PRIVATE SECTOR DEVELOPMENT

Project Insights

Business Climate Review of Egypt

Investment Policies and Public-Private Partnerships

OECD

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2014

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FOREWORD

Rebuilding investors' confidence and supporting government efforts towards a roadmap for investment and business climate reforms are the main objectives of the Business Climate Review (BCR) of Egypt. This review has been carried out by the MENA-OECD Investment Programme and was conducted for, and in collaboration with, Egyptian authorities and involved the private sector through surveys and a series of consultations.

This exercise builds on a well-established working relationship between the OECD and Egypt on business climate reforms. Egypt served as co-chair of the MENA-OECD Investment Programme from 2007 to 2009. It adhered to the OECD Declaration on International Investment and Multinational Enterprises in 2007 after examination of its investment policies (OECD (2007), *Investment Policy Review*) and has since then participated in the work of the OECD Investment Committee. The Declaration is a policy commitment to provide an open and transparent environment for international investment and to encourage the positive contribution multinational enterprises can make to economic and social progress. According to the OECD Guidelines for Multinational Enterprises, which is an integral part of the Declaration, Egypt has set up a National Contact Point tasked with promoting the Guidelines and related practices, encouraging dialogue on responsible business conduct and serving as a mediator between the authorities and foreign companies in specific instances. In 2010, the OECD, at the request of and in co-operation with the government, completed the *Business Climate Development Strategy* (BCDS) of Egypt. This comprehensive analysis of the business environment covered 12 dimensions (including investment and business laws, SMEs, anti-corruption, infrastructure, tax policies and human capital) (see Annex B). It was a useful tool to gauge the success of economic and regulatory reform efforts carried out by authorities since the mid-2000s. It also assessed areas in which additional progress was required.

In 2012, in light of the urgent need to revive investment, the Egyptian government and the OECD, with support from the EU, initiated a revision of two chapters of the BCDS: those addressing investment policies and promotion, and public-private partnerships (PPPs). This review is the result of that work and focuses on changes in Egyptian law and practice related to investment and PPPs since 2010, based on the benchmark set by the BCDS assessment and recommendations. Building on a participatory and consultative process – encompassing surveys and meetings with the private sector and in-depth dialogue with authorities, in particular GAFI and the PPP Central Unit, held between early 2012 and January 2014, the review contains further analytical outputs and recommendations to the government and other stakeholders.

While the authorities have continued, throughout the recent political upheavals, to recognise that the business climate is crucial to realising Egypt's potential, the review acknowledges that it is now important to start laying the groundwork for policies and practices more supportive of business and investment, and to respond to the call for a more transparent and streamlined environment in order to further developing the private sector. The OECD remains committed to working with Egypt to develop policies that improve the business and investment climate with a goal of advancing the well-being of Egyptians. It is hoped that the review will provide for a solid foundation for future actions.

ACKNOWLEDGEMENTS

The review was prepared by a team of experts from the MENA-OECD Investment Programme, Global Relations Secretariat, OECD. It consists of a comprehensive analysis of and recommendations on Egypt's investment policies and promotion activities, and its policies in support of PPPs, since 2010. The review is the result of desk research and analytical work of the OECD secretariat, but also a collaborative and consultative process involving the Egyptian authorities and the private sector which took place between early 2012 and January 2014.

Throughout the elaboration of the review, consultations with the private sector were held and included surveys of the private sector, a series of business community workshops and a public-private seminar. In addition, the relevant governmental institutions (Ministry of Investment, General Authority for Investment and Free Zones (GAFI) and PPP Central Unit) have engaged into an in-depth dialogue with the OECD experts, provided relevant information and answers to technical questions, commented on the draft review, discussed and validated the findings and recommendations.

The perceptions of the private sector have been assessed through the involvement of foreign and local investors operating in a wide range of sectors, business associations and chambers of commerce. It benefitted from the continued support of Mr. Said Hanafi (Chief of Staff and General Counsel, Orascom Development, Egypt).

The Egyptian authorities provided valuable inputs throughout the process. The first chapter of the review related to Investment Policy and Promotion, benefitted from contributions of the Ministry of Investment and in particular Ms. Nevine El Shafei (Assistant Minister) and Dr. Sherif Oteifa (Senior Advisor). Relevant information and answers to technical questions were provided by GAFI, in particular by Dr. Hassan Fahmy (Chairman), Ms. Mona Zobaa (Head of the Investment Policy Department), Ms. Fatma Safwat (Investment Policy Department), Ms. Haidy Yehia (Investment Policy Department), Mr. Amr Abo El Fetouh (One-Stop Shop Sector), and Mr. Hamada Haddad (One-Stop Shop Sector). The second chapter of the review on Public-Private Partnerships received valuable comments and inputs from the Ministry of Finance and the PPP Central Unit of Egypt, and in particular from Dr. Atter Ezzat Hannoura (Director).

This review received the financial support of the European Union.

ACRONYMS AND ABBREVIATIONS

BCR	Business Climate Review
BCDS	Business Climate Development Strategy
BITs	Bilateral Investment Treaties
BOT	Build Operate Transfer
CBE	Central Bank of Egypt
CIF	Cost Insurance and Freight
COMESA	Common Market for Eastern and Southern Africa
CRCICA	Cairo Regional Centre for International Commercial Arbitration
EFCBC	Egyptian Federation for Construction and Building Contractors
ERRADA	Egyptian Regulatory Reform and Development Activity
EU	European Union
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
FZ	Free Zone
GAFI	General Authority for Investment and Free Zones
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GIPB	Global Investment Promotion Benchmarking
ICC	International Chamber of Commerce
ICSID	International Centre for the Settlement of Investment Disputes
ICT	Information Communication and Technology
IDA	Industrial Development Authority
IFC	International Finance Corporation
IP	Intellectual Property

IPA	Investment Promotion Agency
IPF	Investment Promotion and Facilitation
IPP	Investment Policy and Promotion
IPR	Intellectual Property Rights
ITIDA	Information Technology Industry Development Agency
IZ	Investment Zone
MCIT	Ministry of Communication and Information Technology
MENA	Middle East and North Africa
MOI	Ministry of Investment (since March 2014, Ministry of Trade, Industry and Investment)
NSDP	National Suppliers Development Programme
OECD	Organisation for Economic Co-operation and Development
PFI	Policy Framework for Investment
PPP	Public-Private Partnership
PPPCU	PPP Central Unit
SEZ	Special Economic Zone
SME	Small and Medium-Sized Enterprise
SEZ	Special Economic Zone
TRIPS	Trade Related Aspects of Intellectual Property Rights
UNCTAD	United Nations Conference on Trade and Development
USTR	United States Trade Representative
WB	World Bank
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

EXECUTIVE SUMMARY

Egypt has been experiencing a period of political transition since early 2011. As with all periods of transition, the resulting instability has taken a toll on the economy. This has been compounded by the tepid recovery from the global economic crisis that has been seen in many parts of the world as both foreign tourists and investors curtail their spending. Egypt's macroeconomic indicators tell the tale: real GDP growth decreased sharply from 5.1% in fiscal year 2009-10 to 1.8% in 2010-11, many foreign investors halted on-going investment and some left the country, leading to a net USD 164 million outflow of FDI in the first quarter of 2011 (January-March). As a consequence unemployment rates have increased since fiscal year 2010-11, reaching 12.7% in 2012, the highest rate in more than a decade.

Throughout this period, the government of Egypt has continued to recognise that the business and investment climate is crucial to realising Egypt's potential and has remained committed to a process of reform and engaged with the OECD. To this end, and in recognition of the urgent need for inclusive growth and job creation, a review of two chapters of the OECD's 2010 Business Climate Development Strategy review of Egypt (BCDS), those dealing with investment policy and promotion and public-private partnerships, was initiated in 2012 with funding provided by the European Union. This report is the result of that initiative.

Among key findings is the fact that Egypt's domestic laws and international commitments provide a high level of protection for foreign investors in many areas. However, it appears that *de facto* practices may sometimes fall short of *de jure* provisions. This was particularly noted with regard to protection of intellectual property rights, guarantees against expropriation, rules regarding national treatment and the conduct of international investment arbitration and amicable settlement. This suggests that in these areas, an improved business and investment climate is not so much a matter of new laws or regulations but rather of diligent implementation of existing provisions.

Transparency emerged as another important issue. In the areas of security certificates for foreign investors, national treatment and dispute settlement mechanisms in particular, requirements, timing for determinations and reasons for determination, are often unclear to those affected. Investors also expressed concerns that decisions sometimes appear to be made on an ad hoc basis. The scope and expected duration of foreign exchange controls imposed in 2012 and 2013 could also benefit from clarification. While predictable application of law and procedure is an absolute prerequisite for a positive business climate, a greater level of transparency and openness on the part of the Egyptian government is one of the key over-arching recommendations of the report.

Perhaps the most significant finding, and one that may help explain both the non-application of *de jure* provisions and issues around transparency, is the need for the government of Egypt to greatly enhance its ability to communicate. Improved communication is needed both externally with the public and business community and internally between levels of government and its various departments and agencies. This is even more evident in the differing perceptions of the effectiveness of Egypt's investment promotion agency. GAFI has implemented numerous reforms and programmes to better serve the business community but the latter is largely unaware of these efforts. A lack of effective communication can also be seen in relations between the public-private partnerships (PPP) Central Unit charged with implementing Egypt's ambitious PPP programme and the line ministry that would most benefit from the procurement of infrastructure under a PPP framework. Comprehensive communication strategies are therefore recommended as an essential component of an improved business and investment climate. Such strategies cannot feature only one-way communication flow

from the government and public actors to the wider community but must also feature mechanisms allowing internal dialogue as well as constructive feedback to be offered by business and the public to improve policy and implementation.

The OECD remains committed to working with Egypt to develop policies that improve the business and investment climate with a view to increase the well-being of Egyptians. While political instability remains an important factor in the current context, this will subside at some point, and the economic situation of average citizens of the Arab world's most populous country will once again come to the fore. This is why it is important to start laying the groundwork for policies and practices more supportive of business and investment. This report and its recommendations, emanating from intense co-operation between the OECD, the Egyptian government and the private sector during this period of transition, are therefore needed and timely.

INTRODUCTION: ABOUT THIS REPORT AND HOW TO USE IT

In 2010 the OECD in co-operation with the government of Egypt completed a Business Climate Development Strategy (BCDS) of Egypt. This study was a useful tool to gauge the success of reform efforts and to assess areas in which additional progress was required. Egypt has seen and continues to see political changes since 2011, but throughout this period, the government has continued to recognise that the business and investment climate is key to realising Egypt's potential and has remained committed to a process of reforms and engaged with the OECD. In light of the urgent need to revive investment for inclusive growth, a review of two chapters of the 2010 BCDS, those dealing with investment policy and promotion and public-private partnerships, was initiated in 2012 with funding provided by the European Union. This report is the result of that work and focuses on changes in Egyptian law and practice related to investment policy and promotion and public-private partnerships since 2010. It builds on regular consultations with government entities dealing with investment and PPP and with the private sector. Perceptions of the business community have been collected to enrich the findings of the report. Strengths and weaknesses in policy design are identified and advice for further reform is offered to policymakers.

The evaluation framework in this report expands on the 2006 *Investment Reform Index* (IRI)[1] investment policy and investment promotion and facilitation chapters, which were themselves inspired by the OECD's *Policy Framework for Investment* (PFI).[2] The PFI was developed as a non-prescriptive checklist of issues for consideration by any interested governments engaged in domestic reform, regional co-operation, or international policy dialogue aimed at creating an environment that is attractive to domestic and foreign investors and enhances the benefits of investment to society. The methodology used to create this report is described fully in Annexes B and C.

An understanding of the macroeconomic context is essential to any assessment of the business and investment climate. The report therefore opens with a review of the current situation in Egypt and macroeconomic indicators since 2010. A case is also made for the importance of foreign direct investment and the impact of such investment on jobs and growth.

The main body of the report consists of a review and analysis of current policies and practices in Egypt against specific indicators relevant to investment policy and promotion and public private partnerships contained in the above-referenced *Policy Framework for Investment (PFI)*. Specific recommendations are offered with a goal of assisting Egyptian decision makers improve policy and practices and thereby facilitate greater investment. A summary of key findings and broad recommendations is presented previous to the detailed chapters on investment policy and promotion and public-private partnerships. Conversely, greater detail and analysis on most indicators can be found in Annexes C and D.

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[1] The Investment Reform Index (IRI) is a practical tool developed by the OECD's Investment Compact to measure and communicate progress made by South East European countries in improving their investment climate. www.oecd.org/investment/psd/south-easteuropeinvestmentreformindex.htm (accessed 18 March 2014)

[2] On 11 May 2006, the OECD Council adopted the final report by the Investment Committee on the Policy Framework for Investment (PFI). It was then endorsed during the OECD Ministerial meeting on 23-24 May 2006.

THE MACRO-ECONOMIC ENVIRONMENT IN EGYPT

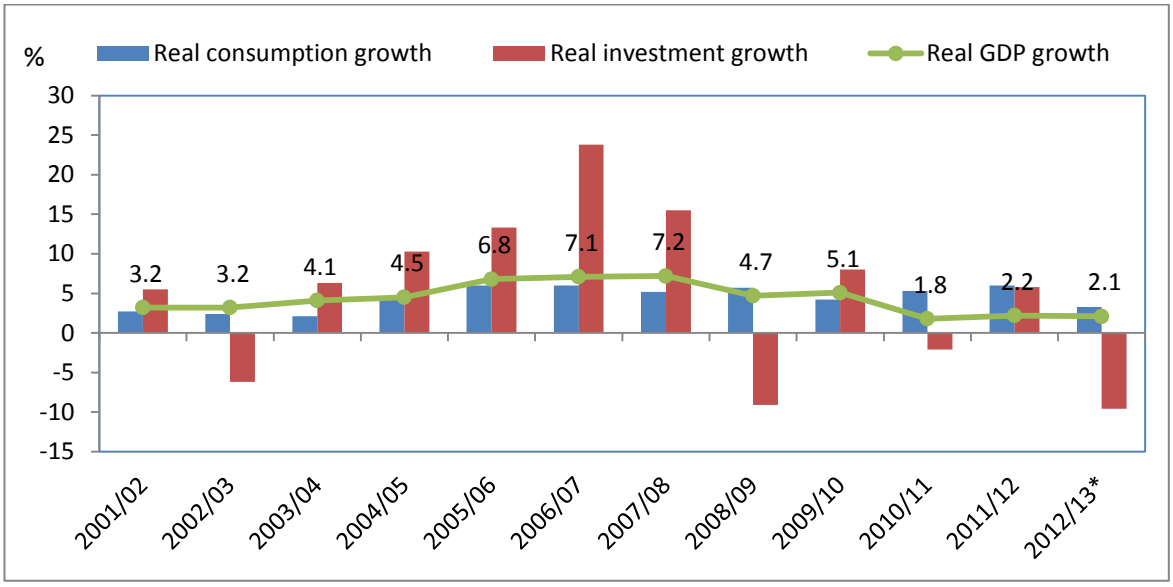
Since the completion of the 2010 Business Climate Development Strategy (BCDS) of Egypt, much has changed in Egypt as the country goes through a difficult period of transition. As in any period of political transition, instability has led to economic turbulence. Real GDP growth decreased sharply from 5.1% in fiscal year 2009-10 to 1.8% in 2010-11 as economic activity slowed, banks and the stock-market were temporarily closed and manufacturers were unable to receive raw materials. The deteriorating environment caused many foreign investors to halt on-going investment and some left the country, leading to a net USD 163.6 million outflow of FDI in the first quarter of 2011 (January-March). As a consequence unemployment rates have increased since fiscal year 2010-11, reaching 13.4% in Q3 of 2013 – the highest rate in more than a decade.

Even though political events led to a worsening macroeconomic context and a deteriorating business climate, they have focused attention on the structural economic and social challenges Egypt is facing. Egypt is a country with many natural advantages including a growing market, location and a large workforce, but despite this too many of its citizens remain unemployed and too many remain poor. Moreover, although the overall growth pattern may have been positive pre-2011, gains from high growth rates between 2004 and 2008 benefited mostly the wealthy and failed to significantly reduce poverty, particularly in rural areas. Thus, while embarking on the process of political transition, Egypt should continue reforming its economy in order to facilitate foreign and domestic investment.

After years of accelerating GDP growth and job creation, growth rates decreased significantly following the global financial crisis.

Although the global economic recession, which began in the last quarter of 2007-08, brought to a halt years of accelerating GDP growth witnessed in the mid-2000s with GDP growth falling from 7.2% in 2008 to 4.7% in 2009, the Egyptian economy nonetheless performed comparatively well at a time when most developed economies were in recession. Investment demand fell sharply in 2008-09, but private consumption remained buoyant, especially in comparison with most OECD member states. Regionally, Egypt also outperformed most of its peers, continuing to attract foreign investment and avoiding a steep slowdown. Output across the MENA region as a whole, for instance, rose by just 1.4% in 2009, while the world economy shrank by 0.8% and OECD economies contracted by 3.3%.

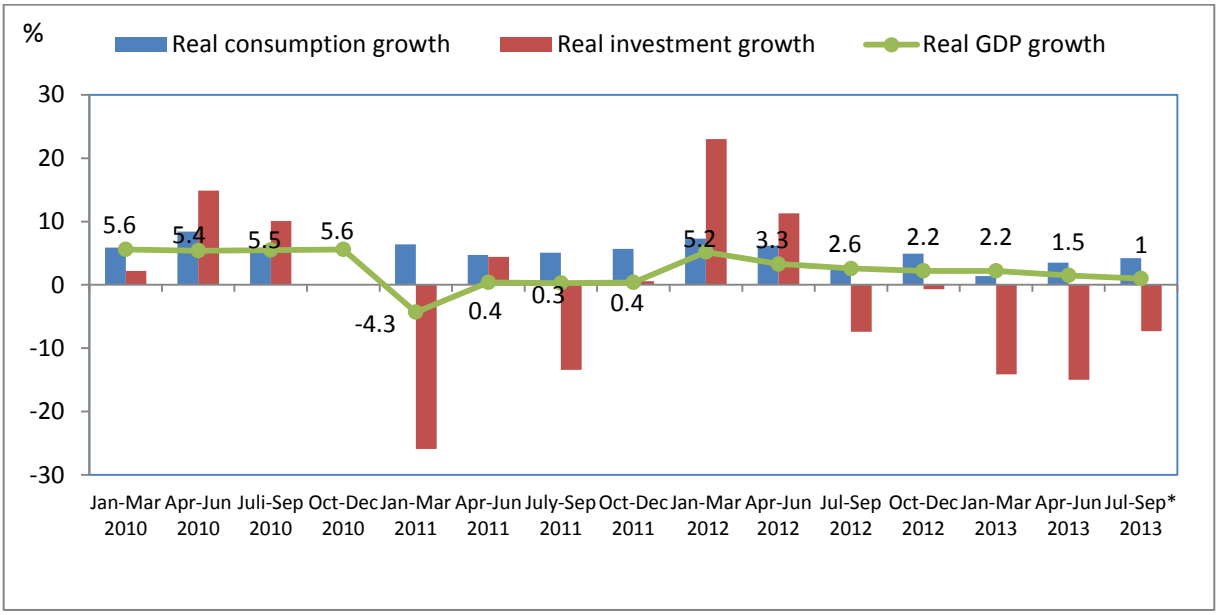
Figure 1.1 Real GDP growth: % real change year-on-year since 2001



Source: Ministry of Finance. * Preliminary data

The Egyptian economy has been hard hit by political and social instability since 2011. GDP growth fell to 1.8% in 2010-11 and real investment growth fell to -2.1%. Furthermore, the sluggish recovery world-wide and the European sovereign debt crisis added an additional burden, as foreign demand remained weak. After a brief recovery in 2011-12, investment and consumption growth once again decreased significantly in 2012-13, lowering hope for an early recovery.

Figure 1.2 Real GDP growth: quarterly % change year-on-year since 2010



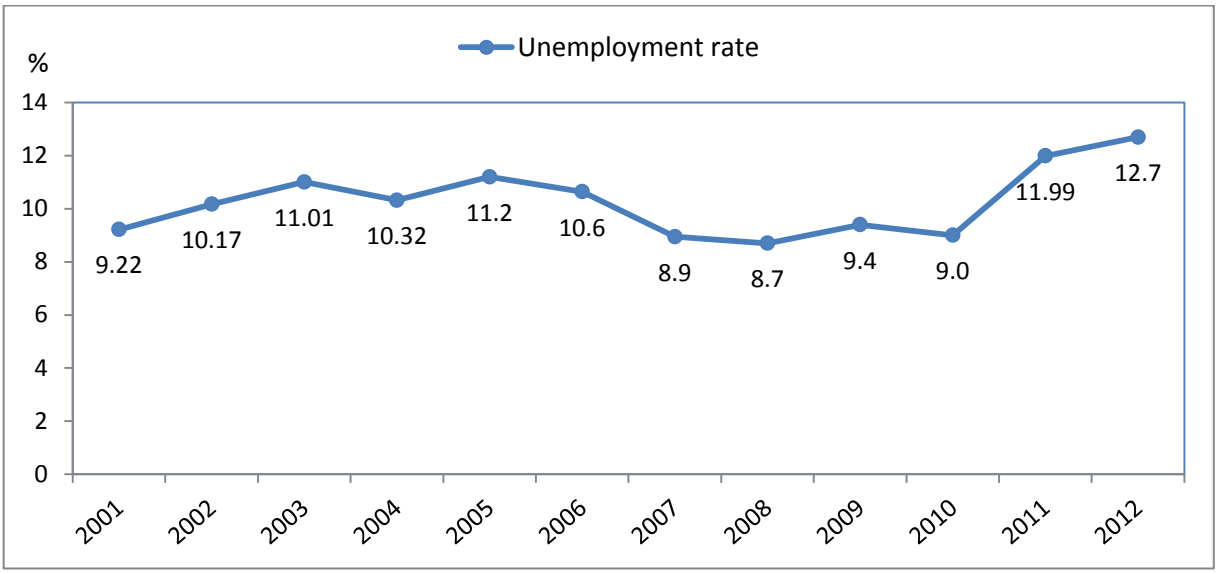
Source: Ministry of Finance. * Preliminary data

Egypt's strained labour market remains a particular challenge.

Owing to rapid population growth (around 2% annual growth for a population of just under 80 million), Egypt's labour market needs to absorb between 600 000 and 700 000 new entrants each year. This puts enormous strain on public services and on the government. The official unemployment rate was close to 10% for most of the last decade and has deteriorated further since the beginning of 2011. In Q3 of 2013 the unemployment rate reached 13.4%, the highest rate in more than ten years. In order to create a sufficient number of jobs each year, it is estimated by local analysts that real annual GDP growth needs to exceed 7% at current productivity levels.

This factor alone should provide impetus to continue to implement deep, structural reforms as the needed economic growth can only be achieved sustainably by continuing to liberalise the economy and by dismantling structural bottlenecks, especially in the labour market. Finally, stronger incentives should be in place for women's economic participation, as women are relatively weakly represented in the labour market in comparison to the level of education achieved (the labour force participation rate of women was only 23.5% of total women above 15 years old in 2010 compared to 43.19% for OECD countries).

Figure 1.3 Unemployment rate



Source: Capmas

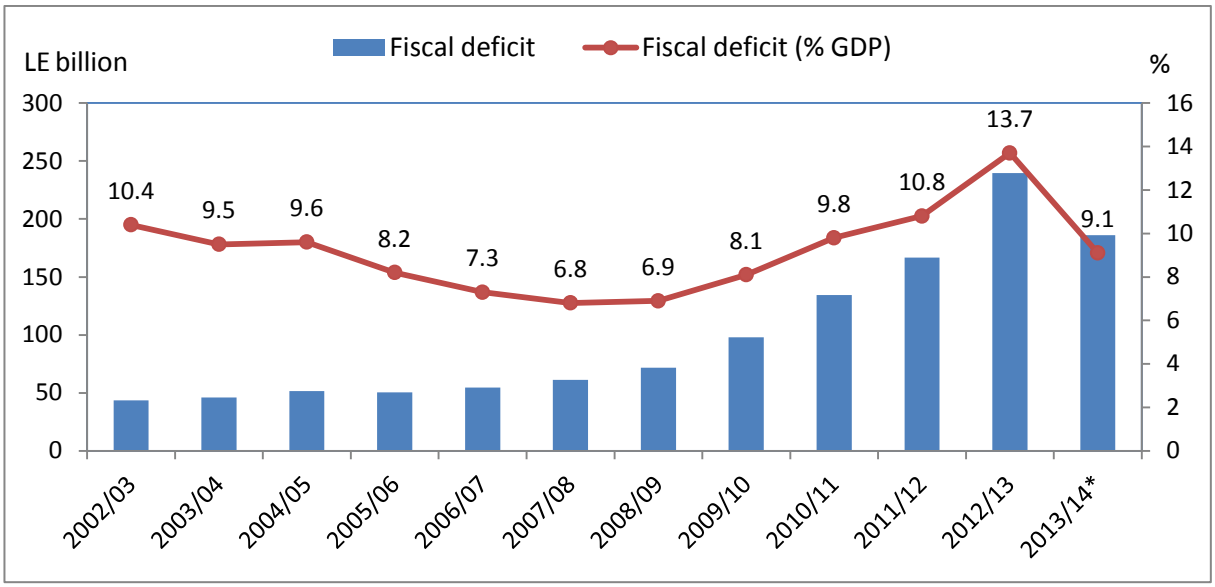
* Preliminary data

Fiscal deficit and public debt have been growing

Simplified tax procedures, lower income-tax rates, and improved enforcement in tax collection have increased compliance and widened the tax base over the past decade. With regard to government expenditure, the country has taken steps to gradually reduce subsidies on energy, one of the main causes of on-going budget deficits. Although still expanding in absolute terms, the central government budget deficit was reduced from 9.6% of GDP in 2004-05 to 6.8% in 2007-08 (see Figure 1.4).

Pressure on the Egyptian economy intensified in mid-2008, when the onset of the global financial crisis lowered foreign demand for goods and services, creating a balance of payments deficit. As a result of expansive fiscal policies, the fiscal deficit rose from 6.8% of GDP to 8.1 % between 2007-08 and 2009-10. The deficit has widened tremendously, reaching EGP 217.6 million in 2012-13 (13.7% of GDP), which is the highest level in ten years. One of the greatest medium-term challenges is the need to further reducing subsidies, particularly those related to energy accounting for about one-fifth of total expenditures and any reduction will be politically sensitive.

Figure 1.4 Fiscal deficit



Source: Ministry of Finance

* Estimates

Inflation has been contained but remains a risk

Inflation (consumer price index, CPI) averaged 11.8% in 2009, a significant improvement from the 18.3% recorded during the previous year. Whilst monthly inflation (urban measure) peaked at 23.6% (year-on-year) in August 2008, it had fallen back to 9% by August 2009, helped by the tight monetary policy adopted by the Central Bank of Egypt (CBE) during 2008.

Figure 1.5 CPI inflation (y-o-y)

Source: Ministry of Finance

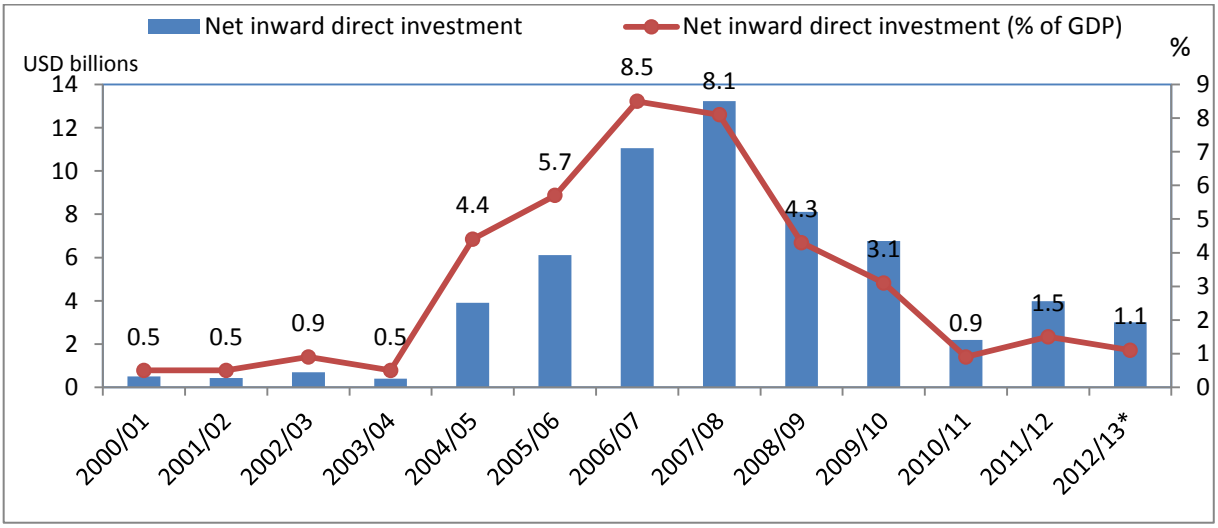
During the first two quarters of 2011, CPI inflation increased slightly, raising concerns of a new era of price instability. However, the rate has decreased notably since the first quarter of 2011-12, falling to the lowest level in several years in the first quarter of 2012-13 at 6.3%. Continuing economic weakness with domestic consumption declining to offset the impact of higher oil prices, explains the diminishing inflationary pressure. However, since the beginning of 2013, the CPI inflation rate has been increasing once more, reaching 11.7% in the third quarter of FY 2013-14. Inflation therefore remains a risk for the Egyptian economy.

Foreign direct investment decreased notably following the global financial crisis

Inward FDI grew approximately 20-fold between 2003 and 2007, to reach USD 13.2 billion in fiscal year 2007-08 (July to June), which represented 8.1% of the country's GDP. Since 2008-09, however, the positive trend has been reversed, with FDI decreasing continuously. Following January 2011, FDI inflows dropped to just above USD 2 billion, representing less than 1% of GDP – similar to the rates in the early 2000s. Throughout the year 2012 inward FDI to Egypt remained volatile. The country witnessed an important rebound in the first two quarters (respectively USD 636 million and USD 1.8 billion), but this surge was directly followed by a significant drop in the third quarter of 2012 (only USD 108 million). Nevertheless, in total, Egypt received a positive inflow of USD 2.8 billion in 2012 against a negative USD 483 million in 2011.[3]

[3] Source: UNCTAD STAT.

Figure 1.6 FDI inflows

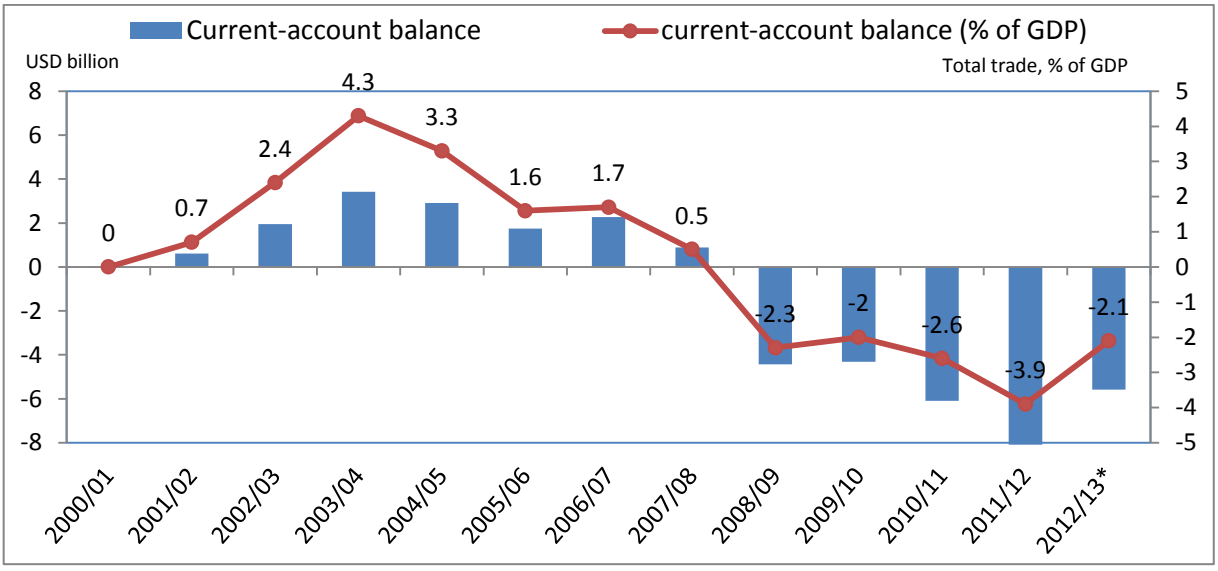


Source: Central Bank of Egypt * Preliminary data

Trade balance deficit persists

Trade has grown significantly over the last half decade, as a consequence of tariff cuts and multilateral and bilateral trade agreements. For example, the 2004 EU-Egypt Association Agreement led to a doubling of the parties' trade volume within four years. Egypt has diversified its exports to include more non-energy products. Political instability has widened the current account deficit even more, mainly due to decreasing tourism revenues. In 2009-10 tourism revenues amounted to USD 11.59 billion compared to USD 9.4 billion in 2011-12.

Figure 1.7 Current account balance



Source: Central Bank of Egypt * Preliminary data

Future prospects and challenges

According to the latest estimates provided by the World Economic Outlook (IMF), it is forecasted that the Egyptian Economy will grow by only 2.8% during 2014, but is expected to approach pre-crisis growth levels starting in 2015. While these numbers are encouraging, they will not be achieved without pursuing economic reforms. Structural reforms should continue tackling pressing issues related to the strengthening of economic and legal institutions as well as improving the rule of law, a prerequisite to attract domestic and foreign investors and entrepreneurial activities. In the medium-term, Egypt should improve its macroeconomic fundamentals by narrowing the fiscal deficit and improving its international reserve holdings.

Furthermore, particular attention should be brought to translating future growth into the real economy, by creating jobs and offering better living conditions for all. Egypt's labour market is widely recognised as a major structural weakness and constraint. Besides rigidities in the labour market, there are also structural human capital challenges, with an education system unable to cater to the needs of the private sector. With strong population growth, a young population and an underperforming education system, Egypt faces a steep policy challenge with regard to large-scale job creation.

CHAPTER 1: INVESTMENT POLICIES AND PROMOTION

This chapter discusses changes in investment-related Egyptian law and practice related to investment policy and promotion since the 2010 Business Climate Development Strategy (BCDS). It highlights the efforts and improvements that have been made, but also seeks to build awareness on issues raised by the business community. The recommendations addressed to policy makers aim to support Egypt in its efforts to improve its overall investment climate, with a view to generating growth and creating new job opportunities.

Introduction

The experience of OECD members as well as non-member governments has shown that a strong political commitment to facilitate investment, clear legal and regulatory frameworks, underpinned by principles of transparency and non-discrimination, are instrumental in attracting foreign investors and enabling domestic economies to benefit from their presence. Attracting foreign investment is unlikely unless investors have a reasonable understanding of the environment in which they operate and they experience support from the government. Over the years, OECD member governments have sought to develop international criteria in the treatment of international investment by agreeing to instruments such as the Declaration on International Investment and Multinational Enterprises[4] (Box 1.1) to which Egypt adhered in 2007.

Box 1.1 The OECD Declaration on International Investment and Multinational Enterprises

Adopted in 1976, the Declaration is a policy commitment by adhering governments to provide an open and transparent environment for international investment and to encourage the positive contribution multinational enterprises can make to economic and social progress.

The Declaration consists of four elements (each underpinned by a Decision by the OECD Council on follow-up procedures):

- The National Treatment instrument: A voluntary undertaking by adhering countries to accord to foreign-controlled enterprises on their territories treatment no less favourable than that accorded in like situations to domestic enterprises.
- The Guidelines for Multinational Enterprises: Recommendations on responsible business conduct addressed by governments to multinational enterprises operating in or from adhering countries. The Guidelines were updated in 2011.
- The instrument on conflicting requirements: Adhering countries agree to co-operate so as to avoid or minimise the imposition of conflicting requirements on multinational enterprises.
- The instrument on international investment incentives and disincentives: Adhering countries recognise the need to give due weight to the interest of other adhering countries affected by laws and practices in this field; they need to strengthen international co-operation in this area and endeavour to make measures as transparent as possible.

All 34 OECD member countries have adhered to the Declaration, as have 12 non-member countries: Argentina (22 April 1997), Brazil (14 November 1997), Colombia (8 December 2011), Egypt (11 July 2007), Latvia (9 January 2004), Lithuania (20 September 2001), Morocco (23 November 2009), Peru (25 July 2008), Romania (20 April 2005), Tunisia (23 May 2012), Costa Rica (30 September 2013) and Jordan (28 November 2013).

[4] www.oecd.org/daf/inv/investment-policy (accessed 18 March 2014).

The following chapter is based on several of the principles and elements contained in the OECD instruments and policy tools designed to assist governments in developing and promoting a stable, transparent, and predictable business environment for international investment.

The main instruments and tools which this chapter uses to analyse investment policy include:

- the OECD Declaration on International Investment and Multinational Enterprises and its related instruments: the Guidelines for Multinational Enterprises, and the National Treatment instrument;
- the Policy Framework for Investment (PFI) (Box 1.2) and the "Investment Policy" chapter of the associated PFI User's Toolkit;
- the OECD Code of Liberalisation of Capital Movements;
- the Investment Reform Index (IRI) developed by the OECD Private Sector Development Division for the countries of Southeast Europe (SEE);
- the OECD Investment Committee's recommendations on transparency and incentives.

Box 1.2 The OECD Policy Framework for Investment

The OECD Policy Framework for Investment (PFI) was developed within the OECD by the representatives of nearly 60 countries, and poses a list of key questions that should be examined by governments seeking to create a favourable investment climate. The objective of the PFI is to mobilise private investment in support of stable economic growth and sustainable development, contributing in this way to the prosperity of countries and their citizens and to combating poverty.

The PFI is not prescriptive. It is a flexible instrument that allows countries to evaluate their progress and identify priorities for action in ten policy areas: i) investment policy; ii) investment promotion and facilitation; iii) trade policy; iv) competition policy; v) tax policy; vi) corporate governance; vii) policies for promoting responsible business conduct; viii) human resource development; ix) infrastructure and financial sector development; and x) public governance. Three principles apply throughout the framework: policy coherence, transparency in policy formulation and implementation of policies, and regular evaluation of the impact of existing and proposed policies.

By encouraging a structured process for formulating and implementing policies at all levels of government, the PFI can be used in various ways, including for self-evaluations, peer reviews, regional co-operation, and multilateral discussions.

A User's Toolkit has been developed offering practical guidance on how to implement the PFI. It highlights how the core principles of the PFI influence investment, how the various chapters of the PFI relate to one another, and how the PFI can assist in an on-going and iterative process of reform and in fostering public-private dialogue.

Source : OECD, www.oecd.org/daf/investment/pfi and www.oecd.org/investment/pfitoolkit (accessed 19 March 2014).

For several years, Egypt has been showing a commitment to conform its investment policies to international standards, adhering to multilateral organisations, ratifying international instruments and bilateral and regional investment agreements, and transposing investment provisions into national law. These steps should be encouraged.

Egypt ranked 94 out of 146 economies on the Global Competitiveness Index (GCI) 2011/12 dropping 13 ranks, compared with the GCI results of 2010/11. In the World Bank Doing Business Report of 2013, Egypt ranked 109 out of 185 economies, dropping 3 ranks since 2010. It is to be noted that over the last decade a number of measures had been taken resulting in a commitment to stabilise

the investment climate and build investors' confidence in the Egyptian market. However, red tape remains a strong business impediment in Egypt, including a multiplicity of regulations and regulatory agencies, delays in clearing goods through customs, arbitrary administrative decision-making in some cases, high market entry transaction costs, and a generally slow commercial court system.

This chapter constitutes an update of the investment policies and promotion dimension in the Business Climate Development Strategy conducted by the MENA-OECD Investment Programme in 2009-2010.

Summary and Key Recommendations

Despite the fact that a number of the indicators examined deal with seemingly different matters, it became obvious when conducting consultations and research for this report that a number of key themes would emerge. Certain issues and points were raised repeatedly as participants and interviewees often offered similar observations across seemingly disparate indicators. While recommendations to address these issues are provided in the following pages under each individual indicator, the subsequent observations and recommendations apply across all indicators and in many ways summarise the findings of the report.

De Jure *provision vs.* de facto *practice*

On many indicators Egypt's international obligations and domestic law reflect a high standard of investor promotion and protection commitments. However, interviews with the Egyptian business community and foreign investors suggest that in practice these high standards may not always be respected. Examples of areas in which *de facto* practice and *de jure* provisions do not always coincide include protection of intellectual property rights, guarantees against expropriation, rules regarding national treatment and the conduct of international arbitration and amicable settlement. Implementation may be lagging due to insufficient knowledge on the part of Egyptian officials as to the particular provisions in question. In this case, additional training is recommended.

One of the objectives of this exercise is to recommend legislative changes and adoption of international instruments and conventions to foster a more attractive business and investment climate. What the study has found is that appropriate legislation and conventions are often in place and that what is required in order to improve the business climate is that they be diligently respected.

Failure to communicate

It is clear that there is a disconnection in perceptions between government officials and private sector actors on a number of fronts. This is especially true with regard to the activities of the General Authority for Investment (GAFI), Egypt's investment promotion agency. It is also true, perhaps to a lesser degree, of efforts to procure infrastructure by way of Public-Private Partnerships (PPPs). However, with PPPs there appear to be communication issues with public stakeholders, and with other areas of government. In both cases, GAFI and the PPP Central Unit responsible for implementing the country's PPP programme, often have policies and procedures in place that reflect a high standard of practice, but too few stakeholders seem to be aware of this.

In order to remedy this situation, a greater role for public consultation and the development of comprehensive communication strategies is a broad recommendation applicable to a number of indicators. The recommended public consultation and communication strategies would not only seek to inform as to government intentions and practices, but would also solicit feedback and input from those most affected in order create policies that better reflect the needs of end users and the public.

The need for greater transparency

Transparency remains an issue in Egypt. In the areas of security certificates for foreign investors, national treatment and dispute settlement mechanisms in particular, requirements, timing for determinations and reasons for determination are often unclear to those affected. Egypt has also implemented a number of foreign exchange control measures without providing certainty as to scope and timing. Greater clarity would also be beneficial with regard to a number of mechanisms established to deal with certain expropriation cases.

Predictable application of law is a prerequisite for a positive business environment. Written reasons for decision and timely accessible appeal mechanisms are key components of transparent legal systems. As Egypt seeks to foster a more positive business climate and greater levels of foreign investment transparency must remain a key consideration.

Lack of progress since 2010

The 2010 BCDS was conducted after an almost decade-long period in which economic reform was emphasised by the Egyptian government and recognised that significant reform had been accomplished in a number of areas. This report, which updates two chapters of the previous study, has found that progress since 2010 has been more measured.

The slower pace of reform since 2010 should not be surprising or judged too negatively. The period under study is relatively brief and many changes had taken place in the previous decade. There is also the reality that Egypt has been undergoing a period of political transition since January 2011. In light of the challenges the country is facing, reforms to improve the business and investment climate may not be the most pressing matters at hand for Egyptian law makers and officials. However, by participating in this exercise in co-operation with the OECD, the government of Egypt has demonstrated its commitment to reform and its understanding of the importance of fostering a positive business climate. It is hoped that this report will provide a solid foundation for future actions.

Overview: The institutional and legal investment framework in Egypt

At the institutional level, the Ministry of Investment and the General Authority for Investment and Free Zones (GAFI) are the two main government bodies responsible for the investment environment in Egypt. Established in 2004, the Ministry of Investment is the authority in charge of setting the legal framework with a view to attract foreign and domestic investment.[5] In parallel, GAFI has been the promotion agency since 1997, responsible for facilitating investment and assisting international investors. In particular, GAFI plays a role in simplifying and facilitating the process of approval, registration, licensing and certification for new investment projects in the country.

Egypt has three key laws governing investment: the Investment Guarantees and Incentives Law No. 8 of 1997 (the **Investment Law**); the Companies Law No. 159 of 1981 (the **Companies Law**); and the Law on Economic Zones of a Special Nature No. 83 of 2002 (the **Law on Economic Zones**). These laws set out the specific legal framework for local and foreign investment (except in the hydrocarbon exploration and production sectors) while other laws and regulations contain provisions regulating activities of foreign and domestic economic operators.

The 1997 Investment Law has been amended by nine subsequent laws or decree-laws and some additional proposed amendments are currently pending enactment. Applying to both local and foreign investors, the Law contains provisions on investment protection when it relates to expropriation and dispute settlement. It also deals with land ownership, licensing, incentives and exemptions, free zones (though provisions on free zones were complemented by specific laws on economic zones in 2002 and on investment zones in 2007). Finally, the Law establishes GAFI as the administrative entity to apply the provisions of the Law. Details on composition and tasks are provided. Below indicators analyse in more detail these provisions.

The 1981 Companies Law establishes a parallel regime for business entry. It applies to domestic and foreign investments – in any sector – which take the form of joint stock companies (JSCs), limited liability companies (LLCs) or companies limited by shares. Besides corporations, the Companies Law regulates representative offices as well as branches of foreign companies. It permits automatic company registration upon submission of an application to GAFI and for acquisition of legal status after annotation in the Commercial Registrar. There are no restrictions on foreign ownership of JSCs and LLCs under the company law regime. The Companies Law also defines accounting standards.

The 2002 Law on Economic Zones governs free zones in Egypt and provides for the establishment of special zones for industrial, agricultural or service activities aiming at promoting export, foreign investment and employment. The Law offers incentives and guarantees to projects operating in special economic zones, including tax exemptions, special protection of assets and more flexibility in employment conditions. In addition to the Law on Economic Zones, the Law No. 19 of 2007 adding a new article to the Investment Law provides for the establishment of investment zones that are open to all economic sectors and not restricted to industrial activities.

In addition to the above, foreign investments are subject to other laws and regulations that form the general legal framework for investment. These concern areas such as trade (i.e. the Trade Law No. 17 of 1999), taxes, customs, exports and imports, competition (e.g. the Capital Markets Law No. 95 of 1992 which governs Egypt's capital markets and according to which foreign investors can buy shares on the Egyptian Stock Exchange on the same basis as local investors).

[5] In March 2014, this Ministry became the Ministry of Trade, Industry and Investment.

Part 1. Foreign Direct Investment (FDI) Policy

1.1. Approval procedures

Governments have the sovereign right to regulate the entry of foreign investors and their investments. Entry regulation can include screening procedures i.e. approval procedures (*e.g.* licenses and permits) for all sectors or for specific sectors as well as security checks. Transparency (*e.g.* publishing criteria for approval) and predictability (*e.g.* not subject to discretionary powers) of such procedures send an important message to potential investors about the overall attractiveness of the investment environment.

This indicator primarily tests the transparency of screening procedures for foreign investors. It assesses:

- whether the process and criteria for a given approval procedure are codified in laws, regulations, or administrative procedures;
- whether the process and criteria are published using the appropriate platforms (Internet) and language (English); and
- the extent to which the government takes steps to reduce discriminatory procedures over time; and whether decisions are justified and whether appeals against rejections are permitted.

Egyptian authorities screen investment only in specific sectors and this screening applies to both domestic and foreign investments with few but notable exceptions such as the security approval requirement which applies only to foreign investors.

Key findings and recommendations

The authorities should clearly define all procedures applicable to foreign investors and process approvals in a transparent and timely manner. Rejections should be reasoned and provided in writing to the investors concerned.

Foreign investors are subject to **security checks** with indeterminate time lines and unclear criteria. Though rejections are rare, they can be discretionary and not transparent.

Operational licensing procedures are required in specific sectors for both foreign and domestic investors. In practice, additional or different requirements than those provided in the laws are requested. Delays and non-renewal of licences have been flagged. Currently, temporary licenses are granted to investors in free zones. An extension of the ability to grant temporary licences to investment zones and outside of the zones is under consideration.

With respect to the establishment of companies, there is no distinction between domestic and foreign investors. However, efforts should be made to enhance transparency and predictability of procedures, notably in terms of timing and outcome while temporary licenses should be further expanded. Costly and time consuming formalities remain (for example in the legalisation of foreign public documents) and could be streamlined. Egypt should consider ratifying the Hague Convention with regard to foreign public documents.

Analysis

Operational licensing procedures

Operational licensing procedures (approvals, licenses and permits) are required for both domestic and foreign investors to operate in certain specific sectors including tourism and energy-intensive sectors. Prior approval is also required to operate certain activities or in certain sectors such as banking services, insurance, brokerage activities, mortgage finance, factoring, air transport and related activities, specific tourism activities, intensive energy sectors, chemical industries.

GAFI has prepared a manual (guidebook) including all licenses, approvals, procedures, time and cost which are required for different economic sectors related to governmental interties and it is regularly updated.

The authorities should also be cautious about suspending, even temporarily, the issuance of licenses without prior notice and adequate information. With respects to temporary licenses, the extension of the system of temporary licenses outside the free zones should be encouraged, as well as implementation of the practice in investment zones.

Security approvals procedures

Security screening procedures are common in a number of countries in order to ensure compliance with national security objectives. When not clear and transparent, security clearance lengthens the process of establishment and can causes delays. Foreign investors in Egypt, interviewed in the context of this review, indicated that there are no clear and transparent inspection rules and guidelines for security intervention in the business sector nor clear criteria for relevant approvals. Moreover, the applicant is not informed in advance of the time it will take to process the security clearance. If an application becomes subject to a security clearance, this can take up to three months during which the applicant has no information regarding the eligibility of the project. This uncertainty has practical implications for financing and for ownership of land and other property titles. Despite unjustified rejections, most of the business community interviewed nonetheless agrees that it is possible to appeal decisions.

In practice, security clearances may apply in the following cases: (i) when foreign (natural or legal persons) are owners or shareholders of a new Egyptian company; (ii) new foreign shareholders in an existing company; and (iii) appointing foreign managers or board members in an already established company or a company in the process of being established. As a rule, however, security approvals should not postpone the process.

Security rejections seem to be quite rare in practice and according to GAFI, they do not prevent establishment of companies. At any rate, clarification of the security approval procedure is recommended to ensure that it does not unnecessarily disrupt the establishment process for foreign-owned companies. Criteria and procedure should be transparent and available. Clear guidelines for security inspection of investment projects should be made available to investors and security clearance should be time-bound. Officers dealing with approvals should be trained to improve efficiency standards. Investors should be informed of the outcome of the security check prior to establishing a company and reasons for decision should be provided.

Company establishment

With regard to the procedure for establishing a company, there is no difference between domestic and foreign investors. The World Bank (2013) *Ease of Doing Business Index 2013* report indicates that Egypt has made progress in reducing the number of procedures required to start a business to six and the number of days to seven. However, its ranking in starting a business fell to 26 (out of 185) in 2013 compared to 18 in 2011 and 21 in 2012.

GAFI embarked in 2002[6] on setting-up a one-stop shop to streamline and facilitate the approval and establishment process. It states that, as of November 2013, its one-stop shop contained 44 offices representing 21 ministries and had facilities to deal with work permit approval, company registration, taxation, customs, and other post-establishment services. GAFI attempts to process all requirements for an application within 72 hours and to assign an employee to be responsible for the investor.[7] In practice however, a lack of co-ordination between GAFI and other ministries remains and has been raised as a concern. The process can only benefit from GAFI's sustained efforts in operationalizing the one-stop-shop facility and encourage further ministries and agencies to participate in this effort.

Foreign investors continue to face costly formalities. This is notably the case for registering a branch in Egypt, which is subject to burdensome and time consuming procedures as it is usually tied to the performance of a specific contract, as a permanent presence independent from the implementation of a specific project is not permitted. The legalisation procedure of foreign public documents that may be required by the Egyptian authorities (e.g. extracts from Commercial Registrars, court rulings etc.) also adds complexity and delay. GAFI indicates that new measures effective September 2011 have been implemented in this regard including minimising the period of registration for representative offices to 24 hours, improved from 40-60 days and the streamlining of procedures to establish a branch of a foreign company to five days from the previous to four months.

In the context of company establishment, a recent instruction by the Central Bank of Egypt (CBE) has added an impediment to the streamlined establishment requirement provided for by GAFI. Under this new set of instructions, in order to open a bank account for an LLC, a joint-stock company or a partnership limited by shares (see Annex E) under establishment, every shareholder is to provide a document evidencing its shareholding structure. The CBE set these new instructions in order to track the shareholding structure of every company potentially investing in Egypt so that it may identify the individuals ultimately exercising control. It would therefore be recommended that in due time, the CBE might consider applying less cumbersome procedures for the opening of bank accounts, for companies under establishment. In practice, it appears that assigning a local legal and/or a financial advisor remains the quickest and easiest way for a foreign investor to establish a company in Egypt.

Egypt is currently developing a new system to register companies electronically. The first phase of on-line registration was launched in 2010, allowing investors to submit applications and follow their status.[8] Though this electronic registration system may contribute to streamline formalities, to date, a dual system continues to be in function, based on both electronic and paper applications.

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[6] Presidential Decree No. 79 of 2002 and Prime Minister's Decree No. 636 of 2002.

[7] OECD (2007), *Investment Policy Review - Egypt*, Paris.

[8] The electronic registration system involves three stages: i) receiving and following up requests; ii) electronic signature; and iii) electronic fees payments.

Egypt should consider ratifying the 1961 Hague Convention abolishing the requirement of legalisation for foreign public documents (the Apostille Convention). This would allow investors to benefit from streamlined legalisation procedures for documents used in Egypt.

For further analysis on this indicator, see Annex C. 1.1.

1.2. Admittance of foreign business personnel in support of FDI

Restricting the rights of foreign nationals to manage or work in affiliates of foreign enterprises may discourage potential investment. Two issues are at stake: control by an investor over the investment through the board of directors or senior management personnel, and employment of foreign workers in the enterprise. Provisions stipulating that nationals or residents must form a majority of board members may undermine foreign owners' control over their holdings and make them more hesitant to invest. Similarly, if regulations restrict the employment of foreign nationals, investors may consider that they cannot make use of necessary expertise. However, a country may legitimately wish to stimulate employment of its national workforce and transfer of know-how.

Egyptian regulations allow foreign enterprises to select the composition of their boards of directors. Foreign workers may work full-time, albeit on a temporary basis, to perform specialised tasks in most, fields.

Key findings and recommendations

In law, **no restrictions are applied to the nationality of boards of directors**, except in the case of limited liability companies (LLCs), where at least one of the company's managers must be of Egyptian nationality. However, **only 10% of a company's workers can be foreigners**. The majority of the private sector representatives interviewed mentioned that there are additional quotas for specialised foreign personnel and that foreign labour is *de facto* not allowed in some sectors such as textiles outside of the free zones. To the extent that **there are *de facto* quotas in certain sectors or in certain zones**, it is recommended that these either be abandoned or codified.

The Ministry of Immigration and Manpower is seen to have a good understanding of investors' issues, facilitating documentation regarding work permits and their renewal for foreign employees. The importance of training Egyptians (on-the-job training) through expatriates has been emphasised by some business associations.

Analysis

Any foreign national wishing to work on a permanent basis in Egypt must apply for a work permit. A residence permit is subsequently granted on presentation of the work permit. Both are usually issued for periods of 12 months, but board members of companies established under the Investment Law are often granted work and residence permits for up to five years.

In order for the work permit to be granted, 90% of the employees of the applicant company must be of Egyptian nationality. The employment of foreign personnel needs to be justified, for example by way of specific qualifications. In principle, a company should employ at least one Egyptian assistant who should be trained by the foreign worker and take over their functions at a later stage. However, there are exceptions to this rule, for example employees of representative offices, managers of branch offices and general managers of LLCs whose names are annotated in the company's Commercial Registrar. In practice, obtaining a first work permit for foreigners in Egypt is not difficult. However,

renewals may be more challenging. According to the IFC, the process to obtain a temporary work permit in Egypt takes an average of 6 weeks, a processing time faster than the global average (8 weeks) and the MENA average (11 weeks).[9]

In free zones, foreign employees may account for up to 25% of staff. This ceiling may be exceeded upon an explicit exemption granted by the government.

Some of the bilateral investment treaties signed by Egypt contain provisions on key personnel, which usually stipulate that parties will facilitate entry and residence of managerial and technical personal according to their laws and regulations.

For further analysis on this indicator, please see annex C. 1.2.

1.3. Transfer of FDI-related capital

The ability to freely transfer investment-related capital, including repatriated earnings and liquidated capital, is important for any business if it is to make, operate, and maintain investments in another country.[10]

This indicator is designed to assess the implementation of laws, regulations, and international commitments (e.g. Article VIII of the IMF Articles of Agreement and, when relevant, the OECD Codes of Liberalisation) in order to ensure the free transfer of:

- FDI-related capital, such as profits, dividends, interests, or other amounts derived from foreign investment;
- proceeds from the sale of an investment;
- payments resulting from expropriation; and
- payments resulting from international arbitration.

The indicator also reviews under what circumstances transfers may be restricted and whether such restrictions are codified in laws and regulations and are publicly available.

Egypt's Banking Law No. 88 of 2003 guarantees the right to remit income earned in Egypt and to repatriate capital. In addition, the Investment Law stipulates that foreign employees hired by projects established in the framework of the law can transfer the earnings abroad. Egypt adhered to the IMF's Articles of the Agreement with regard to currency practices. However, in late 2012 and in 2013, the Central Bank of Egypt (CBE) introduced certain restrictions on foreign currency transfers.

Key findings and recommendations

It is recommended that the CBE clarify the scope and timing of foreign currency measures introduced in 2012 and 2013. During the period of these new restrictions, Egyptian authorities may wish to create a dedicated contact point to receive investors' queries and requests in connection with

[9] IFC (2013), *Employing skilled expatriates. Benchmarking skilled immigration regimes across economies*, Washington.

[10] OECD, *PFI User's Toolkit, Investment Policy, Section on Non-Discriminatory Treatment for National and Foreign Investors.*

capital transfers. In addition, they should consider regularly monitoring practices of capital controls and transfers, for example through regular surveys of foreign investors and local banks. Further transparency and streamlining of existing procedures and documentation is recommended, especially with regard to liquidation and bankruptcy processes.

Exceptions and limitations on free transfer of capital in exceptional circumstances should be clearly announced and make reference to conditions and procedures set forth in international instruments, such as IMF Articles and the OECD Code of Liberalisation of Capital Movement[11] – even though Egypt is not a State party to the latter.

Analysis

In December 2012 and beyond, the BCE introduced capital transfer restrictions. The new instructions allow foreign companies to send abroad more than USD 100,000 per year only under certain conditions. In addition to original documentation, the transfers above this amount are allowed only for legitimate business purposes and require the CBE approval. In addition, companies are allowed to transfer up to USD 30,000 per day. Further capital controls were introduced through the requirement on travellers to declare the amounts physically carried in and out the country if they exceed USD 10,000.

Measures taken by the CBE in December 2012 have been implemented in order to monitor the flight of capital and financial activities in Egypt. These measures were also taken to limit access and departure of hard currency, especially United States Dollars (USD). Consequently, it is reported that businesses are constantly searching for hard-to-find foreign currency and companies are having problems arranging foreign currency through accredited banks and authorised foreign exchange dealers. Banks are further requested to ask for justifications for any foreign currency transfers or withdrawals. Between December 2012 and February 2013, the Egyptian pound (EGP) lost 8% of its value against USD and had suffered a total 14% depreciation since 2011. In its circular of 13 March 2013, the CBE reinforced the existing mechanism on free and streamlined repatriation and transfer of capital invested in the stock exchange, bonds and treasury bills. According to the statements of the CBE and the Egyptian authorities, the current situation is temporary pending resolution of critical fiscal problems and the stabilisation of foreign currency reserves. The objective is to lower the impact on Egypt's balance of payments deficit and to prevent the outflow of illicit gains; it remains to be seen for how long these measures will be applicable.

Business representatives interviewed before December 2012 did not note any difficulties in transferring FDI related capital including dividends, interests, or any sort of capital repatriation in and out of Egypt. However, they reported experiencing additional delays and difficulties for legitimate transfers to be executed after December 2012.

Egypt has a very large network of bilateral investment treaties (BITs), having signed more than 100 of such agreements (see Annex F). Most of them allow *inter alia* free transfers of capital, usually

[11] Article VI, Section 3 on Controls of Capital Transfers of the Agreement of the IMF providing that "Members may exercise such controls as are necessary to regulate international capital movements, but no member may exercise these controls in a manner which will restrict payments for current transactions or which will unduly delay transfers of funds in settlement of commitments, except as provided in Article VII, Section 3(b), and in Article XIV, Section 2" www.imf.org/external/pubs/ft/aa/index.htm#a6s3 (accessed 18 March 2014), and Part I of the OECD Code of Liberalisation of Capital Movements; www.oecd.org/daf/inv/investment-policy/codes.htm (accessed 18 March 2014).

including dividends, royalties, compensation in case of expropriation, contract payments and proceeds from sales. The Egyptian BIT model guarantees the free transfer of funds related to investments without delay in a freely convertible currency, while acknowledging the host State's right to take safeguard measures to deal with serious short-term balance of payments difficulties or monetary policy difficulties. These safeguard measures require that measures should be non-discriminatory, proportional, temporary, avoid unnecessary damage and be in conformity with the IMF Agreement.

For further analysis on this indicator, see Annex C. 1.3.

1.4. FDI incentives

Countries frequently offer various forms of incentives to attract prospective investors. The *OECD Checklist for Foreign Direct Investment Incentive Policies* defines FDI incentives as: "Measures designed to influence the size, location or industry of an FDI investment project by affecting its relative cost, or by altering the risks attached to it through inducements that are not available to comparable domestic investors."

FDI incentives can take the form of fiscal incentives (e.g. reduced direct corporate tax), financial incentives (e.g. infrastructure or job training subsidies) and regulatory incentives (e.g. relaxation of environmental, social, or labour standards). Incentives should be used with caution given the potential negative impact they may have if not regularly assessed.

The FDI incentives indicator is assessed against the following yardsticks:

- codification and disclosure of criteria and procedures to obtain incentives;
- whether the incentives are supported by a cost-benefit analysis; and
- the predictability of the duration of incentives and the existence of sunset or grandfather clauses.

The Egyptian Investment Law and its Executive Regulations provided for fiscal incentives to investors. General and specific exemptions on tax on revenues of commercial and industrial activities were granted to companies which have obtained necessary permits, met requirements of incorporation and completed the notification procedures through GAFI. Many of these tax exemptions were cancelled in 2005 with a view to streamline and clarify exemptions. However, tax incentives were grandfathered and companies currently benefitting will continue to do so until the end of the period stipulated when they were established. Other specific tax incentives still apply, in particular in free zones.

Key findings and recommendations

The types of incentives and eligibility criteria are published in English and are readily available on GAFI's website or in specific publications targeted to investors.[12] Entry into the various zones is

[12] According to GAFI, available at the following links (accessed 18 March 2014):
www.egypt.gov.eg/english
www.investment.gov.eg
www.ad.gov.eg
www.gafinet.org/en
www.alexcham.org
www.customs.gov.eg

open to domestic and foreign enterprises and the associated incentives are offered on a non-discriminatory basis.

Despite efforts to streamline incentives, it is unclear whether cost-benefit analyses are performed. Therefore, to avoid the squandering of scarce public resources, Egypt should undertake **regular cost-benefit assessments of all kinds of FDI incentives**. It should **assess the performance of companies benefiting from incentives offered in the free zones against the performance of enterprises operating outside the zones**. The government should also consider reviewing the timing scope of FDI incentives as they are generally not limited by sunset clauses.

Analysis

The private sector representatives interviewed for this assessment agree that FDI incentives generally are provided on a non-discriminatory basis and that the criteria and procedures for obtaining incentives are publicly available per the Investment Law. However, a common problem revealed by foreign and local investors is the inefficiency in tax administration and the complexity of tax regime enforcement. They also mention that there is a need for specific tax incentives, as well as better access to land for development. They highlight that the zones regime is very complicated and that guidelines and criteria to form companies in free zones should be clearer and more transparent.

The business community views coincide with the Doing Business 2013 ease of paying taxes indicator according to which Egypt's global ranking has deteriorated from the 139th in 2011 to the 145th position in 2013 among 185 countries.

By adhering to the OECD Declaration on International Investment and Multinational Enterprises in 2007, Egypt has declared it is ready and able to fulfil its commitments under the instrument on International Investment Incentives and Disincentives. This instrument encourages adhering countries to ensure that incentives as well as disincentives are as transparent as possible so that their scope and objective may be easily determined.

For further analysis on this indicator, see Annex C. 1.4.

1.5. Land ownership, titling and cadastre

Clearly defined ownership rights provide investors with an incentive to undertake new investments and maintain and preserve existing ones. Proof of ownership is needed to obtain financing and licences. Circumstances may arise where foreign investors are barred from owning certain types of land. However, such restrictions to ownership rights should be clearly defined and codified in law. Some restrictions still exist in OECD countries.

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www.sfdegypt.org
www.amchamegypt.com/resources_publications/trade_resources/dbe/
www.gafinet.org/LawsLibrary/Forms/En_AllItems.aspx?lawtype=Business%20Laws#first
www.oecd.org/mena/investment/36086747.pdf
www.goeic.gov.eg/en/index_r.asp

The land ownership indicator assesses whether land ownership rights are clearly defined in the law and whether there is discrimination between domestic and foreign investors. The key criteria include:

- whether foreign investors can own industrial real estate, residential properties, and rural land;
- the complexity of procedures and the time required to register land; and
- the extent to which there is preferential treatment for nationals in these procedures.

A land title contains crucial legal information about a piece of land, such as the name(s) of the registered owner(s), historical title details, and the registration number. Having a functioning land titling system in place, combined with a system of documented information, provides investors with increased security that the purchased land is not subject to claims for restitution. GAFI indicates that it is in the process of easing the procedures required by activating a Land Information Unit that will include a database.

A cadastre is a comprehensive register of a country's real estate. It commonly includes details of ownership, tenure, precise location, dimensions, and the value of individual parcels of land. The land titling and cadastre indicator assesses the extent to which a system of land titling and real estate cadastres is in place. It also assesses whether restitution processes have been completed and if information on any restitutions liens is readily available.

The Egyptian authorities have begun implementing a national cadastre scheme to register real estate electronically. The new system is considered to be one of the most ambitious cadastre projects in the MENA region and is aimed at building a national web-based system that automates the different procedures for rural and urban property registration through a simple, user-friendly interface. However, it is not yet complete and its coexistence with the old system raises issues. Details regarding its implementation are unclear while the process has taken far longer than the government initially estimated. Registering real estate in the new system is expected to take a long time, especially outside Cairo and Alexandria. Officials in the Ministry of Local Development and the Ministry of Justice estimate that the project is 50% complete. That progress, though, refers mainly to putting the electronic register and hardware in place, not to actual registering. Some observers doubt that the scheme is really advancing at such a rate given the sheer amount of work required.[13]

Key findings and recommendations

Egypt should consider clarifying land ownership rules and regulations, especially with regard to restrictions currently in place.

Issues remain with public land management and allocation as it is seen by the private sector representatives interviewed to be very complicated. The absence of a clear cadastre describing the location and availability of land is also an obstacle. Changes to the Public Procurement Law in September 2013, allowing government authorities to allocate land to investors without public tenders may make land more readily available.

Egypt should accelerate the pace of registering property in the new electronic cadastre system. Priority for registration should go to urban areas and to those where foreign investors have

[13] Interviews conducted by the Egyptian Centre for Economic Studies (ECES) with officials from the Ministry of Justice, Ministry of Finance, and Ministry of Local Development.

expressed an interest in establishing operations. In March 2013, the new Finance Minister has announced that its PPP Central Unit has decided to launch a project for the preparation of an electronic registry of property covering the whole country.[14]

Analysis

Egyptian companies are entitled to own land and real estate required to practice their activities regardless of the nationality or residence of the shareholders, or the percentage of their shareholding.

The Prime Minister may, based on the suggestion of the relevant minister, allocate state-owned lands, free of charge, to companies operating in fields covered by the Investment Law. Applications for land allotment shall be submitted to GAFI showing the required area, size and nature of proposed activity and money to be invested. GAFI then decides on the application within two weeks.[15]

However, access to land ownership is restricted in some cases, mostly for reasons of strategic importance, for instance in the Sinai Peninsula. Real estate can be used by foreigners in Sinai, but only as concessions. Ownership of agricultural land is also limited for foreign investors.

According to the World Bank Doing Business, Egypt's rank in property registration has slipped from 87 in 2009 to 95 in 2013. To register a property in Egypt, an investor now has to contend with seven procedures that take 72 days at a cost of 0.7% of the value of the property. Although no discrimination appears between foreign and domestic investors, Egypt lags behind MENA and OECD averages with respect to the number of procedures required and the estimated number of days it takes to register a property.

Egypt's Property Registration Procedures

Indicator	Egypt	MENA Region	OECD
Procedures (number)	7	8	5
Duration (days)	72	33	26
Cost (% of property value)	0.7	5.9	4.5

Source: Doing Business (World Bank, 2013).

For further analysis on this indicator, see Annex C. 1.5.

1.6. Intellectual property rights

There are many legal instruments which safeguard intellectual property (IP) rights. They include patents, trademarks, copyright, and industrial designs. Membership of international bodies such as the World Trade Organization (WTO) and World Intellectual Property Organization (WIPO) requires abiding by binding commitments to protect IP rights.

The IP rights indicator assesses the existing IP protection framework within a country. A baseline score is given where domestic IP legislation exists, covering fundamental forms of IP rights such as protection of patents, trademarks, industrial designs, geographic indicators, and copyrights. A mid-level score is assigned if the country complies with international rules, such as those required by the

[14] Economic Intelligence Unit (March 2014), country report – Egypt.

[15] Article 44 of the Executive Regulations of the Investment Law.

WTO and WIPO. A high-level assessment may be obtained if there is a demonstrable commitment to the enforcement of laws and regulations though the prosecution of IP violations, establishment of IP offices, removal from international watch lists, enforcement of court awards, and use of information campaigns to raise public awareness of IP protection.

Key findings and recommendations

Egypt has the legislative framework in place to support intellectual property rights and is a party to several international agreements protecting IP. However, private sector participants expressed dissatisfaction with the enforcement of IP rights legislation. Some business associations also reported that government bodies interfere with complaints. Consequently, **Egypt should consider improving the implementation and enforcement of IP rights.** Priority areas for action should include easing the backlog of pending patent applications and increased customs inspections to prevent the transhipment of counterfeit goods through Egypt.

Egypt should focus its efforts on curbing the piracy of cultural goods such as books, music and films. A requirement in this regard is closer co-operation between the Ministry of Culture and organisations such as the Egyptian Centre for Intellectual Property and Information Technology in training law enforcement officials and in running campaigns to raise awareness of the negative economic effects of the piracy of cultural goods and of the penalties for pirates.

Establishing effective mechanisms permitting a party claiming violation of its IP rights to obtain interim/provisional relief or injunctions (to avoid an increase in damage suffered) before the final determination of the proceeding is a key point to be considered within the IP legislation.

Analysis

Egypt has been a State party to the WIPO Convention since 1975, and adhered in 1995 to the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. In addition, IP rights are usually covered and protected by the bilateral investment agreements ratified by Egypt with more than 100 countries. In these treaties, the definition of the protected investment usually includes copyrights, industrial property rights such as patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin, know-how, traditional knowledge and goodwill. At the institutional level, several Egyptian agencies coexist to ensure the co-ordination of policies and raise awareness on IP issues.

While Egypt has established legal and institutional framework for IP rights protection, the country remains on the 2013 US Trade Representative (USTR)'s Watch List. According to the 2013 USTR Special 301 Report, the failure to issue deterrent-level sentences for IP violations when offenders are convicted and the need for additional training for enforcement officials are the main challenges for Egypt. Nonetheless, the report highlights recent improvements in efficiency and effectiveness of the Economic Courts in IP rights cases, as well as the increase in raids and investigations against distributors and producers of pirated or counterfeit merchandise by the Information Technology Industry Development Agency (ITIDA). In its seventh annual Business Software Alliance (BSA) and International Data Corporation (IDC) Global Software Piracy Study, Egypt was found to have cut its piracy rate from 65% in 2005 to 59% in 2009. Egypt's piracy rate is comparable to the average for the MENA region, but is higher than the EU.

For further analysis on this indicator, see Annex C. 1. 6.

1.7. Restrictions to national treatment

National treatment obligations provide that a host State grant foreign investors no less favourable treatment than that granted to domestic investors in like circumstances. Under this relative standard of protection, the host State shall not discriminate against foreign investors. The standard seeks to ensure a certain competitive equality between national and foreign investors and stimulates competition between foreign and domestic enterprises with a view to offering better products and services, improved resource allocation, and a better diffusion of technological innovation.[16]

Under the OECD Declaration on International Investment and Multinational Enterprises, national treatment consists of two elements: a declaration of principle, which forms part of the Declaration, and a procedural OECD Council Decision which obliges adhering countries to notify their exceptions to national treatment.[17] To ensure transparency, countries adhering to the Declaration also undertake to report any measures that constitute a restriction to national treatment. The lists of these exceptions and measures are published and regularly updated.[18]

It is important to note that the measures that must be listed are restrictions to the entry and/operation of foreign investors only.

The yardsticks for assessing Egyptian restrictions to national treatment are:

- whether restrictions are clearly codified and incorporated into the legislation governing private sector FDI;
- whether the government has taken steps on a periodic basis to remove or reduce the number of restrictions to national treatment;
- whether restrictions have been removed either under the terms of bilateral or multilateral negotiations on specific investment-related treaties or as the result of other instruments; and
- whether the government undertakes unilateral efforts on a periodic basis to review its national treatment restrictions.

By acceding to multilateral organisations such as the World Trade Organization (WTO), negotiating regional trade arrangements like COMESA, AGADIR, and GAFTA, as well as adhering to the OECD Declaration on International Investment and Multinational Enterprises,[19] Egypt has committed itself to respecting national treatment provisions and clearly defining and making publicly available all restrictions to national treatment.

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[16] OECD (2006), *A Policy Framework for Investment* (PFI).

[17] The decision comprises an annex which lists exceptions to national treatment, as notified by each adhering country and accepted by the OECD Council. The exceptions are periodically examined by the Investment Committee.

[18] The list of exceptions to national treatment and the list of measures reported for transparency by all adhering countries are available at www.oecd.org/industry/inv/investment-policy/nationaltreatmentinstrument.htm (accessed 19 March 2014).

[19] Egypt adhered to the OECD Declaration on International Investment and Multinational Enterprises in 2007. For the purpose of its adhesion, the country underwent the Investment Policy Review (IPR) and committed to the national treatment standard and to promote responsible business conduct.

In the context of its adherence to the Declaration in 2007, Egypt provided a list of restrictions to national treatment.[20] According to GAFI, the Egyptian authorities refrain from introducing new exceptions to national treatment with none having been introduced since the 2010 BCDS, and efforts are made to unilaterally lift restrictions to comply with reciprocal commitments in bilateral, regional or multilateral agreements.

Key findings and recommendations

Though Egypt is *de jure* one of the most open economies in the region, certain restrictions remain. Some of these, for instance in the agriculture sector and in the transportation sector, are similar to those existing in many countries. However, **restrictions in construction and professional services may be detrimental to foreign investment and should be addressed.** Consultations indicate that **transparency** remains an issue as **clarity** with regard to the various laws and regulations faced by foreign investors, and their interaction, may not always be forthcoming.

As part of its obligation under the OECD Declaration on International Investment and Multinational Enterprises, **Egypt should revise its 2007 list of restrictions to national treatment and provide a comprehensive and updated list.** This would improve transparency and predictability and send a strong and positive signal to the business community as it would allow foreign investors to have a clear and simple overview of the sectors in which they may face restrictions.

While revising its 2007 list, **the Egyptian government may also wish to consider removing unusual restrictions to national treatment or lifting some restrictions in value-added sectors** it wishes to promote due to the job creation potential of these sectors. In this respect, Egypt could remove restrictions on import activities to help increase and liberalise trade activities. Egypt is a cross roads for many businesses and opening the door to foreign investors and import activities may be one of the conditions to help revive trade and industrial activities in Egypt.

Analysis

The OECD FDI Regulatory Restrictiveness Index, which seeks to gauge the restrictiveness of a country's FDI rules (see Box 2.1 in Annex C. 1.7), shows Egypt's ranking based on its 2007 list of restrictions to national treatment as well as on other sources. Egypt stands lower (i.e. less restrictive) than the average both among OECD countries and among non-members of the OECD (see Figure 2.1 in Annex C. 1.7). The country achieved the best ranking compared to the other MENA countries that adhered to the Declaration (i.e. Morocco, Tunisia and Jordan).

The combined analysis of the Egyptian legislation and of the 2007 list of restrictions shows that restrictions to national treatment apply: i) in transportation sectors (maritime and air transportation); ii) to commercial agents activities; iii) to certain professional services activities (i.e. engineering, legal services, auditing and accounting services); and iv) with regard to public tenders.

Restrictions in other sectors exist, in particular the construction sector and the importation of goods for trading purposes. However, these restrictions do not, *de facto*, prevent foreign investors from carrying out activities in these sectors. Though, they add to the cost and complexity of foreign investment in Egypt in key value-added sectors.

[20] See list of restrictions to national treatment at: www.oecd.org/globalrelations/psd/CEFTA%20WP2_National%20Treatment_NEW_Nov%202010.pdf (accessed 19 March 2014).

In the context of the above mentioned restrictions, it should be noted that some restrictions are provided in other pieces of legislation than those indicated in the 2007 list of restrictions which may lead to confusion for foreign investors and raises issues of transparency and coherence. As the country's regulatory framework has evolved, the restrictions to national treatment as notified by Egypt in 2007 at the occasion of its adherence to the Declaration therefore needs to be revised in order to adequately reflect the degree of openness of the economy.

In addition to providing transparency and a strong signal to the business community of Egypt's efforts to attract foreign investment, a revision of the list, could also alleviate concerns about unusual restrictions that remain in some sectors or that are perceived as unnecessary by some private sector interviewees, such as for example, in relation to import licensing for trading. The revision could be conducted with the assistance of the OECD based on national legislation and investment-related international commitments.

For further analysis on this indicator, see Annex C. 1.7.

1.8. Guarantees against expropriation

Governments may legitimately take possession of private property for public purposes. This applies to property owned by foreign investors. However, in order to be lawful under general principles of international law, the expropriation of private property must fulfil the following conditions: i) the expropriation serves the public interest; ii) the measure is non-discriminatory; iii) undertaken under due process of law; and iv) the owner is duly compensated. Provisions adopting these principles in the event of expropriation are a common feature of domestic legislation in OECD countries and of investment treaties.

This indicator assesses whether domestic law provides compensation for expropriation which is prompt, adequate, and effective and whether the other conditions for a lawful expropriation are fulfilled.

The Investment Law and the Law on Economic Zones of a Special Nature No. 83 of 2002 contain provisions that protect against nationalisation and/or expropriation. These provisions however do not mention the conditions for the expropriation to be lawful and do not cover indirect expropriation (i.e. when, for instance, a change in legislation forces a company into *de facto* closure or a private individual out of their property). The country's numerous BITs also contain provisions on compensation for expropriation.

Key findings and recommendation

On a *de jure* basis, Egyptian law offers protection against expropriation. However, in practice there are instances where procedures to enforce claims are long and costly and where Egyptian courts have not enforced arbitral awards related to expropriation rendered under BITs or international contracts. Given the increasing number of cases linked to expropriation measures, it is important for Egypt to send a strong signal to the international investment community that **disputes relating to contracts, privatisation agreements, land and other property transactions are dealt with in an efficient, transparent manner in accordance with due process and Egypt's international obligations.**

A special committee chaired by the Prime Minister has been set up to deal with these disputes with an objective of reconciling with investors (see below the indicator on international arbitration).

Analysis

Foreign investors' claims for illegal expropriations can be brought before Egyptian tribunals on the basis of national legislation, and/or before an international arbitral tribunal, as provided by a BIT, when applicable. The *de jure* domestic and international investment framework of Egypt is consequently in line with the general requirements of this indicator. However, in practice the judicial system is very slow and it can take several years to resolve a case. In addition, there are indications that *de jure* procedures are not always followed and that judgements and awards may not be enforced. Slow procedures or difficulties to enforce an arbitration award or damages have given raise to international arbitration under investment treaties and has generated great concern on the part of the international investor community.

Since 2011, the Egyptian Administrative Court issued eight decisions where it cancelled privatisation agreements concluded over the last two decades. The International Centre for the Settlement of Investment Disputes (ICSID) registered 13 cases that were brought against Egypt after 2011. Some were based on expropriation ground.

For further analysis on this indicator, see Annex C. 1.8.

1.9. International investment agreements

International investment agreements offer foreign investors protection in accordance with international legal standards and make the rights and obligations of the parties more stable and predictable.[21] Although the government loses some policy flexibility, investors face reduced risks and uncertainties. The intention is to help mobilise additional investment and reduce political risk for existing investors. The OECD, through its Investment Committee and the Freedom of Investment Roundtables, is especially active in taking stock of emerging patterns in investment agreements entered into by OECD countries and developing countries. In recent years it has explored various topics such as indirect expropriation, investor-State dispute settlement, and definitions of investors and investments.[22]

This indicator assesses:

- the number of investment agreements signed and whether signed investment treaties have been ratified;
- the scope of signed, ratified treaties – e.g. whether a broad definition of investment/investor is used, whether it applies to pre- and post-establishment phases;
- the substantial protection of investors – e.g. legal regime of expropriation; treatment (national treatment, most-favoured nation, full protection and security, fair and equitable treatment, non-discrimination); transfer of funds; recognition of other obligations such as umbrella clause, etc.
- whether there are dispute settlement mechanisms, such as mandatory negotiation/mediation and an offer to recourse to investor-state arbitration; and
- whether the government properly implements and reviews its treaties with its state partners.

[21] OECD PFI User's Toolkit on Investment Policy.

[22] www.oecd.org/daf/inv/investment-policy/foi.htm (accessed 19 March 2014).

Egypt is an active signatory of bilateral investment treaties (BITs), having signed 111 of such agreements.[23] In July 2007, Egypt became the 40th country – and the first Arab and African nation – to adhere to the OECD Declaration on International Investment and Multinational Enterprises. Also in 2007, Egypt adopted a new model of BIT that seeks to provide a clear definition of the terms "investment" and "investors", and that seeks to offer convenient and flexible investor-State dispute settlement mechanism (consultation, negotiation, mediation). This new model was used to sign the BIT with Switzerland, in June 2010.

Key findings and recommendations

Egypt has a wide network of international investment protection agreements, having signed 111 BITs – though 42 BITs have not entered into force, and several investment-related regional agreements.[24]

Egypt should use its extensive network of bilateral and regional agreements to signal its commitment to protect foreign investment. It should conduct a thorough assessment of all these agreements to ensure consistency and hence consider possible revision of some treaties. It should consider ratifying BITs signed but not yet ratified. It could also further **strengthen the regional dimension to foster intra-regional investment** by notably considering the ratification of the recently Amended Arab League Investment Agreement.

Analysis

Egypt has wide coverage for investment protection. With its large network of 111 BITs (see Annex F), Egypt ranks sixth among countries with the highest number of BITs worldwide. Egypt's BITs show good regional coverage: about 20% of its BITs were signed with other MENA countries. More than 23% of its BITs have been signed with OECD countries. While 70% of its BITs have entered into force, almost all of its BITs signed with other MENA countries (except one with Djibouti) have entered into force.

With 42 BITs still not in force, Egypt should consider ratifying or renegotiating these treaties. To strengthen intra- and inter-regional integration, Egypt could also consider ratifying the amended Arab League Investment Agreement, as well pursuing other investment-related negotiations with key trading partners.

For further analysis on this indicator, see Annex C. 1.9.

1.10. International arbitration and amicable dispute settlement mechanisms

Investor-state dispute settlement mechanisms embodied in most investment treaties entitle foreign investors to seek redress for damages arising out of host governments' alleged breaches of investment-related obligations. The system of investment dispute settlement has borrowed its main elements from the system of commercial arbitration despite the fact that investor-state disputes often raise public

[23] According to information provided by GAFI.

[24] Egypt is party to the 1980 LAS Unified Agreement recently amended – though the 2013 Amendment has not yet been ratified by Egypt – and to several trade treaties: Greater Arab Free Trade Area (GAFTA); Agadir Agreement; FTAs with Turkey (2007), EFTA (2007), and Mercosur (2010). Having signed an Association Agreement with the EU, negotiations of a Deep and Comprehensive Free-Trade Agreement (DCFTA) may now be envisaged in case Egypt expresses interest.

interest issues which are usually absent from international commercial arbitration. Investment arbitration has expanded in the past decade thanks in part to almost 3 000 regional and bilateral investment-related treaties now in force around the world. Investor-state arbitration de-politicises a potential dispute between an investor and host government as the dispute settlement process is undertaken in a neutral forum.

This indicator examines whether a State is party to international conventions on international commercial and investment arbitration and whether its national legislation is appropriate and enforced by competent courts. Close attention is paid to international arbitration cases and decisions in which the State has been involved. This indicator also assesses whether a State uses other alternative dispute resolution means and other institutional mechanisms to settle disputes and whether these mechanisms ensure transparency and respect due process of law.

Key findings and recommendations

Egypt is a **party to the main international and regional conventions on arbitration.**[25] It has a wide network of bilateral investment treaties containing provisions on investor-State dispute settlement. It presents a **relatively favourable legislation with regard to arbitration** (recognition of the validation of arbitration clauses and enforcement of arbitral awards).

However, Egypt is facing a significant increase of the caseload related to investor-State disputes (24 cases brought before ICSID, including 12 since 2011). Egypt has therefore undertaken several initiatives since 2011 by setting up **alternative and preventive dispute settlement mechanisms and related-implementing committees.** This sends a clear message that the government supports investment and is willing to tackle these issues. According to GAFI, over 90% of disputes have been resolved through these mechanisms. However, **the respective role of the committees and the access procedures are unclear** while the multiplicity of committees may be confusing. Therefore, their role should be clarified while due process and transparency of procedures should be guaranteed.

Analysis

According to the World Bank (2013) Investing Across Borders indicator on arbitrating commercial disputes, Egypt ranks above (i.e. better than) average in the MENA region and worldwide on the strength of law index and ease of process index. Egypt also ranks above the MENA average on the extent of judicial assistance index. According to the report, the courts in Egypt have stated a pro-arbitration policy in several leading decisions. It also indicates that enforcement takes around 48 weeks for a domestic award and 51 weeks for a foreign award.

Other reports indicate that the Egyptian judicial system functions slowly and cases often remain in the pipeline for years due to backlogs.[26] The World Bank (2013) Doing Business report showed that enforcing a contract in Egypt requires 42 procedures and costs 26.2% of the value of the claim.

[25] Egypt is party to the 1958 New York Convention on recognition and enforcement of arbitral awards; the 1965 Convention on the settlement of investment disputes between states and nationals of other states; and the 1980 Unified Agreement for the Investment of Arab Capital in the Arab States that has been amended in 2013 along with the status of the Arab Investment Court.

[26] The case of two Belgian companies, *Jan de Nul NV* and *Dredginig International* which sought redress in the Egyptian court system against the Suez Canal Authority reportedly took 10 years. The case was eventually brought to an ICSID panel who ruled in favour of the Egyptian government in November 2008. See Investment Treaty News, "Belgium dredging companies fail in arbitration against Egypt", 17 November 2008.

Egypt's rank deteriorated to 152 (out of 185) in 2013, pushing the country further behind the MENA regional average.

There has been a recent significant increase of the caseload related to investor-State disputes. According to the International Centre for Settlement of Investment Disputes (ICSID) database, there are currently 14 pending cases against Egypt; 12 having been filed since 2011.[27]

To deal with the raising number of disputes, Egypt has undertaken a series of measures in 2012 by:

- Setting up an amicable dispute settlement mechanism in cases involving charges of embezzlement, profiteering and squandering of public funds.[28] This mechanism is implemented by a committee[29] chaired by the Prime Minister and aims at settling disputes involving foreign investors and State entities arising out of contracts concluded prior to 2011. Where a settlement agreement is reached, it may result in the dismissal of the criminal lawsuit for the investor.
- Setting up a preventive dispute mechanism which is implemented by a governmental group for the settlement of investment disputes[30] within GAFI premises and which is chaired by the Minister of Justice. This committee is responsible for handling investors' complaints and requests arising out of their relationship with State bodies. Its recommendations are binding on the governmental body involved.

This indicator is another example of Egypt's international obligations, domestic laws and BITs providing a *de jure* strong foundation for international arbitration and amicable dispute settlement mechanisms. However, the *de facto* track record is more mixed. Egyptian courts have held that the country's obligations under international instruments and commitments form part of Egyptian law and have generally shown a pro-arbitration inclination. However, in practice, caseload is increasing, court processes are very lengthy and complex, and enforcement of arbitral awards presents some difficulties.

For further analysis on this indicator, see Annex C. 1.10.

[27] Other *ad hoc* investment arbitrations have been filed (i.e. UNCITRAL arbitration filed by *Mr. Yosef Maiman and Others v. Egypt*) but information is not exhaustive due to the confidential nature of arbitration proceedings. See UNCTAD (May 2013), Recent Developments in investor-State Dispute Settlement.

[28] Law No. 4 of 2012 adding article 7 bis to the Investment Law.

[29] Established by the implementation Decree No. 1067 of 2012.

[30] Established by Decree No. 1115 of 2012.

Part 2. Investment Promotion and Facilitation (IPF)

The term "investment promotion and facilitation" (IPF) covers: investment promotion strategy, the implementing institution strategy (i.e. the investment promotion agency), and the monitoring and evaluation mechanisms in place to gauge progress. IPF also includes specific investment promotion services and activities to attract and retain foreign investment. Examples of such activities may be the forging of ties between foreign investors and local enterprises, the implementation of communication tools to promote the attractiveness of the country and the fine-tuning of one-stop shop assistance for foreign investors in the pre-establishment phase and tailored follow-up services.

2.1. Investment promotion strategy

At its most basic level, an investment promotion strategy should identify specific objectives (type of investment targeted; specific sectors; magnitude of FDI, among other possibilities) and spell out the steps that should be taken to reach those objectives.

In order to assess investment promotion strategy, one should consider whether the investment promotion strategy:

- has been endorsed by the government and key governmental bodies;
- contains key elements such as i) a clear vision for the country and its economic objectives; ii) a clearly defined idea of where to compete; and iii) a roadmap of how to compete and meet the stated objectives;
- provides for the well-functioning of the IPA with an efficient organisational structure (setting out the responsibilities of senior management and implementing units), well-defined human and financial resource needs, and a review timetable to take stock of results and identify areas of improvement; and
- is consistent with other development strategies, industrial or sectorial strategies developed by the government.

Key findings and recommendations

Interviews with private-sector representatives suggest that the national investment promotion strategy, if any, is poorly communicated. The business community could not identify either the sectors or projects prioritised by the government. GAFI does have a considerable amount of information available on its public website, but it is lacking coherence.

To improve its performance the MoI and GAFI could consider the following actions:

- **define strategic policy objectives to restore investors' confidence;**
- **enhance dialogue and the communication with the business community**;
- **strengthen co-operation with home States of investors;**
- **enhance sector-specific investment promotion efforts** by going into deeper levels including undertaking in-depth and sector-specific studies, for instance of supply-chain dynamics or linkages to the local economy;

- **help remove policy barriers** with detailed action plans;
- **monitor results** with the use of clear and transparent indicators; and
- follow up with **action plans** for areas where indicators show little progress over time.

Analysis

The Ministry of Investment (MoI) was created by the Egyptian government in 2004 with a mandate to oversee the development of investment policy in co-ordination with other ministries and agencies. At the time of its creation, the MoI supervised the Capital Market Authority, the Egyptian Insurance Supervisory Authority, the Mortgage Finance Authority (which have now been integrated into the Egyptian Financial Supervisory Authority (EFSA)), the privatisation programme, and the General Authority for Investment (GAFI), the investment promotion agency. In March 2013, a ministerial reshuffle led to the anchoring of the investment portfolio into the Ministry of Trade, Industry and Investment.

Egypt has identified several sectors where it is seeking to promote inward FDI. These sectors include agribusiness, automotive, building materials, ICT, healthcare, logistics, petrochemicals, retail, textiles, real estate and tourism. Several integrated development projects (called "mega-projects") have been identified as priorities (e.g. the development of East Port Said, the Special Economic Zones in North West Suez Canal and Upper Egypt-Red Sea (Sohag Safaga)).

GAFI has recently tried to focus its investment promotion activities on attracting investments from sovereign funds, especially from the Gulf area countries, and investors from Asia, in particular China.[31]

2.2. Implementing agency & 2.3. Monitoring and evaluation

An implementing agency, typically an investment promotion agency (IPA), is responsible for executing the government's investment promotion strategy. It can have many functions, such as generating demand (through image building, marketing, promotion, etc.) and facilitating investment (e.g. by helping foreign investors navigate regulatory procedures).

The effectiveness of an IPA can be determined by the following factors:

- the IPA is an independent body administered by a board comprising public and private sector representatives;
- staff are drawn from both the public and private sectors, speak multiple languages and have specific business, legal, or sectorial competences;
- based on a clear defined strategy, the IPA has an annual budget determined by a carefully defined programme of work and covering all overhead and human resources costs;
- it has an internal planning mechanism which comprises a calendar of events, statistical tracking mechanisms, and internal rules of procedure; and
- a system for monitoring and evaluating results of activities, such as an established set of indicators or a benchmark.

[31] Information provided by the Egyptian Centre for Economic Studies (ECES).

Monitoring and evaluation mechanisms track an IPA's performance and assess whether its objectives are being met and at what cost. Monitoring and evaluation mechanisms have several benefits: they inform IPAs of better ways to allocate resources, allow reconsideration of activities and services deemed ineffectual, and demonstrate accountability to oversight bodies.

The key criteria used to assess the monitoring and evaluation indicator are:

- whether the IPA has developed effective monitoring and evaluation tools;
- whether annual reports are publicly available;
- whether annual reports and assessments of activities are based on specific factors, such as increased inward FDI flows, job creation, and investor satisfaction; and
- whether results are benchmarked against the performance of other IPAs.

Egypt's IPA is the General Authority for Investment and Free Zones (GAFI). Its mandate focuses on investment promotion and facilitation. It also operates Egypt's public and private free zones with the authority to grant "private free zones" status to individual firms which, though not physically located in free zones (FZs), may enjoy the same benefits. In addition, it has a one-stop shop facility which helps investors to obtain the necessary national and local approvals to facilitate the start-up of operations in Egypt. Since 2009, GAFI also provides dispute settlement services for investors. An online dispute settlement service is available through the GAFI website, (in Arabic only), for disputes arising among shareholders of foreign invested companies where investors can have access to decisions made by the Dispute Settlement Committee and the date of the decision.

GAFI's external performance is regularly monitored and evaluated by its board of directors on the basis of indicators like the number of new projects registered, volumes of inward FDI flows, and the number of jobs created.[32] GAFI's board meets on a bi-monthly basis to review the Agency's performance and strategy.

Key findings and recommendations

GAFI is a well-structured organisation with what seems to be an adequate number of representatives from the private sector on its board of directors. Its budget aims to be sustainable as funding is based on fees charged for services provided to companies in the free zones. **However, the roles of GAFI and the MoI need to be more clearly defined and differentiated between promotion, regulation, and dispute settlement to avoid overlapping of responsibilities and allow effective co-ordination.**

The need for capacity building and for more qualified and competent personnel is strongly emphasised. GAFI is required to increase the effectiveness of its communication and promotion activities through proactive initiatives. For example, the establishment of a special unit to deal with large scale investments is recommended. Investors also report difficulty contacting responsible staff to obtain information or discuss issues that arise. GAFI's website needs to be more regularly updated with information needed by foreign and local investors. For instance, information is frequently only available at extra costs to the business community (e.g. the Investment Law). GAFI could also consider publishing or summarising more of its reports in English.

[32] OECD (2007), *Investment Policy Review*.

Analysis

GAFI is organised into 13 functional units,[33] and headed by a board of directors, a chairman and three deputies, each of them having assistants and advisors. According to GAFI, investment promotion has a clear internal planning mechanism with defined responsibilities for the various units outlined in the IP Working Instruction Manual (WIM). This Manual sets the internal rules and procedures for the staff, the tracking mechanisms for both staff performance and achievements through the client relationship management system (CRM). The investment promotion strategy is being updated through cross functional teams within a timeframe.

GAFI's budget comes from both service fees collected from investors in the free zones and from contributions from government bodies.[34]

GAFI's has gone through various restructuring and capacity-building programmes with specialised international organizations such as the Multilateral Investment Guarantee Agency (MIGA). The restructuring process resulted in the creation of GAFI's investment promotion department. Most of GAFI's staff were selected and allocated by foreign experts. Specialised training programmes have been delivered to staff regarding all aspects involved in investment promotion and facilitation. The investment promotion department's budget is approved by GAFI's board based on a defined action plan and agenda.

GAFI's board of directors regularly reviews and evaluates its performance and GAFI conducts regular surveys. However, as not all of this information is made public, it is difficult to know to what extent performance reviews are actually conducted and result in further improvements in GAFI's performance.[35]

GAFI participates regularly in various international benchmarking studies of IPA performance. In 2009, the World Bank's Global Investment Promotion Benchmarking (GIPB)[36] rated as "weak" the performance of Egypt for its poor responsiveness to investors' inquiries and website design. According to the 2011 GIPB, GAFI expressed its commitment to improve its performance based on tailored recommendations.

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[33] Technical Office; Free Zones; Policy; Promotion; Investment Services; Investment Regimes; Information Technology; Investment in Governorates; General Assembly; Economic Performance; Companies; Legal Affairs; Quality. There are also the Media and Public Relations Central Unit and Security Central Unit.

[34] Enterprises in the free zones are charged 1% of their value added, value stored, or annual revenue. Land is rented at USD 3.50 per square meter for industrial projects and USD 7 per square meter for all other projects. In addition, an annual charge of 1% is payable to GAFI on the Cost Insurance and Freight (CIF) value of commodities entering a free zone for storage, and on manufactured and assembled items exiting a free zone. Goods that transit a free zone are exempt from this charge, whereas the charge for service activities is 1% of total revenues. There is also a service fee of 0.05% of the capital cost of projects, payable annually to GAFI.

[35] ECES evaluation.

[36] The GIPB surveys the ability of national investment promotion intermediates (IPIs) to provide information to foreign companies for their investment projects, www.wbginvestmentclimate.org/uploads/Report_COMESA.pdf (accessed 19 March 2014).

2.4. National and sub-national co-operation

In addition to a national investment promotion agency, countries may have bodies that undertake investment promotion activities at sub-national or regional levels. Close and well-directed co-operation between national and regional IPAs can result in promotional campaigns that target foreign investors more directly and that are more effective in helping investors navigate local licensing and permit procedures.

This indicator gauges the extent to which national and sub-national IPAs co-operate with each other. The criteria used by the indicator are:

- whether the duplication of activities is minimised;
- whether there is co-operation with regard to promotional activities and exchange of good practices; and
- whether national and sub-national IPAs periodically review licensing and permit procedures to ensure that investors are not subject to unnecessary bureaucratic delays.

Egypt is divided into 27 governorates. GAFI is the only IPA, with only five one-stop shops in governorates. Each of these one-stop shops has been located in a central governorate in order to serve the surrounding area. The agency is planning on opening additional one-stop shops in El Giza, Dakahleya, Sohag and El Wady El Gedid. It has a presence in 14 other governorates which co-ordinate with the head office in Cairo.

Key findings and recommendation

GAFI's efforts to promote potential investment opportunities in different governorates should be enhanced. GAFI should continue to pursue regular dialogue with the governorates to exchange good practices, discuss ways of improving promotional activities, and to review local administrative procedures for investors. It may also consider **translating the content of its website** to improve the promotion of governorate-based investment projects to foreign investors. Some of this information is now available in Arabic only.[37] **Training to upgrade the skills of officials at the local level is also recommended.**

Analysis

To date there are five one-stop shops (OSS) in the following locations: Cairo, Alexandria, Ismailia, 10th of Ramadan and Asyut. In addition, there are 14 local offices in various governorates. GAFI intends to expand OSS coverage to all regions and aims to get involved in local investment promotion activities in order to streamline the investment policies and procedures investors need to follow at the local government level. This would also reduce bureaucracy at the governorate level, which is typically where investors encounter difficulties in obtaining permits and licences. This project is ambitious and will require co-ordination and consensus building with local authorities if the new GAFI units are to become investors' sole port of call at both the national and local level.

An Investment in the Governorates Department was created to help promote investment in the least developed areas of Egypt. In this context, GAFI states that activities are conducted in co-ordination with its local offices and governorate officials, with a clear distribution of competencies.

[37] Information available on www.gafi.gov.eg/EN/Default.aspx under "Doing Business/Investment Opportunities" (accessed 19 March 2014).

The governorate is responsible for identifying investment opportunities and land options, along with facilitating the acquisition of licenses and permits, and GAFI is in charge of attracting appropriate investors. Examples of these efforts are the governorate databases, which contain information on resources, the infrastructure, the competitive advantages, the investment opportunities, etc., along with promotional brochures, the organisation and implementation of site-visits and promotional conferences.

However, private sector representatives report a lack of an integrated plan and poor co-ordination between the national and sub-national entities. The absence of qualified personnel at the local level was also emphasised, and issues were identified at the governorate level regarding land, building permits and operation licenses. Lack of co-ordination may also generate problems of consistency between decisions taken at the local and the central level.

2.5. SME-FDI linkages

Commercial relationships or business linkages between SMEs and multinational enterprises can be a powerful conduit for increasing growth of local enterprises and diffusing knowledge, skills and management practices and for moving up the value chain.

This indicator assesses to what extent SME-FDI linkage programmes are incorporated into the activities of an IPA. The indicator considers:

- whether there is a defined linkage strategy;
- whether specific sectors have been prioritised and potential foreign and local participants identified;
- whether there is a basic operating structure, e.g. a unit within the IPA to run the linkage programme;
- the monitoring and evaluation mechanism to measure the programme's success; and
- the expansion phase, which includes new sectors and participants.

There are around 2.5 million SMEs in Egypt representing 75% of the total private employed workforce and 99% of non-agricultural private sector establishments.[38]

Key findings and recommendations

While GAFI provides services that help foreign investors find local suppliers, there is no general strategy that enables foreign investors to be linked to corresponding SMEs from whom they can source inputs locally. The GAFI website for instance, does not provide a database of Egyptian suppliers.

GAFI should explore the possibility of launching a pilot SME-FDI linkages Programme dedicated to Egypt's free zones. In contrast with the National Suppliers Development Programme (NSDP), launched in 2004, the pilot programme could focus on GAFI's-administered free zones, or in the new investment zones, with the aim of building stronger linkages between firms inside and outside Egypt's free zones. This pilot programme should not only focus on providing a strategy to improve matchmaking between multinational enterprises and local SME suppliers, but also on **developing**

[38] National SME Census project 2010/2011.

SME capabilities to meet the specific to the needs of the multinational enterprises located in the free zones.

Analysis

In 2004 the Ministry of Trade and Industry (MTI) launched the NSDP to help upgrade Egyptian enterprises which supply multinational corporations operating in Egypt. The NSDP began as a pilot programme specifically targeting suppliers of General Motors Egypt. The scheme was then expanded to include 37 parent companies from a variety of industrial sectors. Data on results of the NSDP appear scarce. Even so, the programme could serve as a blueprint for the type of activities GAFI could emulate in order to increase linkages with local SMEs and to deepen integration of foreign investors in the local economy.

The OECD assessment of SME policies over eight MENA countries in the southern Mediterranean,[39] conducted with the support of the European Commission, reports that Egypt has a number of relevant initiatives to promote Euro-MED enterprise linkages, including a number of business associations between Egyptian and EU enterprises. Egypt also participates in the Enterprise Europe Network (EEN) and has technology transfer and innovation centres aimed at promoting the establishment of Euro-MED networks of business support services. It participates in the "EuroMed Innovative Entrepreneurs for Change" pilot project supported by the EU and shares knowledge and good practice relating to clusters, innovation management and networks with Morocco, Tunisia, Lebanon and the EU. Yet, there is scope to promote the development of clusters and networks beyond these ongoing pilot projects.

For further analysis on this indicator, see Annex C. 2.5.

2.6. One-stop shop

To assist foreign investors in overcoming regulatory hurdles, an IPA may set up or supervise a single point of contact or a one-stop shop (OSS). The objective is to offer a single-window entity to undertake the necessary paperwork in one streamlined and co-ordinated process, rather than having to go through a labyrinth of different government bodies. This indicator assesses the extent foreign investors can rely on an IPA's one-stop shop services.

GAFI has established a one-stop shop in its Cairo office for both local and foreign companies. Important improvements in facilitating procedures have been made before 2011. However, GAFI still does not have delegation of authority from all relevant administrative bodies and these shows down approval processes.

Key findings and recommendations

Prior to 2011, GAFI had made significant progress in deploying its one-stop shop and securing most investment approvals. However, the process seems to have slowed down. **To continue improvement, GAFI should consider the possibility of obtaining authorisations** and providing

[39] OECD, European Commission, European Training Foundation and European Investment Bank (2014), *SME Policy Index: Implementation of the "Small Business Act" for Europe in the Mediterranean Middle East and North Africa 2014*, OECD Publishing, Paris.

them space within its Cairo headquarters for officials **from relevant ministries and institutions not already represented.** In this way it would house the key outstanding approval procedures that it does not already manage through its one-stop shop. This would further reduce the time for companies to obtain the needed approval. **As mentioned above, GAFI should also improve the functioning and co-ordination of its four regional OSSs and consider expanding its network to additional governorates.**

Analysis

Several facilities and support measures have been introduced by GAFI in an attempt to encourage and maintain investments since 2011. The process of registering foreign company subsidiaries and representation offices has been simplified to take only three days of processing time. In the meantime, the administrative procedures related to establishing a business have been streamlined (see Annex E on the basic documentation required when establishing a company in Egypt). Moreover, import and export flexibility has been enhanced through import and export certificates that are available for 3-5 year periods.

Private foreign and local investors indicated that though GAFI's one-stop shop had made procedures easier for investors, certain approvals still require a long time to be processed. Documents which must still be sent to other ministries for approval include commercial registry applications (to the Ministry of Trade) and background checks. Delays in approvals, bureaucracy and the need to deal with other government agencies not represented at the OSS to obtain operational licenses have been identified as problems. Foreign investors frequently delegate law firms to undertake on their behalf all processes through the OSS and other entities. The project for the electronic registration of companies continues to encounter difficulties. Exit rules were also mentioned by investors to be problematic and lengthy to the extent that they can last for several years.

The 2009 edition of the World Bank's annual survey, *Ease of Doing Business*, identified Egypt in the top 10 global reformers and as the top regional reformer (making starting a business easier by reducing the paid-in minimum capital requirement by over 80%, abolishing bar association fees, and automating tax registration.) In contrast, the 2013 Doing Business Report emphasises that in the previous four years, there was no visible improvement in the areas measured. The 2013 Report ranks Egypt 26th on starting a business, and 109th on the ease of doing business.

For further analysis on this indicator, see Annex C. 2.6.

2.7. Customer relationship management

A process for customer relationship management (CRM) enables an IPA to actively manage relations with foreign investors in an organised, strategic manner. In practice, that means developing methodologies, internal operations, and software and internet capabilities to be able to better address foreign investor needs. Using a CRM-based system, the IPA can keep track of such key foreign investor information as contacts, correspondence, meetings, and location preferences.

A CRM-based system goes beyond recording basic corporate information about potential foreign investors. IPAs can analyse the data from CRM-based processes to identify their most likely foreign investors, enrich and individualise presentations and marketing campaigns, and serve wider geographical regions.

The CRM indicator considers:

- the IPA's system for tracking and managing a foreign investor's corporate information and its correspondence and meetings with the investor, and recording the investor's location preferences;
- timely follow-up of investor inquiries;
- whether the CRM database is well structured, comprehensive, regularly updated, user friendly, and easily accessible; and
- whether the IPA uses information gathered from its CRM system to tailor promotional material to investors.

Since late 2009 a new CRM system has been installed at GAFI. This new CRM programme targets potential foreign investors across a broad geographical spectrum.[40] By end of 2010, the CRM programme had been tested, launched and used by all IPA personnel.

Key findings and recommendations

GAFI should consider a communications strategy in order to build awareness of the CRM improvements. In addition, it could adopt an internal policy of following up foreign investor inquiries within a fixed time frame. GAFI should ensure that presentations be tailored to investors by industry and service sector – e.g. by providing comparative information on sectors' market size and growth, labour costs, productivity, and remaining policy constraints. GAFI would also gain from posting all presentations produced for investors as well as contact details of country officers on its website.

In light of the current FDI environment and trends, retention of existing investment is critical. To this end, **GAFI could consider strengthening its grievance tracking system either as part of CRM or as part of its after-care services.**

Most of the private sector representatives interviewed are of the view that GAFI does not have a sophisticated CRM system in place. Investors state that very little help is provided and only a small department exists at GAFI to advise investors and deal with their problems or complaints. It appears there is a gap between GAFI's efforts to set up an improved CRM system and the effectiveness perceived by private sector representatives.

Analysis

According to GAFI, the existing database was built on best practices in the field in cooperation with reputable European experts. It is highly structured, comprehensive, and regularly updated by the country officers. A regular and fixed reporting system on relations with potential and existing investors has been approved by GAFI senior management. GAFI also stresses that the current CRM captures almost all information needed to build a comprehensive investment promotion strategy including; proactive vs. reactive investments, investments by region/country/sector, expansions vs. greenfield, investment promotion process and pipeline, categorisation of investors' complaints by type/country/sector/region, sectors of interest by region/country, investors contact details, and other relevant information.

[40] Information provided by GAFI.

Private sector representatives interviewed for this assessment were of the opinion that the Investor Relations Department and Promotion Section do not seem to be operating effectively in advising investors or dealing with their complaints. Investors report difficulty in contacting relevant country officers.

Results under this indicator reflect a theme that runs throughout this report; the disconnect in perceptions between government officials and private sector parties. To an extent this is to be expected as private sector actors with more limited interests to serve will always demand more in the way of services and assistance from government. However, the pervasiveness of this disconnect suggests that the situation in Egypt may be more severe than elsewhere. Private sector representatives were repeatedly unaware of or unimpressed by efforts made by GAFI. At very least, this indicates an issue with communication. In order to bridge this disconnect, one of the major cross-cutting recommendations of this report is that a comprehensive communication strategy be developed by the Egyptian government. This must be a two-way strategy that informs the business community of the many positive steps that have been taken, but also listens to investors' concerns.

2.8. Policy advocacy

Policy advocacy refers to the ability of an IPA to shape legal, regulatory and administrative practices applicable to foreign investment. Given its close relationship with the foreign investor community, an IPA is well positioned to bring key policy constraints to the attention of policy makers. In order to be effective, the policy advocacy function of the IPA should be officially recognised within government and included in the IPA's success measures. Further, once policy constraints have been identified, the IPA should actively contribute to reviews of existing investment measures and to the development of new ones as they relate to foreign investors. To be able to perform its policy advocacy task, the IPA should conduct regular consultations with the private sector and have the capacity to relay identified constraints, problems and suggestions to the relevant authorities.

This indicator examines:

- whether a specific unit exists within the IPA to undertake policy advocacy activities;
- whether regular consultations are held with foreign investors;
- whether annual assessments of the impact of FDI are undertaken; and
- whether the unit has a specific role in the development of investment policy.

A Policy Advocacy Department was established at GAFI in 2005. Its mandate is to support general policies and regulations with the view to enhance the investment climate; to gather investors' feedback; to take part in investment-policy making; to support regional investment policies and national policies throughout the different governorates; to assess sectorial policies; to conduct periodical surveys in co-ordination with international organisations (e.g. OECD, World Bank, MIGA, IMF, EBRD) and through tools such as the OECD (2010) Business Climate Development Strategy (BCDS), the World Bank Investment Climate Assessments, the World Bank Doing Business surveys or the EU-OECD Assessment of the implementation of the Euro-Mediterranean Charter for Enterprise/Small Business Act; to provide policy assessments against best practices of other countries in the fields of FDI attraction, incentives, licensing system, land allocation and OSS mechanisms and to co-ordinate the permanent governmental steering committee responsible for enhancing the investment climate. The Investment Policy Advocacy Department is currently being restructured.

Key findings and recommendations

GAFI should conduct more regular and systematic consultations with the business community to relay identified issues to the relevant governmental authorities. This should be carried out as part of a comprehensive communications strategy. GAFI should also consider making available its policy studies, or summaries thereof, on its website.

Analysis

This indicator is another example of the disconnect between GAFI's activities and investor perceptions with some interviewees not aware of the Policy Advocacy Department. Once again, this highlights the need for a comprehensive communications and consultation strategy.

For further analysis on this indicator, see Annex C. 2.8.

2.9. Aftercare services

Aftercare services that IPAs provide to foreign investors are intended to retain them or support expansion. They are offered after the establishment of a business or the making of an investment; they do not address assistance to enter the country and to start-up of operation. Aftercare services can range from assisting foreign investors with administrative procedures, such as obtaining further building permits and licenses, to more advanced services like identifying local suppliers. They aim to addressing potential problems investors may face and to support the smooth operation and expansion of projects.

This indicator assesses the type of aftercare services an IPA provides and whether responses to investor inquiries are provided within a given timeframe. Progressively higher scores are given if the IPA provides aftercare services of an administrative nature (e.g. assistance with obtaining licenses and permits) and an operational nature (such as finding local suppliers), and if it guarantees response times to investors' inquiries.

GAFI's promotion arm has an Aftercare Department that was rated as "weak" in its ability to handle investor inquiries in the World Bank (2009) *Global Investment Benchmarking Report*.[41] According to GAFI, more attention to aftercare services has been given since 2011.

Key findings and recommendations

GAFI should improve its aftercare services by offering more tailored services to investors and building the capacities of its Aftercare Department.

Analysis

Services provided by the Aftercare Services Department include assisting investors with obtaining working permits and licenses, resolving administrative issues, and liaising with the department responsible for boosting effective partnerships as a part of the integrated investment promotion strategy. According to GAFI, clear goals, objectives and action plans have been set while implementation programmes have been identified, and monitoring, evaluation and approvals from senior management has been secured. GAFI also asserts that a proactive aftercare strategy has been

[41] World Bank (2009), *Global Investment Benchmarking Report.*

clearly and broadly communicated to targeted existing investors, foreign embassies, foreign businessmen and associations.

However, some private sector representatives reported that GAFI officials do not commit to responding to their inquiries within a fixed timeframe and stressed that services are more often provided at the pre-establishment and establishment phases of the investment cycle. In order to retain existing investors, Egypt should build the capacity of its Aftercare Services Department in order to ensure that follow-up services are being provided post-establishment.

2.10. Free zones (FZs)

Free zones (FZs) represent a policy instrument frequently used by governments to promote FDI by offering a more competitive business environment through provision of special fiscal, regulatory and financial incentives in a defined geographic area. However, FZs should not serve as a substitute for broader reforms aimed at improving the business environment through trade and investment liberalisation, good infrastructure, rule of law and administrative simplification. FZs or variations thereof have been used for decades by both developed and developing countries.

To assess the effectiveness of FZs,[42] one should consider:

- whether there is a public authority with clear responsibilities and mandates to administer the free zones;
- whether the entry of firms into the free zones is based on transparent and clear eligibility criteria and simplified administrative procedures;
- whether the free zones allow for broad forms of economic activities including manufacturing, commercial and professional services;
- whether public authorities encourage greater integration between free zones and the domestic economy;
- whether free zones provide equal treatment of domestic and foreign investors;
- whether there is a greater role for the private sector in the development of free zones;
- whether there are export requirements in line with the WTO framework;
- whether there is a lowering of labour and environmental standards in the free zones; and
- whether public authorities encourage greater specialisation of economic activities in the zones by providing, where appropriate, more focused support and facilitation services to emerging networks and clusters of firms.

Egypt has a relatively long history of relying on FZs. The first Free Zones established in 1973 are still in existence. More recent years have brought a change in overall strategy. In 2002, Egypt introduced special economic zones (SEZs) through Law on Economic Zones of a Special Nature No. 83 of 2002 (The Law on Economic Zones), as well as investment zones through Law No. 19 of 2007 which amended the Investment Law.

[42] For the purpose of this study, the general term “free zones - FZs” will indistinctly refer to all types of zones existing in Egypt (free zones (public/private), special economic zones, and investment zones).

Key findings and recommendations

Egypt has a complex web of rules and regulations regarding free zones, special economic zones, industrial zones and investment zones. These rules need to be more transparent and less complicated.

To improve the overall FZs system, Egypt should consider the following elements when designing a new zone: the type of zone to be developed; the policy framework; the incentive framework; the regulatory framework; the institutional framework; and lastly the physical development and management of the zone.

Analysis

They are of two types of free zones in Egypt: public free zones and private free zones. Except in certain cases, all types of projects can be carried out in public and private free zones by both domestic and foreign investors upon authorisation from the relevant authority. The main feature of the private free zones is that they are "confined to a single project" approved by the investment authority. Special tax incentives and exemptions are offered to investors operating in free zones, which notably include exemption from import/export regulations.

In 2007, Egypt introduced the investment zones system as a new investment scheme aimed at increasing private sector involvement in zone development and management. Investment zones are not limited to industrial activities and cover large sectors. They are generally developed by private enterprises.

GAFI is responsible for issuing licenses in the investment zones. According to GAFI, the extension to investment zones of the ability to issue temporary licenses as granted in FZs, is currently under consideration. Temporary licenses may be granted by GAFI to investors operating in free zones. In the case of a refusal of a permanent license, the consequences for an investor that has been granted a temporary license are not clear.

The system of free zones, special economic zones and industrial zones and the rules and regulations governing them, is very complicated. In order to maximize the potential of the zones and facilitate investment, the rules should be simplified and made more transparent. The 25% maximum percentage of foreign labour is also seen by some investors as too low. However, there are examples of successful free zones in Egypt and developing an investment corridor in the Suez Canal zone is seen to have great potential.

For further analysis on this indicator, see Annex C. 2.10.

Part 3. Transparency

Transparency remains one of the overriding concerns of investors worldwide. It can be improved significantly while business risks and anxieties can be concurrently eased by:

- codifying and publishing primary and subordinate laws and making them publicly available, notably in the English language;
- giving interested parties and stakeholders prior notification of investment policy reform and consulting them ahead of reform; and
- ensuring transparency in administrative procedures and in the implementation of investment laws and regulations.[43]

In 2003, the OECD produced its *Framework for Investment Policy Transparency* to assist OECD and non-OECD governments in addressing concerns over transparency and to improve the transparency of their laws, regulations and procedures. The following indicators have drawn inspiration from the OECD framework in assessing three areas: publication avenues and tools; prior notification and consultations; and procedural transparency.

3.1. Publication avenues and tools

The OECD's framework for regulatory practices includes the codification of primary legislation and laws, the publication of the consolidated registers of all subordinate (or secondary) legislation, and the provision of public access via the Internet. Most OECD countries whose national language is not English also publish their legislation or descriptions of their policies in English.

This indicator assesses the extent to which laws and regulations are codified and made publicly available on the Internet, and whether English translations are provided free of charge or at a limited cost.

Key findings and recommendations

GAFI should indicate on its website where investors may obtain certified English translations of the major investment-related laws and indicate whether a cost is involved. The information should be updated regularly.

Egypt has made important strides with regard to publication avenues and tools. GAFI's website has improved significantly in recent years. It provides English summaries of the core investment and business laws. However, too much information is still available in Arabic only. This may have a negative impact on investment.

Analysis

Egypt has made significant progress in codifying its Investment Law in Arabic and other business-related laws and in making them publicly available.

The Ministry of Investment and GAFI have posted core investment and business-related laws on their websites, including the Investment Law, the Companies Law, and the Law on Special Economic

[43] PFI User's Toolkit.

Zones, in addition to other laws covering business, trade, and financial activities. Investment-related Presidential, Prime Minister and Ministerial Decrees are also available. Electronic copies are available through various legal databases on the Internet. However, these laws are available in Arabic only. GAFI only provides English summaries of core investment and business-related laws on its website.[44] Obtaining these laws in English is costly. Non-Arabic speaking investors consequently have limited access to information that might be considered as crucial in the decision-making process to invest in Egypt.

3.2. Prior notification and stakeholder consultations

Prior notification and consultation with interested parties are integral elements of OECD good practice with regard to public sector transparency. Involving foreign investors and other stakeholders in the process of relevant regulatory changes adds to the legitimacy and effectiveness of new regulatory measures. Furthermore, feedback generated by prior notification and consultation can help public authorities develop better regulations and build support for compliance.

This indicator assesses the extent to which governments give prior notification to interested parties of new or revised investment laws and regulations. Scores are higher if governments periodically hold face-to-face consultations with a broad range of interested parties and release summaries or transcripts of such consultations.

Key findings and recommendations

Egypt could improve and increase the private sector's involvement in the process of regulatory changes. **The first step would be to announce that public consultations will be held with the private sector on a particular investment policy issue. Second, transcripts or summaries of issues discussed should be released. Third, GAFI should consider instituting periodic public consultations.** For example, GAFI could hold a regular event in conjunction with the publication of its annual report to share information and gauge feedback on upcoming regulatory changes or shifts in investment policy.

When consultations are held by GAFI, they tend to be on an ad hoc basis and results are not summarised or made publicly available.

Egypt should also consider offering online access to draft laws and requests for comments (such as in Morocco for all trade-related laws as required by the transparency provisions of the US-Morocco FTA).

Analysis

GAFI has a two-step process regarding consultations on investment policy issues. An initial round of consultation brings together GAFI's board of directors (some 12 directors representing a broad cross-section of Egypt's business community), the Federation of Egyptian Industries, and business associations. The second phase takes place between GAFI, businesses organisations, consumer protection groups, think tanks, academics, and the Egyptian Junior Business Association. Foreign investors appear to be frequently excluded from consultations.[45] More active consultation with

[44] GAFI provides notably English summary of the Investment Law, the Corporate Law, the Law on Special Economic Zones and the Tax Law.

[45] American Chamber of Commerce's response to the chapter on investment policy and promotion.

different stakeholders including the private sector, local and foreign investors, NGOs, academia, and trade unions is recommended.

3.3. Procedural transparency

Registration, authorisation, and permit formalities can be costly and time-consuming. They may also lead to abuse of administrative discretion, red tape and corruption. It is therefore crucial that they be administered in a transparent, clear, impartial, and reasonably speedy manner. Procedural transparency also requires legal mechanisms enabling investors to appeal denials of investment projects before impartial authorities.

This indicator assesses the transparency of procedures for admitting inward investment or granting permits and licenses. Key criteria used to evaluate the government's performance include:

- whether the conditions for admitting an investor or approving a license or a permit are clear and publicly available;
- whether approval procedures have a fixed timeline;
- whether an investor is informed of the reasons for any denial of investment, license or permit; and
- whether there are provisions for appealing decisions.

Key findings and recommendations

For operational licensing procedures, the guidelines and criteria used are reported to be clearly set out, though clarification and consistency is needed.

While security checks are quite rare, they remain of concern as the conditions and criteria of approval or rejection are not clear and the procedure is not transparent. In case of rejection, investors can appeal through legal procedures and mechanisms, but it is unclear whether these mechanisms function effectively.

Procedural transparency remains an issue in Egypt. To improve it, **criteria and operational licensing procedures and security checks should be clearer and publicly available, and the reasons for rejection should be released.** Business sector surveys concerning operational licensing procedures and judicial reviews of decisions to refuse a license or permit, should be engaged to better evaluate the shortcomings.

Analysis

Egypt does not use a horizontal screening mechanism to approve inward foreign investment, but screens both domestic and foreign investment in specific sectors. For instance, foreign investors must apply for licenses to provide services in the tourism and banking sectors. In addition, with regards to the upstream oil and gas sector, production-sharing arrangements are typically made between inward investors and the Ministry of Oil. Such arrangements are codified in laws for each investment.[46] The Egyptian government reports that there are time limits on approvals of licenses and that a silence-is-consent rule applies.

[46] OECD (2007), Investment Policy Review: Egypt.

Investors may lodge complaints and appeals with the Inter-Ministerial Resolution Committee against rejection of investment projects. There is also provision for judicial review, although Egypt's judicial system is backlogged with cases and review tends to be a slow process.[47]

According to the business community, guidelines and criteria for processing and approving operational licensing procedures are said to be clearly set out, though clarification and consistency is needed. Though investors can appeal in case of rejection, no explanation is given in case of rejection, which raises issues of due process and transparency.

[47] Evaluation by the Egyptian Centre for Economic Studies (ECES).

CHAPTER 2: PUBLIC-PRIVATE PARTNERSHIPS

This chapter discusses Egypt's Public-Private Partnership (PPP) framework and reviews developments related to PPPs since the publication of the 2010 OECD Business Climate Development Strategy of Egypt. Prior to 2010, Egypt had taken many steps to establish a robust PPP framework, including the passage of PPP legislation and the establishment of a PPP central unit. Renewed emphasis has been placed on PPPs by the government in recognition of the need for private-sector involvement in building the infrastructure necessary to improve Egyptians' quality of life.

The chapter finds that while Egypt has many elements of a sound PPP procurement framework in place, a number of challenges remain, including adequate resourcing of the PPP Central Unit and diligent execution of existing PPP projects. Recommendations are offered to support Egypt in improving its attractiveness as a destination for PPP investment.

Introduction

Public-Private Partnerships (PPPs) – arrangements whereby private entities participate in the provision of public services – are formed with a view to more efficiently delivering certain public goods and services, such as infrastructure. PPPs present several key characteristics, such as:

- *Institutionalisation*. PPPs are based on formal relationships between the public and private sector;
- *The state as a partner*. The government is clearly partnering with the private sector instead of being a catalyser or a regulator of private sector activities;
- Shared objectives and a public interest clearly defined; and
- The active involvement of all partners and the joint investment of resources.

PPPs have several advantages, such as a key role for private sector capital and skills, which often bridge the gap between public capacity and project requirements; the partial transfer of risk to the private sector; the necessity for both parties to quantify the risks and costs over the life of the project; and, for the public partner, to focus on the expected social and economic outcomes. Furthermore, PPPs can act as an essential vector for know-how and technology transfer.

The existence of a legal framework for PPPs plays a key role in improving the business climate. The transition from a traditional framework of public markets (referred to hereafter as "traditional procurement methods") towards a PPP framework in which the state decides to involve the private sector in the tasks of design, construction, operation and maintenance, for instance, takes place on a continuum going from total control of the concessionaire by public authorities to a minimal degree of control. Service contracts, management contracts, leases, Build-Operate-Transfer (BOT) formulae, concessions and total privatisation are frameworks that include different degrees of control applied by public and private parties. PPP frameworks are also different with respect to asset ownership, obligations for operation and maintenance, main sponsors, capital investment, risk allocation, and in particular, the duration of the project. The long duration of most PPP projects is the first argument for a solid institutional and legal framework.

Only two of these categories – the different forms of BOT, BOO (Build-Operate-Own), BOOT (Build-Operate-Own-Transfer), and BTO (Build-Transfer-Operate), as well as operations involving

state control and/or a temporary investment commitment (concessions) – need complex PPP frameworks.

PPP framework and projects in Egypt

In 2006, the government of Egypt launched a new PPP strategy. The strategy recognised that: "Egypt needs to move quickly to remove the barriers that prevent or discourage private investment in basic services such as water, electricity, gas, waste management, road building and transportation. Failure to act is retarding development, arresting social change and threatens to jeopardise the positive results of privatisation in other sectors."

To remove obstructions to private investment, the strategy acknowledged that a series of economic, financial, legal, and institutional reforms were necessary, including:

- Reform and upgrade the laws governing private investments in infrastructure facilities;
- Reform and improve the institutional framework; and
- Develop a communications strategy.

Accordingly, in 2006, the government planned to use availability-payment PPPs to finance new investments in education (USD 5 billion), health (USD 1 billion), and wastewater treatment (USD 2 billion). In these PPPs, in contrast to the Independent Power Producer (used in electricity generation), the government planned to pay in Egyptian pounds (EGP). A further USD 7 billion of transport projects were planned, many of which would be user-fee based.[48]

As part of this 2006 programme, the Ministry of Health (subsequently disbanded) and the Ministry of Transport created PPP units to manage the bidding and supervision of PPP contracts, and the Ministry of Finance created the PPP Central Unit to supervise the programme and advise line ministries. The government also enacted a new law on PPPs, which, *inter alia*, formally created the PPP Central Unit; gave it the right to reject proposals to issue bidding documents; and required it to be represented on bid evaluation committees. The law established a PPP Supreme Committee, chaired by the Prime Minister, with a permanent membership of six ministers in addition to the minister responsible for the proposed project. The Committee also includes the head of the PPP Central Unit, and must approve a PPP before it can be implemented.

Like other MENA governments, the Egyptian government faces the challenge of translating its PPP policy into sustainable projects that not only attain economic viability but also political support. This requires market openness, effective communication on the benefits of PPPs, and reassurance for private investors that expectations as to their risk management capacity are realistic.

Following standard practice in Egypt, the terms and conditions of payment and the risk distribution between public and private sectors are included in long-term agreements, based mainly on availability payments from the state. Availability payments are relatively easy to forecast, although indexation and deductions for substandard performance mean that they cannot be predicted exactly. However, due to budget constraints, the Egyptian government may consider more innovative PPP payment mechanisms, such as introducing toll charges in road transport projects or other user fees where practicable.

[48] R. Zayed, "*Overview on the development of the Egyptian PPP program*," presentation, May 12, 2008.

With the appointment of a new Minister of Finance, Hany Kadry Dimian, on 28 February 2014, a renewed emphasis has been placed on the role of PPPs. The PPP Central Unit has been preparing a portfolio of new projects, and as of March 2014 pre-feasibility studies have been completed with regard to four projects: Safaga Industrial Port on the Red Sea to facilitate exports from Upper Egypt and handle imports of foodstuffs, a river bus project on the Nile in Greater Cairo to provide urban transit and help ease traffic congestion, a Cairo call centre and business process outsourcing complex, and the automation of the land registry and notary system for the entire country. It is expected that these projects will be brought to the PPP Supreme Committee for approval.

Summary and key recommendations

Egypt has initially been less successful than expected in attracting investment to selected projects via its PPP programme, partly due to a choice of overly large and complex pilot projects that have not appealed to investors. In addition, the government's financing model (including the absence of an exchange rate guarantee) and the lack of long-term project funding have also been obstacles to the success of the PPP programme. Investor perceptions of political and economic instability have also played a role.

The PPP Central Unit (PPPCU) could co-ordinate more closely with line ministries and better communicate the roles and responsibilities of the unit and the line ministries to both investors and government stakeholders. Improved communication to investors of broader government investment policy by the Ministry of Investment and the PPPCU would also greatly enhance the investment environment.

The PPP Central Unit has encountered resistance from line ministries

The PPPCU still encounters some problems, including difficulties ensuring buy-in of portfolio ministries, the failure to secure establishment of satellite PPP units in some ministries, and a general lack of public awareness of the PPP legislation and its ramifications. Resistance from line ministries to the concept of a PPPCU with an overall co-ordination function may signal a communication problem or a concern over the defence of prerogatives. Interviews with the business community in Egypt indicate that line ministries have not yet seen the value-added of the PPPCU and are uncertain of the benefits it can provide, and this reticence may explain some of the lack of flexibility reported by investors when dealing with line departments. The PPPCU may not have made a sufficient effort to communicate its role and the rationale for PPP procurement, either to government stakeholders or the general public.

Some PPP pilot projects have failed to attract investor interest

An initial and very ambitious project in the education sector, involving the procurement of 345 school buildings in various governorates (the "New Schools" project), was postponed due to lack of private sector interest, and the government plans to re-tender it on the basis of fewer schools spread across 18 governorates. Market testing is needed at an early stage after project identification and programming, together with adequate prior project scaling and preparation, to ensure PPP schemes are tailored to market demand.

A plan to develop river ports on the Nile in 2010 also failed to receive any bidders. OECD analysis suggests that this may have been due to an inappropriate balance of risks between the private and public sectors, with too much risk being pushed onto the developer without sufficient compensation. It should be noted that this project was not tendered through the PPPCU or under the PPP law.

Funding availability, financial capacity and political instability

In the short-run, the most pressing issue is to secure investors against political and legal risks in Egypt. Egyptian PPP contracts include provisions to protect investors against changes in law, and include articles making compensation available for Force Majeure and prolonged Force Majeure. In light of political instability since 2011, some investors may consider political risk insurance mechanisms. However, two hospital projects have been tendered without such insurance since late

2011, with financial closure expected on one of them, in Alexandria, in Q2 2014. Some of these risks are also addressed by the government of Egypt directly entering into the project agreement with the project entity and lenders.

PPP fiscal management

Understanding the long-term fiscal effects of PPPs, and ensuring they are used only when they are affordable and offer better value for money than public financing is a challenge for all governments. PPP fiscal management should account for the kinds of financial obligations the government will assume in its planned PPPs and the challenges those obligations could create. The government of Egypt could: i) develop a more rigorous framework to determine exactly which risks it should bear in PPP projects; ii) improve government accounting procedures and practice so that it better captures the fiscal effects of PPPs; and iii) disclose information about the fiscal effects of PPPs.

The government's priority is to get certain pilot PPP projects underway. As the PPP programme grows, it will become more important to develop strategies and systems to ensure that the government effectively understands, controls, monitors, and reports on the financial obligations it assumes. This will require co-ordination mechanisms between departments in charge of fiscal policy management and those in charge of PPPs.

Limited capacity of public institutions to manage the PPP process

The PPPCU has done well incubating PPP pilot projects (schools, wastewater treatment plant, hospitals), but existing PPP units in line ministries need to scale up their capacity in order to assume leadership in the preparation of PPP transactions in their respective sectors, while additional line ministries need to develop PPP Units.

Absence of a pipeline of viable PPP projects

Previous pilot PPP projects were not subject to appropriate screening before their selection, and the failed schools project is an example. However, projects tendered under the PPP Law and with the participation of the PPPCU will be subject to much more thorough initial screening and pre-feasibility studies.

Announced pipelines should be realistic. Ambitious plans that are not realised do not build investor confidence. In light of the resource and capacity constraints of the PPPCU, it may be preferable to dedicate efforts to a small number of projects ensuring that they are developed in a timely manner.

Need for better and effective communication on PPPs

Egyptian citizens are generally uneasy with private sector provision of public services and infrastructure, equating it with higher prices and, as PPPs are complex arrangements by nature, with an opaque means of privatisation. To respond to increasing social concern regarding economic reforms and privatisations, the Egyptian government could elaborate and implement a communications strategy to accompany implementation of its PPP programme. The government could also emphasise its intention to re-prioritise the PPP project pipeline in response to the economic and social concerns affecting Egyptians' daily lives, focusing on projects related to transport, health, education, and housing. Such projects would improve the standard of living of the poor and be relatively labour-intensive, thereby boosting employment. As is the case globally, PPPs will only have a sustained future in Egypt if they have public support or at least public acceptance.

Part 4. Public-Private Partnerships

4.1. PPP Unit

This indicator looks at:

- whether there is a PPP unit in place within the government;
- the implementation stage of the PPP unit;
- the capacity and co-ordination functions of the PPP unit;
- how formal the PPP unit's co-ordination role is; and
- the degree of political support it enjoys.

PPP units have been created in OECD countries in response to a general weakness in government machinery for managing PPP programmes effectively. World Bank analysis suggests that successful examples of PPP units share similar traits. Their staff shows a mix of expertise (lawyers, economists, project finance experts, engineers, etc.) and they tend to be attached to departments or ministries with a horizontal policy co-ordinating function, such as treasury or finance ministries. They also have an overall policy co-ordination function supported by high-level political commitment. It has also been found that the success of PPP units tends to increase with the provision of relevant functions within PPP units.

The government of Egypt's 2006 PPP strategy provided for the establishment of a PPP Central Unit within the Ministry of Finance to oversee and co-ordinate PPP policy. The PPPCU is considered the financial, technical and legal expert with regard to PPP, and houses the Supreme Committee for PPP Affairs. The latter is a body created by the PPP Law that is charged with overseeing national policy and general approaches towards PPPs and with approving PPPs. It is chaired by the Prime Minister.

Key findings and recommendations

The PPPCU faces a number of issues. These include a lack of resources, difficulties ensuring the buy-in of portfolio ministries, and the failed establishment of satellite PPP units in some ministries. A lack of communication and consultation appears to be a key factor in the latter two issues. **Therefore, external and internal communications strategies are recommended to educate the public and other government stakeholders as to the role and function of PPPs and the PPPCU.**

The PPP Central Unit's direction in the medium-term should be to act as a central source of technically credible support to PPP project teams across the government and to the PPP approval process. **Sufficient resources should be provided to this end.**

Analysis

One of the main features of Egypt's PPP policy is the PPP Central Unit (PPPCU). It has worked on five pilot projects since it was established: a school project, the Alexandria University Hospital, a Cairo wastewater treatment plant, and two transport projects – the Shubra to Banha Highway and the Rod El Farag access road. Several other projects are in the early stages of preparation across different sectors. In March 2014, four new PPP projects were announced.

The PPPCU was modelled on similar structures in countries such as the UK, South Africa and India. It was commissioned to produce initial guidance material, draft the PPP law, assist in establishing satellite PPP units within line ministries, build the capacity of all government entities working on PPPs, handle communications and public awareness, and initiate pilot PPP projects. The legal basis for the unit is provided by Article 16 of the PPP Law. Its establishment signals a clear political commitment designed to assure investors of the seriousness of the Egyptian government's efforts to increase private participation in infrastructure financing. It also points to the need to develop intra-governmental capacities.

The PPPCU is still encountering problems. These include difficulties ensuring the buy-in of portfolio ministries and the failed establishment of satellite PPP units in some ministries, including, at the time of the assessment, the Ministry of Transportation and Ministry of Health; a lack of public awareness of the PPP legislation, and a loss of capacity previously created in other government entities. Consultations suggests that there has also been some resistance from line ministries to the idea of a central unit with an overall co-ordination function, which may signal a communications problem or concern over retaining prerogatives.

For further analysis on this indicator, see Annex D. 4.1.

4.2. PPP legislation

The legal environment for PPPs may include several layers: national legislation; regulations and ordinances at the sub-national level; and the specific contractual obligations between public and private partners in the project. This indicator focuses on the legislative framework at the national level. Laws authorising and regulating PPPs may take the form of a single horizontal law covering multiple sectors or there may be several sector-specific pieces of legislation.

This indicator looks at:

- whether sector-specific or horizontal legislation covers PPP projects and/or whether there are plans to introduce (additional) legislation;
- whether the law identifies the roles and responsibilities of the public and private sectors; and
- the elements covered in the law, such as concessions and other forms of PPPs.

Experience has shown that the development of consistent national legislative and regulatory structures greatly facilitates the identification, development, and implementation of PPPs. A legislative framework on PPP-related projects should include provisions on granting concessions and should cover the entire lifecycle of the project (i.e. the design, build, finance, ownership, and operation stages, and the eventual transfer back to the public sector).

In Egypt, Law No. 67/2010 (the PPP Law), which entered into force in July 2010, provides a framework for the procurement of infrastructure projects as well as other utility projects and services under a public-private partnership model.

Key findings and recommendations

It is not clear that the PPP Law provides for all forms of PPP. **It is therefore recommended that the PPP Law be clarified to encompass all methods of infrastructure procurement involving the private sector and that legislation allowing for sectorial approaches be repealed.**

In addition to the review of the PPP law in progress, **a review of all Egyptian procurement legislation is suggested to identify day-to-day impediments to the undertaking and operation of PPPs**. With regard to the review of the PPP Law, it is suggested that certain practices which are currently left to be addressed in the project contract be addressed in the PPP Law itself thereby reducing the probability of *ad hoc*, contract by contract, treatment of these issues.

Analysis

Egypt is in the unusual position of having a general legal PPP framework coexisting with alternative channels for procuring infrastructure projects, such as the system of public economic entities, public utilities legislation and a number of sector-specific or project-specific laws (e.g. within the Ministry of Electricity and Energy and Ministry of Transport). Failing to impose the new PPP model as an exclusive regime for procuring PPPs has undermined line ministry support for the PPPCU, as ministries may prefer more familiar sectoral approaches.

The PPP Law introduced the concept of a mandatory prequalification process for each project, as well as a competitive dialogue process intended to improve the tender documents for specific projects. Bidders will be required to present an initial non-binding bid that then forms the basis of discussions with the client. The bidding documents can then be refined as the client sees fit.

Since a February 2012 decision of the PPP Supreme Committee, PPP disputes may be resolved not only through Egyptian courts but also via commercial arbitration administered by the Cairo Regional Centre for International Commercial Arbitration (CRCICA) under United Nations Commission on International Trade Law (UNCITRAL) procedures. Each party to a dispute would select one arbitrator, and both arbitrators would have to agree on a third; there are no restrictions as to the nationality of arbitrators. Although there is no pending case before the CRCICA, such a provision is a significant positive signal to foreign investors interested in PPP contracts and looking for neutral third-party arbitration.

A proper balance of risks between public and private sector is essential in order for a project to attract bids at a price that provides value for the state. Under the current PPP Law, number of important considerations, including responsibility for obtaining authorisations, licences and permits and the funding of offsite infrastructure required to make the project functional, are left to be determined in the project contract. It would provide a higher level of investor comfort and reduce the potential for differential provisions across projects if these matters were deemed the responsibility of the tendering authority by the PPP Law.

For further analysis on this indicator, see Annex D. 4.2.

4.3. PPP consultations

Open, transparent, consistent consultation with relevant stakeholders, including but not limited to consumers (i.e. domestic end users), domestic businesses, and potential foreign investors helps the authorities to secure buy-in for PPP projects.

This indicator considers:

- whether the government undertakes consultations prior to engaging in a PPP project;
- whether the government consults consumers, domestic firms and private foreign investors; and
- how often the government consults stakeholders ahead of PPP projects – consistently or on an ad hoc basis.

The 2006 Egypt PPP strategy document states that communications effort should be undertaken and should be "directed at key stakeholders, including officials of the public services, procuring agencies, employees in sectors where PPPs will be developed, and the general public".

Key findings and recommendations

A formalised consultation process should be put in place, involving domestic end users as well as local, regional and foreign investors. A well-considered public communications strategy should also be developed to accompany the PPP programme implementation process.

In Egypt, PPP consultations are informal, ad hoc and too infrequent. Further, consultations only take place after a decision has been made to proceed with a project. The lack of a formal, pre-decision consultation process contributes to the lack of buy-in sometimes encountered from line ministries and the broader public.

The government does consult PPP experts about PPP projects, but it appears to do so only once the projects have already been approved. Moreover, there is no mention at all of consultations of any kind in the PPP Law.

Analysis

Few and insufficient consultations take place. Two levels of informal post-selection consultation do appear to exist, the first being within government and the second relating to technical matters and market testing.

The "New Schools" project has been mentioned as evidence of improper consultations – no consultations took place before tendering nor prior to the decision to abandon. The PPPCU has stated that it has learned the lessons of this project's failure and is now more actively consulting including one or two public consultations for each project. Though this may be the case and good practice, the practice remains ad hoc and not required by the legislation.

It appears that broader consultations as part of project selection are still not conducted. A more formalised consultation process should be put in place, involving domestic end users as well as local, regional and foreign investors.

The high-priority need for communication on PPPs to the public remains acute and most likely will increase in the short-term. Egyptian citizens are generally uneasy with private sector provision of public services and infrastructure, equating it with higher prices and, as PPPs are complex arrangements by nature, with an opaque means of privatisation. It is important that a well-designed public communications strategy accompany PPP programme implementation, since PPPs will only have a sustained future in Egypt if they have public support or at least acceptance.

There is also a need for continued communication with the private sector. The private sector parties interviewed indicated that they had been satisfied with the PPPCU's previous communications efforts, but the situation is now less clear. Some private sector participants clearly emphasised that consultations need to be improved.

4.4. Approach to cost-benefit assessment for PPP projects

This indicator assesses whether the government undertakes cost-benefit analyses for PPP projects, and if so, whether it uses OECD guidelines to evaluate the cost-benefit analysis process.

The cost-benefit analysis should include:

- An analysis of all alternative modes of delivery (e.g. divestiture, concessions, management and service contracts) including financial and non-financial (e.g. sustainable development) costs and benefits over the project life cycle;
- Analysis of the degree to which costs can be recovered from end-users and, in the event of shortfalls, what other sources of financing can be mobilised;
- A risk assessment based on the public interest (e.g. shifting too much risk on to the private sector may result in higher prices for consumers to offset the risk);
- The potential public finance implications of sharing responsibilities with the private sector should be fully understood (e.g. the fiscal implications of issuing guarantees, including in the event of macroeconomic crises).

Under the Egyptian PPP Law, a cost-benefit analysis using a public sector comparator model must be conducted, and this was done for both current PPP projects, the New Cairo Wastewater Treatment Plant and the Alexandria Teaching Hospitals. Risk-adjusted models were developed by transaction advisors under the supervision of the PPPCU.

Key findings and recommendations

An infrastructure project preparation fund could be established within the Ministry of Finance to provide funds that line ministries, local governments and other government agencies can draw on to prepare and implement PPP projects. This fund could eventually become part of the PPPCU in order to streamline its operations and ensure greater efficacy in the handling of requests from line ministries or agencies. It would make resources available on a grant basis to:

- Ensure that line ministries or agencies undertake adequate due diligence when designing or structuring PPP transactions;
- Enable line ministries or agencies to mobilise needed technical assistance from professionals to prepare and implement PPP projects; and
- Improve co-ordination and collaboration between line ministries and agencies and the PPPCU.

The definition of stakeholders should be modified to include government, the private sector, financiers, civil society and consumers. The government should communicate effectively and in a transparent manner with all stakeholders to ensure that it is acting in the general interest.

Analysis

As in many other emerging economies, developing a robust pipeline of viable PPP projects is critical in Egypt. The cost of poor due diligence or preparation of PPP projects will be reflected in the bids submitted and will lead to costly PPP contracts. The preparation and procurement phases for PPP projects are more complex and costly than publicly procured infrastructure projects. The costs of procuring PPP projects are significant and often pose a burden on the budget of line ministries. Therefore, an enabling environment conducive to PPP development shall provide appropriate funding to line ministries and agencies so they can cover the costs related to project preparation and development.

It should be noted that some aspects of cost-benefit analysis models based on OECD best-practices are a difficult fit for a country like Egypt. Whereas users fees and tariffs may cover costs and allow some profit for a private sector developer in more developed countries, in Egypt it is likely that fees charged users will not cover the cost of most projects. Cost-benefit analysis may become more a matter of determining which method of procurement will require the lowest level of government support or subsidy. In the event of shortfalls, there may be no other sources of financing.

4.5. PPP Monitoring

This indicator examines the following:

- whether a mechanism to monitor the performance of PPP projects is in place;
- which financial and technical aspects of a PPP project are monitored;
- whether or not, and how often, the government monitors all PPP projects; and
- whether or not the private partner in a PPP project is required to submit business and budget plans on an annual basis.

Monitoring throughout all stages of the project lifecycle is essential. Proper monitoring helps ensure value for money and allows problems to be detected before they can threaten the project.

Article 5 of the Egyptian PPP Law establishes a project performance monitoring committee to oversee the operating phase of the project and ensure the "adequacy of the product or service at the required level, including a periodical report of the committee's work to the competent administrative entity".

Key findings and recommendations

In light of Egypt's limited experience with PPP projects to date, the PPP Monitoring indicator has not been assessed.

In many jurisdictions in the early stages of PPP programmes, contract management is an after-thought. In Egypt, the importance of contract management was recognised by the PPP Central Unit, but much remains to be done, including:

- The preparation of a contract management framework, guidance and training; and

- The establishment of contract management capacity in the portfolio ministries/satellite PPP units, and involving relevant staff in the PPP tendering process.

The lack of preparedness in this area by line ministries, together with the lukewarm support for PPPs within some of them, means that the PPPCU may need to play a relatively large role in contract management in the early years of the initial projects.

Analysis

To ensure that a PPP project meets its stated policy objectives, it should be monitored throughout its lifetime. The OECD Principles for Private Sector Participation in Infrastructure advise that: "Formal agreements between public authorities and the private sector should be specified in terms of verifiable infrastructure services to be provided to the public on the basis of output or performance based specifications."

An additional component of a monitoring mechanism should include access to information about the financial and technical status of a PPP project and the future business and budget plans of the project partners.

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ANNEX A: EGYPT'S INVESTMENT POLICY AND PPP SCORES

Investment Policy and Promotion – Summary of Scores in 2010, 2012 and 2013

INVESTMENT POLICY AND PROMOTION		AGGREGATE SCORE 2010	BUSINESS COMMUNITY SCORE 2012	PUBLIC-PRIVATE WORKSHOP AGREED SCORE 2013*
1	FDI policy			
1.1	Restrictions to national treatment	4	3.5	3
1.2	Approval procedures	4	2.5	2.5
1.3	Admittance of business personnel in support of FDI*	3.5	3.5	
1.4	Transfer of FDI-related capital	5	4	2.5
1.5	FDI incentives	3.5	3.5	3.5
1.6	Land ownership	3	2.5	2.5
1.7	Titling and cadastre	2	2	2.5
1.8	Intellectual property*	3	3	
1.9	Guarantees against expropriation	3	3	2
1.10	International investment agreements	3.5	4	4
1.11	International arbitration and amicable dispute settlement	3.5	3.5	3.5
2	Promotion and facilitation			
2.1	Strategy*	4	2.5	
2.2	Implementing agency*	4	2	
2.3	Monitoring and evaluation	3	1.5	
2.4	National and sub-national co-ordination*	3	2	
2.5	FDI-SME linkages*	4	2	
2.6	One-stop shop*	4.5	3	
2.7	Customer relationship management	3	2	4.5
2.8	Policy advocacy	4	2.5	4
2.9	Aftercare services	3	2	3.5
2.10	Free economic zones	4	2.5	4.5
3	Transparency			
3.1	Publication avenues and tools*	3.5	3	
3.2	Prior notification and stakeholder consultations*	3	1.5	
3.3	Procedural transparency*	4	2.5	

Scores range from 0 (absence of policy) to 5 (best practice).

* Indicators for which scores are not provided have not been discussed at the 2013 private-public workshops and therefore no new scores were allocated.

Public-Private Partnership – Summary of Scores 2013

Indicator	PPP Unit	PPP Legislation	PPP Consultation	Cost Benefit Analysis	Monitoring
Scores	4	4	3	2.5	X

Scores range from 0 (absence of policy) to 5 (best practice).

ANNEX B: BUSINESS CLIMATE REVIEW METHODOLOGY AND PROCESS

The Business Climate Review (BCR) is a process that defines in which areas and how a country could implement reforms to improve its business climate and competitiveness, thereby contributing to growth and employment.

In 2009-2010, the OECD completed a Business Climate Development Strategy (BCDS) of Egypt working closely with the Egyptian government.

The BCDS assessed 12 policy dimensions over a total of 242 indicators under three headings:

1. Business operation environment
   - Investment Policy and Promotion
   - Privatisation Policy and Public Private Partnerships
   - Tax Policy and Administration
   - Trade Policy and Facilitation
   - Better Business Regulation
   - SME Policy and Promotion
2. Rule of law
   - Anti-Corruption
   - Corporate Governance
   - Business Law and Commercial Courts
3. Factor markets
   - Infrastructure Policy
   - Human Capital Development
   - Access to Finance

In 2012, the Egyptian government and the OECD, with funding from the EU Delegation to Egypt, initiated a project to revise two chapters of the 2009-2010 BCDS: Investment Policy and Promotion and Public Private Partnerships. Given its focus, the report is now entitled the Business Climate Review of Egypt.

The Review consists of a comprehensive **analysis** of and **recommendations** on Egypt's investment policies and promotion activities, and its policies in support of PPPs, since 2010. These deliverables build on a **consultative and capacity-building process**. Indeed, throughout the elaboration of the review, consultations with the private sector were held and included surveys of the private sector, both local and foreign investors, a series of business community workshops and a public-private seminar. In addition, the relevant governmental institutions (Ministry of Investment, General Authority for Investment and Free Zones (GAFI) and PPP Central Unit) have engaged into an in-depth dialogue with the OECD experts, provided relevant information and answers to technical questions, commented on the draft review, discussed and validated the findings and recommendations.

Therefore, the work has been structured around various phases, some concomitant: desk research, business sector surveys, private sector consultations, public-private evaluations, inputs from and dialogue with relevant governmental institutions, validation of the recommendations, final assessment and launch.

In parallel to the OECD analytical work, several activities were carried out during the project to feed the review process.

Business sector assessment and consultations (January-October 2012)

The private sector perceptions were assessed at a series of consultations held in Cairo from February to July 2012. Results were collected and presented at workshops held on 23-24 September 2012 in Cairo. The preliminary findings based on the conclusions of the workshops were presented to the EU Delegation to Egypt on 8 October 2012 in Cairo. This business sector assessment and consultation phase involved:

- Fact finding and data gathering;
- Elaboration of a questionnaire sent to around 100 companies;
- Interviews with representatives of multinational, chambers of commerce and business associations to collect responses to the questionnaire and preliminary assessment of the indicators of the chapters;
- Aggregation of data from the questionnaire and interviews, and elaboration of working documents to be presented at the private sector workshops;
- Interactive workshops with business representatives and experts to test the results, in Cairo on 23-24 September 2012;
- Drafting of the conclusions of the workshops with preliminary recommendations;
- Presentation of the preliminary findings to the EU on 8 October 2012 in Cairo.

Egyptian authorities' assessment and validation, public-private consultations (November 2012-January 2014)

Based on the information gathered and on the inputs from the private sector representatives, a draft review was prepared including a thorough analysis of each indicator.

Key findings and recommendations of the review were presented and discussed with the Egyptian authorities (including representatives from the Ministry of Investment, GAFI and the PPP Central Unit) at several public-private workshops held in Cairo which involved the EU Delegation to Egypt, representatives from the private sector, experts from the OECD and other international organisations:

- Key findings and recommendations of the Investment Policy and Promotion (IPP) Chapter of the review were first presented to the Egyptian authorities for their feedback and comments at a public-private workshop on "Reviving Foreign Investment and Strengthening Infrastructure: Restoring Investors' Trust in Egypt" held on 6 March 2013. They were further examined and discussed at a public-private workshop on "Reviving Foreign Investment: Assessing the priorities" held on 12 June 2013 at GAFI

headquarters. The Deauville Partnership Investment Forum for Egypt held on 25 June 2013 also discussed the key findings of the Review. It should be noted that the "Investment Climate Reform Priorities of Egypt" presented by the government at the G8 UK Deauville Partnership Investment Conference in London in September 2013 recalled the main recommendations of the Review.

- Key findings and recommendations of the Public-Private Partnerships (PPP) Chapter of the review were examined and discussed at a public-private workshop on "Public-Private Partnerships" held on 26 June 2013 at GAFI headquarters. These workshops focused on the priorities and implementation suggestions.

Based on the results and feedback gathered during the public-private consultations, the Review was substantially revised with the view to take into account the comments received from the Egyptian partners. The revised draft Review was sent to GAFI and the PPP CU for their final review and validation. Further discussions were held with GAFI, the PPP CU and the EU Delegation to Egypt in fall 2013. The last rounds of comments were received in January 2014 and were incorporated into the Review for finalisation.

ANNEX C: ASSESSMENT FRAMEWORK FOR INVESTMENT POLICY AND PROMOTION

This note explains the evaluation framework used for the investment policy and promotion component of the MENA-OECD Investment Programme's *Business Climate Review (BCR)* in the Middle East North Africa (MENA) region.

The evaluation framework in this chapter expands on the 2006 *Investment Reform Index* (IRI)[49] investment policy and investment promotion and facilitation chapters, which were themselves inspired by the OECD's *Policy Framework for Investment* (PFI).[50] The PFI was developed as a non-prescriptive checklist of issues for consideration by any interested governments engaged in domestic reform, regional co-operation, or international policy dialogue aimed at creating an environment that is attractive to domestic and foreign investors and enhances the benefits of investment to society.

Objective and Scope of the Investment Policy and Promotion Assessment Framework

The objective of this assessment framework is three-fold: i) provide comprehensive coverage of critical investment policy issues and promotion activities; ii) develop a coherent approach to analysis; and, iii) present the assessment in a cogent format. The result is a holistic approach to investment policy and investment promotion.

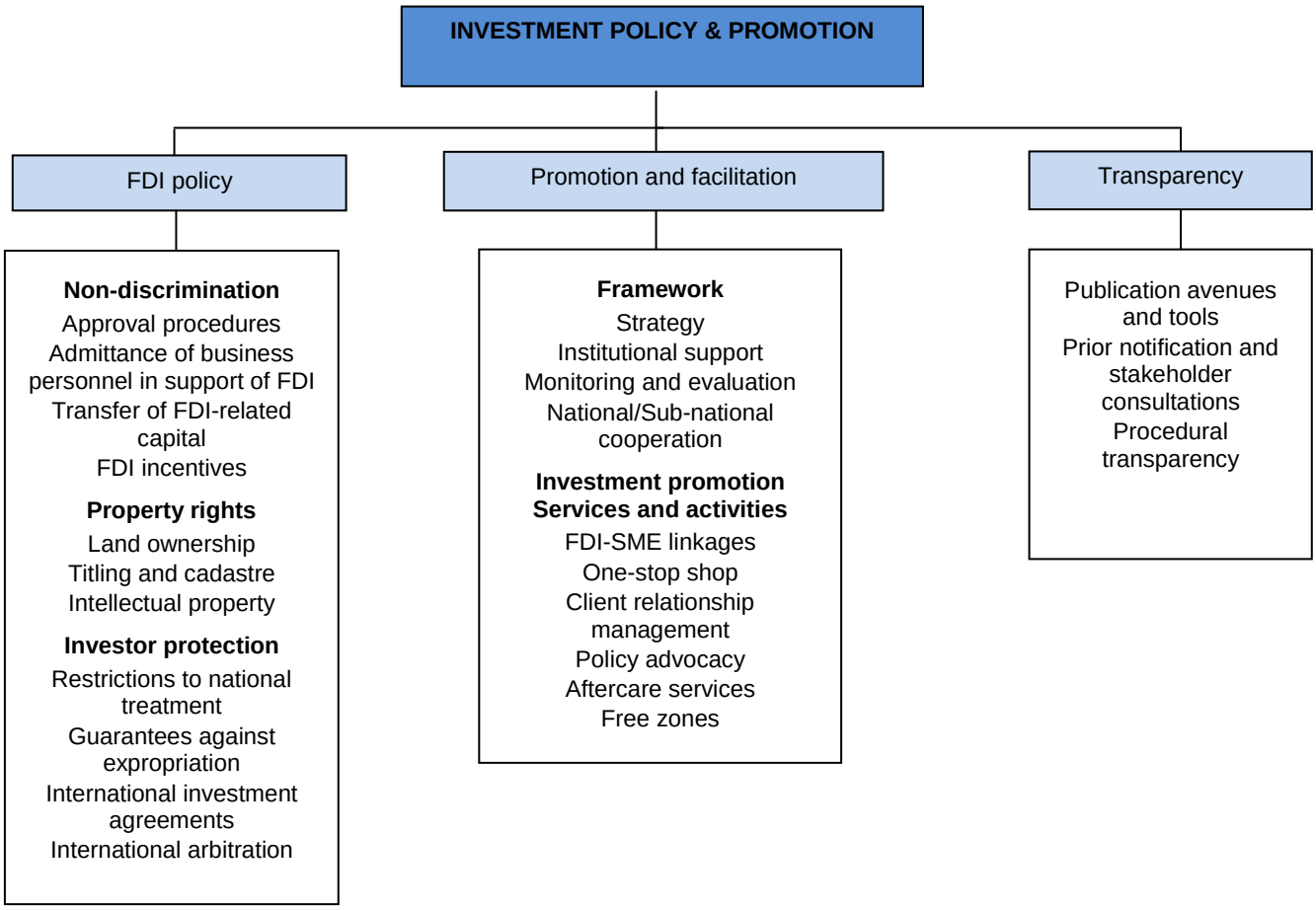
Global competition for foreign investment is fierce, and successful jurisdictions reform their investment laws and regulations while promoting their advantages simultaneously. The investment policy and promotion assessment framework recognises this and provides policy makers with a single window to assess their progress in that regard.

The investment policy and promotion assessment framework illustrated in the figure below is divided into three components, or sub-dimensions: I) Foreign Direct Investment (FDI) policy; II) Investment Promotion and Facilitation; III) Transparency. Each sub-dimension contains a fixed number of policy indicators. These indicators are then used to score policy reform in ascending order – "1" being the weakest, "5" the strongest.

Section on "Measurement", defines each indicator and provides a rationale for its inclusion. In addition, each reform level – from "1" through "5" – states precisely what measures, actions, or policies need to be in place for a country to improve its score.

[49] The Investment Reform Index (IRI) is a practical tool developed by the OECD's Investment Compact to measure and communicate progress made by South East European countries in improving their investment climate, www.oecd.org/investment/psd/south-easteuropeinvestmentreformindex.htm (accessed 19 March 2014)

[50] On 11 May 2006, the OECD Council adopted and declassified the final report by the Investment Committee on the Policy Framework for Investment (PFI). It was then endorsed during the OECD Ministerial meeting of 23-24 May 2006.


INVESTMENT POLICY & PROMOTION
FDI policy
Promotion and facilitation
Transparency
Non-discrimination
Approval procedures
Admittance of business personnel in support of FDI
Transfer of FDI-related capital
FDI incentives
Property rights
Land ownership
Titling and cadastre
Intellectual property
Investor protection
Restrictions to national treatment
Guarantees against expropriation
International investment agreements
International arbitration
Framework
Strategy
Institutional support
Monitoring and evaluation
National/Sub-national cooperation
Investment promotion Services and activities
FDI-SME linkages
One-stop shop
Client relationship management
Policy advocacy
Aftercare services
Free zones
Publication avenues and tools
Prior notification and stakeholder consultations
Procedural transparency

The three sub-dimensions are designed to assess the following:

1. Foreign Direct Investment (FDI) policy

Three themes are covered in this sub-dimension. The first is the principle of non-discrimination. Non-discrimination concerns the notion of "national treatment" which provides that a government treat investments controlled by nationals or residents of another country no less favourably than domestic investors in like situations.

The second theme covers property rights. Foreign investors need to be confident that their ownership of, or right to use, property is legally recognised and protected.

The third theme covers investor protection. Investor protection provides foreign investors with a means to resolve disputes and prevent ad hoc, discriminatory action by the host government.

2. Investment Promotion and Facilitation (IPF)

This sub-dimension evaluates two broad themes. The first is the overall IPF framework which examines the guiding strategy underpinning IPF activities, the institution implementing the strategy (investment promotion agency), and the monitoring and evaluation mechanisms in place to gauge progress.

The second theme examines the specific investment promotion services and activities implemented to attract and retain foreign investment. These activities include forging links between foreign investors and local enterprises, implementing customer relationship management processes, and fine-tuning one-stop-shop assistance for foreign investors in their pre-establishment phases.

3. Transparency

Transparency remains one of the overriding concerns of investors worldwide.[51] The indicators in this sub-dimension assess the progress governments have made in: codifying and publishing primary and subordinate laws and making them publicly available; prior notification and consultation with interested parties and stakeholders ahead of reforms to investment policies; and procedural transparency in dealings with government offices and the application of investment laws and regulations.

Data Collection

The data for assessing progress is collected through questionnaire responses by participating governments and follow-up interviews by OECD staff with government officials and private sector participants. To cross-check responses given by government officials, OECD staff will review, where appropriate, commitments made by countries in international agreements (e.g. OECD commitments, WTO GATS schedules, regional and/or bilateral investment treaties) and surveys or studies conducted by other international bodies (e.g. World Bank, World Economic Forum, Economist Intelligence Unit).

[51] OECD (2003), A Framework for Investment Policy Transparency.

Part 1. Foreign Direct Investment Policy

1.1. Approval procedures

Governments have the sovereign right to regulate the entry of foreign investors and their investments into their jurisdictions. Entry regulation may include procedures for screening and approving all investments or sector-specific investments. The transparency and predictability of these procedures sends an important message to potential investors about the overall attractiveness of the investment environment. Approval procedures may involve case-by-case reviews of potential foreign investment projects by a specialised public authority in the host country – the investment promotion agency, a special investment committee, or the Ministry responsible for investment. Should the public authority deny entry, a foreign investor should have the opportunity to appeal the decision. The OECD's *FDI Regulatory Restrictiveness Index* cautions that obligatory screening and other discriminatory approval procedures may limit inward FDI flows.

Questions

- *Is FDI subject to approval procedures that discriminate between foreign and local investors?*
- *Are these approval procedures defined in laws, regulations and procedures?*
- *Are approval procedures and entry criteria published?*
- *Is FDI approval assessed on a case-by-case basis?*
- *Has the government reduced the number of approval procedures?*
- *Are approval procedures applied across all sectors or only specific ones?*
- *Does the foreign investor have the right to appeal a decision by the reviewing authority?*

Approval Procedures

Level 1	Level 2	Level 3	Level 4	Level 5
The majority of approval procedures are not defined in laws, regulations or administrative procedures and are applied in an ad hoc manner. The majority of approval procedures for FDI discriminate in favour of domestic investors.	The majority of approval procedures are defined in laws, regulations or administrative procedures and are applied in accordance with specific criteria on a case by case basis. The majority of approval procedures for FDI discriminate in favour of domestic investors.	The government is undertaking a process to review all FDI approval procedures to reduce discrimination against FDI. All approval procedures are defined in laws, regulations or administrative procedures and are applied in accordance with specific criteria on a case by case basis. Appeals against decisions not permitted.	Level 3 **plus** the government has eliminated some discriminatory FDI approval procedures, while retaining others in specific sectors.	Level 4 **plus** the government undertakes periodic reviews and continues to reduce discriminatory FDI approval procedures, while retaining some in specific sectors. In the event of non-approval, appeals are permitted.

Analysis

Operational licensing procedures

Operational licensing procedures (approvals, licenses and permits) are required for both domestic and foreign investors to operate in certain specific sectors including tourism and energy-intensive sectors (e.g. fertiliser production, aluminium, iron, and steel). Prior approval is also required to operate certain activities or in certain sectors, such as banking services (exchange companies and transfer of funds), insurance (life and health), brokerage activities, mortgage finance, factoring, air transport and related activities, specific tourism activities, intensive energy sectors, chemical industries.

Information regarding approvals, licenses and permits is published in English by GAFI in an investor's guide. However, the precise criteria and procedures for obtaining them is not clearly indicated. According to interviewed investors, the criteria for approval are unclearly defined and, in some cases, it is based on internal regulations and instructions which are not always accessible to the public. This forces the investors to rely on oral information which might be inaccurate and might differ from the requirements of the relevant laws and regulations. In practice, additional or different requirements than those provided in the laws are requested.

While licenses are required to operate activities in the free zones[52] and in the investment zones,[53] temporary licenses, which allow the investor to start activities prior to getting the required license, are currently granted by GAFI[54] in both public and private free zones. The same procedure is provided for in investment zones, but has not been implemented. The Egyptian authorities are currently examining the possibility and the opportunity of expanding temporary licenses outside the zones. However, it appears that, as an exception to this rule, a prior security approval would be required before initiating the procedure for specific nationalities.

The relevant authorities should also be cautious about suspending, even temporarily, the issuance of licenses without prior notice and adequate information.

With respects to temporary licenses, the extension of the system of temporary licenses outside the free zones should be encouraged, as well as implementation of the practice in investment zones.

Security approvals procedures

Foreign investors have indicated that there are no clear and transparent inspection rules and guidelines for security intervention in the business sector nor clear criteria for the relevant approvals. Moreover, the applicant is not informed in advance of the time it will take to process the security clearance. If an application becomes subject to a security clearance, this can take up to two or three months during which the applicant has no information regarding the eligibility of the project. This uncertainty has practical implications for financing and for ownership of land and other property titles. Despite unjustified rejections, most of the business community interviewed nonetheless agrees that it is possible to appeal the decisions.

In practice, security clearances may apply in the following cases: i) when foreign (natural or legal persons) are owners or shareholders of a new Egyptian company; ii) new foreign shareholders in an

[52] Article 31 of the Investment Law.

[53] Article 46*bis* of the Investment Law.

[54] Law No. 13 of 2004.

existing company; and iii) appointing foreign managers or board members in an already established or under establishment company. As a rule, however, security approvals should not postpone the entire procedure in question. GAFI proceeds with the whole process (e.g. establishment, appointment of a manager etc.) and, if the security bodies reject the concerned person at a later stage, the company will be requested, within a period not exceeding one month, to replace the person in question. If the company does not fulfil such request, its commercial register will be cancelled and GAFI will refuse to notarise any of the corporate documents (e.g. board meeting resolutions).

Security rejections seem to be quite rare in practice and according to GAFI, they do not prevent establishment of companies. At any rate, clarification of the security approval procedure is recommended to ensure that it does not unnecessarily disrupt the establishment process for foreign-owned companies. Criteria and procedure should be transparent and available. Clear guidelines for security inspection of investment projects should be made available to investors and security clearance should be time-bound. Officers dealing with approvals should be trained to improve efficiency standards. Investors should be informed of the outcome of the security check prior to establishing a company and reasons for decision should be provided.

Company establishment

There are no restrictions on foreign ownership of Joint Stock Companies (JSCs) and Limited Liability Corporations (LLCs) and no minimum capital required for an LLC. However, capital must be in line with the business's purpose and must be fully paid in prior to incorporation. JSCs are required to have a minimum issued capital of EGP 250 000 or EGP 1 million in case of publicly held companies (i.e. companies which offer shares for public subscription pursuant to Article 41 of the Executive Regulations of the Capital Market Law). The issued share capital must be fully subscribed upon the creation of the company. In case of cash contributions, every shareholder pays in at least 25% of the amount of that shareholder's participation in the capital within three months after the company's registration, and the remainder must be paid in within five years from the date of registration of the company with the Commercial Registrar.

With regard to the procedure for establishing a company, there is no difference between domestic and foreign investors. The World Bank (2013) *Ease of Doing Business Index 2013* report indicates that Egypt has made progress in reducing the number of procedures required to start a business to six and the number of days to seven. Though across the MENA region, Egypt ranks second, after the United Arab Emirates, Egypt's ranking in starting a business fell to 26 (out of 185) in 2013 compared to 18 in 2011 and 21 in 2012.

It is also worth mentioning that while establishing and operating a business, foreign investors may face costly formalities. This is notably the case for registering a branch in Egypt, which is subject to burdensome and time consuming procedures as it is usually tied to the performance of a specific contract, as a permanent presence independent from the implementation of a specific project is not permitted.

The legalisation procedure of foreign public documents that may be required by the Egyptian authorities (e.g. extracts from Commercial Registrars, court rulings etc.) may add costly and time-consuming formalities.

In the context of companies' establishment, a recent instruction by the Central Bank of Egypt (CBE) has required, in addition to the basic documentation needed for the establishment of a company in Egypt (see Annex E), an important impediment to the streamlined establishment requirement provided for by GAFI. Under this new set of instructions, in order to open a bank account for a

company under establishment, every future legal shareholder is to provide a document evidencing its shareholding structure (e.g. articles of association or official certificate listing the shareholders). If they are legal persons, copies of their Commercial Registrar showing the shareholding structure or articles of association are to be provided. If they are natural persons, scanned passport copies are to be provided. All documents provided should be notarised and legalised, except passport copies. The CBE set these new instructions in order to track the shareholding structure of every potential investing company until it reaches the natural persons having control.

It would therefore be recommended that in due time, the CBE might consider applying less cumbersome procedures for the opening of bank accounts, for companies under establishment. In practice, it appears that assigning a local legal and/or a financial advisor remains the quickest and easiest way for a foreign investor to establish a company in Egypt.

Egypt is currently developing a new system to register companies electronically. The first phase of on-line registration was launched in 2010, allowing investors to submit applications and follow their status.[55] Though this electronic registration system may contribute to streamline formalities, to date, a dual system continues to be in function, based on both electronic and paper applications.

GAFI embarked in 2002[56] on setting-up a one-stop shop to streamline and facilitate the approval and establishment process. It states that, as of November 2013, its one-stop shop contained 44 offices representing 24 ministries and had facilities to deal with work permit approval, company registration, taxation, customs, and other post-establishment services. GAFI attempts to process all requirements for an application within 72 hours and to assign an employee to be responsible for the investor.[57] In practice however, a lack of co-ordination between GAFI and other ministries remains and has been raised as a concern. An example cited by one of the interviewed business associations recounts the experience of a well-known international retailer which faced difficulties with respect to land allocation and the obtaining of planning permits, resulting in only two outlets being opened in two years instead of the five that had been planned. The process can only benefit from GAFI's sustained efforts in operationalising the one-stop-shop facility and encourage further ministries and agencies to participate in this effort.

Efforts should also be made towards streamlining and simplifying formalities. In this respect, Egypt should also continue to develop electronic procedures. Egypt could also consider ratifying the Hague Convention of 5 October 1961 abolishing the requirement of legalisation for foreign public documents (the "Apostille Convention", widely ratified[58], which facilitates the circulation of the required documents emanating from authorities of a State party and to be produced in another State party, with the mere issuance of a certificate called "apostille" by a competent authority for the recognition of the required foreign document). This would allow investors to benefit from streamlined legalisation procedures for documents used in Egypt.

[55] The electronic registration system involves three stages: i) receiving and following up requests; ii) electronic signature; and iii) electronic fees payments.

[56] Presidential Decree No. 79 of 2002 and Prime Minister's Decree No. 636 of 2002.

[57] OECD (2007), *Investment Policy Review - Egypt*, Paris.

[58] The treaty is ratified by more than 100 countries.

1.2 Admittance of foreign business personnel in support of FDI

Regulatory measures that can discourage FDI include constraints on foreign nationals either managing or working in affiliates of foreign companies.[59] Stipulations that nationals or residents must form a majority of boards of directors may undermine foreign owners' control over their holdings and so make them more hesitant about investing. Similarly, if regulations restrict the employment of foreign nationals, investors may judge that they cannot make use of the necessary expertise to make their investment worthwhile.

Questions

- *Does the government impose senior management quotas on foreign enterprises? If so, what are they?*
- *Is temporary entry granted to personnel with specialised knowledge in support of foreign enterprises active in noted sectors?*

Admittance of Foreign Business Personal in Support of FDI

Level 1	Level 2	Level 3	Level 4	Level 5
All members of board of directors must be nationals of host country. Temporary entry is not granted to personnel with specialised knowledge in support of FDI.	A simple majority of members of board of directors must be nationals of the host country. Temporary entry is not granted to personnel with specialised knowledge in support of FDI.	No more than 51% of members of board of directors can be foreign nationals. Temporary entry is granted to personnel with specialised knowledge in support of FDI within the limits of a set quota.	The majority of members on a board of directors can be foreign nationals. However a limited number must be nationals of the host-country. Temporary entry is granted to personnel with specialised knowledge in support of FDI. No quota is applied.	No restriction on nationality of members of board of directors and the host country grants temporary entry to personnel with specialised knowledge in support of FDI.

Analysis

Board of directors

According to Law No. 3 of 1998 amending the Companies Law, the board of directors of a given company can comprise only foreign nationals, except in the case of limited liability companies (LLCs), where at least one of the company's managers must be of Egyptian nationality.

Foreign personnel

According to Article 28 of the Employment Law No. 12 of 2003, any foreign national wishing to work on a permanent basis in Egypt must apply for a work permit, irrespective of whether she is

[59] The OECD's FDI Regulatory Restrictiveness Index identifies restrictions to entry of business personnel as factor in discouraging inward FDI flows.

employed or self-employed. A residence permit is subsequently granted on presentation of the work permit. Both are usually issued for periods of 12 months, but board members of companies established under the Investment Law are often granted work and residence permits for up to five years.

In order for the work permit to be granted, 90% of the employees of the applicant company must be of Egyptian nationality. The employment of foreign personnel needs to be justified, for example by way of specific qualifications. If no specific qualifications exist, the company should employ at least one Egyptian assistant who should be trained by the foreign worker and take over its functions at a later stage. However, there are exceptions to this rule, for example employees of representative offices, managers of branch offices and general managers of LLCs whose names are annotated in the company's Commercial Registrar.

In practice, obtaining a first work permit for foreigners in Egypt is not difficult. However, renewals may be more challenging. According to a recently published IFC report, the process to obtain a temporary work permit in Egypt takes an average of 6 weeks, a processing time faster than the global average (8 weeks) and the MENA average (11 weeks).[60]

In free zones, foreign employees may account for up to 25% of staff. This ceiling may be exceeded upon an explicit exemption granted by the government.

In the oil and gas industry, employment restrictions on foreign nationals do not apply, but most concession arrangements include requirements for a minimum percentage of local employees. Some services – like insurance mediation services (e.g. brokers and agents) and professional services (e.g. lawyers, accountants, architects, and engineers) – are reserved exclusively to Egyptian nationals.

Some of the bilateral investment treaties signed by Egypt contain provisions on key personnel, which usually stipulate that parties should facilitate entry and residence of managerial and technical personal according to their laws and regulations.

1.3 Transfer of FDI-related capital

The ability to transfer investment-related capital, including repatriated earnings and liquidated capital, is important for any firm if it is to make, operate, and maintain investments in another country.[61] Governments may need to limit such economic freedoms in the event of unforeseen macroeconomic problems, such as a balance of payment crises. Where appropriate, governments should periodically review measures designed to restrict the transfer of FDI-related capital so as not to adversely affect inflows of international investment, deter domestic companies from accessing international capital markets, or encourage inefficient and non-transparent practices such as transfer pricing. Undertaking international commitments, such as accepting the IMF Articles of Agreement (specifically Article VIII),[62] demonstrates the government's commitment to liberalising transfers of FDI-related capital.

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[60] IFC (2013), Employing skilled expatriates. Benchmarking skilled immigration regimes across economies, Washington.

[61] OECD, PFI User's Toolkit, Investment Policy – section on Non-Discriminatory Treatment for National and Foreign Investors.

[62] Under Article VIII, Sections 2, 3 and 4, IMF members undertake not to impose restrictions on the making of payments and transfers for current international transactions, and not to engage in, or permit any of their fiscal agencies to engage in, any discriminatory currency arrangement or multiple currency

Questions

- *Has the government implemented a law providing for the free transfer of: FDI-related capital such as profits, dividends, interests or other amounts; proceeds from the sale of an investment; payments resulting from expropriation; payments resulting from international arbitration?*
- *Under what circumstances are international transfers restricted? Are these restrictions codified in laws and regulations and are they publicly available?*
- *Has the government reviewed restrictions affecting the free transfer of capital and profits and their effect on attracting international investment?*
- *Has the government accepted Article VIII of the IMF?*

Transfer of FDI-Related Capital

Level 1	Level 2	Level 3	Level 4	Level 5
Transfers of capital in support of FDI are prohibited and systematically subject to government approval.	Preparation of draft law to liberalise transfers of capital in support of FDI.	The government has adopted laws and regulations that provide for transfers (in and out of the host country) of capital in support of FDI, which include: guaranteeing transfers of profits; dividends; interests or other amounts derived from the investment; proceeds from the sale of the investment; payments resulting from expropriation; payments resulting from international arbitration.	Level 3 **plus** the government has undertaken international commitments such as accepting Article VIII of IMF Articles of Agreement.	Level 4 **plus** the government has codified in law narrow restrictions to transfers of capital in support of FDI. Such restrictions may be bankruptcy or insolvency; dealing in securities; criminal reports of transfers of currency; or enforcement of court rulings. All restrictions are clear and publicly available.

Analysis

In December 2012, the Central Bank of Egypt (CBE) imposed certain restrictions on foreign currency transfers. In its circular of 13 March 2013, the CBE reinforced the existing mechanism on free and streamlined repatriation and transfer of capital invested in the stock exchange, bonds and treasury bills. Egypt's Banking Law No. 88 of 2003 guarantees the right to remit income earned in Egypt and to repatriate capital. However, its article 116 was amended by Law No. 8 of 2013 and introduced new capital controls through a requirement on travellers to declare the amounts held by them when entering and departing the country if they exceed USD 10.000.

practice, except with IMF approval. By accepting the obligations of Article VIII, Sections 2, 3 and 4, a country signals to the international community that it will pursue economic policies which will make restrictions on the making of payments and transfers for current international transactions unnecessary, and will contribute to a multilateral payments system free of restrictions.

New CBE instructions allow foreign companies to send abroad more than USD 100,000 per year only under certain conditions. In addition to original documentation, the transfers above this amount are allowed only for legitimate business purposes and require the CBE approval. In addition, companies are allowed to transfer up to USD 30,000 per day.

The measures taken by the CBE in December 2012 have been directed towards specific persons, companies and organisations in order to monitor the flight of capital and financial activities in Egypt. Drastic measures were also taken to limit access to hard currency, especially United States Dollars (USD). Consequently, it is reported that businesses are constantly searching for hard-to-find foreign currency and companies are having problems arranging foreign currency through accredited banks and authorized foreign exchange dealers. Banks are further requested to ask for justifications for any foreign currency transfers or withdrawals. Between December 2012 and February 2013, the Egyptian pound (EGP) lost 8% of its value against USD and had suffered a total 14% depreciation since 2011. In its circular of 13 March 2013, the CBE reinforced the existing mechanism on free and streamlined repatriation and transfer of capital invested in the stock exchange, bonds and treasury bills. According to the statements of the CBE and the Egyptian authorities, the current situation is temporary pending resolution of critical fiscal problems and the stabilisation of foreign currency reserves. The objective is to lower the impact on Egypt's balance of payments deficit and to prevent the outflow of illicit gains; it remains to be seen for how long these measures will be applied.

It is recommended that the CBE clarify the scope and timing of these measures. During the period of these new restrictions, Egyptian authorities may wish to create a dedicated contact point to receive investors' queries and requests in connection with capital transfers. In addition, they should consider regularly monitoring practices of capital controls and transfers, for example through regular surveys of foreign investors and local banks. Further transparency and streamlining of existing procedures and documentation is recommended, especially with regard to liquidation and bankruptcy processes.

Exceptions and limitations on free transfer of capital in exceptional circumstances should be clearly announced and make reference to international instruments, such as IMF Articles and the OECD Code of Liberalisation of Capital Movement[63] – even though Egypt is not a State party to the latter.

Individuals and businesses are allowed to conduct all normal foreign exchange transactions, including opening accounts and transferring in and out of Egypt. The conversion and transfer of royalty payments are further permitted when a patent, trademark, or other licensing agreement has been approved under the Investment Law.

The current system of profit repatriation by foreign firms announced in late June 2002 requires sub-custodian banks to open foreign and local currency accounts for foreign investors (called "Global Custodians"), which are exclusively maintained for stock exchange transactions. The two accounts serve as a channel through which foreign investors process their sales, purchases, dividend collections,

[63] Article VI, Section 3 on Controls of Capital Transfers of the Agreement of the IMF providing that "Members may exercise such controls as are necessary to regulate international capital movements, but no member may exercise these controls in a manner which will restrict payments for current transactions or which will unduly delay transfers of funds in settlement of commitments, except as provided in Article VII, Section 3(b), and in Article XIV, Section 2", www.imf.org/external/pubs/ft/aa/index.htm#a6s3, and Part I of the OECD Code of Liberalisation of Capital Movements www.oecd.org/daf/inv/investment-policy/CapitalMovements_WebEnglish.pdf (accessed 19 March 2014).

and profit repatriation transactions, using the bank's posted daily exchange rates. The system is designed to allow for settlement of transactions in less than two days. In 2005, when Egypt agreed to Article VIII of the IMF Articles of Agreement, the Egyptian Pound became a freely convertible currency under sections 2, 3 and 4.

Business representatives interviewed before December 2012 did not note any difficulties in transferring FDI related capital including dividends, interests, or any sort of capital repatriation in and out of Egypt. However, new restrictions have been introduced since then.

Indeed, in December 2012 and early 2013, the CBE has circulated instructions to the banks:

- Requiring banks to verify the reasons and background for offshore foreign currency transfers and ask companies for supporting documents, if the amount exceeds USD 100 000. Companies wishing to transfer amounts exceeding USD 100 000 should provide all supporting documents and await the CBE confirmation on the transfer. Such process takes 3-5 working days;
- Limiting per day foreign currency withdrawals to USD 10 000 for individuals and USD 30 000 for companies;
- Exempting documentary credits issued for importing certain vital commodities (including, pharmaceuticals and food) from the 50% cash cover requirement that is generally applicable to any documentary credit issued in foreign currency;
- Setting some prudential procedures for banks to abide by while executing external direct transfers on import transactions (e.g. supporting documents and verifications of transfers' reasons;
- Allowing free cross-border movement for Egyptian expatriates' funds in Egyptian banks (upon submission of supporting documents to the banks);
- Requiring banks, when selling USD or other hard currency, to give priority to importers of essential goods like food, industrial machinery and raw materials, pharmaceuticals, oil and gas products and fertilisers.

Egypt has a very large network of bilateral investment treaties (BITs), having signed more than 100 of such agreements (see Annex F). Most of them allow *inter alia* free transfers of capital, usually including dividends, royalties, compensation in case of expropriation, contract payments and proceeds from sales. The Egyptian BIT model guarantees the free transfer of funds related to investments without delay in a freely convertible currency, while acknowledging the host State's right to take safeguard measures to deal with serious short-term balance of payments difficulties or monetary policy difficulties. These safeguard measures shall be pursued through respecting the principles of non-discrimination, avoidance of unnecessary damage, proportionality, phasing out and conformity with the IMF Agreement.

1.4. FDI incentives

The OECD Checklist for Foreign Direct Investment Incentive Policies defines FDI incentives as: "Measures designed to influence the size, location or industry of a FDI investment project by affecting its relative cost or by altering the risks attached to it through inducements that are not available to comparable domestic investors." FDI incentives can take the form of fiscal incentives (e.g. reduced direct corporate tax), financial incentives (e.g. infrastructure or job training subsidies) and regulatory incentives (e.g. relaxation of environmental, social, or labour standards).

Questions

- *Does the government grant incentives to attract FDI in a non-discriminatory, open, transparent manner?*
- *Are the goals of the FDI incentive programme, as well as the criteria and procedures for obtaining them, publicly available?*
- *Have FDI incentives undergone a cost-benefits analysis and do they contain sunset clauses?*

FDI Incentives

Level 1	Level 2	Level 3	Level 4	Level 5
FDI incentives are applied in an ad hoc manner. The goals of the FDI incentives, as well as the criteria and procedures for obtaining them are not publicly disclosed. There are no sunset or grandfather clauses and no cost-benefit analysis has been undertaken.	FDI incentives are provided on a non-discriminatory basis. Criteria and procedures for obtaining incentives are not publicly available. FDI incentives have not undergone a cost-benefit analysis and do not contain sunset clauses.	Level 2 **plus** criteria and procedures for obtaining incentives are publicly available. FDI incentives have not undergone a cost-benefit analysis and do not contain sunset clauses.	Level 3 **plus** FDI incentives have undergone a cost-benefit analysis, but do not contain sunset clauses.	Level 4 **plus** incentives contain sunset clauses.

Analysis

Fiscal incentives are contained in Chapter 1 of Part 3 of the Investment Law and in Part 6 of its Executive Regulations. General exemptions on tax on revenues of commercial and industrial activities were granted to companies which have obtained necessary permits, met requirements of incorporation and completed the notification procedures through GAFI (Article 16 of the Investment Law and Article 19 of its Executive Regulations), as well as an exemption from tax on commercial or industrial activity revenues on profits resulting from companies' expansion (Article 38 of the Executive Regulation). Most of these tax exemptions were cancelled by the Law No. 91 of 2005 with a view to streamline and clarify the exemptions. However, existing tax incentives were grandfathered. Companies currently benefitting will continue to do so until the end of the period stipulated when they were established. The following tax exemptions remain:

- Five-year exemption from the stamp duty tax and notarisation fees on registration of deeds of association of companies and establishments, loan and mortgage contracts connected with their works as well as on registration contracts for lands necessary for the establishment of companies (article 20 of the Investment Law);

- Customs tax rate of 5% of the value on all machines, equipment, and instruments imported necessary for the establishment of the company (article 23 of the Investment Law);
- Automatic tax exemptions for companies operating in the fields defined in article 1 of the Regulation provided that they comply with their obligations of (article 27 of the Investment Law and article 33 of the Executive Regulation):
- Fulfilling the licences required (as provided in article 2 of the Executive Regulation);
- Registering in the Commercial Code (as provided in article 10 of the Executive Regulation);
- Publishing the deeds of association and article of associations (as provided in article 11 of the Executive Regulation);
- Being established in compliance with the rules applying for its establishment (as provided in article 14 of the Executive Regulation);
- Providing the Authority with an adequate statement regarding the activity, the head office, the capital appropriated for it and other data necessary for registering the activity into the Commercial Code; submitting a copy of the record; having independent accounts and a special financial statement (as provided in article 14 of the Executive Regulation);
- Provided fulfilment of the required conditions (as defined in article 37(3)), the tax exemptions granted by the Investment Law may apply on the expansion of companies (as provided in article 37 of the Executive Regulation);
- Exemption from tax on commercial or industrial activity revenues on profits resulting from companies' expansion (article 38 of the Executive Regulation).
- Other incentives take the form of the possibility to acquire under advantageous conditions state-owned land in accordance with Article 28 of the Investment Law and Part 7 of its Executive Regulations.

Specific tax incentives also apply in free zones and in investment zones, in accordance with Chapter 3 Part 3 of the Investment Law and Part 8 of its Executive Regulation. Typical incentives for firms in free zones include: tax breaks, exemption from customs duties on capital inputs, more relaxed labour laws, and subsidised energy, land, and water. Egypt is also encouraging the development of investment zones according to Article 46 *bis* of the Investment Law. These zones do not provide the typical tax and duty exemptions found in the free zones and special economic zones. They however provide for a bureaucracy-free environment with a one-stop shop affiliated with GAFI and support services to deal with licenses and incorporation. Investment zones may be established in all sectors: tourism, finance, agriculture, industry and services. However, companies surveyed with experience of these zones state that the simplified procedures are not effective enough in practice.

The special economic zones created in 2002 in the north-west of the Gulf of Suez offers a flat tax rate (income and corporation) of 10% on all activities.

The private sector representatives interviewed for this assessment agree that FDI incentives generally are provided on a non-discriminatory basis and that the criteria and procedures for obtaining incentives are publicly available as per the Investment Law. However, a common problem revealed by foreign and local investors is the inefficiency in tax administration and the complexity of tax regime enforcement. They also mention that there is a need for specific tax incentives, as well as better access to land for development. They highlight that the zones regime is very complicated and that guidelines and criteria to form companies in free zones should be clearer and more transparent.

The business community views coincide with the Doing Business 2013 ease of paying taxes indicator according to which Egypt's global ranking has deteriorated from the 139th in 2011 to the 145th position in 2013 among 185 countries.

By adhering to the OECD Declaration on International Investment and Multinational Enterprises in 2007, Egypt has declared it is ready and able to fulfil its commitments under the instrument on International Investment Incentives and Disincentives. This instrument encourages adhering countries to ensure that incentives as well as disincentives are as transparent as possible so that their scope and objective may be easily determined.

A useful exercise could be to assess the performance of companies benefiting from incentives offered in the free zones against the performance of enterprises operating outside the zones. For example, if the analysis showed that incentives help to increase productivity in free zones, a case could be made for changing the broader policy regime. By contrast, if despite incentives, firms operating outside the zones are shown to be more productive than firms inside them, then a case can be made for gradually eliminating the use of zones-specific incentives.

1.5. Land ownership, titling and cadastre

Investors need to be safe in the knowledge that their ownership of, or right to use, property is legally recognised and protected.[64] Secure, verifiable, and transferable rights including land registers and cadastral information relating to agricultural and other types of land and forms of property provide investors and entrepreneurs incentive to move into the formal economy. They also entitle the investor to share in any profits that may accrue from an investment and reduce the risk of fraud in transactions.

Questions

- *Are land ownership rights granted by national laws and do land registration institutions exist?*
- *Do foreign investors and their investments have the same rights as nationals to own and register land? If not, do the restrictions depend on the type of land (e.g. rural, residential property or industrial real estate) or its intended use?*
- *Are the administrative and compliance procedures for foreigners more burdensome or costly than for nationals?*

[64] OECD, PFI User's Toolkit, Investment Policy – section on Effective Ownership Registration.

Land Ownership

Level 1	Level 2	Level 3	Level 4	Level 5
Land ownership rights not clearly granted by national laws. Foreign investors do not have the right to own real estate.	Land ownership rights granted by national laws, however, limited property rights for foreign investors. Corporate access to real estate through term leasing contracts.	No restriction on foreign corporate ownership of industrial real estate, but restrictions on rural land and residential properties.	Level 3 **plus** restrictions on foreign ownership of rural land. Administrative procedures for acquisition of land by foreign owners are still more burdensome than procedures for national investors.	No restriction on foreign ownership and registration. Administrative procedures, including registration, for foreign owners are no less expeditious than procedures for national investors.

Analysis

Article 12 of the Investment Law entitles companies to own land and real estate required to practice their activities regardless of the nationality or residence of the shareholders, or the percentage of their shareholding. Such right applies to all companies, whether incorporated under the Companies Law or the Investment Law.

Article 28 of the Investment Law entitles the Prime Minister, based on the suggestion of the relevant minister, to allocate state-owned lands, free of charge, to companies operating in the fields covered by the Investment Law. Applications for land allotment shall be submitted to GAFI showing the required area, size and nature of proposed activity and money to be invested. GAFI then decides on the application within two weeks.[65]

However, access to land ownership is restricted in some cases. Lands located in areas designated by the Prime Minister's Decree No. 350 of 2007 are excluded from private property, mostly for reasons of strategic importance. These areas include the Sinai Peninsula, where only a usufruct right, or temporary use or session of real estate is allowed with a maximum period of 50 years (from 99 years previously). Real estate can be used by foreigners in Sinai, but only as concessions. Some specific exemptions apply for foreign ownership of land in the Sinai, border-land zones, and along the Red Sea coast. In these areas, foreigners may acquire land, but with prior approval (Law No. 94 of 2005) and a majority Egyptian partnership (51%) is required. Non-Arab foreigners may not permanently own land in Sinai.

Ownership of agricultural land is also limited for foreign investors. The Land and Real Estate Law No. 15 of 1963 prohibits foreign natural or legal persons from owning agricultural land (defined as traditional agricultural land in the Nile Valley, Delta and oases), except for desert reclamation projects.

In addition, archaeological areas and natural reserves are also excluded from foreign ownership under the terms of Prime Ministerial Decree No. 350 of 2007.

[65] Article 44 of the Executive Regulations of the Investment Law.

Egypt has progressively relaxed some of its restrictions on foreign ownership of land and property. Prime Ministerial Decree No. 548 of 2005 allowed ownership, but only for residential purposes, in a number of tourist and new urban areas.[66]

Under Article 5 of the Investment Law, and in accordance with the applicable laws and regulations, relevant authorities may dispose of state-owned lands for investors, through the competent office of GAFI.

Land titling and cadastre

This indicator is a corollary to land ownership. A land title contains legal information about a parcel of land, such as the name(s) of the registered owner(s), historical title details, and registration number. Having land titling legislation in place, combined with a system of documented information, provides investors with added security that land purchased is not subject to claims for restitution. A cadastre is a comprehensive register of a country's real estate. It commonly includes details of ownership, tenure, precise location, dimensions, and the value of individual parcels of land. A foreign investor will seek cadastre information prior to undertaking investment in a new jurisdiction.

Questions

- *Is titling legislation in place?*
- *Are there backlogs of pending court cases over property titles?*
- *Has titling been completed for urban and rural land?*
- *Have restitution processes been completed?*
- *Are nationalisation rights clearly defined including compensation at fair market value?*
- *Is there a land cadastre and register of liens?*
- *Has cadastre updating been completed?*
- *Is cadastre and lien information easily available at limited cost?*

[66] Prime Minister's Decree No. 548/2005 granted foreigners the same legal rights as Egyptian nationals with regard to ownership of residential units in the tourist areas of Sidi Abdel-Rahman, Hurghada, the Red Sea coast, including the beach resort of Hurghada, Ras Al-Hekma, and the Mediterranean coast in Matrouh Governorate.

Land Titling and Cadastre

Level 1	Level 2	Level 3	Level 4	Level 5
Titling legislation incomplete and inconsistent. Long backlog of court cases over property titles. Land cadastre and register of liens on movable goods not properly functioning.	Titling legislation in place. Titling under way, but not fully completed. Information about cadastres and registers of liens not easily accessible.	Titling of properties within urban areas largely completed. Property restitution process well under way. Cadastre updating largely completed. Register of liens in place.	Titling completed, including rural areas. Restitution process largely completed. Nationalisation rights clearly defined. Cadastre updating completed.	Titling legislation transparent. Nationalisation possible under strict conditions with fair compensation. Cadastre and lien information easily available at limited cost.

Analysis

According to World Bank Doing Business, Egypt's rank in property registration has slipped from 87 in 2009 to 95 in 2013. To register a property in Egypt, an investor now has to contend with 7 procedures that take 72 days at a cost of 0.7% of the value of the property. Although no discrimination appears between foreign and domestic investors, Egypt lags behind MENA and OECD averages with respect to the number of procedures required and the estimated number of days it takes to register a property.

This is notably due to overlaps of the old registration system –which is outdated, and of the new one – which is not complete and not uniformly implemented throughout the country. The old registration system that was divided between the Egyptian Survey Authority and the Ministry of Justice's Real Estate Publicity Department is paper-based and involves cumbersome registration procedures. Foreign investors have raised concerns that tourism-related projects have not been adequately categorised in the cadastre. The new system is not yet fully implemented it appears that so far, only properties in new towns, such as the new satellite cities around Cairo, are being added to the new electronic cadastre, as these are well-defined properties.

As a consequence, obtaining proof of ownership in the form of deeds is a lengthy and at times almost impossible task. Difficulty with land registration is emphasised as a major problem for investors owing to outdated registries, which in turn reduces the actual value of the land and prevents the use of land as collateral for access to finance.

Difficulties with public land allocation by the Industrial Development Authority have also been reported. Letters of allocations can be registered; however, this can only be done in very stable satellite cities like 6th of October, 10th of Ramadan and Borg El Arab and not in all new urban areas. Issues linked to land ownership and registration by foreign investors may cause an increasing number of disputes.

1.6. Intellectual property rights

As noted in the PFI *User's Toolkit*, intellectual property (IP) rights give businesses an incentive to invest in research and development, fostering the creation of innovative products and processes.[67] They also give their holders the confidence to share new technologies through joint ventures, licensing agreements, etc. In this way, successful innovations are in time diffused within and across economies, bringing higher productivity and growth. The main formal IP instruments are patents, trademarks, copyright, new varieties of plant, industrial designs and geographic indications.

Questions

- *Has the government implemented laws and regulations for the protection of intellectual property rights?*
- *What is covered by the IP law?*
- *What international agreements regarding IP does the government adhere (e.g. WIPO or WTO)?*
- *How does the government enforce its IP laws?*
- *Are there criminal procedures and penalties for cases of counterfeiting, piracy, patent infringement, etc.?*
- *Is there an IP office to register intellectual property?*
- *Do civil and other mechanisms exist to settle IP disputes?*
- *Are all cases of IP violation are reviewed and investigated by the authorities?*
- *Do officials responsible for enforcement and the judiciary receive specialised training to properly enforce IP laws?*
- *Does the government use information campaigns to raise awareness of penalties for IP infringement?*
- *If a judicial body issues an award on the basis of a violation of IP laws is it always enforced?*

[67] OECD, PFI User's Toolkit, Investment Policy – section on Intellectual Property Rights.

Intellectual Property Rights

Level 1	Level 2	Level 3	Level 4	Level 5
No legislation on intellectual property in place. Systematic violation of IP rights.	Legislation on intellectual property under preparation.	IP rights legislation approved and ratified for registering and protecting such IP as: patents; trademarks, industrial designs and geographical indications; copyright, new varieties of plants, and related rights. IP legislation is consistent with WIPO agreements and WTO TRIPs Agreement. Enforcement of IP laws and regulations is weak, as evidenced by a lack of criminal procedures and penalties for cases of counterfeiting, piracy, patent infringement. No IP office. Country appears on various watch lists and receives poor peer reviews.	Level 3 **plus** the government has made efforts to improve its record of enforcement. This includes IP infringement a criminal offence; creating a national IP office; and providing civil procedures and mechanisms for settling IP disputes. Awards are not consistently enforced. Country has been downgraded or removed from various IP watch lists and receives improved peer reviews.	Level 4 **plus** all cases of IP violation are reviewed and investigated. Awards are enforced. Officials responsible for enforcement and the judiciary receive specialised training to properly enforce IP laws. Government uses information campaigns to raise awareness of the penalties for IP infringement.

Analysis

The national IP rights legal framework

Egypt's central piece of IP legislation is Law No. 82 of 2002 and Executive Regulation No. 1366 of 2003. To clarify and improve its application, Egypt has subsequently adopted several decrees. Law No. 82 of 2002 seeks to bring Egypt into compliance with its obligations under international agreements. It covers patents, integrated circuit designs, undisclosed information, trademarks, geographical indications, trade statements, industrial designs, copyright and related rights, and protection of plant varieties.

Law No. 82 of 2002 allows IP rights holders whose rights have been infringed to file a complaint with the public authorities. If they find evidence of infringement, the case is transferred to the public prosecutor who presses charges. Unlike other legal systems, all incidents of IP infringement are deemed to be criminal offences that may be prosecuted following a complaint by the IP holder. If convicted, the accused may face:

- a monetary fine;
- imprisonment;
- confiscation of goods;
- closure of business for up to six months;
- publication of the decision in the press;
- increased fees and mandatory imprisonment sentences if a repeat offender.

The international IP rights legal framework

Most of the provisions of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement are incorporated in Law No. 82 of 2002.

Egypt is a party to several IP rights conventions.[68]

In September 2009, it ratified the protocol of the Madrid Agreement concerning the International Registration of Marks and has been in the final stage of acceding to the Convention for the Protection of New Varieties of Plants[69] (UPOV). However, according to the 2011 edition of the annual progress report on the implementation of the European Neighbourhood Policy, no progress has taken place in the ratification of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, and the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedures. The EU report also notes that Egypt still needs sound enforcement of intellectual property rights.

IP rights may also be protected by BITs concluded by Egypt. Usually, the investments covered under these agreements include copyrights, industrial property rights (for instance, patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), know-how, traditional knowledge and goodwill.

The institutional IP rights framework

Egypt has established several institutions to deal with IP rights protection within different ministries.

The Ministry of Trade and Industry hosts the Trademarks and Industrial Designs Office, as well as the Intellectual Property Rights Group, which has the following responsibilities:

- Co-ordinating policy positions for Egypt's WTO negotiators, following up and participating in negotiations held under the auspices of the WTO TRIPS Council, as well as co-ordinating policy positions for Egypt's WTO negotiators;
- Presenting developments in negotiations to the Subsidiary Committee of IP rights. The IP Rights Group acts as the technical body of the committee, reporting its recommendations to the Minister of Industry and Foreign Trade for approval;
- Carrying out public awareness campaigns directed at relevant stakeholders from governmental authorities, the business community, and NGOs.

The Ministry of Communication and Information Technology (MCIT) supports the development of the software industry, while increasing social awareness of intellectual property issues. Within this Ministry, the Intellectual Property Rights Office was established in 2002 to administer a national copyright system. Since the inception of the IP Rights Office, there has been an increase in the number of seminars, workshops, and training sessions carried out to stress the importance of enforcing IP laws. Most trainings has been conducted by the Information Technology Industry Development Agency (ITIDA), founded in 2004 as an executive IT arm of the MCIT to spearhead the process of developing the Egyptian IT industry. Almost 2000 judges from various courts around the country as well as over

[68] For the list of treaties ratified by Egypt, see the World Intellectual Property Organization (WIPO) web site: www.wipo.int/portal/en/index.html.

[69] www.upov.int/upovlex/fr/conventions/1991/act1991.html (accessed 19 March 2014).

1000 general prosecutors have been trained as of 2010.[70] The training is designed to familiarise judges and prosecutors with sound procedures that support full enforcement of IP laws. ITIDA offered additional courses to over 250 law enforcement officers to give them fuller understanding of the technical aspects of enforcing the law. ITIDA also carried out campaigns to raise awareness of IP rights and its role in sustaining economic growth and attracting foreign direct investment. The campaigns were designed and conducted in co-operation with various government entities, NGOs such as the Egyptian Centre of Information Technology and Intellectual Property Rights (ECIPT), and multinational corporations working in related fields (*e.g.* Microsoft and Auto Desk).

The Permanent Office for the Protection of Copyright is established within the Ministry of Culture and the Egyptian Patent Office is under the responsibility of the Academy of Scientific Research and Technology (ASRT) in the Ministry of Scientific Research.

WIPO is providing support to Egypt in building its institutional capacities and enhancing its training ability in IP rights protection.

In September 2011 a Memorandum of Understanding (MoU) was signed under which WIPO will assist Egypt's Trademark and Industrial Designs Office to create an online platform for the electronic administration of trademark and design documents. This is in addition to a MoU signed in early 2011 to modernise Egypt's Patent Office and improve the quality of the examination and processing of patent applications and to enhance the IT platform and systems to support the Patent Office's role as an international search authority.

In October 2011, another MoU was signed with WIPO under which the Organisation engages to assist the Academy of Scientific and Technologic Research (ASRT) of Egypt in establishing a training institute dedicated to intellectual property rights' teaching. Co-operation will include advice on the development of curricula and tailor-made programmes, in accordance with the development goals of ASRT. The target audience are SMEs, professional associations, science and technology policymakers, law enforcement agencies, journalists and media practitioners, universities, research and development institutions, technical colleges, innovators, inventors and the general ICT industry.

Protection against infringements: implementation and enforcement

While there is an institutional and legislative framework for the protection of IP rights, enforcement shows weaknesses and represents a hurdle for investors. Parties seeking civil damages arising from IP infringement are facing several problems. For example, Egyptian courts often refer IP matters to government experts, who then write their own analysis and make the appropriate recommendations to the court. This procedure delays the judicial process and is highly prone to influence. In addition, courts simply affirm recommendations in many cases. Courts also have a record of awarding damages that are very low compared to the sums claimed. Furthermore, it may take up to four years for a decision to be rendered. Executing civil judgments relating to the confiscation or destruction of infringing goods is also problematic, as court bailiffs are often unable to implement such decisions due to a lack of resources.

Egypt remains in the USTR watch list given the lack of IP protection and enforcement. In the 2013 USTR Special 301 Report Egypt is encouraged to finalise long-awaited regulations to clarify border procedures for the destruction of counterfeit products and to provide customs officials with the authority to take ex officio action. The report also points out that despite Egypt's efforts to upgrade its trademark registration system, rights holders raised concerns about the improper issuance of certain

[70] Evaluation by the Egyptian Centre for Economic Studies (ECES).

registrations. Rights holders continue to express significant concern that businesses offering pirated television content are impairing the ability of legitimate distribution outlets to operate in the market, and that print piracy continues to harm domestic and foreign publishers. The report urges Egypt to amend its copyright law to clarify translation requirements for copyright protection, appropriate presumption of ownership in copyright works, and other concerns.[71]

In the ICT Policy Review of Egypt, UNCTAD analysed the main achievements and the remaining challenges in the areas of ICT infrastructure, skills developments for the ICT sector, ICT use in the educational system, e-content development in Arabic and the promotion of an export-oriented ICT sector. Main recommendations are:

- Building a more inclusive information economy, seizing the full economic potential of new ICTs and making the new national ICT strategy more demand-driven by assessing priority needs of Egyptian consumers and businesses;
- In order to extend the reach and benefits of ICTs: enhancing infrastructure coverage in underserved areas, promote greater use of ICTs among enterprises that are located outside of technology parks and find ways to reach Arabic-speaking users while paying attention to the provision of services and content development using mobile platforms, as mobile phones are the most widespread ICT tool;
- Regarding medium-sized enterprises (SMEs) which represent an untapped potential for the ICT sector, produce local content and boost export revenues: better harnessing SMEs in the next strategy and allow them to play greater role as producers as well as users of ICT goods and services.

The report also emphasises the success of Egypt in establishing itself as a recognised location for outsourcing business processes and services, given that exports of ICT enabled services to expand greatly. It emphasised the need to move towards exports of higher value-added services, such as knowledge process outsourcing, information technology outsourcing, business application development, remote infrastructure management and the "Arabisation" of software.[72]

1.7. Restrictions to national treatment

In the Policy Framework for Investment (PFI) "national treatment" is defined as the commitment of a government to treat investments controlled by nationals or residents of another country no less favourably than domestic investments in like circumstances. Foreign investors look for jurisdictions offering national treatment as it demonstrates a commitment to non-discrimination and signals a degree of predictability. As noted in the PFI User's Toolkit for Investment Policy, no country unequivocally applies national treatment.[73] However, where exceptions exist and, therefore, circumscribe the scope of national treatment, these exceptions should be transparent and defined in law. The PFI User's Toolkit identifies three types of exceptions or restrictions to national treatment: general exceptions (e.g. protection of national security);[74] subject-specific exceptions (e.g. intellectual

[71] United States Trade Representative, 2013 Watch List Report.

[72] UNCTAD (2011), ICT Policy Review of Egypt, Geneva.

[73] OECD PFI: User's Toolkit on Investment Policy: www.oecd.org/investment/toolkit/policyareas/investmentpolicy.htm (accessed 19 March 2014)

[74] The OECD Investment Committee's project on "Freedom of Investment, National Security and Strategic Industries" has, since early 2006, provided a forum for intergovernmental dialogue on how

property, taxation provisions in bilateral tax treaties); and country-specific exceptions (e.g. specific industries, such as financial services and transportation).

Questions

- *Has the government incorporated the principle of national treatment into the main investment laws and into primary and secondary legislation?*
- *Does the government maintain restrictions in its laws, regulations, and administrative procedures to national treatment at the pre and post-establishment stages?*
- *Can a foreign investor obtain from the government clearly defined restrictions to national treatment in the form of general exceptions (e.g. national security), subject specific exceptions (e.g. intellectual property, taxation), and country-specific exceptions (e.g. specific industries such as financial services and transportation)?*
- *Does the government refrain from introducing new restrictions?*
- *Has the government reduced the number of exceptions to national treatment? If so, is this commitment incorporated into bilateral or multilateral investment agreements or is it done on the basis of unilateral reviews of investment policies?*

Restrictions to National Treatment

Level 1	Level 2	Level 3	Level 4	Level 5
Primary and secondary private FDI legislation does not incorporate national treatment. Discriminatory treatment of foreign investors compared to national investors in like circumstances is exercised on the basis of discretionary power.	The government is in the process of incorporating "national treatment" into primary and secondary legislation on private FDI flows and is clearly identifying restrictions to national treatment in the form of exceptions.	Primary and secondary legislation incorporate national treatment. The discrimination that does occurs is on the basis of: clearly defined general exceptions to national treatment; subject-specific exceptions; and country-specific exceptions. While exceptions are clearly defined, the government does not refrain from introducing new ones.	Level 3 **plus** the government refrains from introducing new exceptions. The lifting of restrictions to national treatment is motivated by reciprocal commitments made through bilateral, regional, or multilateral agreements.	Level 4 **plus** the government undertakes unilateral efforts to reduce restrictions to national treatment on the basis of periodic reviews of overall foreign investment policy.

governments can reconcile the need to preserve and expand an open international investment environment with their duty to safeguard essential national security interests. Discussions so far have revealed strong support for three principles for investment policy measures addressing essential security interests: transparency (i.e., regulatory objectives and practices should be as transparent as possible to increase predictability of outcomes); proportionality (i.e., restrictions on investment should not be greater than needed to protect national security); and, accountability (i.e., procedures for parliamentary oversight, judicial review, periodic impact assessments, and requirements that decisions to block investment should be taken at high government levels should be considered to ensure accountability of the implementing authorities).

It has to be noted that restrictions maintained by most countries usually aim at protecting national security and strategic sectors. They may apply across all economic sectors or to specific sectors only, such as financial services, telecommunications or transport. They are called *de jure* restrictions when they are found in laws or regulations and *de facto* restrictions when they stem from practical application.

Restrictions should be transparent, clearly codified and defined in laws and regulations related to private direct investment.[75] They should also be subject to accountability and proportional to the objective pursued.[76]

Analysis

The Investment Law No. 8 of 1997 takes a so-called "positive list" approach in so far as it applies only to those sectors specifically provided for and falling within its scope. Sectors and activities which are subject to the provisions of the Investment Law are the following:[77]

- Reclamation and cultivation of fallow and desert lands;
- Animal and fish production;
- Industry and mining;
- Hotel, motels, apart hotels, touristic compounds and touristic transportation;
- Refrigerated transport of goods, cold stores for preservation of agricultural and food products, containers terminals and grain silos;
- Air transportation and its related services;
- Overseas maritime transportation;
- Services supporting drilling, exploration, transportation and delivery of gas;
- Housing activities (the units of which are leased wholly empty for housing non-administrative purposes);
- Infrastructure activities comprising drinking and waste water, electricity, roads and communications;
- Hospitals and medical treatment centres offering 10% of their capacity free of charge;
- Financial leasing;
- Underwriting securities;
- Risk capital;

[75] PFI User's Toolkit.

[76] The OECD's Freedom of Investment project provides a forum for intergovernmental dialogue on how governments can reconcile the need to preserve and expand an open international investment environment with their duty to safeguard the essential security interests of their people. A key finding of these discussions is that any restrictions designed to protect national security should be transparent, subject to accountability and proportional to the objective pursued. To the extent possible, other policy remedies to the problem should be used before considering new restrictions, www.oecd.org/daf/inv/investment-policy/foi.htm (accessed 19 March 2014).

[77] Investment Law, Article 1.

- Production of computers software and systems;
- Projects funded by the Social Development Fund.

The Executive Regulations of the Investment Law provide in detail the conditions and limits required in order to be covered by the provisions of the Investment Law.[78] It should be noted that the cabinet is authorised to include any additional fields it deems necessary.

The combined analysis of the Egyptian legislation and of the 2007 list of restrictions that has been provided shows that:

i) Restrictions to national treatment applying to foreign investors are found in the following sectors:

- *Maritime transportation:* Foreign investment is only allowed in the form of joint-venture companies in which foreign equity shall not exceed 49% in maritime transport. For supporting services, foreign equity shall not exceed 75%.[79] Moreover, some restrictions apply to foreign investors for a limited series of activities with regards to the scope and licensing requirements to carry out maritime transportation.[80] Further, a prerequisite for a ship to fly the Egyptian flag is ownership by an Egyptian company and registry with the Egyptian ship register.
- *Commercial agents:* Foreigners desiring to carry out commercial agents activities are not allowed to register in the Register of Commercial Agents and Intermediaries, which is a prerequisite to engaging in the activities.[81]
- *Air transportation:* Foreigners are allowed to invest up to 40% in companies' capital involved in regular international and domestic flights (for both passenger and cargo services) while foreign investment up to 100% is permitted in ancillary services including maintenance and repair of aircraft, selling and marketing of air services and computer reservation systems.[82]
- *Public tenders:* Foreign companies (i.e. having no legal presence in Egypt) willing to participate in public tenders (except sales to the Ministry of Defence) are required to have a registered local agent.[83] This restriction is related to the liability of contractors and the necessity of having representation in Egypt for the purpose of the proper implementation of public contracts. In addition, for certain types of contracts (i.e. supply of machinery) contractors might be obliged to do regular maintenances and – hence – have an agent to carry out the maintenance work on behalf of the contractor.

Restrictions applying to foreigners have also been identified with regard to professional services activities (i.e. engineering[84], legal services,[85] auditing and accounting services[86]).

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[78] Executive Regulations of the Investment Law, Article 1.

[79] Ministry of Transportation Decree No. 451 of 2009.

[80] E.g. Decree No. 18 of 1978, Decree 116 of 1976, Decree No. 3 of 1993, Decree No. 21 of 1996, Decree No. 680 of 2001 and Decree No. 520 of 2003.

[81] Law No. 120 of 1982 (article 3) and Law No. 121 of 1982.

[82] Law No 28 of 1981 (article 75) and its Executive Regulation (article 122 and 126), Presidential Decree 56 of 2002, and Ministerial Decree No 451 of 2007.

[83] Article 61 of the Executive Regulations of the Tender and Auction Law No. 89 of 1998.

[84] Law No. 66 of 1974 on the Establishment of the Egyptian Engineers Syndicate.

ii) Restrictions exist in other sectors but do not *de facto* prevent foreign investment.

These restrictions often provide for specific national capital ownership requirements, but do not forbid foreign indirect ownership. As a result, the activities restricted may be carried out by the foreign investor through a subsidiary held by a "holding company" considered as a national stakeholder.[87] This recourse to an Egyptian holding company has been identified as common in the construction sector and with regard to the importation of goods for trading purposes.

If the practice of allowing holding companies to be formed in order to meet nationality requirements is maintained, it is suggested that clear rules and procedures be articulated in order to provide a level-playing-field.

iii) Specific restrictions apply in the Sinai Peninsula.

The area of the Sinai Peninsula remains subject to a special law amended by the Supreme Council of the Armed Forces (SCAF) Decree No. 14 of 2012 issued in January 2012. As per the amended law, the ownership of lands and buildings in the defined development areas[88] is limited to Egyptian citizens and companies with fully Egyptian owned capital. The use of lands and buildings by natural or legal persons whether Egyptians or foreigners is allowed, but only under usufruct right for a maximum of 50 years. For the purpose of residence, non-Egyptians can have usufruct for a maximum of 50 years (previously 99 years). Moreover, a foreign investor willing to engage in an investment or a development project in Sinai has to form of a joint-stock company with no more than 45% of foreign ownership.

The OECD FDI Regulatory Restrictiveness Index, which seeks to gauge the restrictiveness of a country's FDI rules (Box 2.1), shows Egypt's ranking based on its 2007 list of restrictions to national treatment as well as on WTO sources (Figure 2.1). By way of comparison, Jordan and Tunisia show a much higher degree of restrictiveness while Morocco has a similar score to Egypt.

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[85] Law on Legal Practice No. 17 of 1983.

[86] Syndicate of Commercial Professions Law No. 40 of 1972.

[87] The Egyptian law recognises companies established and registered under Egyptian law as legal persons holding Egyptian nationality.

[88] The Decree Law defined three types of development areas: i) limited development areas for small and medium projects for community services; ii) investment areas for different investment projects (tourism, real estate, agriculture, manufacturing, mining, commercial, etc.); and iii) comprehensive and inclusive development area for large national projects like Shark El Tefraiah, El Salam Canal, Industrial area in East of Port Said and others.

Box 2.1 The OECD FDI Regulatory Restrictiveness Index

The FDI Restrictiveness Index is currently available for 34 OECD countries, 12 non-OECD countries adhering to the OECD Declaration on International Investment and Multinational Enterprises and 12 other countries, including China, India, Indonesia and Russia. It is used on a stand-alone basis to assess the restrictiveness of FDI policies in reviews of candidates for OECD accession and in OECD Investment Policy Reviews, including reviews of new adherent countries to the OECD Declaration. The FDI Index does not provide a full measure of a country's investment climate as it does not score the actual implementation of formal restrictions and does not take into account other aspects of the investment regulatory framework, such as the extent of state ownership, and other institutional and informal restrictions which may also impinge on the FDI climate. Nonetheless, FDI rules are a critical determinant of a country's attractiveness to foreign investors and the FDI Index, used in combination with other indicators measuring various aspects of the FDI climate, contributes to assessing countries' international investment policies and to explaining variations among countries in attracting FDI.

The OECD FDI Regulatory Restrictiveness Index covers 22 sectors, including agriculture, mining, electricity, manufacturing and main services (transports, construction, distribution, communications, real estate, financial and professional services).

For each sector, the scoring is based on the following elements:

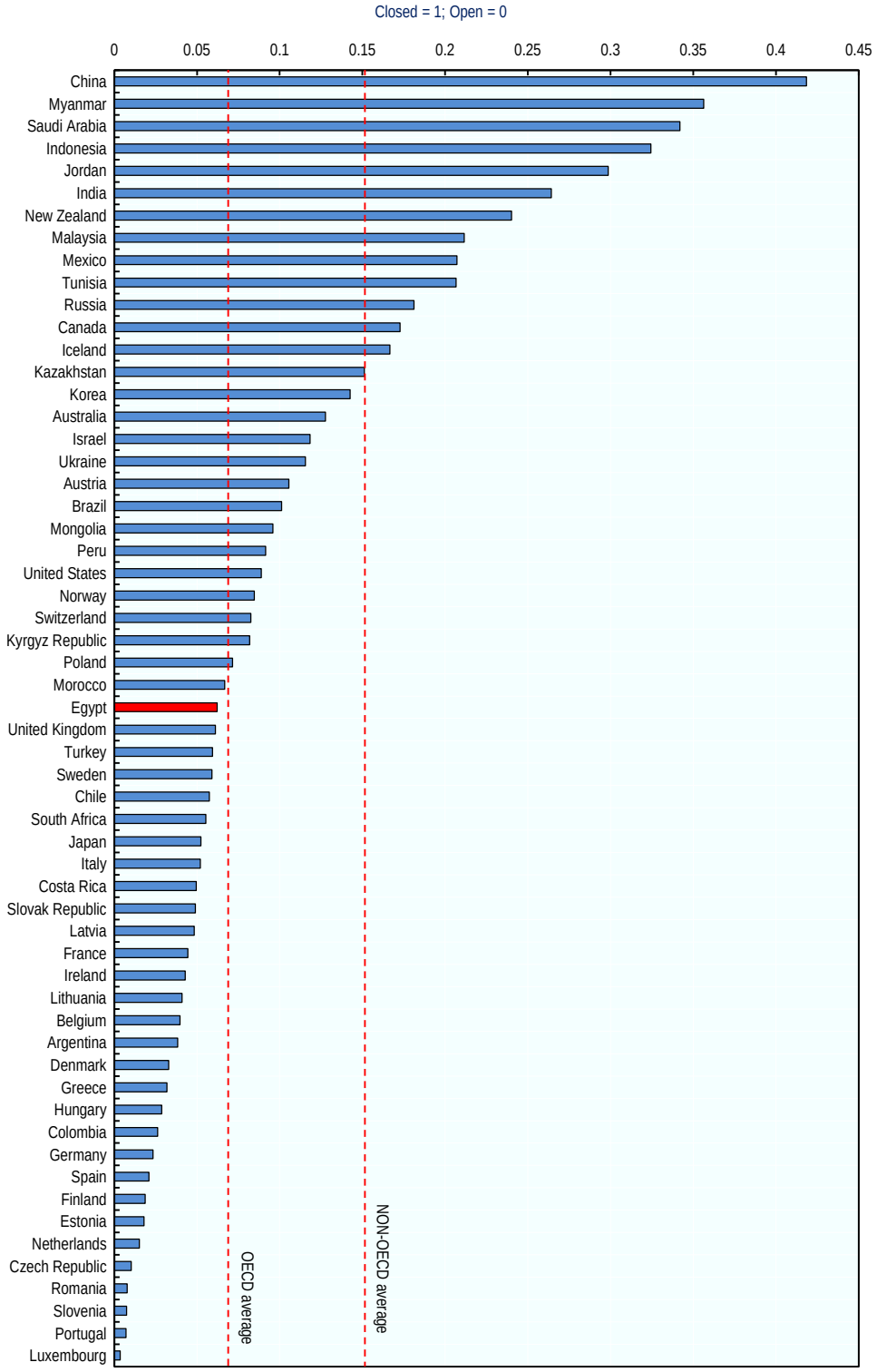
- the level of foreign equity ownership permitted,
- the screening and approval procedures applied to inward foreign direct investment;
- restrictions on key foreign personnel; and
- other restrictions such as on land ownership, corporate organisation (e.g. branching).

Restrictions are evaluated on a 0 (open) to 1 (closed) scale. The overall restrictiveness index is a weighted average of individual sectoral scores.

The measures taken into account by the index are limited to statutory regulatory restrictions on FDI as reflected in the countries' lists of exceptions to the National Treatment instrument and measures notified for transparency without assessing their actual enforcement. The discriminatory nature of measures, i.e. when they apply to foreign investors only, is the central criterion for scoring a measure. State ownership and state monopolies, to the extent they are not discriminatory towards foreigners, are not scored.

For the latest scores, see: www.oecd.org/investment/index and for explanation of the methodology: OECD Working Paper on International Investment No. 2010/3.

Figure 2.1 OECD FDI Regulatory Restrictiveness Index, 2013



Source: OECD

1.8. Guarantees against expropriation

In certain circumstances, governments may legitimately need to take private property for public purposes.[89] In environmental emergencies, they may need to resettle people whose property is located in irreparably contaminated areas. To develop and locate infrastructure, such as roads and power stations, governments may need to acquire land. However, when a government expropriates property, the natural corollary to the protection of property rights is timely, adequate, and effective compensation. The right to fair compensation and due process is incontestable. It is also reflected in international customary law and international investment agreements. Foreign investors actively seek those jurisdictions that offer prompt, adequate, and effective compensation.

Questions

- *Does the government maintain a policy of timely, adequate, and effective compensation for expropriation?*
- *Is the compensation based on a fair market assessment of the expropriated investment?*
- *What explicit and clearly defined limits has the government placed on its power to expropriate?*
- *What independent channels exist for reviewing the exercise of this power or for contesting it?*

Guarantees against Expropriation

Level 1	Level 2	Level 3	Level 4	Level 5
No national law or constitutional provision for guarantees against expropriation. No recourse for foreign investors.	Preparation of draft law or constitutional amendment to regulate expropriation and provide for prompt, adequate and effective compensation.	Law or constitutional amendment providing guarantees against expropriation approved. Expropriation and regulatory expropriation are possible only in strictly defined circumstances and followed by prompt, adequate, and effective compensation.	Any expropriation order is reviewed by an independent body to ensure the public interest, due process and fair compensation. If international arbitration is available, expropriation rulings and arbitral awards are regularly enforced.	Clear legal and administrative guarantees against expropriation. Due process, public interest motivation and fair market compensation have always been adhered to during expropriations. International awards have been enforced.

Analysis

The Investment Law provides for protection against nationalisation and/or expropriation of investment projects. Article 8 provides that: "The companies and establishments shall not be

[89] OECD, PFI User's Toolkit, Investment Policy – section on Expropriation Laws and Review Process.

nationalised or confiscated" while Article 9 states that: "Sequestration shall not be imposed administratively on the companies and establishments nor shall their property and funds be distained, seized, retained in protective custody, frozen, or confiscated".

Expropriation provisions can also be found in the Law of Economic Zones of a Special Nature No. 83 of 2002. Under this text, companies working in such zones "shall not be nationalised" (Article 43), nor shall their funds be seized "without a court ruling" (Article 44).

Moreover, most BITs to which Egypt is party contain provisions on protection in case of expropriation, but scope and wording differ among treaties. The Egyptian BIT model guarantees investments against nationalisation or expropriation or being subject to any measure having an effect equivalent to these measures (indirect expropriation), unless they are taken on a non-discriminatory basis, for public interest, in accordance with due process of law and against payment of compensation that is settled in a freely convertible currency and paid without delay and be freely transferable. The model also grants the affected investor the right to access, under the law of the contracting state making the expropriation, to the judicial or other competent authority of that state, in order to review the legality of nationalisation, expropriation or equivalent measure and the amount of compensation. The model BIT thus follows best practices.

Given the provisions of the laws and the BITs, foreign investors' claims for illegal expropriations could be brought before Egyptian tribunals on the basis of national legislation, and/or before and international arbitral tribunal, as provided by a BIT, when applicable. The domestic and international investment framework of Egypt is consequently in line with the general requirements of this indicator. However, the judicial system is very slow and it can take several years to resolve a case. Slow procedures or difficulties to enforce an arbitration award or damages have given raise to international arbitration under investment treaties. Changes in legislations and legal practices have also raised concerns recently.

1.9. International investment agreements

International investment agreements promote cross-border investment by reducing restrictions on sectors closed to FDI, offering foreign investors minimum levels of protection based on international legal standards (e.g. against expropriation), and by making the rights and obligations of the parties more stable and predictable. Although the government loses some policy flexibility, risks and uncertainties faced by investors are reduced, helping to mobilise additional investment. Wider country coverage of international investment agreements is thus one of the elements underpinning an attractive investment environment.[90]

Questions

- *Does the government pursue international investment agreements as part of a targeted strategy to attract FDI?*
- *Has the government signed and ratified investment agreements?*
- *Is there a model bilateral investment treaty (BIT) that the government uses to negotiate and is it publicly available?*

[90] OECD, PFI User's Toolkit, Investment Policy.

- *Can the government describe the key provisions of its BITs (e.g. broad "asset-based" definition of investment[91], MFN and national treatment in the pre- and post-establishment phases with limited exceptions, treatment provisions, and investor-state dispute settlement procedures)?*
- *Does the government meet periodically with its treaty partners to review the operation and implementation of its international investment agreements?*

International Investment Agreements

Level 1	Level 2	Level 3	Level 4	Level 5
Has not signed and does not pursue investment treaties with major trading partners as part of a targeted strategy to attract FDI.	Investment treaties have been negotiated and signed with trading partners as part of a targeted strategy to attract FDI. However, investment treaties have not been ratified.	Level 2 **plus** majority of signed treaties have been ratified. Investment agreements contain *inter alia* narrow definition of investment; provide MFN and national treatment at the post-establishment phase with minimal exceptions; provisions on protection of property; and investor-state dispute settlement provisions.	Level 3 **plus** all signed treaties have been ratified by the government and are in force. Treaties contain *inter alia* broad "asset-based" definition of investment; provide MFN and national treatment at the pre and post-establishment phases with minimal exceptions; provisions on protection of property, and investor-state dispute settlement.	Level 4 **plus** the government meets periodically with its treaty partners to review the operation and implementation of its international investment agreements. The model bilateral investment treaty the government uses as a basis for negotiation is publicly available.

Analysis

BITs concluded by Egypt

Egypt has wide coverage for investment protection. With its large network of 111 bilateral investment treaties (BITs),[92] Egypt ranks sixth among countries with the highest number of BITs. Egypt's BITs show good regional coverage: about 20% of its BITs were signed with other MENA countries. More than 23% have been signed with OECD countries. Up to this date, almost 70% of its BITs have been ratified, while almost all of its BITs signed with other MENA countries (except one with Djibouti) have been ratified (see Annex F).

Inter-regional trade and/or investment-related agreements

Egypt has signed several inter-regional trade and/or investment-related agreements. Egypt signed an Association Agreement with the European Union (EU) (effective 2004) and a FTA with the European Free Trade Association (EFTA) (effective 2007). Egypt has also signed a FTA with Turkey, (effective 2007) and a FTA with the four Mercosur countries (i.e. Argentina, Brazil, Paraguay and Uruguay) (effective 2010). Though these FTAs include investment promotion provisions, they do not

[91] Inclusion of portfolio investments.

[92] MENA-OECD Investment Programme/UNCTAD/Kluwer Arbitration database

contain protection provisions such as investor-State arbitration. In addition, Egypt joined the Common Market for Eastern and Southern Africa (COMESA) in June 1998 and has negotiated and signed its Common Investment Area in 2007 – though this agreement has not yet entered into force.

More recently, in December 2011, the European Commission received a mandate allowing negotiations of a Deep and Comprehensive Free-Trade Agreement (DCFTA) with investment protection provisions, with a view to improve market access opportunities and the overall investment climate in Egypt.[93] The first exploratory discussions took place on 12-13 November 2012 but Egypt has not yet expressed interest in launching these negotiations.

Intra-regional trade and/or investment-related agreements

Egypt is party to the Greater Arab Free Trade Area (GAFTA), also known as the Pan-Arab Free Trade Area (PAFTA), which was created by the Economic and Social Council of the League of Arab States (LAS) in February 1997, with the aim of fostering regional integration among Arab nations. However, GAFTA does not contain investment provisions *per se*, though it aims to include trade in services provisions (on-going negotiations).

Along with Jordan, Morocco, and Tunisia, Egypt signed the Agadir Agreement in February 2004 which entered into force in 2006. The agreement aims at establishing a free trade area between the participating countries as part of the Euro-Mediterranean free trade area envisaged in the Barcelona Process. Since the agreement entered into force, trade in industrial and agriculture products between the four signatory countries has been fully liberalised. Like GAFTA, the Agadir Agreement does contain investment provisions.

Egypt is also a State party to the 1980 Arab League Agreement on the Investment of Arab Capital in the Arab States, which represents, to date, the most comprehensive effort put forth by Arab economies to establish a regional and enforceable investment regime. The Agreement has been ratified by all member States of the Arab League (with the exception of Algeria and the Comoros Islands). An amendment to the Agreement was adopted during the Economic Summit held in Riyadh on 22 January 2013. The Arab League Member States are expected to ratify it by 2014.

Egypt also signed other investment-related agreements, such as the 1986 Agreement on the promotion, protection and guarantee of investments between the member States of the Organization of Islamic Conference.

1.10 International arbitration and amicable dispute settlement mechanisms

The legal framework for international arbitration (commercial and investment) has its roots in international conventions and in national legislations. To assure and promote the legal binding force of international arbitration, there are a number of international conventions that govern arbitration-related matters. One of the most important of these instruments is the 1958 New York Convention on the Recognition and enforcement of arbitral awards[94] (the New York Convention), widely ratified by 149[95] States and applicable to the recognition and enforcement of arbitral awards rendered in

[93] europa.eu/rapid/press-release_IP-11-1545_en.htm.

[94] See the text of the New York Convention at: www.uncitral.org/pdf/french/texts/arbitration/NY-conv/XXII_1_f.pdf.

[95] www.uncitral.org/uncitral/fr/uncitral_texts/arbitration/NYConvention_status.html.

commercial or investment disputes.[96] With regard to investment arbitration, the 1965 Washington Convention on the settlement of investment disputes between states and nationals of other states[97] (the ICSID Convention) has been ratified by 148 States. At the regional level, including the Arab region, there are also a number of multiparty conventions governing international arbitration.[98] At the national level, many states have specific arbitration laws and some countries have investment laws providing for arbitration as the mechanism for settlement of disputes with investors.

States tend to agree to arbitrate their disputes with investors to give assurance that impartial, independent and experienced arbitrators will examine and render their award.

Questions

- *Has the state signed and ratified the New York and ICSID conventions?*
- *Does the state allow foreign investors a wide range of choice in international investor-state arbitration?*
- *Does the state provide for alternative dispute resolution means and other institutional mechanisms to settle disputes?*
- *How many investor-State dispute settlement cases have been brought against Egypt?*

International Arbitration

Level 1	Level 2	Level 3	Level 4	Level 5
Not party to New York Convention on Recognition and Enforcement of Arbitral Awards (1958) or to the 1965 Washington Convention on the Settlement of Investment Disputes between States and National of Other States (ICSID).	New York and ICSID conventions signed, but not ratified.	New York and ICSID Convention ratified. Implementing legislation and regulations on the enforcement of arbitral awards approved.	Foreign arbitral awards are generally recognised and enforced by local courts, although in a limited number of cases some problems have arisen.	Arbitral awards are regularly and systematically enforced by the courts.

[96] With the exception of awards made under the ICSID Rules, which are governed by the ICSID Convention.

[97] www.icsid.worldbank.org.

[98] For example, member States of the Arab League signed agreements providing for and governing international arbitration (i.e. the 1974 Convention on the settlement of investment disputes and the 1980 Unified investment Agreement amended in 2013 and establishing the Arab Investment Court).

Analysis

International arbitration

At the international level, Egypt was one of the first States to ratify the 1958 New York Convention.[99] Also, Egypt accessed to the ICSID Convention in 1972 and ratified the Convention on the Settlement of Investment Disputes between the Arab States in 1973.

At the regional level, Egypt is party to the Unified Agreement for the Investment of Arab Capital in the Arab States of 1980, which established the Arab Investment Court. The Investment Agreement and the status of the Arab Investment Court have been revised in 2013. However, the Court did not start to function until 2000 and has declared its competency to rule over only one of the seven cases brought before it. Egypt is also party to the 1974 Agreement on the settlement of investment disputes between Arab investment host countries and nationals of other Arab countries as well to the 2000 Agreement on the settlement of investment disputes within the Council of Arab Economic Unity.

At the national level, article 7 of the Investment Law provides for arbitration as a mechanism to settle disputes with investors.[100] Though this provision recognises and encourages the State and the investor to agree on the mechanism to be used to settle their potential disputes, it is unclear whether it constitutes an explicit legal offer of arbitration. However, it has to be noted that most bilateral investment treaties (BITs) signed by Egypt contain investor-State dispute settlement provisions. In particular, the Egyptian BIT model provides for amicable settlement of disputes – including consultation, negotiation and mediation – that must be exhausted through a cooling-off period of six months, beside the domestic administrative review of the dispute in the hosting country, before resorting to traditional litigation or international arbitration. This phase could include submitting the dispute to the ministerial committee for settlement of investment disputes and other suitable mechanisms. Where the dispute cannot be settled by amicable means, the model provides for the settlement of investment disputes before national courts or international arbitration which include the following: (i) an arbitral tribunal established under the ICSID Convention, or under the ICSID Additional Facility Rules; (ii) ad-hoc tribunals established under the UNCITRAL Rules; (iii) regional centres for international arbitration (e.g. the Cairo Regional Centre for International Commercial Arbitration (CRCICA)); (iv) any other national or international arbitration institution or under any other arbitration rules.

The provisions of Law No. 27 of 1994 concerning arbitration in civil and commercial matters (the Arbitration Law) recognise the validity of arbitration agreements contracted by States and public entities. Commercial and investment arbitration cases might be ad hoc or administered by international institutions such as the International Court of Arbitration affiliated with the International Chamber of

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[99] Egypt ratified the Convention in 1959.

[100] Article 7: "Settlement of investment disputes in relation with enforcement of the provisions of the present law may be carried out in the manner to be agreed upon with the investor; parties may also agree to settle these disputes within the frame of a Treaty signed between the Arab Republic of Egypt and the State of the investor or within the frame of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States that Arab Republic of Egypt has joined by Law No. 90 of the year 1971; and this in accordance with the conditions and terms and in the events when these Conventions are applicable; or in accordance with provisions of the Arbitration Law in Civil and Commercial matters No. 27 of the year 1994. Parties may also agree to settle the above-mentioned disputes through arbitration before the Cairo Regional Center for International Commercial Arbitration."

Commerce (ICC) under the ICC arbitration rules, or by the CRCICA under the CRCICA Rules.[101] Hence, the Arbitration Law provides for the arbitration of trade-related domestic and international investment disputes.[102]

Enforcement of arbitral awards in Egypt is subject to Articles 56 to 58 of the Arbitration Law, Articles 296 to 301 of the Code of Civil and Commercial Procedure (The Code of procedure) and to provisions of the New York Convention for the recognition and the enforcement of awards. Hence, the rules of the New York Convention will apply to foreign arbitral awards (i.e. rendered outside Egypt) as well as to awards rendered in Egypt related to international arbitration cases.[103]

Other alternative dispute resolution mechanisms:

Given the significant increase of the caseload related to investor-State disputes since 2011, Egypt introduced the following two mechanisms in 2012:

(i) Amicable dispute settlement mechanism

Egypt introduced by Decree-Law No. 4 of 2012[104] a mechanism to amicably settle cases related to investor-State disputes arising out of contracts signed prior 2011 and related to crimes of embezzlement, profiteering and squandering of public funds (see Annex H).[105] This mechanism is conditioned to investor's return of all funds, moveable property, lands or property subject to the criminal offense. It is implemented by a committee established by the implementation Decree No.

[101] The CRCICA Rules follow to a great extent the UNCITRAL Rules. The CRCICA adopted new arbitration rules which entered into force on 1st March 2011 and are applicable to proceedings commenced after this date. The CRCICA also adopted new mediation rules effective as from 1st January 2013.

[102] With regard to arbitration agreements in administrative contracts, it has to be noted that these agreements must be approved by "the competent minister or the official assuming his powers" (Article 1 of the Arbitration Law).

[103] The Egyptian Courts recalled, several times, that Egypt acceded by Presidential Decree No. 171 of 1959 to the New York Convention which is therefore part of Egypt legislation. In one of the arbitration related cases, the Tanta Court of Appeal referred to Article III of the New York Convention, providing that the contracting States shall enforce arbitral awards in accordance with their rules of procedure, in order to highlight that the term "rules of procedure" in the New York Convention is not limited to the Code of Procedure but includes all laws organising proceedings, such as the Arbitration Law. Whereas Article III of the New York Convention provides that the contracting States shall not impose substantially more onerous conditions on the enforcement of foreign arbitral awards than those imposed on the enforcement of domestic arbitral awards, the Court concluded - by comparing the provisions of the Code of Procedure applicable to enforcement of foreign decisions with Articles 55 to 58 of the Arbitration Law applying to enforcement of arbitral awards rendered in Egypt that the provisions of the Code of Procedure set more onerous conditions than those of the Arbitration Law. Accordingly, it decided that the enforcement of the award should be governed by the Arbitration Law, which provides in its Articles 9 and 56 for the jurisdiction of the Chairman of the Cairo Court of Appeal over requests for enforcement of awards rendered in international commercial arbitrations (see appeal No. 42 of the year 42 judicial, Tanta Court of Appeal on 17 November 2009, *Al Ahram Beverages Company v. Société Française d'Études et de Construction*).

[104] The Decree-Law No. 4 of 2012 introduced aticles 7 bis and 66 bis in the Investment Law.

[105] As referred to the 4th section of the second book of the Egyptian penal Code No. 58 of 1937, as amended.

1067 of 2012[106] which is chaired by the Prime Minister. In case an amicable settlement is reached, it shall be enforceable and may result in the dismissal of the criminal lawsuit for the investor.

(ii) Dispute prevention mechanism

With the view to resolve disputes between investors and administrative or governmental entities before legal proceedings be initiated, the Decree No. 1115 of 2012 established a Governmental Group for Settlement of Investment Disputes chaired by the Minister of Justice. The Group is empowered to examine investors' requests and complaints arising out of their relations with Ministers and or other public entities. It is not involved in the settlement of disputes covered by the Decree No. 1067 of 2012 and its recommendations are binding to the government body involved.

Regarding the settlement of investor-investor disputes, it is worth mentioning that Egypt has established in 2009 an Investment Dispute Settlement Centre[107] within GAFI premises where mediation and conciliation services are available to investors to settle their disputes arising from their investment. The objective is to reach a consensual, speedy and fair settlement, without prejudice to the right of parties to resort to State courts or arbitration. The Centre commenced operation in 2012 and since then a couple of cases have been brought for mediation.

The establishment of these committees shows that Egypt has developed alternative dispute resolutions mechanisms, as an alternative to national courts and arbitration.

Investor-State Dispute Cases involving Egypt

Year	Parties	Case No.	Decisions	Status
1984	Southern Pacific Properties (Middle East) Limited v. Arab Republic of Egypt	ICSID ARB/84/3	Settlement agreed by the parties and proceeding discontinued at their request (Order taking note of the discontinuance issued by the Committee on March 9, 1993 pursuant to Arbitration Rule 43(1))	Settled
1989	Manufacturers Hanover Trust Company v. Arab Republic of Egypt	ICSID ARB/84/3	Settlement agreed by the Claimant and one of the Respondents and proceeding discontinued at their request (Order taking note of the discontinuance issued by the Tribunal on June 24, 1993 pursuant to Arbitration Rule 44).	Settled
1998	Wena Hotels Ltd. v. Arab Republic of Egypt	ICSID ARB/98/4	Decision on Jurisdiction issued on 29 June 1999; Final Award issued on 8 December 2000; Decision on Application for Annulment issued on 5 February 2002; Decision on the Claimant's Application for Interpretation of the Arbitral Award dated December 8, 2000 issued on 31 October 2005	Awarded in favour of the investor
1999	Middle East Cement Shipping and Handling Co v. Arab Republic of Egypt	ICSID ARB/99/6	Award issued on 12 April 2002	Awarded in favour of the investor
2002	Champion Trading Company and others v. Arab Republic of Egypt	ICSID ARB/02/9	Decision on Jurisdiction issued on 21 October 2003;	Awarded in favour of

[106] Amending the Investment Law by adding article 66 bis.

[107] Decree No. 170 of 2009 issued by the Minister of Investment.

			Award issued on 27 October 2006	the state
2002	Ahmonseto, Inc. and others v. Arab Republic of Egypt	ICSID ARB/02/15	Award rendered on 18 June 2007	Settled
2003	Joy Mining Machinery v. Arab Republic of Egypt	ICSID ARB/03/11	Decision on Jurisdiction issued on 30 July 2004; Order taking note of the discontinuance pursuant to Arbitration Rule 43 (1) issued by the Tribunal on 16 December 2005; Award rendered on August 6, 2004.	Settled
2004	Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt (ICSID Case No.)	ICSID ARB/04/13	Decision on Jurisdiction issued on 16 June 2006; Award issued on 24 October 2008	Awarded in favour of the state
2005	Waguih Elie George Siag and Clorinda Vecchi v. Arab Republic of Egypt	ICSID ARB/05/15	Decision on Jurisdiction issued on 28 May 2007; Award rendered on 1 June 2009	Settled
2005	Helnan International Hotels A/S v. Arab Republic of Egypt	ICSID ARB/05/19	Decision on Objections to Jurisdiction issued on 17 October 2006; Award rendered on July 3, 2008.	Settled
2008	Malicorp Limited v Egypt	ICSID ARB/08/18		Pending
2009	H&H Enterprises Investments, Inc. v. Arab Republic of Egypt	ICSID ARB/09/15		Pending
2011	Bawabet Al Kuwait Holding Company v. Arab Republic of Egypt	ICSID ARB/11/6		Pending
2011	National Gas S.A.E. v. Arab Republic of Egypt	ICSID ARB/11/7		Pending
2011	Hussain Sajwani, Damac Park Avenue for Real Estate Development S.A.E., and Damac Gamsha Bay for Development S.A.E. v. Arab Republic of Egypt	ICSID ARB/11/16		Pending
2011	Indorama International Finance Limited v. Arab Republic of Egypt	ICSID ARB/11/32		Pending
2012	Ampal-American Israel Corporation and others v. Arab Republic of Egypt	ICSID ARB/12/11		Pending
2012	Mr Yosef Maiman and others	UNICTRAL		TBD
2012	Veolia Propreté v. Arab Republic of Egypt	ICSID ARB/12/15		Pending
2013	Ossama Al Sharif v. Arab Republic of Egypt	ICSID ARB/13/5		Pending
2013	Ossama Al Sharif v. Arab Republic of Egypt	ICSID ARB/13/4		Pending
2013	Ossama Al Sharif v. Arab Republic of Egypt	ICSID ARB/13/3		Pending
2013	Cementos La Union S.A. and Aridos Jativa S.L.U.	ICSID ARB/13/29		Pending
2013	ASA International S.p.A.	ICSID ARB/13/23		Pending
2013	Utsch M.O.V.E.R.S. International GmbH, Erich Utsch Aktiengesellschaft, and Mr. Helmut Jungbluth	ICSID ARB/13/37		Pending

Sources: ICSID and UNCTAD.

Part 2. Investment Promotion and Facilitation (IPF)

2.1. Investment promotion strategy

The 2006 Investment Reform Index identified three important elements that should be contained in an IPF strategy: i) a vision for the country; ii) a precise definition of where to compete; and iii) a roadmap of how to compete and meet objectives.[108]

The "vision" should contain national development objectives (e.g. building a competitive market economy) and indicate how those objectives will be met (e.g. through maximising scale and scope of private foreign and domestic investment).

A precise definition of "where to compete" includes identifying specific sectors (e.g. IT, tourism), geographic locations (e.g. neighbouring regions), customer types (e.g. new investors, old ones looking to expand existing operations) and measures to improve the business climate (e.g. local skills development).

A roadmap of "how to compete" identifies the ideas behind activities to generate greater inward flows (e.g. linkage programmes), services to be provided to foreign investors to facilitate their establishment and operation (e.g. one stop shops), and mechanisms to continuously improve the business environment (e.g. policy advocacy).

In addition, IPF strategies should provide a blueprint for implementation such as identifying an organisational structure (e.g. responsibilities of senior management and implementing units) and necessary human resources (e.g. skill sets) and financial requirements (e.g. budget estimates) to implement the strategy.[109] Lastly the strategy should contain a timetable for a comprehensive review to take stock of accomplishments and areas of improvement.

Questions

- *Does the government have an IPF strategy supported by a strategic plan?*
- *Does the strategic plan contain a clear vision for the country, precise definition of where to compete, and a roadmap of how to meet objectives?*
- *Does the strategy provide a blueprint for implementation such as identifying an organisational structure, human resource needs and financial requirements?*
- *Does the strategy contain a timetable for a comprehensive review?*

[108] www.oecd.org/investmentcompact (accessed 19 March 2014)

[109] FIAS Investment Promotion Toolkit – www.wbginvestmentclimate.org/toolkits/investment-generation-toolkit/index.cfm (accessed 19 March 2014)

Investment Promotion Strategy

Level 1	Level 2	Level 3	Level 4	Level 5
No investment promotion and facilitation (IPF) strategic plan.	IPF strategic plan in development phase.	IPF strategic plan approved by government and contains clear vision for the country; precise definition of where to compete; and roadmap of how to compete and meet objectives. The strategy does not contain key operational mechanisms nor the notions of services it will provide.	Level 3 **plus** the IPF strategy contains a blueprint for an organisational structure to implement priorities and meet objectives. Organisational structure delineates responsibilities from senior management to implementing units.	Level 4 **plus** the strategy provides details of specific human resource needs and financial requirements. The strategy contains a timetable for a comprehensive review.

2.2. Implementing agency

The IPA is responsible for executing the IPF strategy. It has many functions including that of demand generator (e.g. image building, marketing and promotion) and investment facilitator (e.g. helping foreign investors navigate through regulatory procedures). Specific activities and programmes run out of the IPA will be evaluated in subsequent indicators covering SME-FDI linkages, one-stop shops, customer relations management, policy advocacy, and aftercare services.

A non-political and non-governmental IPA provides stability and continuity as it is less affected by periodic changes in government. The IPA should be a separate body that reports to a board of directors appointed by the government. The board should be chaired by a private sector appointee and include representatives from key ministries (e.g. Economy, Foreign Affairs, Finance, Justice, Regional Development) and domestic and international private companies. IPA staff should have specific language skills and knowledge concerning business issues, legal affairs and industry sectors. The IPA should also benefit from stable financial resources in order to execute the investment promotion strategy.

Questions

- *Has the government set up an IPA to implement the IPF strategic plan?*
- *Does the IPA have the support of key public and private sector decision makers?*
- *Has the IPA received a formal mandate to implement the investment promotion strategy?*
- *What structure does the IPA have? Does the IPA have a set internal organisation (e.g. senior management, private sector CEO and functional units)?*
- *Are IPA staff a mix of private and public sector employees with ability to communicate in multiple languages?*
- *Does the IPA have a stable budget to cover all overhead and salary costs?*

- *Does the IPA have an internal planning mechanism (e.g. calendar of events and deadlines, statistical tracking mechanisms, internal rules and procedures for staff, and adequate IT resources) to support its operational effectiveness?*

Implementing Agency

Level 1	Level 2	Level 3	Level 4	Level 5
No IPA. Investment promotion activities undertaken in uncoordinated manner across different government ministries.	IPA is authorised by government with backing of key public and private sector decision makers. The IPA structure is decided and the IPA receives a formal mandate to implement the investment promotion strategy.	Level 2 **plus** the IPA's internal structure is determined. The IPA is staffed with a mix of private and public sector employees who speak multiple languages.	Level 3 **plus** IPA is given an annual budget to cover typical overhead costs, salaries of all employees, travel costs, IT expenditures, etc.	Level 4 **plus** the IPA has an internal planning mechanism that supports the agency's operational effectiveness. The mechanism consists of a calendar of events and deadlines, statistical tracking mechanisms, internal rules and procedures for staff, and adequate IT resources.

2.3. Monitoring and evaluation

Monitoring and evaluation mechanisms track the IPA's progress against goals defined in the strategic plan and assess whether objectives are being met and at what cost. Monitoring and evaluation mechanisms allow IPAs to change programme activities if deemed ineffectual while demonstrating accountability to oversight bodies. The results of monitoring and evaluation should be benchmarked against the performance of other IPAs and made publicly available. The toolkit created by the Foreign Investment Advisory Service (FIAS) and the FDI Promotion Centre provides key elements in the design of a monitoring and evaluation instrument which have been adapted to this indicator.[110]

Questions

- *Does the investment promotion institution have a regular monitoring and evaluation structure or is it done on an ad hoc basis?*
- *How long has the monitoring and evaluation me120chanism been in place?*
- *Are all of the IPAs activities subject to monitoring and evaluation?*
- *Are results of monitoring and evaluation benchmarked and publicly available?*

[110] FIAS FDI Promotion Toolkit, www.wbginvestmentclimate.org/toolkits/investment-generation-toolkit/index.cfm (accessed 19 March 2014)

Monitoring and Evaluation

Level 1	Level 2	Level 3	Level 4	Level 5
No monitoring or evaluation mechanisms exist.	IPA has begun to design a monitoring and evaluation mechanism. Full implementation of monitoring and evaluation mechanism still not completed.	IPA has implemented a monitoring and evaluation mechanism. All IPA activities undergo evaluation, including cost effectiveness and investment attraction and retention. Results are kept within the IPA and are not benchmarked against other jurisdictions nor publicly released.	Level 3 **plus** results are benchmarked against performance of other IPAs, but are not publicly released.	Level 4 **plus** results are benchmarked against other IPAs and are publicly available.

2.4. National and sub-national co-operation

In addition to a national investment promotion agency, countries may have bodies that undertake investment promotion activities at sub-national or regional levels. The division of responsibilities between these agencies should be clear so as not to confuse potential investors. Where possible, the national and sub-national agencies should avoid unnecessary duplication of activities so as to maximise the effectiveness of resources devoted to attracting and retaining new investors. In addition, national and sub-national agencies should periodically review approval procedures to ensure investors are not being subjected to unnecessary delays.

Questions

- *Do the national and sub-national investment promotion agencies have clear divisions of responsibility and competency?*
- *Do national and sub-national investment promotion agencies co-operate and co-ordinate their investment promotion activities?*
- *Do national and sub-national investment promotion agencies periodically review their respective approval procedures to ensure investors are not being subjected to unnecessary bureaucratic barriers or delays?*

National and Sub-National Co-Operation

Level 1	Level 2	Level 3	Level 4	Level 5
The division of competencies between national and sub-national investment promotion agencies is unclear. Sub-national and national IPAs do not co-ordinate activities with a view to better targeting investment projects.	National and sub-national IPAs have initiated consultations on finding ways and means of clarifying their respective competencies and improving the co-ordination of investment promotion activities.	National and sub-national IPAs have prepared detailed proposals for policymakers to clarify their respective competencies. In addition, national and sub-national IPAs have agreed to co-operate and co-ordinate their investment promotion activities so as to avoid the unnecessary duplication of efforts where appropriate.	National and sub-national IPAs have clear competencies that do not overlap. National and sub-national IPAs have begun to co-ordinate activities with a view to both attracting and retaining investment projects.	Level 4 **plus** the national and sub-national investment promotion agencies periodically review their respective approval procedures to ensure investors are not being subjected to unnecessary bureaucratic hurdles or delays.

2.5. FDI-SME linkages

OECD member governments actively seek to support the development of small and medium-sized enterprises (SME). In 2005 the OECD Investment Committee issued a policy statement expressing the committee's views on good policy practices to enhance linkages between foreign investors (FDI) and SMEs. A linkage programme between SMEs and foreign FDI should adopt a structured approach which foreign and local enterprises can use to support each other's economic performance. An SME-FDI linkage programme should have a defined linkage strategy (e.g. prioritised sectors, clearly identified foreign and local participants, and a designated pilot sector); a basic operating structure (e.g. a co-ordination committee and project team); a launch phase (e.g. selected companies are invited to participate, strategic audits are conducted, and marketing campaigns initiated); a monitoring and evaluation mechanism (measuring quality and quantity of linkages); and a programme of sustaining linkages (e.g. business networks and clusters).

Questions

- *Does the IPA have a programme of supporting linkages between local SMEs and foreign investors?*
- *Have sectors been prioritised for a SME-FDI linkage programme?*
- *Has a pilot sector been selected?*
- *Has the organisational structure for SME-FDI linkages been put in place?*
- *Has the pilot programme been launched and is it being monitored and evaluated?*
- *Has the pilot programme been expanded and are the SME-FDI linkages being sustained?*

SME-FDI Linkage Programmes

Level 1	Level 2	Level 3	Level 4	Level 5
No activities supporting SME linkages with foreign investors. The IPA is in the process of defining a linkage strategy.	IPA in the process of setting up the programme's basic operating structure. This includes designating a co-ordination committee with key stakeholders; detailing a budget and planning cycle; hiring staff; establishing a monitoring system; and creating an FDI database to track interested foreign investors.	Level 2 **plus** the IPA launches the programme in a pilot sector. This entails approaching local SMEs and conducting strategic audits to assess their capacity for participating in the linkage programme; defining a development plan with each participating SME; timing media and promotional campaigns to generate interest from foreign enterprises; and developing databases to track communication with SMEs and foreign investors.	Level 3 **plus** the IPA monitors the degree and depth of linkages being created and considers expanding the programme into new sectors where appropriate.	Level 4 **plus** new means of sustaining linkages beyond the initial programme are explored, e.g. such as fostering business networks.

Analysis

In 2004 the Ministry of Trade and Industry (MTI) launched the NSDP to help upgrade local Egyptian enterprises which supply multinational corporations operating in Egypt. Egypt's National Suppliers Development Programme (NSDP). The NSDP began as a pilot programme specifically targeting suppliers for General Motors Egypt (automotive industry). The scheme was then expanded to include 37 parent companies from a variety of industrial sectors. Companies that have participated in the programme include Procter & Gamble (household goods, US), Unilever (household goods and food, UK/Netherlands), Cadbury (confectionary, UK), Siemens (consumer electronics and appliances, Germany) and LG (consumer electronics, South Korea). Data on results of the NSDP appear scarce. Even so, the programme could serve as a blueprint for the type of activities that GAFI could emulate in order to increase the linkages with local SMEs and the deeper integration of foreign investors into the local economy.

2.6. One-stop shop

In order to assist foreign investors in overcoming regulatory hurdles an IPA may create or designate a single point of contact or a one-stop shop (OSS). The basic idea is that an investor would only have to be in contact with one single entity to obtain all the necessary paperwork in one streamlined and co-ordinated process, rather than having to go through a labyrinth of different government bodies.[111] Two examples of high-level OSS systems are the Economic Development Board (EDB) in Singapore and the Industrial Development Authority (IDA) in Ireland. In both cases,

[111] FIAS, Do One-Stop Shops Work?

foreign investors can rely on the agencies to provide nearly all approvals and clearances required for their investment, such that foreign investors need only to deal directly with a small number of separate authorities, and even then both agencies tend to be highly effective in ensuring co-operation.[112]

Questions

- *Does the IPA have a designated investment facilitation unit or one-stop shop?*
- *Does the OSS have the authority to approve all regulatory and procedural requirements necessary to establish a foreign enterprise?*
- *If not, what proportion of regulatory and procedural requirements is the OSS responsible for approving?*
- *Does the OSS provide assistance to foreign investors when they are required to deal with separate approval authorities?*

One-Stop Shop

Level 1	Level 2	Level 3	Level 4	Level 5
The notion of offering OSS services is not defined in the investment promotion strategic plan. No OSS unit exists within the IPA. Foreign investors are left to navigate approval, screening, and other regulatory services by themselves.	OSS is defined in the investment promotion strategic plan. The IPA offers a limited OSS service whereby foreign investors only deliver necessary paperwork to the OSS for onward transmission to other regulatory bodies. Foreign investors must co-operate with other regulatory bodies to implement their projects.	The IPA offers expanded OSS services. The OSS has a mandate to approve some, but not most, regulatory approvals and registration procedures necessary for foreign investment projects in the host country	OSS is responsible for providing the majority of regulatory approvals and registration procedures necessary for establishing a foreign business in the host country.	OSS is directly responsible for providing nearly all regulatory approvals and registration procedures necessary for the establishment of foreign businesses in the host country. OSS is main port of call for foreign investors.

Analysis

GAFI began implementing a one-stop shop model in 2005. As of November 2013, its one-stop shop contained 44 offices representing 24 ministries, and had the facilities to deal with work permit approvals, company registration, taxation, customs, and other post-establishment services. GAFI is requested to process all requirements for an application within 72 hours and assigns an employee to take responsibility for each investor. The OECD's 2007 *Investment Policy Review* of Egypt (which was conducted prior to Egypt's adherence to the OECD Investment Declaration) underscored that numerous steps were required before a foreign investor could begin operations. At the time, the

[112] *Ibid*

minimum number of entities that a foreign investor was expected to deal with was eight, while the maximum number was estimated to be closer to 25, depending on the activity.[113]

GAFI points out that currently, it has 14 local offices in the governorates to co-ordinate with the head office in Cairo or in the region and facilitate the process of doing business in the country. The Authority has five one-stop shops in Cairo, Alexandria, Ismailia, 10th of Ramadan and Asyut. It intends to open additional branches in El Giza, Dakahleya, Sohag and El Wady El Gedid. According to GAFI, arrangements have been made with the different governorates to provide the land required to set up additional one-stop shops, the ultimate aim being to reach all 27 governorates.

2.7. Customer relationship management (CRM)

A CRM process enables an IPA to actively manage relations with foreign investors in an organised, strategic manner. In practice that means developing methodologies, internal operations, software and Internet capabilities to be able to better address foreign investor needs and, as a result, increase the likelihood that the foreign investor will enter the host country.

Using a CRM-based system, the IPA can keep track of key foreign investor information such as contacts, correspondence and meetings, and geographic location preferences with a view to matching foreign investors' needs with what the host country offers.

The CRM-based system goes beyond recording basic corporate information about the potential foreign investor. IPAs can analyse the data from CRM-based processes to identify their most likely foreign investors, enrich and individualise foreign investor contact, manage marketing campaigns, and serve wider geographical regions.

Questions

- *Does the IPA have a CRM-based process in place?*
- *What kind of foreign investor information does the IPA track through its CRM process?*
- *Does the IPA use a specific type of CRM software system?*
- *Does the IPA undertake follow-up conversations and meetings with interested foreign investors?*
- *Does the IPA tailor specific investment promotion campaigns as a result of its CRM process?*
- *Does the IPAs CRM strategy target foreign investors across a broad geographic spectrum?*

[113] OECD (2007), Investment Policy Review: Egypt.

Customer Relationship Management

Level 1	Level 2	Level 3	Level 4	Level 5
The IPA does not follow a CRM-based strategy. The IPA does not track communication with interested foreign investors and inquiries are not followed up.	The IPA is committed to a limited CRM-based approach. The IPA only tracks basic corporate information about interested foreign investors and does not follow-up initial enquiries. The IPA's limited CRM-based approach results in generic marketing campaigns targeting foreign investors located in a narrow geographic region.	IPA has expanded its CRM strategy. In addition to basic corporate information, IPA tracks all communication exchanges and meetings, and geographic preferences expressed by foreign investors. IPA undertakes follow-up conversations with foreign investors, but presentations and campaigns remain generic. IPA's CRM strategy remains targeted on foreign investors located in a narrow geographic region.	Level 3 **plus** the IPA always undertakes follow-up conversations and meetings, with campaigns tailored to the foreign investor. The IPA uses sophisticated CRM software packages such as ARC to manage its CRM strategy. The IPA's CRM strategy remains targeted on foreign investors located in a narrow geographic region.	Level 4 **plus** the IPA's CRM strategy targets potential foreign investors across a broad geographic spectrum.

2.8. Policy advocacy

Policy advocacy refers to the degree to which the IPA can shape and/or remove legal, regulatory and administrative practices as they apply to FDI. The IPA should have an advocacy role vis-à-vis the investor community and its government counterparts. Policy advocacy functions should be agreed upon by the IPA and relevant government ministries and agencies. Staff from the IPA should contribute to policy reviews of existing measures as they relate to FDI and design of new ones. Results of strong policy advocacy can be seen in the greater liberalisation of investment laws and increased flows of inward FDI.

Questions

- *Is policy advocacy defined in the investment promotion strategic plan and does the IPA have a policy advocacy unit staffed by experts in the field of investment policy?*
- *Does the policy advocacy unit hold regular, pre-announced consultations with foreign investors to gauge their views on the regulatory environment concerning foreign investment? Does it communicate the results of these consultations to officials responsible for developing foreign investment regulations?*
- *Does the policy advocacy unit undertake annual assessments of the impact of FDI?*
- *Does the IPA have defined policy advocacy role when it comes to the liberalisation and design of measures directed at FDI?*
- *What results can the IPA showcase as a result of its policy advocacy efforts?*

Policy Advocacy

Level 1	Level 2	Level 3	Level 4	Level 5
Policy advocacy is not defined in the investment promotion strategic plan. The IPA does not have a policy advocacy function or unit. It does not communicate foreign investor concerns to ministries or agencies responsible for investment policy.	Policy advocacy is defined in the investment promotion strategic plan. However, the IPA does not have a defined policy advocacy unit with staff. The IPA consults with foreign investors on an ad hoc basis and communicates their concerns on the regulatory and administrative environment to ministries and agencies responsible for investment policy only occasionally.	Level 2 **plus** a designated unit within the IPA exits. The unit holds regular, pre-announced consultations with foreign investors to get their views on the host country's regulatory environment concerning foreign investment. Results of consultations are relayed to government officials.	Level 3 **plus** the policy advocacy unit undertakes annual assessments of the economic impact of FDI which are relayed to government officials. It does not have a role in policy discussions aimed at liberalising foreign investment laws and regulations.	Level 4 **plus** the policy advocacy unit has a role in policy discussions aimed at liberalising foreign investment laws and regulations. As a result of policy advocacy activities, the government has liberalised national laws covering foreign investment.

Analysis

The Policy Advocacy Department, with a work programme approved by GAFI's board, is appropriately staffed. The department has produced various policy papers with recommendations on eliminating barriers to investment in certain economic activities, e.g. financial leasing, renewable energy, and the development of technologies linked to the Clean Development Mechanism. However, any impact on regulatory reforms is unclear.

The Policy Advocacy Department is part of discussions with foreign investors. It also consults with the Aftercare and Promotion Departments in GAFI and plays a critical role in determining investment policy and reforms in all economic sectors.

The Policy Advocacy Department should consider posting its policy studies, or at least summaries of them, on GAFI's website under "research and publications." The department should also be empowered to pass on recommendations deriving from its research and consultations to the institutions managing investment policies and regulations, and to follow up and assess implementation.

2.9. Aftercare services

Aftercare services in the investment promotion context are equivalent to "after-sales services" in the retail sector. They are intended to enhance customer satisfaction and encourage "repeat purchases".[114] In this context, the aftercare services that an IPA provides to a foreign investor are intended to retain a particular foreign investor in a location or support its expansion.

[114] UNCTAD (2008), Investment Brief, No. 2, "Aftercare- reaching out to your investment community".

Aftercare services can range from assisting foreign investors with administrative procedures, such as obtaining building permits and licenses, to more advanced services such as identifying local suppliers.

Questions

- *Does the IPA provide aftercare services to foreign investors?*
- *What is the range of aftercare services that an IPA provides to foreign investors? Do these services include administrative services (e.g. obtaining permits, licenses visas) and operational services (e.g. support for training and identifying local suppliers)?*
- *Does the IPA provide the foreign investor with customer responsiveness guarantees (i.e. providing a response within a given timeframe?)*

Aftercare Services

Level 1	Level 2	Level 3	Level 4	Level 5
The IPA does not offer any aftercare services.	The notion of aftercare services is defined in the investment promotion strategic plan. The IPA is in the process of defining the precise types of aftercare services it will offer to established foreign investors.	The IPA has begun to offer limited aftercare services of an administrative nature to the foreign investor, such as obtaining business licenses, work permits, and finding housing for expatriates. Responses to foreign investors are not within a given timeframe.	Level 3 **plus** the IPA provides operational services such as finding local suppliers for foreign investors. The IPA has begun to implement customer responsiveness guarantees (i.e. responding within a given timeframe).	Level 4 **plus** the IPA always follows up investor queries within a specific timeframe.

2.10. Free zones (FZs)

Free zones (FZs) represent a policy instrument frequently used by governments to promote FDI by offering a more competitive business environment through provision of special fiscal, regulatory and financial incentives in a defined geographic area. However, FZs should not serve as a substitute for broader reforms aimed at improving the business environment through trade and investment liberalisation, good infrastructure, rule of law and administrative simplification. FZs or variations thereof have been used for decades by both developed and developing countries.

Questions

To assess the effectiveness of FZs,[115] one should consider:

[115] For the purpose of this study, the general term “free zones - FZs” will indistinctly refer to all types of zones existing in Egypt (free zones (public/private), special economic zones, and investment zones.

- *whether there is a public authority with clear responsibilities and mandates to administer the free zones;*
- *whether the entry of firms into the free zones is based on transparent and clear eligibility criteria and simplified administrative procedures;*
- *whether the free zones allow for broad forms of economic activities including manufacturing, commercial and professional services;*
- *whether public authorities encourage greater integration between free zones and the domestic economy;*
- *whether free zones provide equal treatment of domestic and foreign investors;*
- *whether there is a greater role for the private sector in the development of free zones;*
- *whether there are export requirements in line with the WTO framework;*
- *whether there is a lowering of labour and environmental standards in the free zones; and*
- *whether public authorities encourage greater specialisation of economic activities in the zones by providing, where appropriate, more focused support and facilitation services to emerging networks and clusters of firms.*

Free Zones

Level 1	Level 2	Level 3	Level 4	Level 5
Government has created a public authority with clear responsibilities and mandate to administer the zones. Among its responsibilities, the free zone authority has a policy advocacy function.	Level 1 plus entry of firms into the free zones is based on transparent and clear eligibility criteria and simplified administrative procedures. Economic activity in the free zones is broad and includes manufacturing, commercial and professional services.	Level 2 plus the public authorities encourage greater integration between the free zones and the domestic economy (e.g., allowing domestic companies selling to free zone companies to obtain similar treatment and benefits to free zone companies exporting directly). Public authorities provide equal treatment of domestic and foreign investors in the free zones.	Level 3 plus the private sector has a greater role in the development of free zones and there is a relaxation of minimum export requirements in line with the WTO framework.	Level 4 plus there is no lowering of labour and environmental standards in the free zones. Public authorities are encouraging greater specialisation of economic activities in the zones by providing, where appropriate, more focused support and facilitation services to emerging networks and clusters of firms.

Analysis

Egypt has two types of free zones aimed at increasing exports, attracting foreign investment, introducing advanced technology and creating job opportunities:

- *Public free zones*, which are established in specific locations by decree of the Cabinet upon a proposal by GAFI for the establishment of a licensed project.[116] As of January 2013, 890 projects in the fields of trade, storage and industrial activities are carried out in the nine public free zones in Egypt.[117] The creation of four new zones is under consideration.
- *Private free zones* which are exclusively established by decree upon a proposal by GAFI and "confined for a single project" approved by the investment authority.[118] As of January 2013, 222 industrial projects are carried out in the only private free zone**.**

Except in the fields of fertilizers, iron and steel, petroleum industries, fields of processing, liquefying and transporting natural gas[119] as well as industrial activities related to liquors and alcoholic drinks or to arms, ammunitions, explosives and other activities connected with the national security,[120] all types of projects can be carried out in free zones by local and foreign investors provided that the project is authorized by the head of the authority or the concerned board of directors of the public free zone.[121] Free zone land remains under GAFI's ownership.

The total number of projects in free zones peaked at 1160 projects in 2008-09. It dropped to 1108 during 2011-12, to reach 1112 as of 31 January 2013. Free zones employ 207 000 workers, 83% in industry, 16% in services and 1% in storage. On the total sales realised from 1 July 2012 to 31 January 2013 and amounting USD 6.2 billion, total export value represents about one third (USD 2.3 billion). To date, FDI in free zones amounts to USD 1.9 billion.

Free zones are managed by a board of directors with a Chairman appointed by decree of the competent administrative authority[122] which is also responsible for setting policy.[123]

Among the special incentives that apply in free zones, the Investment Law provides for the following tax incentives and tax exemptions to investors operating in free zones:

- No customs duties, no general sales tax nor other taxes on goods exported abroad or imported to facilitate activity in the free zones:[124]

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[116] Article 29 (2) of the Investment Law.

[117] Located in Alexandria, Nasr City, Port Said, Suez, Ismailia Damietta, Shebin El Kom, Keft, Media Production City (Source : www.gafinet.org).

[118] Article 29 (3) of the Investment Law.

[119] Article 29 (7) of the Investment Law.

[120] Article 47 of the Investment Law.

[121] Article 47 of the Executive Regulation.

[122] Article 29 of the Investment Law.

[123] Article 30 of the Investment Law.

[124] Article 32 (1) of the Investment Law.

- No custom duties, no general sales tax nor other taxes on materials and tools, equipment and machines required for a project in the free zones;[125]
- Import into the country from the free zones subject to the general rules on import and customs duties as if they were imported from abroad;[126]
- No tax on dividends. Only "an annual duty of 1% of the value of the commodities" applies.[127]

Other incentives relate to foreign labour. Provisions of law No. 173 of 1958 stipulating the obtaining of a work permit before taking up a job with foreign entities and Law No. 231 of 1996 concerning certain provisions regulating work of Egyptians with foreign entities do not apply to Egyptian workers of the projects set up in the free zones.[128] Projects set up in the public FZs shall not be subject to the provisions of Law No. 113 of 1958, article (24) and Chapter 5 of Part III of the Labour Law.[129]

Investors in the free zones may be granted temporary licenses by GAFI allowing them to start the activity before being granted the final approval for the required license. However, in case of refusal of the license, the consequence for an investor that has been granted a temporary license is not clear.

Notwithstanding the advantages provided by the legal framework governing free zones, the private sector representatives interviewed for this study have reported that the management of FZs seems to be very complicated. Hence, guidelines and criteria to form companies in free zones need to be clearer and more transparent. Moreover, the private sector representatives consider that the current 25% maximum percentage of foreign labour is too low. However, according to Amcham Trade and Industry Committee, there are examples of successful free zones in Egypt. Developing the Investment Corridor of the Suez Canal is seen to have great potential.

Special economic zones (SEZs)

The Law on Economic Zones of a Special Nature No. 83 of 2002 provides for the establishment, by presidential decree, of special zones for industrial, agricultural or service activities with the aim of export promotion. The North-West of the Gulf of Suez is so far the first and only one special economic zone (SEZ) created and operational under Law No. 83 of 2002. According to GAFI, the establishment of a new special economic zone throughout Sinai is currently under consideration.

The Ministry of Investment is the authority responsible for the management of special economic zones.

The Law offers, *inter alia*, the following incentives and guarantees to projects operating in SEZs:

- duty-free imports of capital equipment, raw materials and intermediate goods;
- lower corporate taxes (10% tax rate on all economic activities within the zone and a 5% flat rate on personal income tax);

[125] Article 32 (2) of the Investment Law.

[126] As per Article 33 (1) of the Investment Law.

[127] As per Article 35 of the Investment Law.

[128] As per Article 40 of the Investment Law.

[129] As per Article 43 of the Investment Law.

- exemption from sales and indirect taxes;
- the projects operating in economic zones may not be subject to sequestration, freezing of assets or confiscation except by a due process of law;
- right to freely set the prices of their products and services without government interference; and
- simplification of terms governing employment contracts in the zones.

Other incentives include exemption from all import/export regulations, the option to sell a certain percentage of production domestically if custom duties are paid and limited exemptions from labour provisions.

In counterpart, the Law on Economic Zones imposes some obligations on investors operating inside the SEZs:

- they have to export more than 50% of their production;
- projects are subject to a duty of 1% of the value of goods entering the free zone for storage in respect to warehousing projects, and 1% of the value of goods leaving the free zones in respect of manufacturing and assembly projects.

Investment zones (IZs)

Egypt has also deployed a new set of investment zones under Law No. 19 of 2007 which amended the Investment Law by adding article 46 *bis*. The Law introduces the investment zone system as a new investment scheme that increases private sector involvement in zone development and management. Investment zones are established by virtue of Prime Minister's decree upon a proposition of the competent administrative entity. Licenses and permits are issued by GAFI inside the investment zones.

To date, 13 Investment zones specialised in various fields (building materials and engineering, textiles, nanotechnology and biotechnology, higher education and scientific research, information technology and commercial services) had been set up across seven Egyptian governorates, including Cairo, Giza, Dakhalia, Sharkia, Fayoum, Qalioubyia and Alexandria.

The following is the key objectives of the investment zones:

- promoting and developing economic clusters to reduce production costs;
- promoting more private sector involvement in the development of business clusters;
- providing business with a non-bureaucratic environment being run by its own regulatory board of directors authorised to provide relevant licenses. The board of directors has an executive office within the investment zone. The members of the executive office shall be from GAFI staff and it is responsible for issuing all licenses for projects within investment zones after receiving the board's approval.

Investment Zones are not limited to industrial activities and cover large sectors:

- 5 zones in the industrial sector (Engineering Square, CPC Egypt and Polaris Park located in 6th of October City; Pyramids Industrial Park and Al Tajamouat Industrial Park located in 10th of Ramadan City);

- 3 zones in the sector of education and scientific research (Cairo University – International Branch located in 6th of October City, Ein Shams University located in El Obour City and El Fayoum University located in New Fayoun);
- 2 zones in the IT and technology sectors (Maadi Communication and IT zone located in Maadi – Cairo and City of Scientific Research and Technology Applications located in Borg El Arab - Alexandria);
- one zone in the tourism sector (Cairo Airport City located at Cairo International Airport);
- two zones implemented for commercial services offered by SMEs (Meet Ghamr located in the Governorates of Dakahlia and Geza).

Investment zones are developed by private enterprises, except the two zones of Meet Ghamr and El Saf which are developed by GAFI. The land is the property of the developer which can then sell it to the investors in the zone.

GAFI is responsible for issuing licenses in the investment zones. The extension in investment zones of temporary licenses as granted in FZs is currently under consideration.

Projects established within investment zones enjoy the incentives and guarantees offered under the investment law, including full protection against nationalisation and expropriation, non-interference in products pricing, non-cancellation or postponing of the license granted previously to the project, and no restrictions on their capital and legal form. Investment zones operate within a well-developed administrative framework in terms of timing and available facilities concerning license issuance and dealing with entities through an integrated one-stop shop affiliated to GAFI. Moreover, companies established within investment zones are allowed to sell to the local market.

Part 3. Transparency

3.1. Publication avenues and tools

OECD good regulatory practices include the codification of primary legislation and laws, the publication of the consolidated registers of all subordinate (or secondary) legislation, and the provision of public access via the Internet. Most OECD countries whose national language is not English publish their legislation or descriptions of their policies in English.

Questions

- *Has the government codified and published all primary and subordinate investment laws?*
- *Can foreign investors readily obtain written copies of national legislation, amendments, regulations and procedures covering foreign investment? Are laws and regulations electronically available over the internet?*
- *Can the foreign investors obtain certified English translations (or in other languages) of laws and regulations free of charge or at a nominal cost?*

Publication Avenues and Tools

Level 1	Level 2	Level 3	Level 4	Level 5
Primary and secondary legislation, including regulations and administrative procedures governing the treatment of foreign investment, is not codified.	Primary and secondary legislation, including regulations and administrative procedures governing the treatment of foreign investment, is codified and available through the host country's official gazette. But available only in official language of host country.	All legislation, including amendments and regulations governing treatment of foreign investment, is publicly available in written form. Some, but not all, laws and regulations are electronically available on the Internet.	Level 3 **plus** all laws and regulations available over the internet. Certified English translations not available.	Level 4 **plus** certified English translations can be obtained free of charge or at a small cost.

3.2. Prior notification and consultation

Prior notification and consultation with interested parties are integral parts of OECD good practices in furtherance of public sector transparency. A number of OECD countries have general laws

requiring prior notification of proposed legislative changes and many require consultations with interested parties as part of the legislative process.[130]

Involving foreign investors and other stakeholders in the process of relevant regulatory changes can contribute to the legitimacy and effectiveness of the new regulatory investment measures. Moreover, fostering feedback through prior notification and consultation ahead of actual decisions can help public the authorities to devise better regulations and build support for compliance.[131]

Questions

- *Does the government announce in advance or give prior notification of changes to investment laws, regulations and policies?*
- *Does the government provide stakeholders with an opportunity to send written comments on proposed legislative, regulatory or policy changes?*
- *Does the government actively consult interested stakeholders when considering changes to legislative or policy frameworks that affect foreign investment?*
- *Can the government describe its process for consultations?*
- *Which stakeholders are included in consultations?*
- *Are the consultations held periodically or on an ad hoc basis? Are the outcomes of the consultations (e.g. transcripts) publicly released?*

Prior Notification and Stakeholder Consultations

Level 1	Level 2	Level 3	Level 4	Level 5
The government does not give prior notification of changes to investment laws, regulations and policies. Nor does it undertake consultations with interested stakeholders (e.g. private sector, foreign investors, NGOs, civil society) in the area of investment policy.	The government gives prior notification of intended changes to investment laws, regulations, and policies. It allows interested stakeholders to provide written comments. The government does not undertake or organise face-to-face consultations with interested stakeholders.	Level 2 **plus** the government undertakes limited face-to-face consultations with a narrow selection of stakeholders (e.g. only domestic businesses). Consultations are held on an ad hoc basis.	Level 3 **plus** the government includes a broad cross-section of stakeholders in its consultations (e.g. private sector, foreign investors, NGOs, civil society, academia). Consultations remain on an ad hoc basis.	Level 4 **plus** the consultations are held periodically and results (e.g. transcripts) are released for public consumption.

[130] OECD (2008), Transparency and Predictability for Investment Policies Addressing National Security Concerns: A Survey of Practices.

[131] OECD Framework for Investment Policy Transparency.

3.3. Procedural transparency

Registration, authorisation, and permit formalities can cost businesses time and money. They may also lead to abuse of administrative discretion, red tape, and corruption, so it is crucial that they be administered in a transparent, formal, impartial, and reasonably speedy manner.[132] Procedural transparency includes the provision of legal mechanisms enabling investors to appeal denials of investment projects. It also allows for prompt, impartial reviews and should provide clear descriptions or explanations of administrative requirements and statutory delays for rendering decisions, and allow plaintiffs to present additional facts and arguments. Programmes to simplify and cut down red tape, one-stop shops, and new technology may be additional ways to enhance procedural transparency.

Questions

- *Does the government subject investment projects to an approval or screening process? Can the government describe the approval/screening process and under what terms an investment project would be subject to approval or screening (e.g. size of investment, entry into a sensitive sector)?*
- *Does the government make publicly available in written form and on the Internet all guidelines and criteria used to evaluate investment projects?*
- *Does the government notify investors if their investment projects have been approved or rejected? In the case of approval is the silence-is-consent rule used? In the case of rejection is notification given in written form with an explanation?*
- *Does the government place strict time limits on the duration of the approval/selection process?*
- *Does the government commit to protecting commercially sensitive information submitted by the investor as part of the approval/screening process?*
- *What are the investors' legal rights with regard to administrative approval decisions? Is the investor entitled to appeal a decision by the reviewing authority that rejects the investment project? Does this include a right to a prompt and impartial review of the authority's decision, including a judicial review?*

[132] *Ibid.*

Procedural Transparency

Level 1	Level 2	Level 3	Level 4	Level 5
The government requires that investment projects be subject to an approval/screening process if they are a certain size or in sensitive sectors. The government makes publicly available through either written or electronic formats the thresholds and sectors that trigger approval and screening processes. However, the government does not make publicly available in either written or electronic formats the criteria and guidelines used to evaluate the investment projects.	Level 1 **plus** all guidelines and criteria used to evaluate investment projects are publicly available in either written or electronic format. The government provides investors with written notification if their projects have been approved or rejected. In the case of rejection, however, no explanation is given. The investor cannot appeal a rejection.	Level 2 **plus** the government places firm time limits on the length of the approval and screening process and adopts the silence-is-consent" rule for approvals and screenings. Investors cannot appeal rejections.	Level 3 **plus** the investor receives in writing an explanation as to why the reviewing authority rejected the investment project. The government commits to protecting commercially sensitive information submitted by the investor as part of the approval and screening process.	Level 4 **plus** the investor has a right to complain or appeal a decision by the reviewing authority that rejects investment project. This includes the right to a prompt and impartial review of the authority's decision, including a judicial review.

ANNEX D: ASSESSMENT FRAMEWORK FOR PUBLIC-PRIVATE PARTNERSHIPS

Part 4. Public-Private Partnerships

Introduction

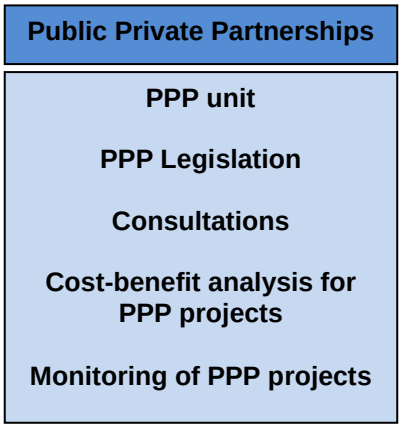
Public-Private Partnerships (PPPs) can be formed between governments and private entities with a view to delivering more efficiently certain public goods and services, such as infrastructure development.

Objective and Scope

The assessment framework for this chapter covers public-private partnerships. It does not seek to explain the rationale behind PPPs in Egypt or their general impact on the country's economy, as this lies outside the scope of this publication. However, it does aim to provide Egyptian policy makers with the means of assessing the progress they have made in their reforms relative to international good practices. This evaluation is influenced by two primary documents: the 2003 OECD report Privatising State-Owned Enterprises: An Overview of Policies and Practices in OECD countries; and the OECD Principles for Private Sector Participation in Infrastructure.

A key challenge to successfully managing PPPs in many OECD and MENA countries lies in setting the right institutional and regulatory frameworks, i.e. building capacity for appropriate laws and regulations, with regulatory authorities managing complex concessions, assessing the cost and benefits of such projects, and monitoring their implementation. Budgetary constraints and existing PPP frameworks and guidelines can be prohibitive, while technical skills can be scarce and significant time investment might be needed to build up such skills. What has been found paramount is to have political buy-in at the highest level. Furthermore, regulatory frameworks need to allow for sufficient flexibility, and transparent and predictable procedures must be complemented by institutional negotiations and implementation capacities on both the public and the private sides.

The indicators related to PPP projects are constructed to address five key elements: i) the existence of a specific unit within government to co-ordinate and develop PPP policy; ii) the legislative framework covering PPP projects; iii) the use of consultations to build buy-in from various stakeholder groups; iv) undertaking cost-benefit analysis prior to making a decision on PPP projects; and v) monitoring the progress of PPP projects over their lifetime.



4.1. PPP unit

PPP units have been created in response to a weakness in government machinery for managing PPP programmes effectively. As noted in the OECD Principles for Private Sector Participation in Infrastructure: "Authorities responsible for privately operated infrastructure projects should have the capacity to manage the commercial processes involved and to partner on an equal basis with their private sector counterparts."

Questions

- *Has the government created a PPP unit to oversee and co-ordinate PPP policy?*
- *Is the PPP unit adequately staffed with a mix expertise?*
- *Is the PPP unit located in a central/horizontal government ministry such as a treasury department or finance ministry?*
- *Does the PPP unit enjoy high-level political support within the government?*

PPP Unit

Level 1	Level 2	Level 3	Level 4	Level 5
No PPP unit exists in the government.	The government has initiated a process of creating a PPP unit.	The government has created a PPP unit which is staffed with multidisciplinary teams consisting of lawyers, project finance experts, economists etc. However, the unit has only an advisory role in PPP policy and projects and does not have an overall policy co-ordination function.	Level 3 plus the PPP unit has a formalised role to co-ordinate overall PPP policy and is attached to a treasury department (or Ministry of Finance).	Level 4 plus the PPP unit has high-level political support within the government.

Analysis

The PPP Central Unit (PPPCU) is facing challenges which include ensuring the buy-in of portfolio ministries and the failed establishment of satellite PPP units in some ministries; lack of public awareness of the PPP legislation and loss of capacity previously created in other government entities. There has also been some resistance from line ministries to the idea of a central unit with an overall co-ordination function. This may signal a communications problem or concern over retaining prerogatives.

Information from the PPPCU indicates that efforts are being made to address the buy-in issue and that ministries now understand that they must have a satellite unit if they are to participate in PPP procurement. A number of large workshops, with funding and support from the International Finance Corporation (IFC), have been held with staff from multiple ministries in attendance to this end. It is being emphasised that ministries must take ownership of projects as the role of the PPPCU is focused on events up to and including financial close.

Another issue raised in interviews relates to the problems the PPPCU encounters in assisting ministries and public bodies to develop PPP proposals (business cases). This could be attributed to the technical capacities of the unit. It does, in fact, hold the right mix of expertise, but the number of staff, five or six, is not sufficient. Efforts to improve staff capacity and increase their number to 17 are underway. The unit's inability to retain and attract highly-skilled staff could be behind some of the difficulties it has faced. This, in turn, negatively impacts on processes within the unit such as the project selection process, which prevents the successful completion of pilot projects. The IFC's expertise was sought by the government in pilot project implementation. Despite that, projects have been facing completion problems, prompting the government to seek technical expertise from other organisations. However, it is also argued that the delay in the completion of projects is due to inefficient project selection and not to the implementation process.

The PPP Law sets out clearly the powers of the different aspects of the PPP apparatus. Any government department which is willing to engage in a PPP project must get the approval of the Supreme Committee for PPP Affairs, which makes its decision in the light of the recommendation submitted by the PPPCU (articles 4 and 17). A government department that is willing to engage in a PPP must provide the PPPCU with all information necessary for the preparation of its report and recommendations (Article 17). Article 18 gives further prerogatives to the PPP Central Unit: "A government department that has received an approval for PPP projects must take into account the application of the PPP Central Unit recommendations in all its procedures. The publication of any advertisement or document related to the tendered projects; including expressions of interest, prequalification invitations, information memorandums, and calls for tenders shall be done after obtaining the approval of the PPP Central Unit. The convening of committees to determine criteria and qualification, or to receive and evaluate bids shall not be valid unless a representative of the PPP Central Unit is present".

The PPP Law has thus formalised the role of the PPPCU by granting it all necessary powers to oversee and co-ordinate all PPPs projects. Moreover, the law seeks to appease the resistance of line ministries and to garner a high level of political support for the Supreme Committee by assigning its chairmanship to the Prime Minister alongside the membership of the ministers of "the economic cabinet" (the Ministers of Finance, Investment, Economic Development, Justice, Housing and Utilities, and Transportation).

4.2. PPP Legislation

This indicator focuses on the legislative framework at the national level. Experience has shown that the development of enabling, consistent national legislative and regulatory structures greatly facilitates the identification, development, and implementation of PPPs. A legislative framework on PPP-related projects should include provisions on granting concessions and cover the entire lifetime of the project.

Questions

- *Has the government approved sector-specific and/or horizontal legislation covering PPP projects?*
- *Does the legislative framework included laws and regulations covering concessions?*
- *Do the legal and regulatory frameworks covering PPPs clearly identify the roles and responsibilities of all parties involved in a PPP project?*
- *Does the government's legislative and regulatory framework covering PPPs go beyond concessions and include other forms of PPPs?*

PPP Legislation

Level 1	Level 2	Level 3	Level 4	Level 5
There is no sector-specific and/or horizontal legislation or regulatory framework covering PPPs.	Government is in the process of drafting sector-specific and/or horizontal legislation covering PPPs.	The government has approved sector-specific and/or horizontal legislation covering limited forms of concessions (e.g. only the operation and management of infrastructure projects). The concession law clearly identifies the roles and responsibilities of the public and private sectors.	The government is in the process of expanding its sector-specific and/or horizontal legislation to make room for additional forms of PPPs.	The government has approved sector-specific and/or horizontal laws providing a legal and regulatory framework for PPPs covering the entire lifetime (e.g. design, build, finance, ownership, operate and transfer) of the project.

Analysis

Egypt finds itself in the unusual position of having a general legal PPP framework coexisting with alternative channels for procuring infrastructure projects, such as the system of public economic entities, public utilities legislation and a number of sector specific or project specific laws. Beyond this issue, the need for an explicit legal basis follows from the fact that legal systems based on civil law qualify concession agreements as special agreements with a public character. A legislative basis for the transfer of infrastructure assets to the private sector is therefore required.

The ability of the public sector to grant concessions is in many jurisdictions the most critical uncertainty faced by lenders and investors and they may argue that this uncertainty is best removed by a horizontal PPP/concession/privatisation law independent of the legal tradition of a country. The argument made by investors is that it is far more difficult to change a law than administrative guidelines.

The first two of the PPP Law's four chapters provide that the law is applicable to projects whose total contract value exceeds EGP 100 million (USD 17.7 million) and involving a concession or off-

take agreement of five years or more in duration. The second chapter also provides clarity on the role of existing regulatory bodies and gives a legal grounding to other new bodies, including the High Supreme Committee for PPPs. The committee is chaired by the Prime Minister, and includes other government ministers involved with economic development, as well as the head of the PPPCU. Committee sessions dealing with specific projects will also involve representatives from the relevant tendering authority. The PPPCU itself – currently part of the technical office of the Minister of Finance – became a legally independent entity, although it remains under the umbrella of the Ministry of Finance.

When it comes to implementation, a crucial factor for the contracting parties to a PPP is that the legal basis should clearly identify their roles and responsibilities. For the implementation of a PPP project, the Egyptian administrative law provides some guidance as to the parties' rights and obligations. The Supreme Administrative Court considers PPP contracts between a government body and a private contracting party as administrative contracts which it defines as contracts "entered into by a moral person of public law for the purpose of managing a public utility". In accordance with this definition of a PPP contract or concession as an administrative contract, the contracting government party may penalise the private contracting party for non-compliance with the terms of the contract. This can include the appropriate government body stepping in (Article 9) and appointing a substitute or terminating the contract. Article 7 of the PPP Law confirms the right of the government entity not only to amend the conditions of construction, rehabilitation, or any other related work or services stipulated under the contract, but also to amend the basic terms of operation and concession, including payment for the product or service available. Administrative courts supervise the execution of a contract in accordance with its terms.

4.3. PPP consultations

The OECD Principles for Private Sector Participation in Infrastructure state that: "private participation in infrastructure is unlikely to be successful unless authorities have assured themselves beforehand that the envisaged undertakings are in the public interest and are acceptable to consumers and other stakeholders." Open, transparent, consistent consultation with relevant stakeholders, including, but not limited to, consumers (i.e. domestic end users), domestic businesses, potential foreign investors, etc. help authorities secure buy-in for PPP projects.

Questions

- *Does the government undertake consultations prior to engaging in a PPP project?*
- *Does the government include consumers (i.e. end users), domestic firms and private foreign investors in its consultations?*
- *How often does the government undertake PPP-related consultations (e.g. consistently or on an ad hoc basis)?*

PPP Consultations

Level 1	Level 2	Level 3	Level 4	Level 5
The government does not undertake any consultations with stakeholders prior to launching a PPP project.	The government has begun a process of consultations but only restricts it to selected domestic business interests.	Level 2 plus the government includes domestic end-users of PPP projects in sporadic consultations.	Level 3 plus the government has a strong track record of consistently consulting domestic private interests and end-users.	Level 4 plus the government opens all PPP consultations to foreign investors.

4.4. Approach to cost-benefit assessment for PPP projects

The decision to involve the private sector in PPP projects should be guided by an assessment of the relative long-term costs and benefits. The OECD Principles for Private Sector Participation in Infrastructure provides four important guidelines in this regard: the cost-benefit analysis should include all alternative modes of delivery, an analysis of the degree to which costs can be recovered from end-users, a risk assessment based on the public interest, and the potential public finance implications of sharing responsibilities with the private sector.

Questions

- *Does the government undertake a cost-benefit analysis for PPP projects?*
- *As part of its analysis does the government take into account all alternative modes of delivery including financial and non-financial costs and benefits over the PPP project lifecycle?*
- *Does the cost-benefit assessment include analysis on the degree to which costs can be recovered from end-users and, in the case of shortfalls, what other sources of finances can be mobilised?*
- *Does the cost-benefit analysis include a risk assessment based on the public interest?*
- *Are the public finance implications of sharing responsibilities with the private sector fully understood?*

Approach to Cost-Benefit Assessment for PPP Projects

Level 1	Level 2	Level 3	Level 4	Level 5
Government does not undertake a cost-benefit analysis prior to undertaking a PPP project.	As part of its cost-benefit analysis the government takes into account all alternative modes of delivery including financial and non-financial costs and benefits over the PPP project lifecycle.	Level 2 plus the cost-benefit assessment includes analysis of the degree to which costs can be recovered from end-users and, in the case of shortfalls, what other sources of finances can be mobilised.	Level 3 plus the cost-benefit analysis includes a risk assessment based on the public interest.	Level 4 plus the potential public finance implications of sharing responsibilities with the private sector are fully understood.

4.5. PPP monitoring

To ensure that a PPP project meets its stated policy objectives, it should be monitored throughout its lifecycle The OECD Principles for Private Sector Participation in Infrastructure advise that "formal agreements between public authorities and the public sector should be specified in terms of verifiable infrastructure services to be provided to the public on the basis of output or performance based specifications." An additional component of a monitoring mechanism should include access to information about the financial and technical state of a PPP project as well as the future business and budget plans of the project's partners.

This indicator examines the degree to which a monitoring mechanism is in place, whether the mechanism consistently (i.e. on an annual basis) monitors the financial and technical state of PPP projects, and whether future business and budget plans of the project's partners are open to scrutiny.

Questions

- *Is there a mechanism in place to monitor the performance of PPP projects?*
- *What aspects of PPP projects are monitored (e.g. financial and technical details)?*
- *Does the government monitor all PPP projects and how often?*
- *As part of the monitoring process, is the private partner in a PPP project required to submit on an annual basis its business and budget plans for the following year?*

PPP Monitoring

Level 1	Level 2	Level 3	Level 4	Level 5
There is no mechanism in place to monitor the performance of PPP projects.	The government is in the process of designing a mechanism to monitor the performance of PPP projects.	The government monitors on an ad hoc and inconsistent basis the financial and technical state of some but not all PPP projects.	The government monitors on a consistent basis (e.g. on an annual basis) the financial and technical state of every PPP project that it embarks upon.	Level 4 plus the government requires the private partner in the PPP project to submit at least on an annual basis its business and budget plans for the following year until the end of the PPP contract.

ANNEX E. BASIC DOCUMENTATION REQUIRED WHEN ESTABLISHING A COMPANY IN EGYPT

Based on interviews with private sector representatives, investors seeking to establish legal presence in Egypt are required to provide the following documents:[133]

- Power of Attorney from each of the founders authorising their representative in Egypt to undertake establishment procedures on their behalf. Notarized and legalized by the Egyptian Consulate in the home country, in case of foreign founders;
- Up-to-date official extracts from the Commercial Registrar and the articles of association of the founders together with a list showing the current shareholders of each founder abroad. Notarized and legalized by the Egyptian Consulate in the home country, in case of foreign founders;
- Passport copies of the person(s) to be nominated as the managers (in case of LLC) or member(s) of the board of directors (in case of JSC);
- Lease agreement or deed of possession of the headquarter of the company in Egypt;
- A bank certificate by an authorized bank in Egypt evidencing the deposition of the full amount of the company's designated capital (in case of LLC) or at least 10% of the company's issued capital (in case of JSC) in a frozen account therewith;
- Extracts from the Commercial Registrar of the shareholders of the founder in case they are corporate entities or copies of passports in case of natural persons. This document is not required by GAFI for the purpose of establishment but rather by banks in Egypt for the purpose of opening bank accounts required in order for the local entity to be established. Notarized and legalized by the Egyptian Consulate in the home country, in case of foreign founders. Further details on this issue below.
- The model articles of association of the LLC or JSC as adopted by GAFI and completed by the parties.

The establishment steps/procedures are as follows:

- Obtaining a certificate with the reservation of the name from the Commercial Registrar;
- Preparing the articles of association for the company based on the model approved by GAFI;
- Opening a bank account for the company with one of the authorised banks in Egypt in order for the founders to deposit the designated capital;
- Obtaining a certificate from the bank confirming the deposit of the capital;
- Preparing and submitting the necessary documents to GAFI for review and approval by their internal legal department and payment of the establishment fees;
- Endorsing the articles of association by the Egyptian Bar Association;
- Authentication of the articles of association by the public notary;

[133] It should be noted that this list is not an exhaustive one, and that additional documents may be required.

- Obtaining the approval of the Capital Market Authority on the issuance of the company's shares, in case of JSCs;
- Obtaining the approval of the Chamber of Commerce on the establishment;
- Issuance of a certificate by GAFI licensing the establishment of the company;
- Registration of the company with the Commercial Registrar;
- Opening a tax file for the company.

ANNEX F. EGYPT'S BILATERAL INVESTMENT AGREEMENTS (AS OF JUNE 2013)

Partner	Date of signature	Date of entry into force
Albania	22 May 1993	6 Apr 1994
Algeria	29 Mar 1997	3 May 2000
Argentina	11 May 92	3 Dec 93
Armenia	9 Jan 96	1 Mar 06
Australia	3 May 01	25 Sep 02
Austria	12 Apr 01	29 Apr 02
Azerbaijan	24 Oct 02	---
Bahrain	17 Sep 97	11 Jan 99
Belarus	20 Mar 97	18 Jan 99
Belgium and Luxembourg	28 Feb 99	24 May 02
Benin	Feb 01 (Initialled)	---
Bosnia and Herzegovina	11 Mar 98	29 Oct 01
Botswana	02 Jul 03 (Initialled)	---
Bulgaria	15 Mar 98	3 Jun 00
Burundi	13 May 12	---
Cameroon	24 Oct 00	---
Cambodia	June 2000 (Initialled)	---
Canada	13 Nov 96	3 Nov 97
Central African Republic	7 Feb 00	---
Chad	12 Mar 98	---
Chile	5 Aug 99	---
China	21 Apr 94	1 Apr 96
Columbia	Jun 00 (Initialled)	---
Comoros	13 Nov 94	27 Feb 00
Congo, Democratic Republic of	18 Dec 98	---
Croatia	27 Oct 97	2 May 99
Cyprus	21 Oct 98	9 Jun 99
Czech Republic	29 May 93	5 Jun 94
Denmark	24 Jun 96	29 Oct 00
Djibouti	21 Jul 98	---
Ecuador	19 Apr 92	---
Ethiopia	27 Jul 06	27 May 10
Finland	3 Mar 04	5 Feb 05
France	22 Dec 74	9 Aug 75
Gabon	22 Dec 97	---
Georgia	3 Jun 99	---
Germany	16 Jun 05	22 Nov 09
Ghana	11 Mar 98	---
Greece	16 Jul 93	6 Apr 95
Guinea	6 Mar 98	---
Hungary	23 May 95	21 Aug 97
Iceland	8 Jan 08	15 Jun 09
India	9 Apr 97	1 Nov 00
Indonesia	19 Jan 94	29 Nov 94
Iran, Islamic Republic	25 May 77	---
Italy	2 Mar 89	1 May 94
Jamaica	10 Feb 99	---
Japan	28 Jan 77	14 Dec 77
Jordan	8 May 96	11 Apr 98
Kazakhstan	14 Feb 93	8 Aug 96
Korea, Democratic People's Republic of	19 Aug 99	12 Jan 00
Korea, Republic	18 Mar 96	25 May 97
Kuwait	17 Apr 01	26 Apr 02
Latvia	24 Apr 97	16 Apr 98
Laos	27 Jun 00 (Initialled)	---

Lebanon	16 Mar 96	6 Feb 97
Libyan Arab Jamahiriya	3 Dec 90	4 Jul 91
Lithuania	6 May 98 (Initialled)	---
Macedonia, TFYR	22 Nov 99	---
Malawi	21 Oct 97	7 Sep 99
Malaysia	15 Apr 97	3 Feb 00
Mali	9 Mar 98	7 Jul 00
Malta	20 Feb 99	18 Jul 00
Mauritius	31 Jan 13 (Initialled)	---
Mongolia	27 Apr 04	25 Jan 05
Morocco	14 May 97	27 Jun 98
Mozambique	8 Dec 98	---
Netherlands	17 Jan 96	20 Jan 98
Niger	4 Mar 98	---
Nigeria	20 Jun 00	---
Oman	25 Mar 98	3 Mar 00
Pakistan	16 Apr 00	---
Palestinian Territory	28 Apr 98	19 Jun 99
Peru	Jun 00 (Initialled)	---
Philippines	Jun 00 (Initialled)	---
Poland	1 Jul 95	17 Jan 98
Portugal	28 Apr 99	23 Dec 00
Qatar	12 Feb 99	14 Jul 06
Romania	24 Nov 94	3 Apr 96
Russian Federation	23 Sep 97	12 Jun 00
Saudi Arabia	13 Mar 90	18 Dec 90
Senegal	5 Mar 98	---
Serbia	24 May 05	---
Seychelles	22 Jan 02	---
Singapore	15 Apr 97	22 Mar 02
Slovakia	30 Apr 97	1 Jan 00
Slovenia	28 Oct 98	7 Feb 00
Somalia	29 May 82	16 Apr 83
South Africa	28 Oct 98	---
Spain	3 Nov 92	26 Apr 94
Sri Lanka	11 Mar 96	10 Mar 98
Sudan	8 Jul 01	1 Apr 03
Swaziland	18 Jul 00	---
Sweden	15 Jul 78	29 Jan 79
Switzerland	7 Jun 10	May 12
Syrian Arab Republic	28 Apr 97	5 Oct 98
Tanzania, United Republic of	30 Apr 97	---
Thailand	18 Feb 00	4 Mar 02
Togo	(Initialled)	
Tunisia	8 Dec 89	2 Jan 91
Turkey	4 Oct 96	31 Jul 02
Turkmenistan	23 May 95	29 Feb 96
Uganda	4 Nov 95	---
Ukraine	22 Dec 92	10 Oct 93
United Arab Emirates	11 May 97	11 Jan 99
United Kingdom	11 Jun 75	24 Feb 76
United States	29 Sep 82	27 Jun 92
Uzbekistan	16 Dec 92	8 Feb 94
Vietnam	6 Sep 97	4 Mar 02
Yemen	6 Jun 96	10 Apr 98
Zambia	28 Apr 00	---
Zimbabwe	27 May 99	---

Sources: MENA-OECD programme/UNCTAD/Kluwer Arbitration.

ANNEX G. THE ENFORCEMENT OF ARBITRAL AWARDS IN EGYPT

Enforcement of arbitral awards in Egypt is subject to Articles 56 to 58 of the Arbitration Law No. 27 of 1994, Articles 296 to 301 of the Code of Civil and Commercial Procedure as well as to provisions of the 1958 New York Convention for the recognition and the enforcement of arbitral awards.

The favourable rules of the New York Convention will apply to foreign arbitral awards (i.e. rendered outside Egypt) as well as to awards rendered in Egypt related to international arbitration cases.

Extracts of the Arbitration Law

Article 56:

> "Jurisdiction to issue an enforcement order of arbitral awards lies with the president of the court referred to in Article 9 of this Law or with the member of said court who has been mandated for this purpose by delegation from said president. The application for enforcement of the arbitral award shall be accompanied by the following:
>
> 1. The original award or a signed copy thereof.
> 2. A copy of the arbitration agreement.
> 3. An Arabic translation of the award, certified by a competent organisation, in case the award was not made in Arabic.
> 4. A copy of the procès-verbal attesting the deposit of the award pursuant to Article 47 of this Law."

Article 57:

> "The filing of an action for annulment does not suspend the enforcement of the arbitral award. Nevertheless, the court may order said suspension if the applicant requests it in his application and such request is based upon serious grounds. The court shall rule on the request for suspension of the enforcement within sixty days of the date of the first hearing fixed in relation thereto. If suspension is ordered, the court may require the provision of a given security or monetary guarantee. When the court orders a suspension of enforcement, it must rule on the action for annulment within six months of the date when the suspension order was rendered."

Article 58:

> "1. Application for the enforcement of an arbitral award shall not be admissible before the expiration of the period during which the action for annulment should be filed in the court registry.
>
> 2. The application to obtain leave for enforcement of the arbitral award according to this Law shall not be granted except after having ascertained the following:

a) That it does not contradict a judgment previously rendered by the Egyptian Courts on the subject matter in dispute;

b) That it does not violate the public policy in the Arab Republic of Egypt; and

c) That it was properly notified to the party against whom it was rendered.

3. The order granting leave for enforcement is not subject to appeal. However, the order refusing to grant enforcement may be subject to a petition lodged, within thirty days from the date thereof, before the competent court referred to in Article 9 of this Law."

Article 3, according to which arbitration is international when:

"(…) its subject matter is a dispute related to international commerce in any of the following cases:

1. If the principal places of business of the two parties to the arbitration are situated in two different States at the time of the conclusion of the arbitration agreement. If either party to the arbitration has more than one place of business, due consideration shall be given to the place of business which has the closest relationship with the arbitration agreement. If either party to the arbitration does not have a place of business, then the place of its habitual residence shall be relied upon.
2. If the parties to the arbitration have agreed to resort to a permanent arbitral organization or to arbitration centre having its headquarters in the Arab Republic of Egypt or abroad.
3. If the subject matter of the dispute falling within the scope of the arbitral agreement is linked to more than one country.
4. If the principal places of business of the two parties to the arbitration are situated in the same State at the time of the conclusion of the arbitration agreement, but one of the following places is located outside the said State:

    a. the place of arbitration as determined in the arbitration agreement or pursuant to the methods provided therein for determining it;

    b. the place where a substantial part of the obligations emerging from the commercial relationship between the parties shall be performed; or

    c. The place with which the subject matter of the dispute is most closely connected".

ANNEX H. NEW PROVISIONS ON AMICABLE SETTLEMENT OF DISPUTES

Egypt promulgated Law No. 4 of 2012 which amended the Investment Law by adding Articles 7 bis and 66 bis, as follows:

- Article 7 bis of the Investment Law:

  "Settlement is possible with Investor for crimes under chapter four of the second book of the Criminal Law that the investor committed in his person or in his capacity or crimes he participated in and this is within the scope of the activities provided for in this Law and at any stage of the criminal proceedings (trial) before a final judgment is issued.

  Settlement is conditional upon restitution by the investor of all assets, movables, lands or real estate which were the subject of the crime or the equivalent of its fair market value at the time the crime was committed when restitution seems to be impossible provided that the fair market value will be determined by a committee of experts former by a decision of the Minister of Justice.

  If a final un-enforceable judgment was issued, settlement will be conditioned, in addition to above-mentioned, upon full payment of the sentenced monetary sanctions.

  Settlement Agreement shall be drafted and signed by the investor or his representatives authorized by a special power of attorney and by the representative of the competent authority and shall be approved by the competent minister upon its presentation by the chairman of the General Authority for Investment. Investigatory authorities or, depending on the circumstances, the competent Court shall be notified by the approved settlement agreement and the Public Prosecutor shall also be notified in order to cease the enforcement of the sentenced sanction.

  Settlement with the investor in accordance with the above will extinguish the criminal trial for the investor solely and will not be extended to the other accused in the same case who shall not profit from it".

- Article 66 bis of the Investment Law:

  "The Prime Minister will issue a decree establishing a committee to settle disputes that arise from contracts entered into between the investors and the authorities affiliated with the State having the mission of examining the disputes arising between the parties to the above-mentioned contracts in order to settle them in a way that preserves the Public Funds and achieving the contractual balance. If the committee reaches a final amicable settlement with all parties, in this case, the settlement will be binding upon parties once approved by the Minister's Council."

  The amended Law offers to investors the possibility of amicably settling disputes with State entities in relation to the crimes of embezzlement, profiteering and squandering of public funds as referred to in the 4th section of the second book of the Egyptian Penal Code No. 58 of 1937 (as amended), which mainly deals with crimes of corruption committed by public servants or employees in the course of their functions, or in relation to public funds or assets that entrusted to them by virtue of their positions or using the authority of their positions as public employees to derive unlawful profit or benefit. According to article 39 of the Penal

Code, any person that takes part in, or commits any part of a crime shall be deemed a perpetrator and shall bear the punishment prescribed in the Penal Code. In addition, article 41 states that any person that is an accessory to a crime shall bear the same punishment as the perpetrator unless the law provides otherwise.

The relevant crimes specified in Section 4 of Book 2 of the Penal Code for which an investor can be implicated are the following:

1). Unlawful seizure by a public employee of state owned lands by cultivating or developing such land for his own benefit or of facilitating such unlawful seizure for any third party – punishable by imprisonment for 3 – 15 years (article 115 of the Penal Code);

2). Premeditatedly damaging public assets or harming public interest by a public employee that are entrusted to the entity at which he works or connected thereto, in this case by undervaluing the land – the punishment for which is hard labour for 3-5 years (Article 116 bis); and

3). Causing substantial damage to state funds or interests by a public employee as a result of negligence or misuse of authority. The perpetrator will be jailed for less than 3 years, unless the crime resulted in damaging the country's economy or interests, in which case the punishment shall be not less than 1 year and not more than 6 years imprisonment in addition to pecuniary fines (Article 116 bis (a).

In addition to the above, article 18 of the Penal Code provides that perpetrators of the crimes mentioned above shall be sentenced to return the unlawfully seized property or embezzled funds in addition to being fined up to the value of the seized property, or the benefit derived from the crime.

Rebuilding confidence and supporting government efforts towards a roadmap for investment are the main objectives of the *Business Climate Review of Egypt*. This review has been carried out by the MENA-OECD Investment Programme with the support of the European Commission, and benefitted from the active co-operation of the Egyptian authorities and the private sector.

This review is the result of a participatory and consultative process. It contains analytical outputs and recommendations to the government and other stakeholders. It principally focuses on investment policies and public-private partnerships (PPPs), building on an earlier comprehensive analysis carried out by the MENA-OECD Investment Programme of Egypt's business environment in 2009-10.

Throughout the recent political upheavals the authorities have continued to recognise that the business climate is crucial to realising Egypt's potential. This review acknowledges that it is now important to lay the groundwork for policies and practices more supportive of business and investment, and to implement a more transparent and streamlined environment to further develop the private sector.

MENA-OECD INVESTMENT PROGRAMME

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With the financial assistance of the European Union

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