

**Decree issued on the formation of the Board of Directors leading Egypt's biggest development project: the formation of the private economic zone in the Suez Canal**

**Source: Decree No. 3300 of 2015, Issue No. 52 of the Official Gazette dated 24 December 2015**

This decree sets out the requirements for membership in the Board of Directors to the General Authority for the Suez Canal Special Economic Zone. Article 1 provides that the Chairman the General Authority for the Suez Canal Special Economic Zone will be the Chairman of its Board of Directors. Membership in the Board of Directors will also consist of the: Minister of Investment; Minister of Trade and Industry; Governor of Port Said; Vice-Chairman of the General Authority for the Suez Canal Special Economic Zone; and a representative from the Ministry of Defense chosen by the Minister of Defense.

The following individuals have also been selected to sit on the Board of Directors of the General Authority for the Suez Canal Special Economic Zone: (i) Dr Khaled Sarie Siam; (ii) Ashraf Negm; (iii) Neveen El Tahry; (iv) Ashraf Sabry; and (v) Ahmed Abdelwahab. These individuals are experts in legal, financial and design related matters with respect to the Suez Canal Special Economic Zone.

Duration of membership on the Board of Directors is three years starting from issuance of this decree (the decree was issued on 14 December 2015). Compensation for work on the Board of Directors will be set by a decree issued by the Prime Minister based on input from the Chairman of the Board of Directors of the General Authority for the Suez Canal Special Economic Zone.

Decree 193 of 2016, in Issue 6 of the Official Journal dated 11 February 2016, amends this decree by stating that the Minister of Transportation of Chairman of the Suez Canal Authority (or their representatives) are to be permanently added to the Board of Directors to the General Authority for the Suez Canal Special Economic Zone.

## **Decree issued permitting public entities to establish a joint stock company**

**Source: Decree No. 127 of 2015, Issue No. 52 (in duplicate) of the Official Gazette dated 29 December 2015**

Upon issuance of a decree by the Prime Minister, and after approval of the Cabinet of Ministers (based on criteria set by the Parliament), entities established and regulated by public law (e.g. a government owned company or an authority) may (i) be licensed to established joint stock companies alone; (ii) establish a joint stock company with other shareholders; and/or (iii) purchase shares in an existing company based on the provisions of the Companies Law (Law No. 159 of 1981) so long as such action is not in breach of the objectives or mission of the public entity.

## **Constitutional Court to hear appeal of Omar Effendi on security of its assets**

**Source: [www.alwafd.org](http://www.alwafd.org), 23 February 2016**

In September 2011, following the Egyptian revolution, the Supreme Administrative Court in the State Council of Egypt issued its decision to annul sale of the Omar Effendi Company (a public sector company at the time that owned the iconic Egyptian department store chain by the same name) to Anwal United Trading Company (a private Saudi investor) and for restitution, i.e., a return to the state of affairs before the sale in 2006. The Administrative Court also held that Anwal United Trading Company would be solely responsible for any debts undertaken in the Omar Effendi Company's name subsequent to its purchase in 2006 because of the inherent invalidity of the sale. Anwal United Trading Company had taken on debts worth over 54 million Egyptian Pounds in the name of the Omar Effendi Company after it was purchased. It is this second part of the ruling that continues to cause controversy in the Egyptian courts today.

The sale of the struggling public sector company for 589.5 million Egyptian Pounds was invalidated on grounds that it had violated Egyptian law because it was done through direct order rather than a public auction. The ruling was also based on the new owner's decision to lay off thousands of Omar Effendi employees following his acquisition of it, which violated the terms of the sale contract.

In response to an appeal by the Ahly United Bank (which had loaned the Omar Effendi Company sums of money after it was privatized in 2006) after the 2011 decision to make the Saudi investor pay back all loans taken in the Omar Effendi Company's name, the Court of Cassation decided in June 2015 to annul the second part of the Supreme Administrative Court's ruling. The Court of Cassation reasoned that any ruling on cancellation of debts was beyond the jurisdiction of the Supreme Administrative Court, as it was a business decision. Once the Omar Effendi Company was privatized, it became a private entity, and not affiliated with any public entity. Therefore, any challenges to its decision-making would fall under the jurisdiction of the regular courts because it effectively ceased to be a public entity after its privatization. The Court of Cassation refused to accept appeals from the Omar Effendi Company to its decision obligating it to pay back the loans incurred since the company was privatized.

The Court of Cassation's order effectively allows the Ahly United Bank to apply for administrative detention of the assets of the Omar Effendi Company (and its owner if applicable) if it is unable to pay back the loans to the Ahly United Bank. In response, the Holding Company for Construction and Reconstruction, the public sector company which now owns the Omar Effendi Company, has turned to the Supreme Constitutional Court to challenge the Cassation Court's ruling in June 2015 and to prevent any administrative detention of its assets. In February 2016, the Supreme Administrative Court decided to delay the appeal lodged by the Ahly United Bank to reject the decision that annulled the sale of the Omar Effendi Company.

The Chairman of the Board of the Holding Company for Construction and Reconstruction has suggested that in the alternative, the Saudi Investor can pay back to the State any difference between the purchase price and what he invested in the company whilst it was still in his ownership, with debts the company incurred.

## **Ministerial Decree introducing amendments to the Executive Regulations of the Capital Markets Law aimed at diversifying financing tools**

**Source: Ministerial Decree No. 6 of 2016, Issue No. 37 of the Official Gazette dated 15 February 2016**

This decree mainly addresses three different matters: (i) the definition of charitable funds and its mechanisms; (ii) covered bonds; and (iii) issuance of non-rated bonds.

Firstly, Article 1 of the decree added a new category of investment funds, i.e., *charitable funds*, an institutional mechanism for financing governmental initiatives for social purposes. This is the first type of investment fund in Egypt that does not pay dividends to certificate holders, as the dividends and interests for charitable funds can only be disbursed for social and charitable purposes.

The decree also added a new Article (179 *bis*), which provides that the Board of Directors of the Egyptian Financial Supervisory Authority (EFSA) shall determine the entities that are eligible to establish a charitable fund. The Chairman of EFSA shall draft the fund's statute. The fund's statute, prospectus or its information memorandum shall stipulate that the distribution of its dividends and interests is restricted to social and charitable purposes determined by the EFSA's Board of Directors. Distribution shall be through established private charities, public entities or affiliates of public entities. It is worth highlighting that the fund's certificates cannot be listed on the stock exchange.

Secondly, the decree added new article to the Executive Regulations (35 *bis* "1") which discuss respectively covered bonds. Article 35 *bis* "1" provides that covered bonds are to be backed by a specific portfolio of the issuer's financial rights. EFSA' board of directors shall set the necessary rules to issue such bonds including requirements of the issuer to issue covered bonds, the additional collateral for the re-payment of principal and interests and the applicable credit rating.

Thirdly, Article 315 *bis* "1" permits the issuance of non-rated bonds in order to provide financing for small and medium enterprises without burdening small and medium enterprises by requirements to obtain credit ratings. These will be available through private placement. Non-rated bonds shall be granted by qualified investors who are able to evaluate the risks. The Board of Directors of the EFSA shall issue criteria to determine who is considered a qualified investor and disclosure requirements. These non-rated bonds may

not be listed in any Egyptian stock market without EFSA's prior approval in accordance with the regulations set by its Board of Directors in this regard.

## **Parliament decision rejecting the Decree No. 18 of 2015 on the Civil Service Law**

**Source: Parliament Decision No. 1 of 2016, Issue No. 7 of the Official Gazette dated 18 February 2016**

In January 2016, the Egyptian Parliament decided not to approve Decree Law No. 18 of 2015 on the Civil Service Law but did not annul its enforcement from its date of issuance 12 March 2015 to 20 January 2016, when it was rejected. Consequently, the Public Sector employees are currently subject to the old Administrative Employees Law no. 47 of 1978. Parliament's vote on the law came as part of a review of all laws passed in the period between the passing of the 2014 Constitution and the formation of the new parliament.

The controversial law presented a new system for salaries and stipulated that incentives should be approved by the Prime Minister as a fixed percentage of the total salary every year in accordance with the state employee's position. The law also stipulated that fixed salaries should contribute to 80% of the employee's income, while bonuses are awarded according to the employee's performance, rather than seniority.

Under the current regime, 80% of public employees' wages were constituted by bonuses while 20% represented a fixed salary. Moreover, the law would have given the government the right to terminate the employment of the state employees after reviewing the employee's evaluation reports, whereas previously the employment's termination of state employees was mainly limited to corruption-related cases or absence without leave.

## **Prime Minister Decree issued on the formation of a Ministerial Committee for the settlement of disputes of Investment's contracts**

**Source: Decree No. 3412 of 2015, Issue No. 53 of the Official Gazette dated 31 December 2015**

As part of the Egyptian Cabinet's efforts to reassure investors and avoid potential disputes, the Egyptian government formed a ministerial committee to settle disputes arising from investment contracts.

Article 1 of the Decree establishing the ministerial committee provides that a ministerial committee is formed for the settlement of disputes arising in investment contracts. Members of the committee include senior State officials, ministers and representatives of sovereign entities. The committee is led by the Prime Minister and ministers of the economic group (a group of ministers tasked with economic policy review), the Minister of International Cooperation, the Minister of Justice and representatives of the Egyptian armed forces and the administrative supervision authority.

Pursuant to its Article 2, the committee shall be competent to consider and settle disputes referred to it arising from investment contracts where the State or governmental agencies are a party in order to reach an amicable settlement. Such settlement should be in a manner that assures the protection of public funds and should achieve economic equilibrium between the Parties to that contract. Moreover, the ministerial committee is empowered – based on the mutual consent of the parties – to reschedule financial dues, amend procedures taken to execute the contract and extend maturities, durations or deadlines stipulated in the contract.

Settlement agreements are approved or rejected by a majority of the attending members in the ministerial committee. The ministerial committee is then obligated to submit a report on the dispute to the Cabinet of Ministers which becomes binding on the public sector authorities after its ratification by the Cabinet.

It is worth highlighting that Article 9 provides that all the disputes which were considered before the Ministerial Committee for the Settlement of Disputes of Investment Contracts (a settlement committee previously formed pursuant to the Ministerial Decree No. 2344 of 2015) shall be referred to the new Committee.



This new committee and its transparent procedures are aimed to provide investors that have an agreement with a public sector entity with a mechanism of resolving disputes in an amicable manner while avoiding the costly and time-consuming involvement of the judiciary or international arbitration.

## **Parliamentary approval of law immunizing state contracts with foreign investors from individual challenges**

After President Morsi was ousted in 2013, Adly Mansour, who was head of the Supreme Constitutional Court, became interim-President until Abdel Fattah al-Sisi was elected 26 May 2014. Egypt's constitution stipulates that MPs shall review all of the decree laws that were issued since 18 January 2014, when the constitution was approved in a popular referendum.

A law on procedures of appeal on State contracts, initially enacted on 22 April 2014 under interim-President Adly Mansour, was approved by the newly elected Egyptian parliament in January 2016. This approval was part of Parliament's review of legislation prior to under both President Adly Mansour and the current President Abdelfattah Al Sisi enacted prior to its election.

The law restricts the right of third parties (e.g., individual citizens or competitor companies) to challenge contracts between the government and investors. This limits appeal rights on state business transactions and privatization of public real estate only to the government, relevant public institutions and the partner investors. The law (i) prevents any party other than the contracting parties from challenging sales or investment contracts signed by the State, including decisions to privatize real estate property (Article 1), and (ii) stipulates the cancellation of all outstanding appeals before courts, even if filed prior to the Law's adoption (Article 2).

Before an increasing number of rulings issued by Egyptian courts to reverse contracts signed by the previous Mubarak regime that involve land and companies that were privatized at allegedly deflated prices (under previous legal regime, citizens were permitted to file individual complaints against such State contracts) this new legal regime is intended to foster business confidence and reassure foreign investors that their transactions with government bodies are legal and final. The business community is generally in favor of this reform, yet it has raised a controversial debate on citizens' rights to complain against suspect government transactions. Indeed, an appeal against its constitutionality has been lodged in the lower courts.

**Cairo Court of Appeal judgment annulled an Arbitration Award that ordered Egyptian Satirist Bassem Youssef and his production company to pay EGP 100 million in compensation to a satellite network**

**Source: Cairo Court of Appeal judgment rendered on 6 January 2016, in the cases No. 11, 12 and 14 of the judicial year 132**

On 6 January 2016 the Cairo Court of Appeal annulled an Arbitration Award issued in Arbitration case No. 941/ 2014 considered before the Cairo Regional Center for International Commercial Arbitration (“CRCICA”). In November 2014, the arbitration award was issued, ordering satirist Bassem Youssef and his production company QSoft Ltd to pay EGP 100 million in compensation to a private satellite network named CBC as total damages for violating the contract concluded between QSoft and CBC.

Following the cancellation of Bassem Youssef’s show by CBC, production company QSoft terminated its contract with the satellite network. CBC argued that this was a breach of contract and claimed damages from Bassem Youssef & his production company QSoft in the CRCICA Arbitration case.

In its reasoning, the Court of Appeal underlined that the Arbitration Award was based on unclear reasoning and the damages figure was not based on any factual evidence or financial logic. It added that the arbitral tribunal ignored the technical report that QSoft presented about the extent of damage that was caused following the suspension of the show by CBC.

It is worth highlighting that in response to a sentence of the award stating that “*the nation doesn’t need any satirical shows now,*” the Court of Appeal emphasized that the discretionary authority conferred to the arbitral tribunal is neither absolute nor unfettered, it is limited by the rule of law and the claims of the parties. The court held that an arbitral tribunal should not use its discretionary authority to impose its opinion on society.