 20,000,000, fully paid up. However, in case of holding companies established for the purposes of stock dealings and investment, the minimum capital is LE 5 million, of which at least 25% must be paid on incorporation. The remaining amount of the issued capital is to be paid up within five years of the date of incorporation according to the procedure and at the rate set by the board of directors. The authorized capital is not to exceed 10 times the issued capital. If the shares are to be offered to the public, this must be done through a bank licensed to receive subscriptions, a company established for this purpose, or a company licensed by EFSA to deal in securities. Shares can be issued for non- cash consideration with the approval of an extraordinary

general shareholders' meeting. However, a formal valuation is required in certain cases where the value of the capital exceeds LE 1,000,000.

In general, there are no limitations to the percentage of the capital that can be owned by foreigners. However, there are some exceptions to the previous rule. For example (as mentioned earlier) certain regulatory approvals are required for foreign and local investments in Egyptian banks and insurance companies exceeding 10% of the issued shares. In addition, companies established for executing investment projects in the Sinai Peninsula must have at least 55% Egyptian capital.

#### 5) *Taxes*

Joint stock companies are subject to tax on company profits.

#### 6) *Profit-Sharing*

At least 10% of the net profits are to be distributed to employees, provided that the amount to be distributed shall not exceed the total value of the wages and salaries annually paid to the company's employees. The entitlement of foreign employees to such a distribution is subject to legal debate. However, the Labor Office has taken the position that foreign employees are not entitled to such a distribution.

## **Foreign Branch Office**

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Under the Companies Law, a foreign company may establish a branch office in Egypt to undertake certain commercial activities. Practically, the branch is treated as an Egyptian company in all matters except corporate governance.

#### 1) *Registration*

Any foreign company, whatever its legal form, which carries out any commercial, financial, industrial or contracting activity in Egypt has to be registered as a branch in the Commercial Registry and GAFI.

#### 2) *Scope of activity*

A branch can undertake any form of legal activity in Egypt for which it is registered in the Commercial Registry provided that it has a signed contract with an Egyptian entity to provide the services encompassed by such activity.



### 3) *Management and control*

A branch can be managed by a foreign manager. A branch is under the full control of its parent company. Branch offices' activities are subject to review by GAFI to ensure compliance with laws and regulations.

### 4) *Capital*

Branch offices are not subject to a requirement of a minimum capital investment. However, initial capital investments must be made in foreign currency transferred to Egypt through a registered Egyptian bank.

### 5) *Taxes*

The net profit of a branch is subject to corporate tax at the same rate as Egyptian companies.

### 6) *Profit-Sharing*

Branches are bound to distribute at least 10 % of their annual net profits to their employees (not exceeding the total annual wages and salaries paid to workers and employees of the branch).

## **Representative Office**

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Pursuant to the Companies Law and its Executive Regulations, a foreign company may establish a representative office in Egypt for the purpose of performing market study and research for the benefit of the foreign company.

### 1) *Registration*

A representative office must be registered with GAFI. Bank representative offices must be registered with the CBE. Furthermore, if an office is designated as a "technical" representative office, it must be registered with the Ministry responsible for its field of activity. For example, a technical office relating to pharmaceuticals must be registered with the Ministry of Health.

### 2) *Scope of activity*

Pursuant to Article 316 of the Regulations for Companies Law, the sole authorized activity for a representative office is to conduct market research, market surveys, and production studies. In the

case of a “technical” representative office, the scope also includes technical review of products in the market.

### 3) *Management and control*

Management can be handled by a foreign manager for the representative office. A representative office is under the full control of the parent company. Activities of a representative office are subject to review by GAFI to ensure compliance with laws and regulations.

### 4) *Capital*

There is no requirement for any capital investment. The parent company pays for the expenses of maintaining the representative office.

### 5) *Taxes*

Since a representative office is legally not involved in any commercial activities, it does not realize any profits and as such is not subject to taxation. Employees are subject to applicable taxes on their employment income.

### 6) *Limitation of Scope*

Given that the scope of activity for a representative office is very limited, a representative office may be useful to monitor commercial activities undertaken by some other form of business entity undertaking the actual commercial activity on behalf of the foreign entity in Egypt. For example, a foreign entity's representative office may be used to monitor the activities of a foreign entity's distributor or agent in Egypt. The office may, indirectly, assist the distributor through the undertaking of market research and market surveys.

## **VII. Indirect Investment: Marketing Arrangements**

This section deals with arrangements whereby foreign producers or suppliers market their products indirectly in Egypt. In other words, the producer does not incorporate or establish a separate Egyptian entity, but carries out its marketing activities through some form of representation in Egypt.

## Agency

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Agency agreements are governed by Agency Law No. 120 of 1982 and the new Egyptian Commercial Law No. 17 of 1999.

Commercial agents must be registered at the Commercial Agents' Registry, which issues a certificate confirming the registration. The agent must be Egyptian or a 100% Egyptian owned company. The agency agreement must be registered with the Egyptian Chamber of Commerce.

A commercial agent can obtain compensation if both:

- The agency agreement is terminated (or not renewed) without good cause and without notice (or at an unreasonable time), even if the termination was provided for in the terms of the agency agreement. All contractual provisions to the contrary are null and void; and
- The agent has not committed an error or omission in the course of its duties, and its activities are proven to have led to evident success in promoting the sales of the commodity or increasing the number of customers for the principal.

A Decree from the Minister of Trade (Number 362 for the Year 2005) placed pressure on foreign principals who have ongoing disputes with local commercial agents to settle such disputes amicably. The Decree holds that no new agent can be registered unless compensation due to the terminated commercial agent is settled. If the terminated agent fails to notify the competent authority with a copy of the writ of its court action or request for arbitration within 60 days of initiating such action or arbitration, there is no restriction on the registration of a new agent.

## Importation

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Under Egyptian law, the importation of goods or products from abroad requires an importation license. An importation license grants the licensee the right to carry out such importation activity. Similarly to commercial agents, importation licenses are only granted to Egyptian individuals or partnerships wherein all the partners are Egyptian, or companies wherein all the shareholders are Egyptian. It is the usual practice that the commercial agent itself holds the importation license. Thus, the commercial agent carries out the marketing, as well as the importation activities.

The importation of foreign products from abroad by a person holding an importation license takes place through letters of credit that are opened for the full value of the imported products. In certain instances, the customer buying the products would itself have the importation license and would

import directly from the foreign producer. Some parties, such as certain public sector entities and governmental organizations, may be exempt from importation restrictions, and may then be able to import directly from the foreign supplier. In such cases, payment by transfers or other means may be possible.

## **Distribution**

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A distributor is a person who sells products in the country on its own account. In other words, a distributor would buy the products directly from the foreign supplier or from the foreign supplier's agent and re-sell at a profit. There are no specific laws governing distribution and franchising agreements. These are governed by the general provisions of the Egyptian Civil Code and the Commercial Code. There is no need to register as a distributor, as long as the distributor does not carry out marketing activities on behalf of the foreign supplier. In other words, as long as the distributor is selling for its own account, it does not need to be registered as an agent. Thus, a foreign producer may appoint a distributor in Egypt that would buy the products directly from the foreign producer (with an importation license), who would pay for the products and re-sell the products for its own account, for its profit.

Alternatively, the foreign producer may appoint both an agent and a distributor, which is common. The agent would carry out the marketing on behalf of the foreign producer as well as the importation process, and the distributor(s) would buy from the agent and re-sell for their own account. There are no nationality restrictions for distributors. The foreign producer may itself form part of the distributor entity that buys the product from the agent and resells within the country (by setting up a 100% owned subsidiary or through a joint venture). The distributor entity, in which the foreign producer may be involved, as mentioned earlier, may itself provide the after-sales support and maintenance. Naturally, the distributor is subject to taxation on its net profits.

## **Franchising**

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Franchising agreements are treated the same way as distributor agreements (See above, Distribution.) In addition, if a franchise agreement involves a transfer of technology, it must be governed by Egyptian Law and any disputes in connection with that agreement must be resolved by the Egyptian courts or by arbitration in Egypt under the Egyptian Arbitration Law No. 27 of 1994.

## **Technology Transfer and Licensing Agreements**

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The foreign producer or supplier may also enter into a technology transfer or licensing agreement with an Egyptian enterprise. In such cases, an agent is not required as there is no marketing of foreign products within the country. Rather, the Egyptian enterprise that is producing under license from the

foreign enterprise would be marketing its own products. However, the royalties payable to the foreign enterprise are subject to Egyptian taxation at the rate of 20%, and are to be withheld at the source. However, some double-taxation treaties to which Egypt is a party (e.g., with the United States) reduce the rate to 15%. (See Section XV for further detail on intellectual property rights in Egypt).

## VIII. Free Zone Investment

The Investment Law sets the framework for the establishment and management of general free zones in Egypt. These are created pursuant to Cabinet decrees (a number of free zones were already established and in operation prior to the law, including the Alexandria Free Zone and others). GAFI sets the policies for free zones and establishes the conditions for granting licenses for entities to operate in the free zones, and the regulations for occupying land and buildings therein. Each free zone has a Board of Directors that manages it, and licenses for operation are granted pursuant to decrees of the Chairman of the Board. Companies working in the fields of fertilizers, iron and steel and production, petrol production and liquefying and transporting natural gas do not benefit cannot be granted a private free zone status [Article 10 of Law 114/2008].

Free zone projects are not subject to taxes. However, an annual fee is payable. The fee is 1% of the value (CIF port of arrival) of goods entering the free zone for storage projects, and 1% of the added value (cost of manufacture or assembly) of goods exiting the free zone for manufacturing and assembly projects. Trade in transit products (with determined destination) is exempt from this fee. Projects whose main activity does not involve the entry or exit of goods are subject to an annual fee equal to 1% of total revenue realized by the project as set out in accounts certified by an auditing firm. The above fee is in addition to an annual service fee at the rate of 0.5 per mille of the capital costs of the project, with a minimum of US \$100 and a maximum of US \$1,000. The minimum and maximum are likely to change often and should be checked per annum. Oil refining projects are not subject to the 0.5 per mille annual fee; they are obliged to pay an annual services fee of 0.005% of the project's investment costs with a cap of USD 100,000. Also, such projects are not exempt from taxes [Law No. 133/2010].

Free zone projects are generally exempt from import/export regulations, and all equipment, machinery, and transportation required for the activities thereof are exempt from customs duties and sales tax (with the exception of cars). In addition to general free zones, GAFI may set up private free zones which, if necessary, may be limited to one project. It may also grant approval for the transformation of an in-land project to a private free zone (specific conditions are set out in the Executive Regulations to the Investment Law, including the requirements that the project is already active, and that it exports at least half of its production output).

## IX. Banking and Financial Facilities

Investment banking services and products in Egypt are regulated by various governmental agencies. Banking and financial services activities require a license from the CBE. Investment banking services require a license or the approval from the Egyptian Financial Supervisory Authority (EFSA).

The following laws and the executive regulations thereof regulate investment banking companies and activities:

- Law No. 159 of 1981 on Commercial Companies
- Law No. 88 of 2003 on Central Bank, Banking Sector and Money
- Law No. 80 of 2002 on Anti Money Laundering
- Law no. 95 of 1992 on Capital Markets
- Law No. 93 of 2000 on Central Depository and Custody
- The Egyptian Commercial Code, Law No. 17 of 1999
- Law No. 91 of 2005 on Income Tax

As a general matter, cross border activities in Egypt should be conducted in a way that would not be considered a “public offering” of such product or service in Egypt (conducted on a one-on-one basis, without public advertising and consistent with private placement principles). There are no restrictions on engaging in investment banking activities for individuals or entities as long as such is included in the purposes or activities of such entities.

Interest rates are determined by the CBE. However, a bank and its client may contractually agree on an interest rate that is higher than the declared rate of interest. Furthermore, the determination of fees and commissions is based on agreement between each bank and its clients.

All the shareholding structures of Egyptian investment banks and capital market related companies are reported and approved as the case may be to EFSA. In addition, all the shareholding structures of Egyptian banks are reported and approved as the case may be to the CBE.

# X. Labor Law and Employment

## The Law Governing Employment Matters

Employment issues in Egypt are governed by the Egyptian Labor Law No. 12 for the year 2003 (“Labor Law”), which governs all employees working in Egypt regardless of their nationality. In addition to the Labor Law, several ministerial decrees also govern the employment relationship and are considered complementary to the Labor Law. The Labor Law and all relevant ministerial decrees aim at increasing private sector involvement and achieving a balance between employee and employer rights.

## General Considerations

### *Minimum Wage*

According to Article (34) of the Labor Law, the National Counsel for Wages undertakes to set minimum wage levels taking into consideration the cost of living and striking a balance between wages and prices. The Counsel also sets the minimum annual increase which must not be less than 7% of the basic salary which is used to calculate the social insurance.

### *Working Hours*

The working hours according to the Labor Law are a maximum of 8 hours per day or 48 hours per week in the case of a six-day work week. However, the employee may, from time to time, be required to work additional hours when necessary.

### *Annual Leave*

According to Article (47) of the Labor Law, the duration of the employees’ annual leave is 21 days per year for those who have worked one year in the service of an employer. For those who have worked more than 10 years in the service of one or more employers, the annual leave is 30 days. Also, employees that are over 50 years of age are entitled to annual leave of 30 days. As for employees that have worked less than one year in the service of an employer, their annual leaves shall be pro-rata to their period of service, provided that they have spent 6 months in the service of the employer.

### *Sick Leave*

According to Article 54 of the Labor Law, if an employee is sick, he or she is entitled to sick leave as

determined by the concerned medical authority. During sick leave, the employee shall be entitled to his or her salary as stipulated in the Social Insurance Law. An employee who has been proven to be sick shall be entitled to a paid sick leave at the rate of 75% of his or her wage upon which social insurance payments are calculated, for a period of 90 days, to be increased to 85% thereafter for the following 90 days. Sick leaves will be payable to the employee for up to 180 days. The employee has the right to benefit from his/her accumulated annual leaves and also to convert his/her annual leaves into sick leaves if he/she has a balance of such leave.

#### *Minimum Number of Nationals*

According to the Companies Law, only 10% of the employees in a company can be foreigners, and their salaries shall not exceed 20% of the total salaries. Furthermore, according to the Investment Law, only 25% of the employees in a company established in any of the free zones can be foreigners.

## **Hiring and Dismissal of Employees**

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### *Hiring*

Pursuant to the Labor Law, the employer has the right to collect personally identifiable information that may be used in connection with the application for employment, compensation, benefits, and other services offered by the employer. The employer should have a file for each employee including certain information which is required for appointment (i.e. the employee's qualifications, certificates, his/her social status, and a copy of his/her ID or passport, a certificate from the employee's former employer). The employer should maintain in such file information regarding the employee's work history, work performance, and disciplinary history during his/her employment with the employer.

Employment contracts, whether for foreigners or Egyptians, are required to be in writing and in Arabic.

### *Dismissal*

If the employer wishes to terminate a definite period employment contract at any time during its term, without a justified cause, (i.e., if the employee has not committed a grave fault as illustrated below), the employer will be liable for the full wage the employee would have been entitled to throughout the entire period of the contract. In this case, the applicable notice period will be as agreed upon in the definite period employment contract.

If an indefinite period employment contract is terminated by the employer without a justified cause, the employer will be liable to compensate the employee for the harm caused because of the termination



as follows: no less than two months' full salary for each year of service, in addition to other entitlements (e.g., accrued leaves, bonus, etc.). In this case, a two months' notice period should be sent to the employee if the employee's service with the employer has been less than ten years, and a three months' notice period should be sent to the employee in case the employee's service with the employer has been more than ten years.

According to the Labor Law, the employer, in general, is not entitled to terminate the employment contract unless the employee breaches the contract by committing a "grave fault", as explicitly stated in Article (69) of the Labor Law. "Grave Fault" circumstances include the following:

- Assuming a false identity or submitting forged documents;
- Continually violating safety instructions;
- Absence from work for more than 20 non-consecutive or ten consecutive days in any one year;
- Divulging the employer's secrets, causing a material loss;
- Competing with the employer in the same line of work;
- Being intoxicated during working hours; and
- Assaulting the employer, the general manager or any of his superiors

In addition, the employer can terminate the employment contract for professional incompetence.

If the employee is unfairly dismissed, he/she can claim compensation. Compensation for unfair dismissal is decided by the competent court, but must not be less than two months' full wages for each year of service, or in the case of a definite term agreement, the salary for the remainder of the contract period.

Any employer can declare redundancies for economic or other reasons, including reduction or cessation of activities, after obtaining the approval of a committee affiliated with the Ministry of Labor and Emigration.

## Safety Standards

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In general, the Labor Law stipulates that the provisions regulating emissions, sound pollution and matters of that nature that are outlined in the Environmental Law have to be respected by the employer. In particular, Article (208) to (211) of the Labor Law stipulates that the employer should provide all the necessary means to protect its employees from hazardous, chemicals, machinery, infections, noise and sound pollution at the work place. Furthermore, Articles (212) and (214) of the Labor Law provide that the employer has the obligation to equip the workplace with the necessary first aid and fire presentation measures.

## Workers' Unions

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Any establishment that hires more than fifty employees should have an Employees' Union to represent the establishment's employees. However, regarding establishments that hire less than fifty employees, the negotiations will be carried by representatives of the General Union and the Employer's representatives.

The main objectives of unions are as follows:

- Settlement of individual and group disputes related to its members;
- Participation with the General Union in drafting collective employment contracts;
- Participation in the discussions related to the establishment's production plan and assisting in the execution thereof;
- Consultation on penalties' regulations and other internal regulations related to the establishment's employees at the time of drafting and amendment;
- Execution of the service programs approved by the General Union; and
- Contribution to the social activity in which the employees participate.

## XI. Work Permit Requirements

Foreign employees may not work in Egypt unless they obtain a residency permit, which includes a work permit (called a non-tourist resident permit). The required documents for obtaining a resident permit in Egypt include:

- Copies of the letters of the Head of the Head of the Central Authority for Employment and Labor Market Information which are addressed to the Passports, Emigration and Nationality Administration and the competent administrative authorities for the approval of recruitment of the employee and granting him/her a work visa;
- A copy of the foreign employee's passport;
- A copy of the employer's Social Insurance Form 2 (most recent version);
- A letter issued by the employer stating the total salaries and the number of Egyptian and foreign employees (in Arabic);
- Experience Certificate for the foreign employee comprising his/her experience in the field where he/she will be working, to be notarized by the competent authorities and the Egyptian Embassy in that country. An official Arabic translation is required;
- Foreign employees work permit forms numbers 1 (stamped by the company's stamp) and 2;
- A postal order in the favor of the head of the competent governmental authority of an approximate value of LE 1,500 (some foreign employees are exempt from such fees);
- Extract of the commercial registration form and the tax card of the Egyptian company;
- HIV test to be taken in Egypt (some foreign employees are exempt from taking the test); and
- An acknowledgement (in Arabic) from the foreign employee stating that he/she neither previously worked in Egypt nor obtained a work permit
- 8 passport-size photographs of the foreign employee.

It should be noted that foreign technical experts must have two Egyptian employees as assistants. Also, employees working in certain fields (such as tourism and education) need to submit additional documents and procure specific approvals in order to obtain a work permit.

Once all required documents are submitted, the Labor Office will issue a temporary slip to be attached to the employee's passport, which will allow the employee to start work. After security clearance procedures, which take approximately 2 months, the work permit and the residence visa are issued.

The process of obtaining work permits costs approximately LE 3,000.

It should be noted that a work permit is always temporary. No permanent work permit is granted. The employee must renew it every year or every six months, depending on the term of the work permit.

## **XII. Taxation**

Tax Law Number 91 for the year 2005 drastically simplified the Egyptian taxation system. Generally speaking, there are now two types of taxes applicable in Egypt:

- An income tax applicable to individuals; and
- A tax on company profits applicable to all types of juristic persons (companies and partnerships).

These two types of taxes are briefly outlined below:

### **Income Tax on Individuals**

The tax on income is in general applicable to the income of natural persons resident in Egypt for the majority of a year in a residence whether owned or rented or if he/she has a commercial office, a place of business, a factory or other places where a natural person undertakes work in Egypt or resides in Egypt for more than 183 continuous or interrupted days within 12 months.

Also, an Egyptian who performs his duties outside Egypt and the source of his income is the Egyptian Treasury is liable to pay an income tax.

The tax covers four sources of income:

- income from commercial and industrial activity;
- Salaries and wages;
- income from non-commercial professions; and
- income realized from real estate property.

### *Income from Commercial and Industrial Activity*

Tax from commercial and industrial activity includes the net profit realized from any commercial or industrial activity, even if such activity is limited to one transaction. It also includes profits realized by brokers and agents and, in general, all profits realized by any person, agency, or office that acts as a broker, mediator, or agent for the sale, purchase, or lease of real estate property or any kinds of goods, services, or stocks. It also includes profits realized from real estate development, and rental of commercial and furnished property.

### *Salaries and Wages*

The salaries and wages tax covers salaries, wages, bonuses, and annuities, excluding pensions and social insurance payments paid to individuals residing in Egypt or individuals residing abroad on account of services rendered in Egypt.

### *Income from Non-Commercial Professions*

Tax on income from non-commercial professions includes net profits realized from the professions where the income is basically generated by the taxpayer's non-commercial work. This also includes profits realized from professional work abroad if the main or permanent center for the taxpayer's professional practice is in Egypt. This category in effect also includes revenue derived from any profession or activity not expressly covered by the law, i.e. this is the default tax category.

### *Income Realized from Real Estate Property*

Tax on revenue from real estate wealth includes revenue from exploitation of agricultural land and buildings.

### *Deductions*

The categories outlined above include a number of deductions, exemptions, and the like, and these should be reviewed individually. Income tax is payable on the excess of LE 5,000 of the total net income realized by the resident taxpayer during the year.

The tax rates on the net annual income of natural persons are as follows:

- More than LE 5,000 up to LE 20,000: 10%.

- More than LE 20,000 up to LE 40,000: 15%.
- More than LE 40,000 up to LE 10,000,000: 20%.
- More than LE 10,000,000: 25%

## **Tax on Company Profits**

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Tax on company profits is applicable to the profit realized by all juristic persons operating in Egypt. This tax is also applicable to banks and public sector companies and units, as well as foreign banks and companies operating in Egypt, whether directly or through branches registered in the country. The general tax rate is:

- Up to LE 10,000,000: 20% of the net profits.
- More than LE 10,000,000: 25%.

There are two exceptions to the general tax on profits:

- The profits realized by oil exploration and production companies are subject to a higher tax rate of 40.55%; and
- The profits realized by the Suez Canal Authority, the Egyptian Petroleum Authority, and the Central Bank of Egypt are subject to a higher tax rate of 40% of their profits.

Generally, the profits of a foreign subsidiary need not be imputed to a tax resident parent company, because there are no controlled foreign company rules.

## **General Tax on Sales**

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In accordance with Law Number 11 of 1991, a new general tax on sales is applicable. The tax applies to the sale of goods (some goods are exempted) and certain types of services (mainly tourist, telecommunications, and entertainment services). Goods imported from abroad for commercial purposes are also subject to the tax. The tax rate for goods ranges from 10% (the general rate) up to 50% for certain specified goods. The tax rate for services ranges from 5 to 10%. The tax is added to the price of the goods or services in question, i.e. is payable by the consumer at point of sale and remitted by the billing entity to the tax authorities.

Egypt does not have transfer pricing rules. However, if the price is substantially below the market price and/or the price used in other transactions, it may give the impression of tax evasion.

## **XIII. Product Liability**

The manufacturer and/or seller can be liable on the grounds of:

- Tort, for damage caused as a result of a defective product;
- Breach of contract; or
- Product liability.

### **Tortious liability**

The manufacturer of a defective product is liable in tort if a defective product causes any personal damage, injury or death. The statute of limitation is 3 years from the date the claimant becomes aware of the damage and, in any event, claims are barred after 15 years from the date the tortious act occurred.

### **Contractual liability (warranty against hidden defects)**

A seller warrants that the product sold conforms to the specifications acknowledged by the seller and is responsible for, and warrants the purchaser against, any hidden or latent defects for one year from the date of delivery to the purchaser (Civil Code).

The purchaser must prove:

- That the product was defective;
- That the defect could not have been discovered by the purchaser at the time of delivery and that, if the purchaser had known of such defect, he would not have purchased the product; and
- The actual damage suffered and profits lost as a direct result of the defect.

## Commercial Code

The Commercial Code recognizes the notion of product liability of both manufacturer and seller. Any person suffering from direct material or physical damage resulting from a defective product, has the right to claim damages by filing a product liability claim against the manufacturer, distributor or both severally. The statute of limitations is the same as for tortious liability.

## Consumer Protection Law

The Consumer Protection Law No. 67 of 2006 (the “CPL”) and its Executive Regulations set out obligations for suppliers of products and services (as defined under the CPL) and various guarantees for consumers. In the event of a breach, the Consumer Protection Authority can suspend the suppliers' activities or seize defective products until investigations are concluded or court judgments are passed.

## XIV. Competition

The Competition Law No. 3 of 2005 and its Executive Regulations establishes the Egyptian Competition Authority to monitor compliance. The Competition Law prohibits, among other things:

- Agreements or contracts between competing persons that are likely to:
  - increase, decrease or fix prices;
  - divide product markets or allocate them on certain grounds (for example, geographical areas);
  - result in concerted participation in tenders, auctions, negotiations and other calls for procurement;
  - restrain production, distribution or marketing operations, or limit the service distribution; and
  - restrict competition.
- A person holding a dominant position from abusing that position; and
- Acts committed outside Egypt that may prohibit, restrict or impair free competition in the Egyptian market.



## Unilateral (or single-firm) conduct

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Single firm conduct is likely to come under the abuse of a dominant position under the Competition Law. An entity holding at least 25% of the market share enabling it to affect the prices or what is on offer in the market is considered as having a dominant position if its competitors have unequal power in the market and are therefore unable to prevent this dominance (Article 4 of the Competition Law).

A person holding a dominant position in a market is prohibited from undertaking specific practices that are considered detrimental to competition (Article 8 of the Competition Law). Such practices include:

- Preventing the manufacture, production or distribution of a product for a certain period (or periods) of time;
- Refraining from entering into transactions with any person or totally ceasing to deal with him in a manner that results in impairing that person's freedom to access or exit the market;
- Limiting the distribution of a specific product, to, for example, certain geographic areas or to a type of customer base;
- Discriminating between sellers or buyers having similar commercial positions in relation to sale or purchase prices or the terms of the transaction;
- Refusing to produce or provide a product that is circumstantially scarce when its production or provision is economically possible;
- Selling products at prices lower than their marginal cost or average variable cost;
- Obliging a supplier in not dealing with a competitor; and
- Imposing the acceptance of obligations or the purchase of products that are unrelated in their nature to the original transactions or agreements or as opposed to relevant commercial custom.

## Control over Mergers and Acquisitions

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Under the Egyptian Companies Law, in a merger between Egyptian companies, prior approval is required from the Ministry of Investment. The approval is automatic and is not considered to be an

impediment to the merger.

Notification to the Egyptian Competition Authority is required where either:

- An entity with a turnover exceeding LE 100,000,000 acquires assets or merges into another entity; or
- The sum of the respective annual turnover of the parties concerned with an acquisition (the sum of the annual turnover of the acquirer, the acquired party and all related parties in Egypt) exceeds LE 100,000,000.

The law defines related parties as two or more separate legal entities, where the majority or the total of a related party's shares are owned by the other or an entity subject to the actual control of another entity.

The law does not specify its application to foreign-to-foreign mergers, but it is likely that the notification requirement only applies where the:

- Transaction will have an impact on the Egyptian market.
- The parties operate directly or indirectly in the Egyptian market.
- One or more related parties of the acquirer or the acquired party are Egyptian entities.

If the parties have no legal establishments (that is, subsidiaries or branches) in Egypt, and only sell through a distributor, no notification is required, even if the distributor's turnover is over LE 100,000,000 in the previous year. No other foreign exemptions exist.

## XV. Intellectual Property

Intellectual property rights and rules of protection are set out in The Intellectual Property Rights Law No. 82 of 2002 ("IPR Law"). The following is a summary of the main intellectual property rights capable of protection.

### Patents

- **Nature of right.** To be patentable, an invention must:

- Be original and novel;
  - Involve an inventive step;
  - Be capable of industrial application; and
  - Not be specifically excluded by the IPR Law.
- **How protected.** Applications for registration must be made to the Egyptian Patent Office. The IPR Law sets out the rules for protection.
  - **How enforced.** Criminal sanctions are imposed. Both the patent owner and the competent governmental body can bring a case in the courts seeking protection. In addition, the patent owner is entitled to civil remedies, such as damages or injunctions.
  - **Length of protection.** Subject to certain exceptions, protection lasts for a maximum of 20 years, provided that renewal fees are paid annually from the fifth year after filing.

## Trade marks

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- **Nature of right.** Trade mark protection is available for trade, industrial and service marks. To be registered as a trade mark, a sign must:
  - Be capable of graphical representation; and
  - Distinguish the goods or services of one undertaking from another.
- **How protected.** Applications for registration must be made to the Egyptian Authority for Commercial Registration (EACR). The IPR Law sets out the rules on protection. Unregistered marks can also be protected through unfair competition actions.
- **How enforced.** The methods of enforcement and the remedies available are the same as for patents (see above, Patents).
- **Length of protection.** Protection lasts indefinitely, subject to renewal every ten years.

## Registered designs

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- **Nature of right.** To qualify for registration, a design must:
  - Be original and novel;
  - Have an individual character; and
  - Relate to the appearance of all or part of a product resulting from certain features of that product or its ornamentation.
- **How protected.** Applications for registration must be made to the EACR. The IPR Law sets out the rules for protection.
- **How enforced.** The methods of enforcement and the remedies available are the same as for patents (see above, Patents).
- **Length of protection.** Protection lasts for a maximum of 15 years, subject to the payment of renewal fees after the first ten years.

## Unregistered designs

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- **Nature of right.** To be protected, the design must relate to an aspect of shape or configuration of the whole or part of an article, and must not be commonplace.
- **How protected.** There is no formal procedure for protecting unregistered designs.
- **How enforced.** The design owner must file an unfair competition claim. In addition, civil remedies such as damages and injunctions are available for the design owner.
- **Length of protection.** Protection lasts for an indefinite period.

## Copyright

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- **Nature of right.** Copyright subsists in original works, such as:
  - Literature (including software and databases);

- Drama;
  - Music;
  - Art;
  - Sound recordings; and
  - Cinematographic films.
- **How protected.** Protection subsists automatically from the moment the work is created. The rules on protection are set out in the IPR Law.
  - **How enforced.** The methods of enforcement and the remedies available are the same as for patents (see above, Patents).
- Length of protection. Protection lasts for:
    - Literary, dramatic, musical and artistic works: 50 years after the death of the author;
    - Cinematographic films: 50 years after the death of the last surviving author of the film.
  - In relation to neighboring rights, protection lasts for:
    - Producers of sound recordings: 50 years from the year of publication or recording;
    - Broadcasting organizations: 50 years from the first broadcast;
    - Performers: 50 years from the first performance or recording.

## Confidential information

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- **Nature of right.** This is protected under the IPR Law. To be protected, the information must be:
  - confidential in nature and not in the public domain or common knowledge; and
  - communicated in circumstances importing an obligation of confidence.

- **How protected.** There is no formal procedure for protection.
- **How enforced.** The injured party must bring a court action for breach of confidence based on breach of confidentiality. Criminal sanctions are imposed. The copyright owner is entitled to civil remedies, such as damages or injunctions.
- **Length of protection.** There is no fixed term, but the information must remain confidential for it to be protected.

## Integrated circuits and their topography

- **Nature of right.** To be protected, an integrated circuit must be:
  - Original and novel; and
  - Non-obvious.
- **How protected.** Applications for registration must be made to the Egyptian Patent Office.
- **How enforced.** The methods of enforcement and the remedies available are the same as for patents (see above, Patents).
- **Length of protection.** Protection lasts ten years from the date of filing in Egypt or the first exploitation in Egypt or abroad, whichever is earlier. A maximum term of 15 years from the design date is imposed.

## XVI. Customs

Customs are regulated under Egyptian law No. 66 for the Year 1963. Imports are subject to custom tariffs at variable rates depending on the product. No custom tariffs are collected for exports. The competent authority in implementing the law and regulating the customs field is the Egyptian Customs Authority as a part of the Ministry of Finance. The Ministry of Finance issues decrees dealing with custom tariffs for each imported product.

# **XVII. Dispute Resolution**

## **Overview of Court System**

The Egyptian Court system is composed of a number of tiers: Courts of First Instance, Court of Appeal, and the Court of Cassation. Large commercial disputes in civil and commercial matters are heard before the First Instance Full Court, and appeals from there are heard before the Court of Appeal. The branches of the First Instance Full Court and Court of Appeal used are those with local jurisdiction depending on where the defendant is domiciled (for example, Cairo, Giza and Alexandria). Further appeals can be made before the Court of Cassation. In 2008, special economic courts were set up to expedite litigation in commercial disputes (Law No. 120 of 2008). These courts became active towards the end of 2008 and early indications are quite positive.

Commercial disputes arising from administrative contracts (that is, contracts concluded with governmental authorities relating to public works) are heard in the first instance before the Administrative Court (equivalent to the Court of Appeal in the civil and commercial jurisdictions) and appeals from there are heard before the High Administrative Court (equivalent to the Court of Cassation). Conflicts in jurisdiction and contradictory judgments (between the civil and commercial court system and the administrative court system) are resolved before the Constitutional Court.

Some investment disputes are subject to optional amicable settlement. Such is the case, for example, with the ministerial committee that has been formed in order to amicably settle investment disputes arising from contracts concluded between private investors and any State or governmental entity. Also, investor complaints regarding obstacles imposed by the State or governmental authorities hindering their investments can be submitted before a ministerial committee that has the power to issue binding decrees removing such obstructions and therefore settling potential disputes. Further, the Investors' Dispute Resolution Center has been established under the auspices of GAFI to amicably settle corporate and investment related disputes arising between company shareholders, partners or companies. It should be stressed; however, that recourse to such committees is optional and is by no means a prerequisite for litigation, arbitration or any other dispute resolution mechanism.

## **Enforcement of Local Judgments**

Enforcement is made by obtaining a writ of execution from the Execution Judge and the judgment is enforced through court bailiffs. Numerous methods are available to delay execution, including a contestation case (which temporarily stops execution for a few months) and third party recovery claims in relation to secured assets. Delays can be up to one year or more in some cases.

## **Enforcement of Foreign Judgments**

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Egyptian courts will generally recognize and enforce foreign judgments if the following conditions are satisfied: (a) Egyptian courts do not have jurisdiction over the dispute, and the foreign court which rendered the judgment has jurisdiction pursuant to its rules on international jurisdiction; (b) the parties have been notified of the proceedings and validly represented before the competent court; (c) the judgment or award is final and binding pursuant to the rules prevailing under the law of the foreign court; and (d) the foreign judgment is not in conflict with a prior award or judgment rendered by Egyptian courts and is not in contravention of the prevailing public policy considerations.

## **Arbitration**

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Since the introduction of the Arbitration Law (Law No. 27 of 1994), arbitration has become an important and effective means of dispute resolution in Egypt. The trend has been an increasing resort to arbitration in commercial disputes. Arbitration is, in many cases, preferred to court litigation, particularly when the parties are seeking a relatively speedy resolution, and can afford the much higher arbitration costs.

The most prominent arbitration organization in Egypt is the Cairo Regional Center for International Commercial Arbitration (CRCICA). The CRCICA basically applies the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules.

An agreement to arbitrate must be in writing. No separate agreement is required. Judges have generally accepted and supported arbitral proceedings and an arbitral award. The Arbitration Law makes it clear that courts shall not accept a case if there is an agreement to arbitrate (unless the defendant waives its right to arbitration). The court rules these cases inadmissible.

## **Enforcement of Arbitral Awards**

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Arbitration awards are final, binding and subject to no appeal on the merits. However, awards can be challenged in actions of nullity, and can be declared null and void. Grounds for nullity are set out in the Arbitration Law, and include lack of jurisdiction, breach of public policy, failure to grant a party a right of defense, and excluding the application of the agreed law governing the merits of the claim.

Enforcement is made through depositing the award with the courts and obtaining a writ of execution. An arbitration award is then enforceable in the same way as a court judgment, through court bailiffs. There are procedures that need to be undertaken, and a 90-day period to grant the other party the right to bring a nullity action. A nullity action does not stop enforcement. There are procedural



defenses to delay enforcement for some time, perhaps even a year or longer, but ultimately an award that is not annulled will be enforced in due course.

At the end of 2008, the Ministry of Justice imposed some new regulations governing the deposit of awards for enforcement. These regulations potentially cast serious doubt over enforceability. The author of this article believes that these regulations are contrary to the Arbitration Law and therefore unconstitutional. It is hoped these regulations will be withdrawn before long.

**Enforcement of Foreign Arbitral Awards**

Under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) to which Egypt is a signatory, a foreign arbitration award is enforceable in a similar way to an award issued in Egypt, by deposit and obtaining a writ of execution. At the stage of recognition or enforcement, arbitral awards, like foreign judgments, are not reviewed on their merits.

**Mediation**

Apart from arbitration, there is no formal statutory recognition of other alternative dispute resolution mechanisms (for example, mediation). The CRCICA has rules for mediation and conciliation, but these processes are only subject to contractual enforcement. Recently, interest has grown in mediation and the Egyptian ADR Association was established in 2007. However, mediation remains subject to contractual agreement, and is not formally governed by legislation.

**XVIII. Limitation of Scope**

The information provided herein is general and for informational purposes. The information is provided as of March, 2012, and is subject to change and updates as a result of new legislation, laws, statutes, regulations, rules, decrees, ordinances, and other applicable governmental laws. The information does not purpose to be exhaustive and should not be relied upon as a substitute for legal advice on any specific matter.

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(As of March, 2012)