



Azmi & Associates

(Newsletter)

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Our Message

Welcome to the inaugural issue of "In Brief". We hope to provide both interesting and significant news, information and developments on legal matters that have an impact on our clients.

2008 has certainly been an eventful and- for many- a turbulent year. The effects of the global economic crisis have not yet fully unfolded and there is no doubt that predictions for 2009 will be plentiful in the coming weeks. Current turmoil aside, looking back at the legal scene in 2008, Egypt witnessed some significant events and developments on the legal and judicial levels. In addition to the "first of its kind" ruling in the famous cement antitrust case, the antitrust law, itself, was also subject to amendments before it even went into application. The relatively new Labour Law (of 2003) was subject to yet another change in the dispute settlement mechanism between the employer and the employee and the long awaited legislation on the new economic courts was finally promulgated. In this issue we will shed some light on the effect that the antitrust ruling may have on the business scene along with the new economic courts. We will also "try" to clarify the rather "ambiguous" change in the Labour Law- the effectiveness of which, until applied by courts, will remain to be seen.

We look forward to your feedback and suggestions and hope you will enjoy future issues of "In Brief".

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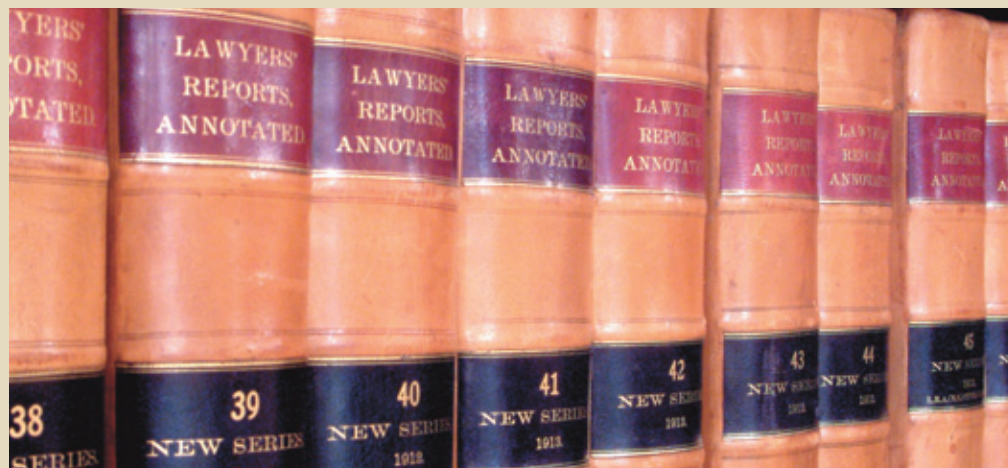
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Important Amendment To The Dispute Settlement Provisions Of The Labor Law:

Earlier in 2008, the Supreme Constitutional Court found the dispute settlement mechanism under article 70 (the "infamous" five-party committee) of the Labor Law unconstitutional. According to the new amendment- a simplified mechanism- all labor disputes are now referred by the requesting party (be it the employer or the employee) to a three – party committee made up of representatives of the 1) labor office, 2) union and 3) employer for amicable settlement within 21 days of request. If no settlement is reached, either party may resort to court within 45 days. A request for dismissal by employer must be decided within 15 days by the court and, if rejected, the court will rule that employee should be reinstated in his/her position. If the employer refuses to reinstate the employee, the court will order the employer to pay a preliminary compensation equal to 12 months of the dismissed employee's salary (assuming the employee had worked for over a year). This amount will serve as an "advance" on compensation until the employee files an action requesting the full amount of compensation. The amount paid as preliminary compensation will be deducted from the final compensation. The bottom line? The amendment may simplify steps to follow if facing an employee/employer dispute but more likely employers will be ordered to pay the minimum compensation (one year's salary) if no amicable settlement is reached. The obvious question that arises is "what if the compensation action is rejected or if the employee is awarded less than the preliminary compensation" will the employer have the right to file an action claiming the amounts already paid?? Only time will tell.



Will The Recent High-profile Judgment In The Cement Antitrust Case Have A True Restraining Effect?

After an extensive investigation of the cement sector and highly publicized trial, 20 cement executives were found guilty of violating the anti-trust laws in Egypt. The investigation was conducted by the Ministry of Trade and Industry's Egyptian Competition Authority (ECA) and started back in August 2006 when all of the cement companies in Egypt were visited by inspectors of the ECA for, what was referred to by the ECA as, "information gathering" visits for research purposes.

The indictment that followed alleged that the companies had conspired to collectively increase prices on cement and to restrict proper distribution by each maintaining its market share unchanged.

As this was the first case of its kind under the Anti-trust law that was implemented in 2005, and the new law on economic courts (see next article) had not yet been promulgated, the case was reviewed by a judge specialized in tax evasion matters. During the hearings, some high profile witnesses were called in to testify including the Chairperson of ECA.

The cement executives' defense on the merits was based on two central arguments: A. that the alleged "agreement" to increase prices was actually ordered by the then Minister of Public Enterprises prior to the issuance of the Antitrust law and was discontinued once the law was issued- the advisor to the Minister of Public Enterprise at the time testified in court to the accuracy of this; and B. that each company's market share was determined by maximum capacity, which had not changed significantly.

While the case was being reviewed, and prior to the issuance of the judgment, the law was amended to increase the fine to LE 300 million. This change, while of no impact to the cement case already underway, was regarded by many as a political signal meant to give a larger dimension to the case and increase pressure on the court to sentence the maximum fine.

On August 25, 2008, after six months of trial, the court found the cement executives guilty and fined each LE 10 million with immediate effect (had to be paid even though an appeal was filed) and last week the court of appeals upheld this judgment providing no new grounds or argument.

The question that remains: *was this just "one isolated case" to demonstrate the existence of the law and ECA; or is this the beginning of a series of trials that might address other industries where, to the public, the true monopolies are thriving.*

Law 120 of 2008 Economic courts law: Will it improve the investment climate?

According to legislators, the economic courts law is an important addition to legislations governing the economic activity in general and investment in particular. The law is meant to ensure that economic and commercial disputes are settled by specialized courts and qualified judges- a step mainly aimed at reassuring investors. It took four years of debate for the parliament to finally approve the Law (on May 18, 2008) that stipulates the establishment of specialized jurisdiction courts to be able to effectively (and hopefully swiftly) settle economic and commercial disputes.

The jurisdiction granted to these courts includes the handling of all disputes related to certain economic laws, such as the Capital Market Law, the Companies Law, the Investment Law and the Intellectual Property Rights Law. One of the anticipated advantages to the new Law is that it will create a pool of judges specialized in the legal affairs referred to such courts as they will be well-trained and gain expertise in economic matters.

Opponents of Law 120 / 2008 argue that it will not necessarily attract new foreign investors into the country or solve any of Egypt's chronic judicial problems. The new courts are still applying the same laws- many of which are long overdue for review anyway. This camp believes that such foreign investors will still prefer resorting to arbitration. Expedient litigations and court procedures are one part of the solution to Egypt's notoriously slow courts, but effective laws and expedient enforcement of judgments is another matter entirely. In this regard, it is not expected that international arbitration will ever be replaced by the economic courts in commercial matters, and will remain the favored means of dispute settlement.

Other concerns raised by the new law, include the fact that all disputes exceeding LE 5 million are directly referred to the second level of the economic courts, which is in effect a court of appeals. Should an unsatisfactory ruling be passed down, there is no higher level to resort to. Some issues of overlapping jurisdiction might also need to be dealt with.

The economic courts will operate in two domains. The first is the criminal proceedings arising from economic/commercial "crimes" as set forth in 17 laws, including bankruptcy crimes in the penal code, crimes contained in the real estate finance law and crimes listed in the Consumer Protection Law. The second domain is civil and will cover proceedings that arise from disputes set forth in 13 different laws including the Intellectual Property Protection Act, the Telecommunications Regulatory Act and the Law of the Central Bank.

Observers don't expect the effect of the new law to be noticed before the second half of 2009 (it was enforced as of October 1, 2008). So check back here for progress reports.

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Azmi & Associates is a full service law firm specializing in corporate and commercial law in the Middle East. As a professional law firm, Azmi & Associates assists international clients entering the Egyptian market, advising them on the most efficient market entry strategy and tax efficient structure. The firm specializes in IT related laws, company set up, joint ventures, construction laws and commercial contracts in general and provides these services in Arabic, English, and French.

The Firm is headed by **Karim Azmi**, who brings two decades of regional experience and in-depth knowledge of a wide range of industries including IT, telecommunications, construction, building materials, anti-trust, entertainment laws and intellectual property. Karim is the author of a number of law publications in English and French and is a regular member of government committees charged with preparing drafts of laws; including the committee that presented the draft of the Telecommunications Law promulgated in 2003.

Our philosophy is to work with integrity, competence, teamwork and complete reliability to our clients and to each other. We are committed to a loyal and intense pursuit of success for our Clients and the Firm.

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Thank You