

Welcome Note

As the summer season winds down and we start looking forward to the start of a new quarter, In brief takes a look back at the most significant events, cases and legislation of the past three months. This summer not just the temperatures were high! Hot legal topics abound in this issue of In Brief. We revisit the cement producers- still in the "judicial limelight" but this time they are being sued by a private contractor not the government. The General Authority for Financial Supervision has been officially established to oversee the work of three previously very important government authorities.

Finally, and as in previous issues of In Brief, we dedicate the "back page" article to a case that has, and still is, receiving extensive media coverage and occupying public opinion: The Orascom Telecom/France Telecom dispute over the shares of Egypt's Mobinil.

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New Umbrella Authority to Regulate Non-Banking Financial Services

According to the Law No. 10 of 2009, issued in February of this year, three major regulatory authorities are now merged into one new General Authority for Financial Supervision (GAFS). As of July 1st, the Capital Market Authority (CMA), the Egyptian Insurance Supervisory Authority and the Mortgage Finance Authority (MFA) are now all operating under one umbrella. GAFS will be responsible for the regulation of all non-banking financial services and will accordingly be overseeing non-bank financial markets and instruments, the capital market, the stock exchange, insurance services, mortgage finance, financial leasing and their related activities, such as factoring. All banking services will remain under the supervision of the Central Bank of Egypt. Furthermore, GAFS scope will include the issuance of licenses to perform non-bank financial services, providing information related to this domain of activities and deploying proper regulations to ensure competition and transparency in the provision of the aforementioned services.

So what is the rationale behind the move?

According to statements by Investment Minister, Mahmoud Mohieldin, GAFS aims to coordinate, unify and standardize the regulatory process of this sector and also aims to better utilize the managerial and financial resources of the three authorities it is replacing. Proponents of this move also argue that GAFS will ensure market stability and further market development since its mandate also

includes promoting transparency and disclosure, furthering knowledge regarding investment in the non-bank financial services sector and protecting the rights of investors.

While the establishment of GAFS comes against a backdrop of global economic and financial crisis which highlighted the need for integrity and transparency in financial markets; and although investors and financial service providers have called for a greater number of financial instruments to be made available in Egypt over the past decade, it was actually the limited scope of financial activities that helped shelter Egypt somewhat from the full impact of the crisis.

Will the load be too much for one entity to handle?

One positive indicator is that the capable and ever optimistic Dr. Ziad Bahaa El Din, former Chairman of the General Authority for Investment and Free Zones (GAFI), will be at GAFS' helm. Under Bahaa El Din GAFI took large strides to eliminate bureaucracy as well as facilitate and speed up processes required to register an enterprise in Egypt contributing to a sharp rise in FDI.

GAFS will be governed by Law No. 192 of 2009, will be fully financially independent, and its board's decision will not be subject to the approvals of any governmental body to be effective. Its headquarters are located in the Smart Village on the Cairo /Alexandria desert road.

The Cement Saga Continues

four leading cement firms are being jointly sued by a contracting company

As if it wasn't enough to be the subject of media and public opinion attacks, investigated for monopoly, dragged through the courts and sentenced to millions in antitrust fines; cement companies are now facing another blow. This time four leading cement firms are being jointly sued by a contracting company for damages which the plaintiff claimed to have sustained as a result of the monopolistic practices carried out by the defendants. The contracting company is basing its law suit on article 163 of the civil code which states that "Every culpable act which causes damage to another obliges he who did it to compensate for such damage". Since fault was clearly established in court during the antitrust case, this entitles the plaintiff to compensation which is estimated by the Plaintiff to be 25 million Egyptian Pounds.

In its statement of claim, the plaintiff argues that as a contracting company, they entered into various binding contracts of works at prices which were determined taking into account the then market price

of 150LE per ton of cement. As a result of prices subsequently jumping to 360, 500 then 700 LE per ton, the plaintiff, alone, had to bear the economic consequences of this increase and incurred substantial losses in executing those contracts of works.

At first glance it doesn't look like the contracting company has a very strong case considering that it will be difficult to prove that actual losses incurred, if any, were the direct result of such increase. Additionally, the effect of the increase on each specific contract entered into by the plaintiff will have to be demonstrated to the court. Again, not an easy feat, but given the fact that cement companies have repeatedly earned the title of "bad guy", it is not entirely impossible that they find themselves facing an additional few million in damages.

The case will be tried before the newly established Economic Courts (see issue 1 of In Brief) and the first hearing is set for September 12, 2009. Check here for updates





When Practice and Policy don't See Eye To Eye

GAFI, the General Authority for Investment and Free Zones is one of the Ministry of Investment's most important arms and is in effect in charge of all aspects of investments in Egypt including approval of projects, granting of advantages (customs etc) as well as the approval of all legal aspects of incorporating new companies and the supervision of the proper application of the companies' law by GAFI's legal department. It replaces the Ministry's now defunct "Companies' Department", which in the past was affiliated to the also defunct Ministry of Trade.

Within GAFI, which boasts being Egypt's "one-stop-shop" for investment, the legal department is supposed to ensure that all companies investing in Egypt are in compliance with its laws and regulations. The legal department is also in charge of ratifying companies' EGM, OGM and other board meetings. Ideally, applying the laws and regulations that govern these matters should be a straight forward practice and no problems should arise.

Recently, however, certain "unofficial policies and

practices" are being required by GAFI researchers and analysts regarding the procedures and substance of company meetings in order for those meetings to be approved. Although in clear conflict of the wording (and spirit) of the law, we are seeing more and more lawyers actually advising their clients to "go along" with GAFI practice; or having to explain that "while the law allows the general assembly to decide on this, the folks at GAFI normally do not" etc..... Many investors and their lawyers are disregarding what the law dictates and are accepting these imposed rules in order to get things done quickly and get their minutes approved. More and more lawyers find themselves facing a dilemma and questioning whether to stick to the word of the law and then have to engage in debates with GAFI, which they may win but at the expense of their clients' time.

So the question is should lawyers and investors waste their time trying to convince GAFI of what the proper meaning of the law is or should, for the sake of time, accept the interpretations of GAFI as they are in order to get their work done?

Mobinil/France Telecom, the Never Ending Story

Mobinil, Egypt's largest mobile phone operator, by number of subscribers, has been the focus of a shareholder dispute between Cairo-based Orascom Telecom (OT) and France Telecom (FT).

Officially, the Egyptian Company for Mobile Services (ECMS), Mobinil, is 51% owned by a holding company in which FT has a 71.25% stake and OT has a 28.75% stake. In addition, OT has a 20% direct stake. That structure gives OT an overall stake of about 35% and FT about 36%. The remaining 29% is freely traded on Egypt's stock exchange.

The dispute has to do with the implementation of a deal they signed in August 2001 as partners in the holding company. It seems the main differences were in their strategy for Mobinil. According to analysts, OT was eager to invest more heavily than FT wanted and while FT claims the disagreement is over Mobinil's budget and expenditure, marketing strategy and start up of 3G services. OT took the case to the International Court of Arbitration at the International Chamber of Commerce in Geneva in 2007.

Last April the Arbitration court ruled that FT should buy OT's stakes in the holding company at a price

equivalent to LE273.26 (\$49) a share by April 10. This gave rise to a new dispute as OT and Egypt's regulator, the Capital Markets Authority, said FT had to bid for the rest of Mobinil but FT says any offer is voluntary.

Two bids later, both refused by regulators for being too low, FT last April started to question the regulator's neutrality and appealed its decision. Meanwhile, OT went to an Egyptian court asking it to rescind the arbitration order. Over the next three months, the two companies battle it out in courts of public opinion until the government finally interfered and said it wanted the firms to end the row. At that point, OT announced it would discontinue legal proceedings to rescind the arbitration order.

However, in July regulator rejected a third FT offer for outstanding Mobinil shares, citing the same reasons as in earlier rejections and then earlier this month FT lost its appeal against regulator's May ruling rejecting its offer. The dispute has yet to be resolved however, now under the supervision of a new regulator (see GAFS article) and mounting official pressure, the last chapter should unfold soon.

AZMI & ASSOCIATES proudly announce their newest member, Mohamed Abdel Nasser. A graduate of the English Section of the faculty of Law, Cairo University in 2005, and currently preparing for a Master's Degree in International Commercial and Legal Transactions, Mr. Abdel Nasser spent the past three years, at the legal department of Egyptair where he specialized in negotiating and drafting of the various contracts related to the aviation business and was a member of the legal committee handling the Egyptair adherence to Star Alliance. We are pleased to have Mohamed join our team as he brings not only sound experience but a dedicated and skilled approach to our clients. Mr. Abdel Nasser, fluent in English and Arabic, will focus his practice on contracts as well as on some litigation cases.



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