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Welcome note

It is the beginning of a new season and a new quarter and we are very pleased to welcome two new members to Azmi & Associates. Also, as promised, we bring you our second issue of In Brief. In this issue we revisit the antitrust issue with an update on the ongoing cement case and the outcome of the investigation into the steel sector. Egypt has witnessed a marked rise in labor unrest and workers' protests over the past years and central to many of these is the issue of profit sharing. We take a look at the legal background and how a groundbreaking case between a cement company and its workers may significantly impact future investors. We shed some light on important amendments to both the Environment and Arbitration Laws that we feel our clients should be aware of and, last but not least, we give you our take on the infamous pyramid scheme - otherwise known as the "Nabil El Boushy" scandal.

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Could There Be A Way Around Employee Profit Sharing?

Egypt has seen a wave of labor strikes in the past two years that is the largest and most militant since the 1940s. The work stoppages, protests, sit-ins and even hunger strikes have spread across workers in a range of sectors from textile workers to truck drivers, building materials workers and garbage collectors. Although strikers' specific demands vary, observers attribute the phenomenon generally to increasingly difficult economic circumstances and a fear of loss of benefits through government plans for economic privatization.

Profit Sharing

A common demand voiced by many of the protests is a demand for a share in the profits of their companies. According to the Companies' Law No. 159 of 1981, employees of joint stock companies are entitled to a percentage not less than 10% of the "distributable" dividends or profits of the company and not more than the total annual salaries of the employees.

A Matter of Definition

The Law is clear on the matter but the problem appears when shareholders and employees don't see eye to eye on the interpretation or definition of the term "distributable" profits. In some cases companies, despite having realized large net profits, decide for business or expansion purpose, not to distribute dividends to shareholders for one or more fiscal year. Companies, in this case, argue that if no dividends are distributed to the shareholders who themselves are the "owners" of the company...then, naturally, there are no profits to "share" with employees. On the other hand, employees maintain that "distributable" profits are the net profits of the company and once net profits are realized, then profits become "distributable" as per the wording of the law. Whether the general assembly of shareholders decides to distribute or not is a decision that should have no impact on the employees' rights under the law.

In almost all of the cases so far, some sort of "governmental interference" made sure that the disputes were settled amicably with settlements varying from payment of a "consolation" bonus to payment of remuneration in installments. The first case to take this argument to court is that of the union of employees of an international cement producer that decided against amicable settlement and instead, took the case to court claiming 10% of the net profits of the company for a number of years. The outcome, which is not expected for several months, could have a significant impact on future foreign investment in Egypt. Foreign investors, and especially multinational companies, believe they pay salaries that are already significantly higher than standard Egyptian wages and accordingly don't feel compelled to give up 10% of their net profits to employees.

Amendment to Environment Law No. 4 of 1994

One of the first laws to be passed in 2009 was an important amendment to the Environment Law No. 4 of 1994. Clearly addressing growing concern for biodiversity conservation, the amendment included changes to the definitions section of the law, providing for a broader and wider definition to the term "Environmental Pollution" and "Air Pollution"

The definition of Environmental Pollution was broadened to read "Any modification in environmental properties which may result directly or indirectly in harming living organisms or establishments or in affecting the ability of people to lead a normal life or harming natural habitats and biodiversity".

Air Pollution was also modified to include "smell" and now reads "any modification in the properties or specifications of the natural air which causes hazards to human health or to the environment, whether resulting from natural factors or human activities, including noise and olfactory (smells) pollution".

The amendment also modified the definition of illegal "Discharge" of hazardous wastes and other substances into the river Nile and the territorial waters in general. The change now allows the Egyptian Environmental Affairs Agency ("EEAA") to determine forms of illegal discharge other than those clearly specified in the law.

Additionally, the amendment makes it now an essential requirement for any industrial project to submit an environmental assessment report before any approval is granted while, under the previous text, EEAA was assessing each application to see which cases required a full environmental assessment study.

Penalties in general were stepped up to become harsher and include imprisonment in the more serious offences which, previously were subject to fine only. Those include now cases of destruction or endangerment of any wild life or their natural habitat and the illegal trade, trafficking and smuggling of animals.

An Important Ministerial Decree on Arbitration: May Hamper More Than Help!

The Minister of Justice issued Decree No. 8310 for the year 2008 (October 7, 2008) organizing the procedure for depositing arbitral awards in accordance with Article 47 of the Egyptian Arbitration Law (No. 27 of 1994). Article 47 makes the deposit of the award by the award creditor an essential condition for obtaining the order for enforcement. Like Law 27 of 1994 itself, the Decree applies to local as well as to international arbitration awards whether those are institutional or ad hoc.

The Decree provides that "the party in whose favor the arbitral award has been rendered shall deposit the award... with the clerk of the enforcing court." In the case of an attorney submitting the award, the attorney must hold a power of attorney issued specifically for this purpose.

Once deposited, the award will undergo severe scrutiny by the technical office of the Ministry of Justice to ensure that a number of requirements are fulfilled, including that the award is not rendered in matters which, according to Egyptian laws, cannot be subject of arbitration and in particular that:

- a) The award is not in contravention of public order and morality;**
- b) The award is not related in any way to the rights, ownership, possession or division of a fixed asset;**
- c) The award is not related to any personal status (family law) matters**
- d) The award is not related to any matter of criminal law.**

The decree has come under heavy criticism because it interferes with the procedure for, and jurisdiction over, the enforcement of arbitral awards in Egypt and is seen by many to give too broad an authority to the technical office to "review" awards on their substance. It also raises questions as to its conformity with the constitutional principle of separation of powers and with Egypt's international obligations under the New York Convention on the Enforcement of Foreign Awards.

Egyptian Competition Authority Clears Steel Of Monopoly

In the last issue of In Brief, we questioned whether the recent Antitrust judgment against cement companies would have a restraining effect on other industries believed to have similar practices. Since then the Egyptian Competition Authority (ECA) in fact ended its two-year investigation into allegations of collusion and price fixing among steel bar producers. The ECA cleared the steel companies of any wrongdoing.

The investigation was being closely followed in the public and was seen as an important litmus test of the ECA's ability to truly enforce its authority over monopolistic practices- especially those of big business linked to politics. Some sectors received the verdict negatively, particularly in light of the guilty verdict just passed down to the cement industry, which exhibited many of the very same practices. Critics of the ECA's decision cite that the country's largest steel producer, which has a 58% share of the domestic steel market, abuses its dominant market position. Its owner, a senior member of the ruling National Democratic Party.

On the other hand, some independent experts have expressed their satisfaction with the ECA's findings, and argue that domestic steel prices were below import prices until very recently and that monopolizing the market would be nearly impossible in practice.

This point gained validity in view of the fact that some steel traders have signed import contracts at lower prices than the major steel producer, forcing the latter to lower its own prices as a result.

Meanwhile, in developments in the case against them, cement producers have for the first time- decided to take separate legal paths. A number chose to accept the ruling of the court of appeals, which had sentenced each cement company executive to pay a fine of EGP10 million. While others decided to take the matter to the court of cassation alleging wrong application of the law.

Pyramid Schemes: The Nabil El-Boushi Case

Undoubtedly the most talked about topic in the past few months has been what many are calling Egypt's version of Bernie Maddoff – Nabil El-Boushi. El-Boushi has been accused by investors in Egypt and the United Arab Emirates (UAE) of stealing hundreds of millions of pounds with claims of legitimate investment in the London and New York stock exchanges under the cover of a local securities brokerage firm.



El-Boushi promised his clients-and in many cases delivered- high returns. Trouble started around December of last year when the truth began to emerge- El-Boushi was operating a classic pyramid scheme (where returns were paid out of the money collected from subsequent investors). In early January a series of complaints filed by his clients led to his arrest in the UAE and investigations in both countries.

The case is now before a criminal court under the orders of the prosecutor general in Egypt. The Appeals Court for Financial Criminal Cases of North Cairo will try El-Boushi in absentia on charges of receiving a sum of LE 350 million from clients and exploiting funds (tawzif al-amwal).

The reason so many clients trusted El-Boushi was because his scheme had a legitimate face in the company Optima Securities Brokerage, based in Cairo. It was, however, just a façade. He used the name of the brokerage company to receive money from his personal clients, but the company itself, which is registered in Egypt with the Capital Market Authority (CMA), did not invest the money. Another company was set up in Dubai by El-Boushi under the name Optima Global Holdings, but it was affiliated neither with the Egyptian company nor with another, unrelated, hedge fund manager named Optima, based in London.

This is hardly the first time Egypt has seen this type of fraud. In the 80s the famous Al-Rayyan, then the biggest name in the industry, lost a reported LE 1 billion- most of it belonging to small investors- in the stock market crash of October 1987.

Ashraf Saad (Al-Saad), Abd El-Fattah Al Sherif (Al-Sherif) and Hoda Abdel-Meneim (of Al-Hoda Misr) all carried out similar schemes. As a result, the People's Assembly passed law 146 of 1988, prohibiting companies from receiving any public money in any currency unless they were operating as joint-stock ventures.

Whether El-Boushi's scheme was fraudulent from the beginning, or whether he simply couldn't make the returns he had guaranteed and had to make up the shortfall with new investors' money, will be decided in court. However, the CMA, which bears responsibility for approving and licensing securities companies, is taking further steps to tighten its regulation and raise investor awareness. Last month the CMA signed a Memorandum of Understanding between the Egyptian Investor Protection Fund and its American Counterpart, Securities Investor Protection Corporation aimed at exchanging expertise and technical support in the area of legislation as well as applying best practices in a way that serves investors. The fact remains however, that as long as people continue to 'believe' the sales pitches and succumb to greed such scandals will continue to happen.

Firm News

New Team Members:

Legal:

Azmi & Associates is pleased to announce that Heba Shahein has joined its legal team effective 1 March 2009. Ms Shahein has an LLB in Law, a Bsc of Economics (hons) from Cairo University, an LLM in European Law from University of Amsterdam and is currently working on a PhD in Competition Law from the London School of Economics. Her experience includes legal practice with Shalakany Law Office in Cairo, In-House Lawyer for Shell in the Netherlands and Senior Lawyer at Americana Group in Cairo. She speaks Arabic, English and French.

Paralegal and Administration:

The firm is also pleased to welcome Mai Nadim on board. Mai has been appointed as the firm's Administrative Manager and brings with her extensive experience having worked as office manager at DLA Piper in Cairo and Kamel Law Office. She is a graduate of the German School in Dokki, Cairo and is currently studying for an LLB of Law from Cairo University. Mai speaks Arabic, German and English.



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