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DOING BUSINESS IN EGYPT AFTER THE JANUARY REVOLUTION: CAPITAL MARKET AND INVESTMENT LAWS

By Radwa S. Elsaman¹ & Ahmed A. Alshorbagy²

ABSTRACT:

Despite the Egyptian economy's remarkable growth during the last decade, unequal treatment at law and unfair distribution of wealth led to the Revolution on January 25, 2011. The Revolution affected investment in Egyptian markets. Reforming business laws—specifically the Capital Market and Investment Laws—has become essential to restore confidence in Egyptian markets. These two branches of business law have undergone many developments over the years, which have improved them significantly. Legal compliance, however, remains a major concern. This Article surveys the economic activity in Egypt from a legal perspective. It evaluates Egyptian laws affecting economic activity by analyzing the effectiveness and shortcomings of relevant laws, and proposing the necessary amendments to those laws in light of the Revolution's impact.

1. INTRODUCTION

Egypt has witnessed remarkable economic growth in the last decade. Most Egyptians, however, did not feel the effect of this growth. The corruption of public officials and businessmen, who were frequently motivated by politics, led to the concentration of most investment tools³ in the hands of the elite.⁴ This elite monopoly led to an

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³ See *infra* and note 172.

⁴ CREDIT AGRICOLE BANK, EMERGING MARKET FOCUS: THE POINT OF NO RETURN, EGYPT'S UNCERTAIN POLITICAL FUTURE, THE ECONOMY AND THE ARMY (Feb. 2011), www.alfransi.com.sa/en/general/download/file/1027.

unfair distribution of wealth, which eventually caused the January 2011 Revolution. The January Revolution has given rise to much economic and political chaos. It rattled the national stock exchange and shocked investors' confidence in the Egyptian market. Reforming economic laws will help boost the Egyptian economy and shorten the transition period before the economy rises again.⁵ In the long term, curbing corruption and institutional reformation are the best means to boost the economy and to achieve social and economic prosperity. The faster these reforms take place, the sooner the Egyptian economy can restore its strength and regain both national and international investor confidence.

This article evaluates Egyptian laws affecting economic activity by analyzing the effectiveness and shortcomings of the relevant laws and proposing necessary amendments in light of the Revolution's impact. Conducting business in Egypt involves numerous different laws, and it is difficult to cover all the relevant laws in a single article. This article focuses on two specific branches of business law in Egypt: Investment Incentives No. 8 of 1997 ("ILI")⁶ and the Capital Market Law No. 95 of 1992 ("CML").⁷

The CML regulates the Capital Market Authority ("CMA"), which was replaced by the Egyptian Financial Supervisory Authority ("EFSA") as the main market supervisor. The CML's executive regulations enjoy a special importance as secondary statutes⁸ because the government has increasingly used them to regulate otherwise unregulated or under-regulated capital market areas.⁹ The amendments to the CML over the past decade have greatly enhanced Egyptian capital market regulation by overcoming many previous deficiencies like the under-regulation of insider trading and market manipulation. Although parts of the law continue to require reform, such as takeover regulation, the main problem with the CML is investor compliance.

⁵ *See id.*

⁶ Law No. 8 of 1997 (Law of Investment Guarantees and Incentives), *Al-Jarida Al-Rasmiyya*, 11 May 1997 (Egypt).

⁷ Law No. 95 of 1992 (Law of Capital Market), *Al-Jarida Al-Rasmiyya*, 22 June 1992 (Egypt).

⁸ Secondary statutes is a generic term that refers to regulations issued by the executive authority rather than the by legislature. In this sense, primary statutes promulgated by the Parliament supersede secondary statutes that may not add, change or violate the primary statutes. *See* MOHAMED KAMAL ABDUL-AZIZ, *ALTANFITH ALMADANY FI DO'OE ALFIQH WALQADA'A* [Civil Execution in the Light of Jurisprudence and Judiciary] 18-25 (1980).

⁹ Minister of Economics and Foreign Trade Decree No. 135 of 1993 (Executive Regulations of the Capital Market Law), *Al-Jarida' al-Rasmiyya*, 8 Apr. 1993, vol. 81 F. no. 8 (Egypt); *see also* Law No. 95 of 1992 (Law of Capital Market), *Al-Jarida Al-Rasmiyya*, 22 June 1992 (Egypt).

Hence the EFSA, as the main market supervisor, should be granted independence from governmental supervision to allow for greater neutrality. Moreover, educating investors about the importance of corporate governance will increase legal compliance, and improved compliance will cause a more transparent market that will attract more investors.

The ILI organizes both local and foreign direct investment in Egypt.¹⁰ It has had a strong influence on the Egyptian investment environment during the previous decade because it provides incentives and guarantees for both local and foreign investors.¹¹ The ILI also established the General Authority of Investment and Free Zones (“GAFI”), an authority that deals with investment issues.¹² Likewise, the ILI also provides for an independent dispute settlement system for disputes arising between investors subject to its provisions. This may be of great use towards reforming investment laws and regulations. Furthermore, considering enforcement mechanisms to guarantee that small investors can make use of investment laws and regulations in Egypt is also necessary.

This explanation of the CML and ILI provides the necessary overview of Egypt’s legal system, the situation with regard to Islamic law, and the economic reasons for the January Revolution. Understanding this is the initial step to do business in Egypt. Part Two explains Egyptian securities regulations and proposes some reforms. Part Three provides an overview of the investment environment in Egypt, its laws, and provides guidelines for its reform.

2. OVERVIEW

2.1. *Laws and Regulations*

The Egyptian legal system is a combination of Islamic law—known as *Shari’a*,— and the Napoleonic Code.¹³ Egypt is the first Arab Middle Eastern country that voluntarily adopted Western style codes in the late nineteenth century.¹⁴ Accordingly, Egypt is a civil law country with a legal system based on codified law.¹⁵

¹⁰ See also Law No. 8 of 1997 (Law of Investment Guarantees and Incentives), *Al-Jarida Al-Rasmiyya*, 11 May 1997 (Egypt).

¹¹ *Id.*

¹² *Id.*

¹³ Mohamed S. E. Abdel Wahab, *Update: An Overview of the Egyptian Legal System and Legal Research* GLOBALLEX (2008), § 2, available at <http://www.nyulawglobal.org/Globalex/Egypt1.htm>.

¹⁴ GHISLAINE ALLEAUME, *EGYPT AND ITS LAWS 1* (Nathalie Bernard-Maugiron & Baudouin Dupret eds., 2002).

¹⁵ Wahab, *supra* note 13, at § 9.

European legal models—particularly the French Civil Code—influenced the Egyptian Civil Code.¹⁶ The Egyptian Civil Code is the law governing private relationships between individuals in areas like property, contracts, personal guarantees, and evidence.¹⁷ The civil law also fills gaps for other branches of private law, such as commercial law.

Egypt's Commercial Code organizes trade and commerce.¹⁸ It has more than 700 provisions covering different issues like commercial contracts, banking, bankruptcy, and commercial paper.

The Companies' Law No. 159 of 1981¹⁹ and the old Egyptian Commercial Law of 1883 govern business associations. The Egyptian Companies' law recognizes different forms of business associations such as partnerships, limited partnerships, partnerships limited by shares, limited liability companies, and corporations.²⁰ Most of the rules governing these forms of business associations are based on European precedents.²¹

2.2. *Judicial system*

Egypt has two types of courts: civil and administrative, each having different levels. Civil courts have first degree courts, second degree courts, and the Egyptian Court of Cassation.²² First degree court decisions are appealed before second degree courts, and those decisions are appealed before the Court of Cassation.²³ In addition, the Law No. 120 of 2008 established specialized Economic Courts to decide economic disputes.²⁴ The State Council ("*Conseil d'Etat*") handles administrative disputes, and is composed of different levels of administrative courts—the highest of which is the Egyptian Supreme Administrative Court.²⁵ The Supreme Constitutional Court decides

¹⁶ ALLEAUME, *supra* note 14, at xxv.

¹⁷ Law No. 131 of 1948 (Civil Code), *Al-Jarida Al-Rasmiyya*, 29 July 1948, vol. 108 (Egypt).

¹⁸ Law No. 17 of 1999 (Commercial Code), *Al-Jarida Al-Rasmiyya*, 17 May 1999, vol. 19 (Egypt).

¹⁹ Law No. 159 of 1981 (Companies' Law), *Al-Jarida Al-Rasmiyya*, 1 Oct. 1981, vol. 40 (Egypt).

²⁰ Tarek F. Riad, *The Legal Environment for Investment in Egypt in the New Millennium*, 15 ARAB L.Q. 117, 122 (2000).

²¹ *Id.*

²² ALLEAUME, *supra* note 14, at xxviii-xxix.

²³ *Id.*

²⁴ Law No. 120 of 2008 (Economic Courts Law), *Al-Jarida Al-Rasmiyya*, 22 May 2008, vol. 21 (Egypt).

²⁵ ALLEAUME, *supra* note 14, at xxviii-xxix.

the constitutionality of laws and disputes among the different courts and judicial bodies.²⁶

Foreign judgment enforcement within Egypt requires the satisfaction of certain conditions.²⁷ For example, Egyptian courts must have competence to decide the dispute.²⁸ Furthermore, the parties are duly and legally notified, that the judgment to be enforced must be final, and it must not contradict any previous Egyptian court decision.²⁹

In Egypt, alternative dispute resolution is commonly used to settle disputes outside of the court system. The “Cairo Regional Center for International Commercial Arbitration” is Egypt’s specialized arbitration center that oversees both domestic and international cases.³⁰ Egypt is also a party to the New York Convention, which enforces the disbursement of foreign arbitral awards in Egypt.³¹

2.3 *The Effect of Islamic Law on the Egyptian Legal System*

Egypt is a Muslim country that requires its main laws and regulations remain consistent with *Shari’a* law.³² The Egyptian Constitu-

²⁶ *Id.*

²⁷ Wahab, *supra* note 13, at § 9; see also Jalila Sayed Ahmed, *Enforcement of Foreign Judgments in Some Arab Countries – Legal Provisions and Court Precedents: Focus on Bahrain*, 14 ARAB L. Q. 169 (1999).

²⁸ Wahab, *supra* note 13, at § 9.

²⁹ *Id.*

³⁰ See generally THE CAIRO REGIONAL CTR. FOR INT’L COMMERCIAL ARB. (CRCICA), <http://www.crcica.org.eg/factsheet.html>.

³¹ See N.Y. ARBITRATION CONVENTION, CONTRACTING STATES (Sept. 1, 2011), <http://www.newyorkconvention.org/new-york-convention-countries/contracting-states>. Some conditions, however, exist for the enforcement of foreign arbitral awards in Egypt such as the requirement that no previous arbitral award issued by an Egyptian arbitration tribunal is there, the condition that the foreign arbitral award does not contradict with the Egyptian public policy, and the condition that notifications of the issuance of the arbitral award and the requesting its enforcement takes place. See also Wahab, *supra* note 13, at § 9.

³² “Muslim States” is a general term that does not only include Arab Middle Eastern states, but also other states outside the Arab region whose populations are mostly Muslim and where the state is a member of the Organization of the Islamic Conference (OIC). NISRINE ABIAD, SHARIA, MUSLIM STATES AND INTERNATIONAL HUMAN RIGHTS TREATY OBLIGATIONS: A COMPARATIVE STUDY 32 (2008). The word Islam, formally, *Al-Islam*, refers to the religion of Muslims whose rules and principles are driven from the holy book, [The] *Qur’an*. [The] *Qur’an* is the Islamic holy book revealed to the Prophet Muhammad. See also *Glossary of Islamic Legal Terms*, 1 J. ISLAMIC L. 89, 99 (1996). The word *Shari’a* literally means “the path or the way”, and, in a legal sense, *Shari’a* refers to Islamic law or the entire system of jurisprudence associated with Islam. See Mona Rafeeq, *Rethinking Islamic Law Arbitration Tribunals: Are They Compatible With Traditional American Notions of*

tion's second provision provides: "Islam is the Religion of the State. Arabic is its official language, and the principal source of legislation is Islamic Jurisprudence (*Shari'a*)."³³ Also, the Egyptian Supreme Constitutional Court has held:

The principles of the Islamic *Shari'a* are the major source of legislation. This imposes a limitation curtailing both the legislative and executive power, through which they are obliged that whatever laws or decrees they enact, no provision contained in them may contradict the provisions of Islamic law which are definite in terms of their immutability and their meaning. . . whatever legislative enactment contravenes them must be declared null and void.³⁴

Accordingly, *Shari'a* strongly influences Egyptian laws and regulations. It also affects Egyptians' trade and investment behavior.

Justice, 28 WIS. INT'L L.J. 108, 116 (2010). *Shari'a* is not simply a body of law but rather an ethical code organizing one's everyday life. See Charles P. Trumbull, *Islamic Arbitration: A New Path for Interpreting Islamic Legal Contracts*, 59 VAND. L. REV. 609, 626 (2006). The sources of Islamic law are divided into two main categories: primary sources, which include the *Qur'an* and *Sunnah*, and secondary sources which include, *inter alia*, *Ijma'a* and *Qiyas*. Adnan A. Zulfiqar, *Religious Sanctification of Labor Law: Islamic Legal Principles and Model Provisions*, 9 U. PA. J. LAB. & EMP. L. 421, 422 (2007). The *Qur'an* is a book of spiritual guidance with rules for everyday life. It is divided into *Surahs* (Chapters) and each *Surah* is divided into verses. *Surah* literally means "a series of things." *Glossary of Islamic Legal Terms*; see also Faisal Kutty, *The Shari'a Factor in International Commercial Arbitration*, 28 LOY. L.A. INT'L & COMP. L. REV. 565, 583 (2006). *Qur'anic* provisions are considered the highest in the hierarchy of legal norms in the Islamic legal system. MASHOOD A. BADERIN, INTERNATIONAL HUMAN RIGHTS AND ISLAMIC LAW 33 (2003). *Sunnah* refers to the actions of Prophet *Muhammad*, his oral pronouncements, or concurrence in action by others. Kutty, *supra*, at 585. *Sunnah* literally means "method" and refers to the second source of *Shari'a* which is the sayings of Prophet *Muhammad*. *Glossary of Islamic Legal Terms, supra*. When *Qur'an* and *Sunnah* do not provide specific guidance on an issue, Muslims are directed to use reasoning to deduce rules, which is called *Ijma* and represents the convergence of opinion on a particular new rule. Irshad Abdal Haqq, *Islamic Law an Overview of its Origin and Elements*, 7 J. ISLAMIC L. & CULTURE 27, 36 (2002); see also Kutty, *supra*, at 589. Whereas *Ijma* represents a form of collective reasoning, *Qiyas* is an individual form based on analogical deduction. Haqq, *supra* at 56. *Qiyas* is based on "[T]he use of reason to conclude that an existing rule applies to a new situation because it is similar to the situation regulated by that rule or to abstain from applying the existing rule to the new situation that is proven dissimilar." Haqq, *supra*, at 56.

³³ CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 11 Sept. 1971, *as amended*, May 22, 1980, May 25, 2005, March 26, 2007.

³⁴ Case No. 5257/43/1997/Constitutional Court (Egypt).

2.4 Economic Reasons for the January 25 Revolution

Despite the remarkable economic progress Egypt witnessed throughout the last decade, middle class and lower class Egyptians did not receive much of the financial benefit.³⁵ The unfair distribution of wealth augmented by the corruption of public officials and businessmen steered economic growth in the direction of the powerful few.³⁶ Of course, profound political problems lay at the Revolution's foundation, but the igniter was the dreadful economic stance and high commodity prices.³⁷

Moreover, Egypt has witnessed significant legal reform in its economic sectors. For example, the Egyptian government adopted the Capital Market Law in 1992 to help bolster the capital market.³⁸ Egypt has also enacted an investment law to encourage both local and foreign investment.³⁹ A huge external debt and the failure to provide jobs to Egyptians characterized the Mubarak era.⁴⁰ In fact, the Egyptian per-capita income ranks 137th worldwide.⁴¹ The CIA's World Fact book reports that twenty percent of Egyptians live under the poverty line⁴² and forty percent live with a maximum of \$2 USD per day.⁴³ Financial corruption and poverty led to the January Revolution along with other political and social factors beyond this Article's scope.

³⁵ CREDIT AGRICOLE BANK, *supra* note 4.

³⁶ *See id.*

³⁷ *See id.*

³⁸ Law No. 95 of 1992 (Law of Capital Market), *Al-Jarida Al-Rasmiyya*, 22 June 1992, vol. 25 (Egypt).

³⁹ Law No. 8 of 1997 (Law of Investment Guarantees and Incentives), *Al-Jarida Al-Rasmiyya*, 11 May 1997, vol. 19 (Egypt).

⁴⁰ Lama Abu-Odeh, *On Law and The Transition To Market: The Case of Egypt*, 23 EMORY INT'L L. REV. 351, 361 (2009).

⁴¹ Zachary Karabell, *The Economic Roots of Egypt's Revolt*, WALL ST. J. (Feb. 1, 2011), <http://online.wsj.com/article/SB10001424052748703833204576114093360852546.html>.

⁴² *Id.*; see also Jonathan Berr, *Hosni Mubarak's Economic Achievements*, DAILY FIN. (Oct. 2, 2011), <http://www.dailyfinance.com/story/hosni-mubaraks-economic-achievements/19838632/>. The Egyptian economy's main sources were two billion USD coming from American subsidies, five billion USD coming from tourism, and 10 billion USD coming from Suez Canal which eliminated all other sources of income such as industry and trade.

⁴³ *World Fact Book - Egypt*, CENT. INTELLIGENCE AGENCY, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/eg.html> (last visited Nov. 18, 2011); see also Mohammad Fadel, *Labor and the Future of the Egyptian Revolution*, THE MIDDLE E. CHANNEL (Feb. 28, 2011, 3:44 PM), http://mideast.foreignpolicy.com/posts/2011/02/28/labor_and_the_future_of_the_egyptian_revolution.

3. SECURITIES REGULATIONS

Although the Egyptian stock market is one of the oldest in the world,⁴⁴ socialist policies and the public sector-based economy adopted during the mid-1950s resulted in the decline of the stock exchange.⁴⁵ It was not until the 1990s that the Egyptian government began its economic reform and restructuring program to move toward a free-market economy. In 1994, privatization began through public offerings of profitable public sector companies. This led to the reactivation and merger of the Egyptian stock markets into the Cairo and Alexandria Stock Exchange (“CASE”).⁴⁶ The Capital Market Law No. 195 of 1992 also contributed to the revival of the Egyptian Stock Exchange.⁴⁷ Today, the Egyptian securities market is a major contributor to Egypt’s economic development.⁴⁸

3.1. *Statutory Framework: Capital Market Law (CML)*

Whereas the Capital Market Law (“CML”) No. 95 of 1995 and its executive regulations No. 135 of 1993⁴⁹ are the main statutes regulating the Egyptian securities market, the Central Depository Law (“CDL”) No. 93 of 2000⁵⁰ and its executive regulations No. 906 of 2001,⁵¹ play an important role in record keeping, clearing and settlement to assure fast securities exchange, and enhanced market liquid-

⁴⁴ The Alexandria Stock Exchange was established in 1888, and a few years later in 1903 the Cairo Stock Exchange was also incepted. Both exchanges were very active until the 1940s. See Shahira Abdel Shahid, Does Ownership Structure Affect Firm Value? Evidence from the Egyptian Stock Market 8 (Jan. 2003) (unpublished manuscript) http://papers.ssrn.com/sol3/papers.cfm?abstract_id=378580.

⁴⁵ For a thorough discussion of Egyptian economic systems before and after the 1952 revolution and the development of public sector, see MOHAMED KAMEL MALASH, MWSO’ET ALSHARIKAT [Encyclopedia of Companies], 693-98 (1980) (explaining the conversion of Egyptian economic system from Capitalism to Socialism and the accompanying establishment and development of Egyptian public sector).

⁴⁶ Jennifer Bremer & Nabil Elias, *Corporate Governance in Developing Economies: The Case of Egypt*, 3 INT’L J. BUS. GOVERNANCE & ETHICS 432 (2007). In 2008, CASE’s name was changed to the Egyptian Exchange (EGX). See also Law No. 95 of 1992, *Al-Jarida Al-Rasmiyya*, 22 June 1992 (Egypt).

⁴⁷ Shahira Abel Shahid, *Corporate Governance Is Becoming a Global Pursuit: What Can Be Done in Egypt?* 42 (Sept. 2001) (unpublished manuscript) <http://papers.ssrn.com/abstract=286875>.

⁴⁸ *Id.*

⁴⁹ Minister of Economics and Foreign Trade Decree No. 135 of 1993 (Executive Regulations of the Capital Market Law), *Al-Jarida’ al-Rasmiyya*, 8 Apr. 1993, vol. 81 F (Egypt).

⁵⁰ CDL was amended by laws 143/2004, 10/2009 and 127/2009.

⁵¹ Executive Regulations were amended by Decrees No. 227/2002, 267/2002, 554/2002 and 193/2005.

ity. Moreover, Decree No. 30 of 2002 of the former Capital Market Authority's Board of Directors defines the rules of listing and delisting in the Egyptian Stock Exchange, which sets forth, *inter alia*, many disclosure requirements.⁵² This Section focuses on CML in particular and refers to other statutes as needed.

3.1.1. Features of the Law

The Capital Market Law was intended to provide a comprehensive regulatory basis to establish and sustain the development of an efficient securities market. By putting investor protection, transparency, and fairness at the top of its priorities, the law aimed to encourage more investments.⁵³ As a result, the CML regulated the following areas of securities law:

Capital Market Commodities (securities): The First Part of the CML regulates the issuance of the different types of securities, permitting Egyptian corporations to issue bonds bearing competing interest rates that exceed seven percent per annum for the first time.⁵⁴ In 2008, wide scale amendments were introduced to encourage more investors. For example, the minimum nominal value of shares in an IPO was reduced from 5 EGP to 0.10 EGP.⁵⁵

The First Part of the CML determines the requirements and procedures of issuing securities, which starts by notifying the Egyptian Financial Supervisory Authority ("EFSA").⁵⁶ If the EFSA does not object within seven business days, the company may proceed with issuing securities.⁵⁷ This includes publishing a prospectus with specific information including the company purpose, term, and future plans after the EFSA's ratification. To guarantee continued transparency, the law requires the issuing company to submit semi-annual reports, prepared and revised by certified auditors, about its perform-

⁵² Listing Rules were amended by CMA Decision No. 94/2008 and EFSA Decisions No. 50/2009, 64/2009, 67/2009 and 132/2010.

⁵³ BAHAA ALI EL-DEAN, *PRIVATIZATION AND THE CREATION OF A MARKET-BASED LEGAL SYSTEM: THE CASE OF EGYPT* 39 (2002).

⁵⁴ Although Egyptian Companies' Law No. 159 of 1981 regulates the bonds' issuance, it did not permit corporations to issue bonds with interest rates exceeding 7% per annum, as this would violate the general rules of Egyptian law that sets the interests rate ceiling in commercial transactions at 7% per annum. This practically prevented corporations from issuing bonds. See MOHAMED TANWIR ALRAFIE, DOOR ALHYA'A AL'AMA LESOOK ALMAL FI HMAIT AKLYT ALMSHAHEMIN FI SHRKAT ALMOHAHAMA [Role of the Capital Market Authority in Protecting Minority Shareholders in Corporations] 24 (2006).

⁵⁵ Law No. 95 of 1992 (Law of Capital Market), *Al-Jarida Al-Rasmiyya*, 22 June 1992, vol. 25, art. 1/2 (Egypt).

⁵⁶ *Id.* art. 2

⁵⁷ *Id.* (the three week period was reduced to seven days in the 2008 amendments).

ance.⁵⁸ Furthermore, Article 8 of the CML requires the disclosure of any transaction that may lead to a change in company control.

Stock Exchanges: In 2008, Article 16 of the CML, which sets the framework of listing securities in Egyptian exchanges, was amended, relegating the authority to regulate this issue to the Listing Rules issued by the EFSA's Board of Directors.⁵⁹ The amendments distinguish between two types of listings. The first type includes shares of Egyptian corporations, provided they meet certain requirements as stipulated in Article 9 of the Listing Rules,⁶⁰ as well as other Egyptian securities.⁶¹ The second type comprises foreign securities, provided they are listed on other exchanges and satisfy the other listing requirements stipulated in Article 10 of the Listing Rules.⁶²

Moreover, securities issued by companies with capital of less than 50 million EGP may be listed on the Nilex exchange.⁶³ Established in accordance with Article 26 of the CML, Nilex is a special exchange that gives small and medium cap companies an opportunity to raise capital with a regulatory environment designed specifically to meet their needs.⁶⁴

Transactions in listed securities are conducted exclusively in the exchange where the traded securities are listed, and only through licensed intermediary companies for a determined fee. EGX also announces transactions that occur on unlisted securities.⁶⁵ Added in the 2008 amendments, Article 20 of the CML regulates insider trading, as explained in the next section. Moreover, the CML gives the EGX Chairman the power to suspend transactions involving price manipu-

⁵⁸ *Id.* arts. 4, 5.

⁵⁹ Chairman of the Capital Market Authority Decree No. 30 of 2002 (defining the rules of listing and delisting), *Al-Jarida Al-Rasmiyya*, 18 June 2002 (Egypt).

⁶⁰ *Id.* art. 9 (requiring the following, inter alia, for the shares of each Egyptian corporation to be listed: at least 10% of the shares must be offered, the number of shareholders must not be less than 100 shareholders, holding at least 5% of the total shares of the corporation, the number of issued shares required to be listed must not be less than 2 million shares, and the company's issued capital must be equal to at least 20 million EGP and must be fully paid).

⁶¹ This includes securities issued by the government, bonds and other financing instruments, and other forms of securities provided that they meet the listing requirements.

⁶² See Decree No. 30 of 2002 art. 10.

⁶³ This cap was increased from 25 million EGP to 50 million EGP by the EFSA's Decision No. 74 of 2010 (regarding the amendment of rules of listing and delisting), on 7 June 2010.

⁶⁴ See NILEX, http://nilex.egyptse.com/en/Listing_Requirements.aspx (last visited Sept. 30, 2011).

⁶⁵ Law No. 95 of 1992 (Law of Capital Market), *Al-Jarida Al-Rasmiyya*, 22 June 1992, vol. 25, arts. 17, 18/2, 24 (Egypt).

lation.⁶⁶ The EGX Chairman may also take substantial procedures to protect investors and the market if dangerous circumstances occur.⁶⁷

Companies Operating in Securities: Part Three of the CML provides a list of activities that are considered *operations in securities*. Examples include companies marketing and executing initial public offerings and venture capital initiatives.⁶⁸ Only EFSA licensed companies may engage in such activities.⁶⁹ A company must meet several conditions related to the company structure, capital and management to get the license.⁷⁰ The EFSA may suspend the operations of a company if it violates the law or imposes a threat to investors or to the market.⁷¹ The EFSA must then further approve and monitor the withdrawal of a company from the market to assure that the company meets its outstanding liabilities. Additionally, this Part provides in detail for the establishment and operation of investment funds and securitization companies.⁷²

The Capital Market Authority / EFSA:⁷³ Until the EFSA's establishment in 2009, the CMA, established by the CML, was the authority responsible for regulating and supervising the Egyptian capital market. The CMA merged with other entities, ultimately forming the EFSA.

Dispute Resolution: The CML created a "complaint" committee to hear complaints filed by parties affected by administrative decisions of the Authority or the Minister of Investment.⁷⁴ Filing a complaint with this committee is a prerequisite for bringing a case before the court.⁷⁵ Moreover, the law stipulated that disputes arising from CML application could only be settled by arbitration. In 2002, however, these mandatory arbitration provisions were declared unconstitutional.⁷⁶

Sanctions: Until 2008, penalties prescribed in Part Six of the CML for violating its provisions were non-deterrent and disproportionate to the gravity of the violations.⁷⁷ In 2008, the CML increased

⁶⁶ *Id.* art. 21.

⁶⁷ *Id.* arts. 22, 23.

⁶⁸ *Id.* art. 27 (the Minister of Investment may add, and has actually added, other activities over the years).

⁶⁹ *Id.* art. 28.

⁷⁰ *Id.* art. 29.

⁷¹ *Id.* arts. 30, 31.

⁷² *Id.* arts. 35-41.

⁷³ *Id.* arts. 42-49.

⁷⁴ *Id.* art. 50.

⁷⁵ *Id.* art. 51.

⁷⁶ Case no. 55/2002/Constitutional Court (Egypt).

⁷⁷ *See, e.g.,* ALI EL-DEAN, *supra* note 53, at 46 (criticizing the sanctions for several reasons. In determining the sanctions, the legislator prescribed a uniform sanc-

these sanctions.⁷⁸ For example, the CML raised monetary fines for most violations from a maximum of fifty thousand or hundred thousand EGP to twenty million EGP.⁷⁹ These amendments make the sanctions more proportionate to violations such as insider trading and fraud.⁸⁰ The law ties the initiation of criminal proceedings to the EFSA's Chairman's demand and gives him the power to conciliate on such crimes at any stage of the action, even during the punishment execution,⁸¹ and even though it may jeopardize law enforcement.

3.1.2. *Executive Regulations' Crucial Role*

Egypt's CML enjoys a great deal of flexibility as a law. The CML's provisions provide broad guidelines to regulate the different areas of securities law and to leave the details for secondary regulations.⁸² This allows the government wide latitude to regulate a variety of market activities by adding a new chapter or a few articles to its executive regulations through a Ministerial Decree, rather than having to amend the law through the Parliament.⁸³ This method of legislation is fast and easy, but has many disadvantages. Legislating through executive regulations as secondary statutes jeopardizes procedural and objective guarantees offered by the law making process of a statute issued by Parliament.⁸⁴ Because executive regulations are nec-

tion for all breaches other than insider trading, assuming that different offenses have the same impact on the market and that insider trading has a less impact than the other offenses).

⁷⁸ See Law No. 123 of 2008 (amending the Law of Capital Market); see also MINISTRY OF INVESTMENT, FINANCING REFORM PROGRAM, <http://www.investment.gov.eg/en/NBFS/CapitalMarket/Pages/Financialprogram.aspx> (last visited Nov. 12, 2011).

⁷⁹ Law No. 95 of 1992 (Law of Capital Market), *Al-Jarida Al-Rasmiyya*, 22 June 1992, vol. 25, arts. 63, 64 (Egypt).

⁸⁰ *Id.* arts. 63-69.

⁸¹ *Id.* art. 69 (unless the EFSA's Chairman requests the initiation of criminal action against the violators, they will not be charged with any violations. In this sense, the law gives the EFSA's Chairman an exclusive authority to initiate criminal actions against any violations criminalized in the CML).

⁸² *Id.*

⁸³ This explains the consecutive large number of amendments of the CML's executive regulations in the last few years by Ministerial Decrees No. 46/2004, 192/2005, 1/2006, 14/2006, 139/2006, 140/2006, 141/2006, 301/2006, 314/2006, 84/2007, 12/2007, 126/2008 and others. See ALRAFIE, *supra* note 54, at 23-25 (discussing the features of CML and describing flexibility as one of the most significant features of that law).

⁸⁴ On the one hand, procedural guarantees include drafting of the first bill by specialized professionals, then revising it by a competent Parliamentary committee, and finally submitting it to a Parliamentary debate. On the other hand, objective guarantees include issuing an explanatory memorandum, which provides guide-

essary for the application of statutes, they are only valid insofar as they do not contradict the main statute.⁸⁵ Furthermore, executive regulations may not add to, amend, or disable the provisions of the statute for which they are issued.⁸⁶ Therefore, adding a chapter to the executive regulations to manage an area of the law that exceeds the scope of what was originally statutorily regulated is considered adding to the law and raises doubts about such regulations' validity.

The Egyptian government has increasingly used executive regulations to govern different areas of the capital market. For instance, the government added several activities related to securities, such as regulating the buying of securities with margin, borrowing securities for sale,⁸⁷ and securitization.⁸⁸ Executive regulations have also set forth rules banning the manipulation of prices and insider trading in its Eleventh Part.⁸⁹ Furthermore, executive regulations presented the first comprehensive takeover regulation in Egypt in 2007.⁹⁰ The importance of executive regulations in securities is clear, however, the excessive use of secondary statutes in regulating the capital market raises legitimate fears about the law's quality and validity.⁹¹

3.2. Institutional Framework: EFSA

The Egyptian Parliament issued Law No. 10 in 2009, establishing the EFSA by merging all entities involved with non-banking financial markets.⁹² Replacing, *inter alia*, the CMA,⁹³ the EFSA became the

lines to help the drafters of the executive regulations, the practitioners and the court to understand the law and capture the intent of the articles therein.

⁸⁵ See ABDUL-AZIZ, *supra* note 8.

⁸⁶ Case no. 528/1975/ Court of Cassation (Egypt).

⁸⁷ See Ministerial Decree No. 48 of 2007 (Regulating Buying Securities with Margin and Borrowing Securities for Sale), *Al-Waqa'i' al-Misriyah*, 22 Mar. 2007, vol. 66 (Egypt).

⁸⁸ See Ministerial Decree No. 46 of 2004 (Regulating the Securitization Activity), *Al-Jarida Al-Rasmiyya*, 18 Nov. 2004, vol. 260 (Sup.) (Egypt).

⁸⁹ See Ministerial Decree No. 141 of 2006 (Regarding the addition of Rules Banning the Manipulation of Prices and Exploiting Insider Information), *Al-Waqa'i' al-Misriyah*, 29 Apr. 2006, vol. 93 (Egypt).

⁹⁰ See Ministerial Decree No. 12 of 2007 (Regulating Acquisitions Through Tender Offers), *Al-Waqa'i' al-Misriyah*, 4 Feb. 2007, vol. 26 (Egypt).

⁹¹ See Ahmad A. Alshorbagy, *Orascom Telecom versus France Telecom: A Case Study on Egyptian Takeover Law*, 20 INFO. & COMM. TECH. L. 157 (2011).

⁹² Law No. 10 of 2009 (Regulating Non-Banking Financial Markets and Instruments), *Al-Jarida Al-Rasmiyya*, 1 Mar. 2009, vol. 9 (Egypt).

⁹³ *Id.* art. 3 ("The Authority shall replace the Egyptian Insurance Supervisory Authority, the Capital Market Authority, and the Mortgage Finance Authority in enforcing the provisions of the Insurance Supervision and Control Law no. 10 of 1981, the Capital Market Law no. 95 of 1992, the Depository and Central Registry Law no. 93 of 2000, the Mortgage Finance Law no. 148 of 2001, as well as any

major supervisor of non-banking financial markets and instruments including capital markets, derivative markets, insurance activities, mortgage finance, financial leasing, and factoring and securitization.⁹⁴ As a unified public authority, the EFSA harmonizes financial market regulation to ensure better supervision and more orderly markets.⁹⁵

The EFSA is a public reporting authority and is attached to the Ministry of Investment as the law stipulates.⁹⁶ Although EFSA has the power to decide most matters presented to it, it must obtain approval from the Minister of Investment for some of its decisions. For instance, when incorporators form a corporation,⁹⁷ a Ministerial Decree forms an evaluation committee of in kind shares upon the EFSA chairman's referral. This limits the EFSA's role to merely suggesting a course of action rather than actually rendering a binding decision.⁹⁸

Nevertheless, political and governmental influences are the real concern of the EFSA's subordination. The method of choosing and appointing the EFSA's board members also jeopardizes its independence. Because all EFSA's board members are appointed by the same method and authority – the Prime Minister upon the recommendation of the Minister of Investment – factors other than competence, like the individuals political affiliation, may affect board member nominations.⁹⁹ This, coupled with their four years renewable term, can also prejudice the judgment of board members who want to keep their positions.¹⁰⁰

other related laws and decrees that are part of the mandates of the above authorities. The Authority shall be considered the competent administrative body entitled to enforce the financial leasing provisions promulgated by Law no. 95 of 1995.”)

⁹⁴ *Id.* art. 2.

⁹⁵ *Id.* art. 4(a) (“The Authority shall maintain the safety, stability, organization and development of non-banking financial markets, and balance the market dealers rights. In addition, the Authority shall provide means and systems, and issue rules and regulations to guarantee the efficiency of non-banking financial markets and ensure transparency of activities undertaken.”).

⁹⁶ *Id.* art. 1(a).

⁹⁷ Establishing a public corporation under the Egyptian law requires going through several procedures, all of which fall under the following steps: drafting the articles of association and the charter of incorporation, subscribing, paying certain percentage of the nominal value of shares, inviting the founding assembly, the approval of the competent committee in the EFSA, the approval of the competent Minister and finally notarizing and registering the company. *See* MOSTAFA K. TAHA, ALSHRKAT ALTEGARIA [Commercial Companies] 145-84 (1998).

⁹⁸ ALRAFIE, *supra* note 54, at 23.

⁹⁹ Despite the multi-partisan political system, the National Democratic Party, controlled by influential businessmen, practically dominated all aspects of political life in Egypt before the January Revolution.

¹⁰⁰ The board formation could be enhanced. Lessons could be discerned from the organization of the French Autorité Des Marchés Financiers (Financial Market

In pursuit of its objectives, the EFSA enjoys powerful authority.¹⁰¹ Its authority falls under one of three categories: 1) license its activities to regulate the non-banking financial market; 2) inspect licensed entities, monitor market transparency, and disseminate information to effectively supervise the market; and 3) develop the non-banking financial market to enable communication and cooperation with similar foreign authorities.¹⁰² The EFSA's authority extends over

Authority – AMF) and the American Securities and Exchange Commission (SEC). Both the AMF and the SEC employ different strategies to ensure and sustain their independency, whether by dispersing the appointing authority of the members in France or by assuring that the commission remains non-partisan in the United States. Additionally, the wider formation of the board is an advantage due to the better representation and more experiences it allows. Having a staggered board is also urged to ease the transfer of powers from one board to another without shaking the stability of the authority.

¹⁰¹ See generally EGYPTIAN FINANCIAL SUPERVISING AUTHORITY, http://www.efsa.gov.eg/content/efsa2_en/efsa2_merge_about_en/efsa2_merge_efsa_en.htm#1 (last visited Sept. 12, 2011) (providing more details on the EFSA).

¹⁰² Presidential Decree No. 192/2009 (establishing the EFSA Charter), *Al-Jarida Al-Rasmiyya*, 14 June 2009, vol. 24, art. 4 (Egypt). The Decree enumerated the following list of authorities:

1. Licensing non-banking financial activities.
2. Inspecting entities licensed to operate in non-banking financial activities.
3. Overseeing the dissemination of non-banking financial markets-related information.
4. Ensuring transparency and competitiveness in rendering non-banking financial services through the proper control of non-banking financial markets.
5. Protecting and balancing non-banking market participants' rights
6. Taking necessary measures to limit market manipulation and fraud, taking into consideration the potential commercial risks relevant to that market.
7. Supervising training of non-banking market staffs and enhance their efficiency.
8. Communicating, cooperating and coordinating with other non-banking regulatory bodies abroad, which leads to the development of the means of supervision of non-banking financial markets.
9. Communicating, cooperating and coordinating with societies and organizations, which regulate the operation of financial supervision authorities across the globe, thus empowering the Authority to assume its competencies according to the best international practices.
10. Contributing to disseminating financial investment culture and awareness.

all capital market participants, including public corporations, intermediary companies, and investors.¹⁰³ Due to both the complexity of laws and regulations dealing with the capital market and then to EFSA's nascence, however, EFSA's staff still lack in experience, rendering them less than fully competent.¹⁰⁴ Like the EFSA, the Egyptian Exchange ("EGX") plays an important role in enforcing listing rules and disclosure requirements.¹⁰⁵

3.3. *Reforming Securities Regulations*

Before discussing the CML's reform proposal, it is crucial to examine the reasons of its current inefficiency and the effect of the January Revolution on the Egyptian capital market. This will help determine today's needs and the underlying purpose of the reform.

3.3.1. *Examining the Egyptian Market*

The Egyptian stock market dropped sharply following the eruption of the Revolution, incurring large losses in the two days it remained open—it then stayed closed until March 23.¹⁰⁶ The Revolution shook investor's confidence in the Egyptian market, especially foreign investors. Given the negative impact on the Egyptian economy as a whole and the continuing political instability, a liquidity problem is

Id.

¹⁰³ ALRAFIE, *supra* note 54, at 36.

¹⁰⁴ For example, the contradiction in the EFSA's behavior over the course of the Mobinil case, the most recent takeover case in Egypt, reflects a deep misunderstanding of the regulations and randomness of its interpretation. *See generally Dispute over ownership of Egypt's Mobinil*, REUTERS (Apr. 10, 2010), <http://www.reuters.com/article/idUSLDE63906K20100410> (describing in greater detail the facts of the Mobinil Case). It is worth mentioning that a group of investors reported EFSA's Chairman along with former EGX Chairman to the Egyptian Public Prosecutor (General Attorney) on the eight's of July 2010, accusing them of destroying the national economy and charging them with the deterioration of EGX. A week later following this event, the latter was removed from his position after four years in service. *See* Ahmed Chalabi & Abdul Rahman Shalabi, *Prosecutor Starts Probe Into Reports of Abuse of Public Funds in the Stock Market*, ARABNET (July 13, 2010), <http://www.almasry-alyoum.com/article2.aspx?ArticleID=262362>.

¹⁰⁵ EGX is the authority attributed with enforcing the Listing Rules and ensuring companies' compliance with them. In this regard, EGX has the power to suspend and delist non-complying companies. *See infra*.

¹⁰⁶ *See* Nikhil Lohade, *Political Strife Roils Egypt's Markets*, WALL ST. J. (Jan. 26, 2011), <http://online.wsj.com/article/SB10001424052748703293204576105852367008580.html>; *see also* THE EGYPTIAN EXCH., EGX RESUMES TRADING ON WEDNESDAY (Mar. 23, 2011), <http://www.egyptse.com/English/newsdetails.aspx?NewsID=92476>.

to be expected too. In these two aspects, Egypt's economic crisis is similar to that of Greece.¹⁰⁷ Additionally, preexisting corruption and the inefficiencies of the CML and EFSA have affected the Egyptian capital market.

The purpose of reforming securities regulations in Egypt is to restore investors' confidence in the Egyptian markets. Furthermore, resolving the existing flaws in the law and its enforcement should attract new categories of investors, such as middle class investors. Middle class investors were reluctant to invest in the Egyptian capital market either from fear of corruption or due to lack of transparency. Attracting new categories of investors will compensate for some of the investors who left the Egyptian market, and will introduce new sources of cash flows that can reduce the expected liquidity problem.

3.3.2. Reform Proposals

This section proposes reforms to some areas of securities law in the light of the previous discussion about the purpose of the desired reforms.

3.3.2.1. Disclosure

Currently, the disclosure rules are scattered among different regulations. For example, the CML requires the subscription prospectus of any incorporating company to disclose certain information relating to the company's purpose, its capital, its incorporators or previous shareholders, and its future plans.¹⁰⁸ CML also requires each corporation to present a semi-annual report, supported by documents, to the EFSA summarizing its activities, performance, and describing its financial status.¹⁰⁹

In addition, the Listing Rules impose the largest part of disclosure requirements.¹¹⁰ Articles 13 and 14 of the Listing Rules define the scope of disclosure by limiting it to necessary and document sup-

¹⁰⁷ Abdul-Rahman Shalaby, *EFSA Demands the Continuity of the Exchange's Closure Until the Election of a Civil Authority*, Almasy Alyoum (mentioning that although Greece's crisis is in essence a debt crisis, it is similar to Egypt's crisis in two aspects. Both crises have shacked investor confidence in the economy, and have caused a liquidity problem. He further explains that Greece did not start recovering from its crisis except with the assistance of a great European subsidy, which contributed to restoring the confidence in their economy and solved the liquidity problem.).

¹⁰⁸ Law No. 95 of 1992 (Law of Capital Market), *Al-Jarida Al-Rasmiyya*, 22 June 1992, vol. 25, art. 5 (Egypt).

¹⁰⁹ *Id.* arts. 6,7.

¹¹⁰ See Chairman of the Capital Market Authority Decree No. 30 of 2002 (defining the rules of listing and delisting), *Al-Jarida Al-Rasmiyya*, 18 June 2002, arts. 12-19 (Egypt).

ported information that does not affect the company's stability.¹¹¹ Furthermore, the Listing Rules require the board of directors of any listed company to present an annual report that summarizes the contracts and agreements between the company and any of its subsidiaries or any other related party.¹¹² The rules also require the company to disclose any fundamental changes in information initially filed in the listing prospectus.¹¹³ The Stock Exchange publishes this disclosed information once received.¹¹⁴

Although disclosure is adequately regulated, disclosure requirements are not fully complied with. The problem with disclosure is two-fold. First, Egyptian investors did not understand the purpose of disclosure requirements.¹¹⁵ Concerns arose as some legal literature discussed how transparency and disclosure requirements impinge company and controlling shareholder privacy.¹¹⁶ Furthermore, the high concentration of ownership in Egyptian corporations has amplified this problem. Controlling shareholders feel that they *own* the whole corporation, and that the disclosure rules require them to disclose personal wealth information. This Egyptian investor mentality, coupled with weakly applied EFSA and EGX law enforcement mechanisms, has led to long-term non-compliance with the disclosure requirements.

Fortunately, awareness of the importance of corporate governance practices, including disclosure, arose in the last few years. Since 2004, the law imposes daily fines for delays in submitting financial statements.¹¹⁷ In 2008, the penalties of noncompliance with disclosure requirements were significantly increased from a maximum of 50,000 EGP to a maximum of one million EGP.¹¹⁸ EGX has also taken stricter measures in enforcing the law. In 2009, EGX suspended the activities on shares of twenty-nine corporations that were not in compliance with the latest Listing Rules.¹¹⁹ This was followed by a massive wave of delisting of companies that failed to adjust to the new rules within the prescribed period.¹²⁰ While financial disclosure has improved sig-

¹¹¹ *Id.* arts. 13, 14.

¹¹² *Id.* art. 17

¹¹³ *Id.* art.18.

¹¹⁴ *Id.* art. 12/2.

¹¹⁵ ALI EL-DEAN, *supra* note 53, at 43.

¹¹⁶ *Id.*; *see also* ALRAFIE, *supra* note 54, at 506.

¹¹⁷ Law No. 95 of 1992 (Law of Capital Market), *Al-Jarida Al-Rasmiyya*, 22 June 1992, vol. 25, art. 67 (Egypt).

¹¹⁸ *Id.* art. 65.

¹¹⁹ THE EGYPTIAN EXCH., 2009 ANNUAL REPORT 16 (2010).

¹²⁰ *Id.* ("The number of listed companies continued to decrease, reaching 306 companies at the end of 2009, down from 373 at the end of 2008, owing to EGX effec-

nificantly over the years, non-financial disclosure in areas like corporate structure or governance remains largely inadequate.¹²¹

The problem with disclosure is not related to the inadequacy of the rule, but rather with its compliance. Improved compliance is crucial. Though delisting non-complying corporations enhanced disclosure practices, it has consequently led to a decline in market capitalization.¹²² Thus, educating investors, assisting corporations, and providing them with incentives to comply with the disclosure requirements are the best means to improve disclosure practices.

3.3.2.2. *Insider Trading*

Until 2006, a single article regulated insider trading, which imposed largely insufficient penalties on violators.¹²³ The Eleventh Part was then added to the CML's executive regulations, regulating price manipulation practices and insider trading.¹²⁴ This new Part added clarity by defining terms like insider, insider information, and material information.¹²⁵ It also widened the scope of prohibition on using and benefitting from insider information, and expressly raised violators' civil and criminal liability.¹²⁶ Moreover, the Listing Rule's 2009 amendment sets a blackout period for an insider that extends up to 15 days before and 3 days after the issuance or publication of any material information.¹²⁷ Penalties on violators were raised to at least two

tive policy in enforcing listing, disclosure and corporate governance rules on issuers.”).

¹²¹ THE WORLD BANK, REPORT ON THE OBSERVANCE OF STANDARDS AND CODES (ROSC): A CORPORATE GOVERNANCE ASSESSMENT FOR THE ARAB REPUBLIC OF EGYPT 13 (June 2009) (mentioning for example that the remuneration policy for board members was disclosed only by 13 percent of EGX-30 companies – which contains the largest thirty listed companies – in 2007, 16 percent disclosed their governance structure such as the board level committees and only three percent disclosed policies with respect to their internal audit, internal control, and external audit process).

¹²² THE EGYPTIAN EXCH., 2010 QUARTERLY REPORT 10 (Jan.-Mar. 2010).

¹²³ Law No. 95 of 1992 (Law of Capital Market), *Al-Jarida Al-Rasmiyya*, 22 June 1992, vol. 25, art. 64 (Egypt). Before the article was amended in 2008, persons who were found guilty of insider trading were punished by at least two year of imprisonment and/or a fine that does not exceed 50,000 EGP, which is less than 10,000 USD.

¹²⁴ Minister of Economics and Foreign Trade Decree No. 135 of 1993 (Executive Regulations of the Capital Market Law), *Al-Jarida' al-Rasmiyya*, 8 Apr. 1993, vol. 81 F., pt. 11 (Egypt).

¹²⁵ *Id.* art. 319.

¹²⁶ *Id.* arts. 318, 322, 323.

¹²⁷ See Chairman of the Capital Market Authority Decree No. 30 of 2002 (defining the rules of listing and delisting), *Al-Jarida Al-Rasmiyya*, 18 June 2002, art. 19 (Egypt).

years imprisonment and/or up to twenty million EGP.¹²⁸ These amendments and measures have decreased the insider trading that the Capital Market Authority recognized as an immense problem a few years ago.¹²⁹ Most market participants recognize insider trading as an “ongoing, albeit diminishing” issue.¹³⁰

While the enhanced insider trading regulation is essential to its elimination, unmitigated impediments include corruption, lack of EFSA and EGX independence, and impaired law enforcement. Many hope that reforms following the January Revolution will overcome these impediments and achieve new levels of equality and transparency in the Egyptian capital market. Improved disclosure practices provide more transparency to market participants, and therefore contributes to solving the insider trading problem.

3.3.2.2.1. Price Manipulation

As with insider trading, price manipulation was regulated by a general CML provision that gave the Stock Exchange Chairman the power to suspend manipulative transactions.¹³¹ Fines, comparably trivial to the violations’ market impact, were used to punish certain forms of price manipulation.¹³² The CML’s executive regulations, however, regulated price manipulation more comprehensively in 2006.¹³³

The Eleventh Part of the executive regulations defines price manipulation and gives several examples of manipulative practices, including acts that were not criminalized before.¹³⁴ These now illegal acts include spreading rumors and performing transactions on a certain security to create delusionary circulation and artificially raise its

¹²⁸ Law No. 95 of 1992 (Law of Capital Market), *Al-Jarida Al-Rasmiyya*, 22 June 1992, vol. 25, art. 64 (Egypt).

¹²⁹ THE WORLD BANK, REPORT ON THE OBSERVANCE OF STANDARDS AND CODES (ROSC): A CORPORATE GOVERNANCE ASSESSMENT FOR THE ARAB REPUBLIC OF EGYPT 7 (Mar. 2004).

¹³⁰ THE WORLD BANK, *supra* note 121, at 19.

¹³¹ Law No. 95 of 1992 (Law of Capital Market), *Al-Jarida Al-Rasmiyya*, 22 June 1992, vol. 25, art. 21 (Egypt).

¹³² For example, disclosing incorrect information in the prospectus or in the company’s records. See Law No. 95 of 1992 (Law of Capital Market), *Al-Jarida Al-Rasmiyya*, 22 June 1992, vol. 25, art. 63/3-5 (Egypt).

¹³³ Minister of Economics and Foreign Trade Decree No. 135 of 1993 (Executive Regulations of the Capital Market Law), *Al-Jarida’ al-Rasmiyya*, 8 Apr. 1993, vol. 81 F., pt. 11 (Egypt).

¹³⁴ *Id.* art. 319 (defining price manipulation as any action or abstention aiming at influencing the price of securities that would harm all or some of the investors in the securities market).

price.¹³⁵ The Listing Rules also prohibit spreading any undocumented information that does not conform to the reality of the corporation.¹³⁶ As a further deterrent, the law increased fines on violators from a maximum of one hundred thousand EGP to twenty million EGP.¹³⁷ Furthermore, the law holds the actual corporation manager, in most cases the controlling shareholder, personally liable for violations committed by his corporation.¹³⁸

Improving the regulation of price manipulation in the Egyptian capital markets reduced the prevalence of such practices. The underlying problem of price manipulation, however, is not its lack of regulation, but market supervision and law enforcement. This can be improved by granting the EFSA more independence and by applying the law equally to all investors—which necessarily requires developing more means to battle corruption.

3.3.2.2.2. *Takeovers*¹³⁹

Takeovers rarely occurred in Egypt until recently.¹⁴⁰ “The increasing number of mergers and acquisitions in the banking, communication, and construction sectors,”¹⁴¹ led the Egyptian government to

¹³⁵ *Id.* arts. 319(a), 321; *see also* ALRAFIE, *supra* note 54, at 553 (demonstrating the shortage of CML in regulating price manipulation before it was regulated in the executive regulations. An example of a form of price manipulation that was not previously criminalized occurred in the Egyptian stock markets when two speculators, by switching their roles from buyers to sellers every other day, increased the share value of the Egyptian British Bank by five percent daily from 80 EGP to 210 EGP. The Minister of Economy was recalled before the Egyptian Parliament because of this incident, who asserted that the two speculators benefited from the vulnerability of the law. The two speculators were not punished.)

¹³⁶ Chairman of the Capital Market Authority Decree No. 30 of 2002 (defining the rules of listing and delisting), *Al-Jarida Al-Rasmiyya*, 18 June 2002, art. 13 (Egypt).

¹³⁷ Law No. 95 of 1992 (Law of Capital Market), *Al-Jarida Al-Rasmiyya*, 22 June 1992, vol. 25, art. 63/3 (Egypt).

¹³⁸ *Id.* art. 68.

¹³⁹ *See* Alshorbagy, *supra* note 91.

¹⁴⁰ Abdel Shahid, *supra* note 47, at 14.

¹⁴¹ Alshorbagy, *supra* note 91, at 157 n.3 (“In the last decade, mergers and acquisitions deals have increasingly taken place in the Egyptian market. Takeovers soared in 2008 mounting to almost 20% of the total value of trade in that year. Takeovers decreased in 2009 partially because of the effect of the universal financial crisis, as revealed in the following table:

regulate takeovers for the first time in 2007.¹⁴² Unfortunately, the government chose to regulate takeovers by issuing secondary regulations rather than by drafting statutes, for example, by adding a new part to the CML executive regulations.¹⁴³ While this accelerated the regulatory process and provided more legal flexibility, the many issues of using secondary regulations to govern takeovers have negated its benefits because of their inefficiencies.¹⁴⁴

The Egyptian takeover regulations largely adopted the European takeover approach. Similar to the European takeover law,¹⁴⁵ the Egyptian takeover regime features a mandatory tender offer rule.¹⁴⁶ The mandatory tender offer requires anyone seeking control over a target corporation to launch a tender offer to purchase all the outstanding shares of the target corporation at the highest price an acquirer paid in a tender offer during the previous twelve months.¹⁴⁷ Furthermore, the non-frustration rule prohibits target corporations in Egypt from committing any action that may be considered a “significant detrimental event” that may hinder the completion of the tender

Year	Number of Deals	Total Value*	Total Market Trade*	Percentage
2006	42	39	287	13.5%
2007	28	37	363	10.2%
2008	28	105	530	19.8%
2009	11	42	448	9.4%

*Values are represented in billions of EGP.)

See THE EGYPTIAN EXCH., 2009 ANNUAL REPORT (2010); THE EGYPTIAN EXCH., 2008 ANNUAL REPORT (2009); THE EGYPTIAN EXCH., 2007 ANNUAL REPORT (2008); THE EGYPTIAN EXCH., 2006 ANNUAL REPORT (2007), http://www.egyptse.com/English/services_reports.aspx.

¹⁴² See Taher S. Mo’emn, AL’ISTHWATH A’LA ALSHARIKA: DRASA NTHRIA WA TATBIKIA [Acquiring the Company: A Theoretical and Empirical Study] 63-64 (2009) (discussing two of the most prominent deals in the building materials and construction sector and their significant effect on the Egyptian market).

¹⁴³ Minister of Economics and Foreign Trade Decree No. 135 of 1993 (Executive Regulations of the Capital Market Law), *Al-Jarida’ al-Rasmiyya*, 8 Apr. 1993, vol. 81 F., pt. 12 (Egypt).

¹⁴⁴ Alshorbagy, *supra* note 91, at 166.

¹⁴⁵ Directive 2004/25, of the European Parliament and of the Council of 21 Apr. 2004 on Takeover Bids, arts. 12, 23, 2004 O.J. (L 142) (EC).

¹⁴⁶ See Alshorbagy, *supra* note 91, at 162.

¹⁴⁷ Minister of Economics and Foreign Trade Decree No. 135 of 1993 (Executive Regulations of the Capital Market Law), *Al-Jarida’ al-Rasmiyya*, 8 Apr. 1993, vol. 81 F., arts. 353-56 (Egypt); Directive 2004/25, of the European Parliament and of the Council of 21 Apr. 2004 on Takeover Bids, art. 25, 2004 O.J. (L 142) (EC); see also Alshorbagy, *supra* note 91, at 162-66 (explaining the mandatory tender offer requirement and examining its points of weakness including the inefficiency of the price determination mechanism of the mandatory tender offer).

offer as the law defines.¹⁴⁸ This rule extends from the time that the decision approving the tender offer is published until the deal's conclusion.¹⁴⁹ The regulations, however, do not impose a breakthrough rule on target corporations that prohibit its board of directors from adopting general pre-bid defensive tactics – such as “poison pills” – against prospective bidders as required under the European Directive on takeovers.¹⁵⁰

The executive regulations governing takeovers have several substantive shortcomings not limited to threats of illegality and unconstitutionality.¹⁵¹ The Egyptian regulations omitted the breakthrough rule, which is an integral part of the European scheme.¹⁵² This omission is a problematic because it renders the non-frustration rule futile. Moreover, because the language employed in the Egyptian regulations is so poorly drafted, it suggests a different meaning than that originally intended. For example, the method to determine the mandatory tender price offer demonstrates these problems.¹⁵³

¹⁴⁸ Minister of Economics and Foreign Trade Decree No. 135 of 1993 (Executive Regulations of the Capital Market Law), *Al-Jarida' al-Rasmiyya*, 8 Apr. 1993, vol. 81 F., art. 326 (Egypt) (defining a significant detrimental event as “any expected event arising after launching the offer that would have a negative effect on the target company, its business or the share value.” Specifically, Article 343 expressly mentions two examples of detrimental events. The first is increasing the target capital, or issuing new convertible bonds if such an increase would make the acquisition difficult or impossible. The second example is a broad one that covers any action, which would detrimentally impact the target's assets or increase its obligations).

¹⁴⁹ *Id.* art. 343; Directive 2004/25, of the European Parliament and of the Council of 21 Apr. 2004 on Takeover Bids, art. 9, 2004 O.J. (L 142) (EC).

¹⁵⁰ See Directive 2004/25, of the European Parliament and of the Council of 21 Apr. 2004 on Takeover Bids, art. 11, 2004 O.J. (L 142) (EC); see also Alshorbagy, *supra* note 91, at 166 (discussing the board passivity rules under the Egyptian Takeover regulations and explaining the inefficiency of dropping the breakthrough rule from the regulations).

¹⁵¹ See Directive 2004/25, of the European Parliament and of the Council of 21 Apr. 2004 on Takeover Bids, arts. 14, 15, 2004 O.J. (L 142) (EC). Originally, takeovers were barely regulated in the CML, which means that by regulating takeovers, the CML's executive regulations may have added to the law. This raises many doubts about the validity of the new regulations.

¹⁵² See Marco Ventoruzzo, *Europe's Thirteenth Directive and U.S. Takeover Regulations: Regulatory Means and Political and Economic Ends*, 41 TEX. INT'L L. J. 171, 200 (2006) (explaining the breakthrough rule).

¹⁵³ Minister of Economics and Foreign Trade Decree No. 135 of 1993 (Executive Regulations of the Capital Market Law), *Al-Jarida' al-Rasmiyya*, 8 Apr. 1993, vol. 81 F., art. 354 (Egypt) (requiring the price of the mandatory tender offer to be as high as the highest price paid by the acquirer, or any of its affiliates, in a previous tender offer during the 12 months preceding the tender offer in question. However,

Because of these inefficiencies, Egyptian takeover regulations generally discourage takeovers. The mandatory tender offer requirement inevitably increases the takeover price. Moreover, the *all-cash* rule, which requires the consideration for the transaction to be paid in cash, makes it harder for any potential acquirer to succeed.¹⁵⁴ The breakthrough rule's omission can often lead the acquirer poorly positioned under Egyptian takeover rules because the incumbent now controls pre-bid defensive measures that make it unlikely for any potential raider to succeed in a company takeover.¹⁵⁵

The regulations' negative effect also extends to the company's minority shareholders, as they do not have adequate protection. By discouraging takeovers, the regulations favor the interests of incumbent controlling shareholders over those of minority shareholders.¹⁵⁶ "Although the regulations guarantee minority shareholders a fair exit strategy if a takeover attempt is successful, the protection is negated by the great unlikelihood of a successful hostile takeover."¹⁵⁷

To summarize, securities regulation in Egypt has vastly developed over the past few years. Legal and institutional changes have enhanced the Egyptian CML either by amending inefficient provisions or by adding new provisions to address legislative gaps and regulate new areas of the law. It is fair to say that the current CML in Egypt is a substantively good law in general, however, it is not very well organized. The same topic is sometimes dealt with in different places and regulations, which makes it difficult for investors to understand the law. Moreover, a few parts of the law need to be improved, for example, the regulation of takeovers. Also, some topics addressed in the executive regulations need to be incorporated in the statute itself to avoid any doubts about its validity.

The main concern about CML is regarding its enforcement. The EFSA, as the capital market's main supervisor, should be granted more independence by stating expressly in the law that it is an institution independent from the government and enhancing the board's formation. This will allow the EFSA to exercise its discretion freely and will guarantee that its decisions be unbiased. Eventually this will also lead to applying the law equally to all investors, curbing the effects of corruption. The non-compliance of market participants is sometimes attributed to the lack of awareness of the importance of corporate governance. It is thus equally important to focus the reform endeavors on

the article neglects the case where no previous tender offer exists, despite it is the case that is more likely to occur.).

¹⁵⁴ *Id.* art. 358.

¹⁵⁵ Alshorbagy, *supra* note 91, at 166.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

educating market participants of the importance of complying with the law. Achieving higher levels of transparency, fairness and accountability will raise confidence in the Egyptian capital markets, allay the anxiety of current investors, and attract new investors.

4. INVESTMENT

4.1. *History and Development of Investment in Egypt*

President Gamal Abdel-Nasser, from 1952 to 1970, adopted nationalism as an economic policy and promoted the role of the public sector in developing the economy.¹⁵⁸ This resulted in only temporary economic development because of unrealistic development programs and bureaucratic policies.¹⁵⁹ Economic laws in this era were concentrating on developing agriculture, confiscating property, governing and organizing public companies, controlling prices, nationalizing laws, and other similar efforts.¹⁶⁰

President Al-Sadat, 1970 to 1981, transformed economic policy from a public sector based economy to a private sector based economy, adopting the “Open Door Policy,”¹⁶¹ which aimed to liberalize trade and free the economy.¹⁶² The Open Door Policy failed, however, because the main sources of Egyptian revenue, including the Suez Canal dues, the oil industry, and leveraging the political location of Egypt, stayed under the public sector’s control.¹⁶³ Also, Egypt’s external debt increased due to the extensive import of goods.¹⁶⁴ The Egyptian GDP, nevertheless, registered high scores due to services produced, rather than economic production and trade.¹⁶⁵ In other words, the revenue obtained from the Suez Canal and similar sources of income and the return of exporting labor to the Gulf region helped to increase the Egyptian GDP.¹⁶⁶ Thereafter, a Gulf area recession caused Egyptians working in the Gulf area to return to Egypt causing loss to the Egyptian economy.¹⁶⁷ President Mubarak, from 1981 to 2011, made use of Egypt’s geopolitical position in the Middle East for Egypt’s benefit. For instance, the Egyptian government received subsidies in return for enhancing the American role in the Middle East.¹⁶⁸ Economic laws

¹⁵⁸ MARAT TERTEROV, *DOING BUSINESS WITH EGYPT* 9 (2001).

¹⁵⁹ Abu-Odeh, *supra* note 40, at 359.

¹⁶⁰ *Id.* at 357-58.

¹⁶¹ TERTEROV, *supra* note 158, at 4.

¹⁶² *Id.* at 9.

¹⁶³ Abu-Odeh, *supra* note 40, at 360.

¹⁶⁴ *Id.* at 361.

¹⁶⁵ TERTEROV, *supra* note 158, at 11.

¹⁶⁶ *Id.*

¹⁶⁷ Abu-Odeh, *supra* note 40, at 360.

¹⁶⁸ *Id.* at 362.

during Mubarak's era concentrated on foreign direct investment, corporate, telecommunications, imports and exports, competition, free tariffs zones, and industrial cities laws.¹⁶⁹

The main sources of Egyptian economy are from Suez Canal dues, tourism, the gas industry, and remittances from expatriates working abroad.¹⁷⁰ Aside from industry and agriculture, trade lies heavily as one of the primary Egyptian economic activities.¹⁷¹ According to the World Bank's 2008 estimation, Egyptian exports of goods and services mount to 53,277 million USD, while imports of goods and services are 63,086 million USD,¹⁷² Egypt's main imports are agricultural products, food components, medicines, metal industrial components and their primary exports are oil and cotton.¹⁷³ Egypt's main trade partners include the United States, China, the United Kingdom, Spain, Germany, Syria, and Saudi Arabia.¹⁷⁴

The main investment tools in the Egyptian market include: 1) privatization, 2) build-own-operate-transfer (BOT) projects, 3) franchising, and 4) investment legal incentives.¹⁷⁵ The Egyptian government started moving toward putting an end to the country's monopoly over the industrial and investment sector and encouraging private investment in 1999.¹⁷⁶ Privatization included sectors such as construction, tourism, transportation, and finance.¹⁷⁷ The Egyptian government also started encouraging BOT projects in different sectors such as infrastructure in 1999.¹⁷⁸ Egypt is considered the franchising center of the Middle East, whose value has grown to over 14 billion

¹⁶⁹ *Id.* at 365.

¹⁷⁰ GIL FEILER, *THE MIDDLE EAST IN THE NEW MILLENNIUM: ECONOMIC DEVELOPMENT & BUSINESS LAW* 46-49 (2000).

¹⁷¹ *Id.* at 47-49.

¹⁷² THE WORLD BANK, *EGYPT: COUNTRY DATA PROFILE*, http://ddp-ext.worldbank.org/ext/ddpreports/ViewSharedReport?REPORT_ID=9147&REQUEST_TYPE=VIEWADVANCED (last visited Nov. 14, 2011).

¹⁷³ FEILER, *supra* note 170, at 49.

¹⁷⁴ INT'L FRANCHISE ASS'N, *COUNTRY FACT SHEET: EGYPT*, <http://franchise.org/IndustrySecondary.aspx?id=45590> (last visited Nov. 11, 2011). For instance, the Egyptian market is the fourth exporter of American products in the Middle East and one of the most important importers of specific American products such as agricultural equipments and products. Also the United States is the second biggest foreign investor in the Egyptian market. U.S. COMMERCIAL SERV., *DOING BUSINESS IN EGYPT: 2010 COUNTRY COMMERCIAL GUIDE FOR U.S. COMPANIES*, http://www.franchise.org/uploadedFiles/Franchise_Industry/International_Development/Country_Profiles/Egypt_2010%20CCG.pdf (last visited Nov. 11, 2011).

¹⁷⁵ FEILER, *supra* note 170, at 49-55.

¹⁷⁶ *Id.* at 49.

¹⁷⁷ *Id.* at 50.

¹⁷⁸ *Id.* at 53.

USD.¹⁷⁹ President Al-Sadat's 1973 "open door" policy opened the door for franchising.¹⁸⁰ Around forty international franchisors are currently investing in Egypt; twenty-five in the food sector and fifteen in other franchising sectors.¹⁸¹ In the last decade, Egypt adopted new laws, regulations, and introduced several amendments to promote investment and enhance production. The best example of this is the Investment Law Incentives No. 8 of 1997, discussed below.¹⁸²

4.2. *Investment Law Incentives No. 8 of 1997 ("ILI")*

Scope of application: The ILI provides incentives, guarantees and benefits in case of investing in specific fields.¹⁸³ The list of these fields embodied in the ILI is not exclusive and the Cabinet can add other fields and activities.¹⁸⁴ Examples of included fields are: reclamation and cultivation of desert, animals and fish production, mining works, hotels and motels, tourists' transportation, transportation and storage of goods, air and maritime transportation, housing furnishings, roads and communication industry electricity services, medical sets, financial leases, securities, and software production, among others.¹⁸⁵

Incentives: ILI provided incentives and guarantees apply to both foreign and local investors.¹⁸⁶ Examples of guarantees include protection against confiscation, nationalization, administrative sequestration, seizure, price control, cancellation of licenses, and the like.¹⁸⁷ One example of an incentive is the exemption of taxes for a specific period of time.¹⁸⁸ In addition, the ILI specifies geographical areas, called free zones, which the Cabinet determines.¹⁸⁹ Free zones

¹⁷⁹ *Economic Update: Bright Franchising Future*, OXFORD BUS. GROUP (Feb. 23, 2007), http://www.oxfordbusinessgroup.com/economic_updates/bright-franchising-future.

¹⁸⁰ The Open Door Policy is the policy through which President Mohamed Anwar Al-Sadat, who stayed in presidency from 1970 to 1981, transferred the Egyptian economic policies to be more liberal with free trade that supports foreign investment. See Abu-Odeh, *supra* note 40, at 360.

¹⁸¹ Kendal Tyre, *Franchising Sector in Egypt Receives Financial Boost*, NIXON PEABODY LLP (June 29, 2009), http://www.nixonpeabody.com/linked_media/publications/Franchise_Alert_06_29_09.pdf.

¹⁸² Law No. 8 of 1997 (Investment Incentives Law), *Al-Jarida Al-Rasmiyya*, 11 May 1997, vol. 19 (Egypt).

¹⁸³ *Id.* art. 1.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* art. 12.

¹⁸⁷ *Id.* arts. 8-14.

¹⁸⁸ *Id.* art. 16.

¹⁸⁹ *Id.* arts. 16-27.

are areas where investors in specific activities can receive high incentives such as removing customs, wide exemption from taxes, and fewer requirements on imports and exports.¹⁹⁰

Imports and exports: The Law of Importation and Exportation No. 118 of 1975 prevents foreigners from importing into Egypt.¹⁹¹ Even Egyptians need to be registered in the Registrar of Imports to import into Egypt.¹⁹² To facilitate investment, the ILI provides an exception to this rule, allowing investors in the activities provided by the ILI, Egyptians or foreigners, to import raw materials without being registered in the Registrar of Imports.¹⁹³

Settlement of disputes: Decree No. 170 of 2009 amended the ILI by establishing a dispute settlement center to resolve any conflicts arising between companies subject to the ILI, so long as the disputing parties agree.¹⁹⁴

Enforcement: The competent authority to enforce and supervise ILI application is the General Authority for Investment (“GAFI”). The ILI established the GAFI and is subject to the Minister of Investment.¹⁹⁵

4.3. *The Effects of the Revolution on the Egyptian Investment*

The January 25 Revolution had significant effects on investment and the economy. After the Revolution, Egypt suffered large losses in the production and services sectors.¹⁹⁶ These losses are estimated at 55 million to 100 million Egyptian pounds (“EGP”).¹⁹⁷ This includes loss of real estate value and also of stock.¹⁹⁸ International companies working in Egypt closed after sending their employees back

¹⁹⁰ *Id.*

¹⁹¹ Law No. 118 of 1975 (Law of Importation and Exportation), *Al-Jarida Al-Rasmiyya*, 25 Sep. 1975, vol. 39 (Egypt); see also Riad, *supra* note 20, at 119.

¹⁹² Law No. 118 of 1975 (Law of Importation and Exportation), *Al-Jarida Al-Rasmiyya*, 25 Sep. 1975, vol. 39 (Egypt).

¹⁹³ Law No. 8 of 1997 (Investment Incentives Law), *Al-Jarida Al-Rasmiyya*, 11 May 1997, vol. 19 (Egypt).

¹⁹⁴ Minister of Investment Decree No. 170 of 2009 (Establishing GAFI Investors’ Disputes Settlement Center), *Al-Jarida Al-Rasmiyya*, 18 Aug. 2009, vol. 192 (Egypt).

¹⁹⁵ Presidential Decree No. 284 of 1997 (Establishing the General Authority For Investment), *Al-Jarida Al-Rasmiyya* 9 Aug. 1997, vol. 32 (Egypt).

¹⁹⁶ *Egypt Economic Losses on the Rise*, AL BAWABA (Feb. 10, 2011), <http://www1.albawaba.com/main-headlines/egypt-economic-losses-rise>.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

to their respective countries, banks were closed for several days, and the stock exchange remained closed for nearly two months.¹⁹⁹

Consequently, the GDP is expected to decrease from 5.8% in 2010 to 2.9% in 2011.²⁰⁰ Also, industrial production is expected to decrease from 5.1% in 2010 to 1.3% in 2011.²⁰¹ Moreover, the EGP exchange rate compared to the American dollar is expected to increase from 5.97 in 2010 to 6.31 in 2011.²⁰² Similarly, inflation is expected to increase from 11.8% in 2010 to 12.0% in 2011.²⁰³ To boost the Egyptian economy's recovery and to improve Egypt's post-Revolution financial situation, Egyptian investment law needs to be reconsidered.

4.4. *Recommendations to Restore Investment Cycle After the January 25 Revolution*

General Recommendation: The Egyptian government needs to do intensive work to restore confidence in the Egyptian economy. To achieve higher gross rates, more attention should be given to the productive sectors, such as industry, agriculture, and trade, in contrast to the declining services sectors, such as the Suez Canal, tourism, and expatriates working abroad. It may be useful to institute programs to spread awareness, and offer training services and investment advice for specific kinds of young or uneducated investors.

The Islamic economic sector, represented in banks and companies working according to Islamic teachings, constitutes an extralegal sector representing a parallel market.²⁰⁴ These institutions are kept outside the legal organization in that they consider themselves as politically and economically powerful as the secular state.²⁰⁵ Ignoring such a large amount of Muslim worker owned capital causes a huge loss to the economy and leads investors to work in a parallel mar-

¹⁹⁹ Heineken Company evacuated 25 employees, Nestlé SA evacuated around 20 employees, and Nissan Motor Co. stopped its operations in Egypt. See *Egypt Unrest: Banks Reopen After Week of Closure*, BBC NEWS (Feb. 6, 2011), <http://www.bbc.co.uk/news/business-12376403>; Adam Mitchell & Nour Malas, *Firms Pull Staff, Halt Operations*, WALL ST. J. (Feb. 1, 2011), <http://online.wsj.com/article/SB10001424052748703439504576115631410098672.html>; Ivan Watson, *Egyptian Stock Market Opens, Plunges*, CNN (Mar. 23, 2011), http://articles.cnn.com/2011-03-23/world/egypt.stock.market_1_stock-market-egyptian-voters-plunges?_s=PM:WORLD.

²⁰⁰ Oren Klachkin, *Country & Industry Forecasting: Egypt*, IHS GLOBAL INSIGHT, <http://myinsight.ihsglobalinsight.com/servlet/cats?filterID=1147&serviceID=4078&TypeID=15431&pageContent=report&pageType=ALL> (last visited Oct. 15, 2011).

²⁰¹ *Id.* at 27.

²⁰² *Id.* at 37.

²⁰³ *Id.* at 4, 35.

²⁰⁴ Abu-Odeh, *supra* note 40, at 366.

²⁰⁵ *Id.* at 367.

ket.²⁰⁶ Hence, the Egyptian market's regular cycle needs to involve Islamic capital. For instance, to fully involve them in the market, Muslim workers should be allowed to have their own labor unions and organizations. This would allow their capital to flow through the entire economic cycle, instead of isolating it within their own legal, economic and political cocoons.²⁰⁷

The formalities and procedures required to open new business investments in Egypt need to be streamlined through legal reform. Complicated procedures reduce investment opportunities and the chances of expanding businesses.²⁰⁸ Thus, to save time and money and encourage young investors, the required fees to establish a new business should be lowered, electronic procedures should be accessible, and the license issuing process should be easier.

Also, legal reform with regard to loans and financing should be reconsidered. Real or personal collateral are usually required to guarantee loans in Egypt.²⁰⁹ Real collateral usually consists of mortgages on movable and immovable assets.²¹⁰ The problem with real estate collateral is the difficulty in proving ownership as per the lending banks requirements.²¹¹ This difficulty is due to the lack of asset ownership registration with governmental authorities.²¹² Although Egypt has a comprehensive law on property registration, property owners are usually reluctant to satisfy property title registration because it helps them avoid paying high registration fees and taxes.²¹³ About 92% of Egyptians own unregistered property,²¹⁴ estimated at a value of 248 billion USD.²¹⁵ This property cannot be used as collateral for loans or to secure any other long-term contractual transaction.²¹⁶ Having easy, quick, and reasonable registration procedures creates better investment opportunities.

²⁰⁶ See *id.* at 366.

²⁰⁷ See *id.* at 380-81.

²⁰⁸ Abdul Ghaffar Shokr, *Tackling the Leviathan: Reforming Egyptian Bureaucracy for Improved Economic Growth*, in CTR. FOR INT'L PRIVATE ENTER. 11 (2010), <http://www.cipe-arabia.org/files/pdf/Bureaucracy-EN.pdf>.

²⁰⁹ See Z. Bahaa-Eldin, *Formal and Informal Finance in Egypt*, in LEGAL PLURALISM IN THE ARAB WORLD 210, 211 (Baudouin Dupret, Maurits Berger & Laila al Zwaini eds., 1999).

²¹⁰ *Id.*; see ALLEAUME, *supra* note 14, at 11-12.

²¹¹ Bahaa-Eldin, *supra* note 209, at 213.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ Hernando De Soto, *Egypt's Economic Apartheid*, WALL ST. J. (Feb. 3, 2011), <http://online.wsj.com/article/SB10001424052748704358704576118683913032882.html>.

²¹⁵ *Id.*

²¹⁶ *Id.*

Other investment tools also need to be legally regulated. For instance, Egypt does not have a law that organizes franchising transactions.²¹⁷ Egypt has a specialized franchise association, the EFDA, but with little awareness of what franchising entails.²¹⁸ Economic risks, lack of franchising laws, and changes in political conditions represent the most important constraints to the development of Egyptian franchising.²¹⁹ Because no specific law regulates franchising in Egypt, general provisions of a host of different laws govern franchising transactions, including contracts, commercial transactions, intellectual property, taxation, insurance, and labor laws.²²⁰ The applicable law is usually the law that has the most proper linkage to the franchise agreement.²²¹ The application of such a variety of laws and regulations contradicts the specific nature of franchising transactions. These franchising transactions require high protection for both parties, especially with the fast growth of technology and the complexity of the recent technical aspects of international licensing transactions. Therefore, a specialized Egyptian franchising law is necessary because franchising parties usually prefer agreements to be governed by a simple and comprehensive law rather than different laws. The application of various laws complicates decisions on various issues arising from franchise agreements.

Getting the money to start a new program may pose an obstacle for investors. Hence, the government needs to help create access to credit. Providing government-lending programs to new businesses with reasonable interest rates may also prove beneficial.

Recommendations related to the ILI: The discretionary power granted to the Cabinet under the ILI should be limited to prevent abuse of power. For instance, if needed, the Cabinet has the right to add any other economic activity to those mentioned in the law.²²² Similarly, the Cabinet has absolute discretionary power to allow investors

²¹⁷ Radwa S. Elsaman, *Towards an Egyptian Franchising Law Based on a Comparative Study of the Laws Of The United States, China, and Malaysia* (Jan. 2009) (unpublished Ph.D. dissertation, American University) (on file with author).

²¹⁸ J. Perry Maisonneuve, *Franchising in the Middle East and North Africa: Business Perspective*, A.B.A. FORUM ON FRANCHISING & A.B.A. CTR. FOR CONTINUING LEGAL EDUC. 16 (2010).

²¹⁹ *Id.*

²²⁰ Elsaman, *supra* note 217.

²²¹ Michael K. Lindsey, *Introduction to Franchising in the Middle East: Navigating the Risks and Rewards of the World's Most Interested Market*, A.B.A. FORUM ON FRANCHISING & A.B.A. CTR. FOR CONTINUING LEGAL EDUC. 15 (2010); Maisonneuve, *supra* note 218.

²²² Law No. 8 of 1997 (Investment Incentives Law), *Al-Jarida Al-Rasmiyya*, 11 May 1997, vol. 19, art. 2 (Egypt).

to own the necessary land to exercise their activities.²²³ Also, the ILI gives the Cabinet the authority to grant any public sector owned land to investors who are subject to the ILI. Moreover, the Cabinet is given the absolute power to establish free zones.²²⁴ Likewise, the ILI prohibits decisions regulating the establishment and operation of projects except after obtaining Cabinet approval.²²⁵ Hence, giving the prime minister absolute discretion to decide ILI enforcement may lead to its abandonment, particularly in instances of corruption. Therefore, there should be a supervision or limitation of the absolute power granted to the prime minister in ILI application. This supervision may take place through the establishment of an authority or committee that is independent of the Cabinet. This committee may watch ILI enforcement to ensure that the ILI guaranteed incentives are effective.

Similarly, the ILI allows the prime minister to form a committee to decide upon any complaints investors submit against the administrative bodies enforcing the ILI rules.²²⁶ The ILI also requires that the prime minister must approve this committee's decisions.²²⁷ This leads to loss of neutrality because if the Cabinet is in a dispute, the deciding committee is not independent of the Cabinet. This rule should be amended so that the deciding committee is independent of the Cabinet. Similarly, GAFI, the competent authority that enforces and supervises ILI application, is subject to the Minister of Investment.²²⁸ GAFI needs to be independent from the Ministry of Investment to facilitate as much transparency as possible.

To attract investments and restore the Egyptian economy, the ILI should renew temporary incentives. For instance, the ILI provides tax exemptions and free tariffs for specific periods of time after the ILI becomes enforceable.²²⁹ These exemptions almost have expired and need to be renewed.

Finally, Law No. 114 of 2008 amended the ILI. This law excluded companies working in oil production, iron, and fertilizers from the scope of ILI application and from all investment incentives and guarantees.²³⁰ The amending law offers no reason for such exclusion

²²³ *Id.* art. 12.

²²⁴ *Id.* art. 29.

²²⁵ *Id.* art. 49.

²²⁶ *Id.* art. 66.

²²⁷ *Id.*

²²⁸ Presidential Decree No. 284 of 1997 (Establishing the General Authority For Investment), *Al-Jarida Al-Rasmiyya* 9 Aug. 1997, vol. 32, art. 1 (Egypt).

²²⁹ Law No. 8 of 1997 (Investment Incentives Law), *Al-Jarida Al-Rasmiyya*, 11 May 1997, vol. 19., art. 16 (Egypt) (as amended by Law No. 91 of 2005, 9 June 2005, vol. 23 (Egypt)).

²³⁰ Law No. 114 of 2008, *Al-Jarida Al-Rasmiyya*, 5 May 2008, vol. 18, art. 11 (Egypt).

except personal goals arising from financial corruption and private ends of its supporters. The exclusion of all companies working in these fields led to the elimination of investment in these sectors, concentrating these industries in the hands of very few producers. This concentration, in turn, led to monopolies and cartels. This law needs to be eliminated to protect competition and prevent monopolies. Similarly, Law No. 133 of 2010, preventing oil-refining companies established in free zones from benefiting of ILI provided tax exemptions,²³¹ also needs to be reconsidered.

5. CONCLUSION

Egypt underwent many economic and legal reforms that resulted in remarkable economic growth at the turn of the century. Due to widespread corruption, however, this economic growth mostly benefited the small clique of powerful officials and businessmen. Unsatisfied Egyptians then took their demands for a better life to the streets, culminating in the January Revolution. Although there were other political motivations to the Revolution, socioeconomic stances were at its heart.

The Revolution is expected to have a positive impact on curbing corruption and enhancing law enforcement. Still, the social anarchy and political instability caused by the Revolution have shaken investor confidence in the Egyptian market. To restore confidence in Egyptian markets and encourage post-Revolution investment, Egypt's economic laws, particularly the Capital Market Law and the Investment Law should be attractive to investors.

The CML was initially an incomprehensive regulation of Egypt's capital market and did not include vital activities and practices in its provisions. Due to several amendments over the years, the CML has become a substantively mature legislation. The major concern about Egypt's capital markets is a lack of legal compliance. Therefore, new methods that encourage better compliance must be developed.

Similarly, the ILI has progressively introduced a number of incentives designed to promote various aspects of investment within the last few years. Most of these incentives, however, ended due to either ILI operation or unfair practices that restricted competition and monopolized specific production sectors. The ILI needs to be reconsidered to restore investment in Egypt in the aftermath of the Revolution.

Raising legal compliance and developing methods to enhance its enforcement are amongst the most crucial reforms imminently re-

²³¹ Law No. 133 of 2010, *Al-Jarida Al-Rasmiyya*, 19 June 2010, vol., 24, art. 1 (Egypt).

quired to boost the Egyptian economy. These reforms will increase the level of transparency and promote investors' confidence in the Egyptian market.