



EGYPTAIN CENTER FOR  
ECONOMIC & SOCIAL RIGHTS

# Egypt & International Arbitration

Protection of Investors.. No Consolation for Public Money

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Egyptian Center for Economic & Social Right "ECESR"

Research Unit

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## Executive Summary

Egypt is one of the top four countries facing international litigation from foreign investors. Since the January 2011 revolution, foreign investors have filed more than ten lawsuits against Egypt at the International Center for Settlement of Investment Disputes (ICSID) alone. The real number is certainly more than these publicized cases, since many are dealt with in secret, based on the rules followed by various international courts specialized in arbitrating investment issues. Despite the harm it caused the country in the past years, before and after the revolution, Egypt keeps restraining its courts and political sovereignty in decision making by entering into new bilateral investment accords and free trade agreements.

Moreover, the Egyptian state keeps neglecting the dangerous negative impacts resulting from its entry into such international investment agreements, particularly the exceptional protection they provide for foreign investors. This includes giving them the ability to overstep local courts, present cases against the state, and demand compensation before courts specialized in investment issues, even if the investment was proven to be corrupt. Courts specialized in investment issues are different from other international courts, overstepping the local judiciary and not taking its rulings into account. Another difference is that such courts – as per the nature of the bilateral investment agreement – have the ability to implement its decisions.

After decades of corruption and squandering Egypt's public money and its peoples' right to their wealth, the Egyptian state is still unable to hold corruptors accountable or return the plundered rights. This happens particularly due to investment agreements signed by Egypt with over one hundred countries. Instead of reviewing its position concerning such agreements – as many countries are currently doing, Egypt lamentably tended to amend its legislations in a manner that reconciled with corruption and neutralized the decisions of Egyptian courts, which had uncovered corruption in several cases involving privatization and land sales. This was justified by fear of international litigation. Moreover, successive Egyptian governments began amending local laws related to investment, tenders, bids, and investment guarantees and initiatives to block the channels of local litigation against corruption – for fear of international litigation also, which threatens to increase corruption and reconcile with crimes, which threaten the Egyptian economy and its citizens' livelihoods.

## Decades of Corruption in Egypt:

Egypt is considered one of the countries where corruption has the biggest grip, especially in the government sector and the state's administrative apparatus. The Corruption Perception Index (CPI) produced by Transparency International (TI) is probably one of the best indicators of the deteriorating situation in Egypt, especially in regard to the continued spread of corruption and the state's failure to put it under control or address the situation. Egypt ranked low on the CPI, occupying the 118th position out of 176 countries in 2012,<sup>1</sup> demonstrating a clear drop from the 98th position it occupied in 2010.<sup>2</sup> Additionally, the World Bank's Worldwide Governance Indicators (WGI) for 2011 indicated that Egypt is in the 30th percentile of countries with the least control over corruption.

Egypt passed through decades of corruption, especially the past twenty years, which witnessed extensive privatization of the public sector and the systematic land sales operations, especially of agricultural land, to be put up for investment. These operations occurred through the muddling politics with investment, under the pretext of privatization and economic liberalization. This allowed the political and economic elite to purchase state owned assets, at much lower than their market prices, and monopolize rents from sources like tourism and external aid.<sup>3</sup>

However, corruption is one of the most important and dangerous challenges facing Egypt's economy and its people's livelihoods. Egypt loses more than six billion US dollars annually due to corruption and illicit financial flow, losing around US \$57.2 billion between the years 2000 and 2008.<sup>4</sup> Thus, Egypt is ranked in the third position in Africa in the amount of wealth and resources lost by the country due to corruption and illicit financial flow. Egypt is facing losses of around 40 billion Egyptian Pounds (\$6 billion) annually due to corruption, which is one and a half times the health budget of 2012-2013 (LE27 billion, \$4 billion). This amount could be better directed to improve the health and education systems in Egypt, which suffer from lack of government funding.

It is worth mentioning that corruption is one of the most important barriers to investment in Egypt. Studies indicate that about 40% of small and medium size enterprises resorted to bribery to obtain a license. The latest World Bank study, published in 2013, indicated that corruption and its spread, especially in the Middle East, resulted in the lack of trust between state agencies and investors.<sup>5</sup>

Thus, fighting corruption should be a top priority for the Egyptian government, because it is a crime against Egypt's economy as a whole and against each and every Egyptian citizen. It also allows impunity for corruptors and reconciliation with corruption, which will have a devastating impact, not only on the livelihood of Egyptians but also on the prospects of attracting investment and regaining the trust of investors who care about the integrity of the Egyptian regime.

1 Transparency International (2012), [Corruption Perceptions Index](#) 2012.

2 Transparency International (2012), *Ibid.*, <http://www.transparency.org/cpi2010/results#CountryResults>.

3 W. Armbrust, "A revolution against neoliberalism?," Al Jazeera (24 February 2011).

4 "Corruption costs Egypt \$6 bn annual loss," Deccan Herald (11 February 2011), <http://www.deccanherald.com/content/136729/E>.

5 J. Sullivan and A. Nadgrodkiwicz, "Economic Reform," Center for International Private Enterprise (2009).

## Priority for Foreign Investors, But What Investment?

Unfortunately, the Egyptian government continues to address the question of investments in a superficial manner, lacking an in-depth analysis of the real problematics of investment in Egypt, remaining stuck to the idea that the best way to encourage investment is to offer tremendous privileges for investors, especially from other countries. So it should not come as a surprise if the current Minister of Investment Engineer Osama Saleh says, “Egypt has signed agreements with most the world’s countries to protect investments. Foreign investors can transfer their money out of Egypt and I think the return on investments in Egypt would be very attractive for any investor.”<sup>6</sup> This represents a direct return to Mubarak’s policies, which provided investors with extraordinary privileges. Ultimately, it led to an investment climate in the country, which attracted superficial and corrupt investors. They bought farmland and turned it into luxury housing complexes and purchased factories and state assets, grabbing the property and the vast areas they were built on, to parcel and sell them off.

Although such privileges did not come to fruition in the past decades, failing to attract the investment needed by Egypt, successive post-revolution governments, including the current interim cabinet, still clutch to those failed investment attracting policies. The Egyptian government continues to look at attracting foreign investments as the solution for all the country’s problems, thus giving the priority to mechanisms to attract foreign investments and continuing to ignore available resources inside the country and national solutions to complex economic and social problems, such as wages, housing, health, and education.

Foreign investment does have several benefits, particularly by providing jobs for Egyptians, transferring global expertise and technology into the country, introducing new industries, and increasing financial flow towards the local economy. However, the investment attracted by Egypt until today was not of the beneficial type and did not achieve what was expected. It was limited to purchasing assets controlled by the state (a result of the privatization program, which led to the dismantling of Egyptian industry and the redundancy of the a large section of Egyptian labor),<sup>7</sup> as well as investment in the building and construction sector, which is confined to the building luxury residential resorts (which is one of the main industries involved in the litigation against Egypt in international investment courts).

Thus, there is an urgent need to review investment priorities in Egypt, which could focus more on attracting investment in labor intensive sectors, with an evaluation of previous contracts and the reasons behind Egypt’s failure to attract useful and genuine investment.

Hence, the current investment minister maintains that “protecting investment” and the investors’ ability to transfer their money out of country are some of the

6 Mohamed Abdul-Ati, “Minister of Investment: Investors are facing difficulties obtaining lands and permits,” *Al-Masry Al-Youm*, 27 October 2013, <http://www.almasryalyoum.com/node/2240246>.

7 Several studies indicated that foreign investment that led to a spurt in the rate of growth during the era of Ahmed Nazif, beginning in 2004, was manifested in the purchase of assets resulting from privatization. For example, this article from American Chamber of Commerce in Egypt (undated): [http://www.amcham.org/resources\\_publications/publications/business\\_monthly/issue.asp?sec=4&subsec=Privatization%20drive%20lures%20fdi&im=2&iy=2006](http://www.amcham.org/resources_publications/publications/business_monthly/issue.asp?sec=4&subsec=Privatization%20drive%20lures%20fdi&im=2&iy=2006).

most significant features of the Egyptian investment climate. However, this completely ignores the past decades and the corruption they witnessed and is but a continuation of [deposed President Hosni] Mubarak's policies of attracting financial investments, which do not serve the economy or benefit Egyptian citizens. Moreover, its benefits are only reaped by investors, to whom Egypt bestows the ability to transfer all their earnings outside the country.

Continuing with such policies, which encourage corruption and greed and do not protect Egyptian interests, successive post-revolutionary governments in the country began amending legislation in a manner that facilitates reconciliation with corruption and even oversteps the rulings of the Egyptian judiciary. The amendments violate the principle of rule of the law and squander Egyptian citizens' right to hold the corrupt accountable, establishing an explicit principle that corruption is not a crime.

Two laws<sup>8</sup> should be mentioned, whose amendments were unfortunate and aim to reconcile with corruption and circumvent Egyptian court rulings. First, there were the amendments of some provisions of the Law of Investment Guarantees and Incentives issued through Act No.8 of 1997 and amended by decree through Act No.4 of 2012, better known as the "law of reconciliation with investors. Second was the amendment of some provisions of Law 89 of 1998, through issuing the Law to Regulate Bids and Tenders through Law 82 of 2013. Several other laws are expected to be issued within the transitional government's plan to amend the legislative framework for investment in Egypt, as part of what it calls investment stimulus.<sup>9</sup>

For example, Law No.4 of 2012, concerning the amendment of some provisions of the Investment Guarantees and Initiatives Law issued through Act No.8 of 1997, authorized the General Authority for Investment and Free Zones (GAFI) to settle cases of fraud, theft, and corruption in investment, from outside the criminal courts. This invalidated criminal proceedings against investors in all cases of fraud and took away the role of the judiciary in accountability for corruption, in an assault on the rule of law.<sup>10</sup>

This law was passed under the rule of the Supreme Council of the Armed Forces (SCAF) in January 2012 and was not repealed by any of the successive legislative authorities, be it the People's Assembly, former president Morsi, or the Shura Council. It was even expanded during Morsi's term to facilitate the holding of reconciliation procedures with investors. The current government is clearly going in the same direction as Morsi and continuing what the ousted president began, who in turn was following in the footsteps of SCAF before him.

The amendments of the so-called law of reconciliation with investors, for example, began with Act No.4 of 2012, during the rule of SCAF in January of that year. The government of ousted president Morsi, headed by Hisham Qandil, kept the law

8 The amendments were published in the Official Gazette and are annexed at the end of this report.

9 "Investment Minister: Amendment of investment initiative legislation is under review," *Youm7* (26 July 2013), <http://www.youm7.com/News.asp?NewsID=1178885#.Um5gIVynpAg>.

10 The bids and tenders law is one of the most important texts used by Egyptian courts to annul privatization and land sale contracts, since it regulates sales provisions and operations. Thus, reducing the cover of the law is a first step to lifting regulations on the sales public resources and property, which promises even more corruption.

and went ahead with reconciling with some investors. It even updated the law in May 2012, to facilitate the settlement process.<sup>11</sup> The amendments were approved by the Cabinet and sent to the Shura Council, which was dissolved before they were issued. Then came the transitional roadmap government, which announced that Qandil's proposed amendments will be part of the legislative amendments package adopted by the government to reconcile with investors in corruption cases.<sup>12</sup> This overstepped the Egyptian courts, which had ruled on the return of factories, lands, and assets to the state, which were grabbed in corrupt deals.

As Law 89 of 1998, regulating bids and tenders, two crucial amendments were made. The first exempted some authorities and local units from the provisions of the law, narrowing the umbrella of its enforcement.<sup>13</sup> The second was amending Article 7 (Para 1) to facilitate direct sales (contracts through direct agreement). For example, while the minister used to be allowed to make general contracting sales directly for amounts less than LE300,000 (\$44,000), the new law, issued on 11 September 2013, gave the competent minister the right to sell at a ceiling of LE10 million (\$1.5 million). This restricts the bids and tenders law's oversight and is an indication that ministers and heads of agencies and departments will have great freedom in selling and disposing of public property, which promises even more rife corruption, without finding a deterrent.

It is unfortunate that the current government has maintained the plan to present a legislative reform package aiming to reconcile with investors and guarantee their protection and freedom to invest, without taking into account that this will merely be a legal cover for corruption and economic crimes. Allowing impunity for the corrupt and not even recognizing that what Egypt witnesses is called corruption is but a signal to investors and the state's administrative apparatus saying that corruption is not a crime and that it is acceptable as long as it encourages investments.<sup>14</sup>

This is the sad consensus of the successive governments since the revolution, beginning with al-Ganzouri's cabinet, Qandil, and Beblawi currently. The only government to shy away from such policies, a remnant of the Mubarak era, was that of Essam Sharaf [March to November 2011]. At the time, deputy Prime Minister Dr. Ali al-Selmi decided and announced the cancellation of the highly corrupt privatization program and the forming of a committee to review contracts of the companies that were disposed of, as he called it.<sup>15</sup> In the meantime, he also decided to get rid of the investment ministry and arrive at legal mechanisms to

11 The Council of Ministers approved the proposal of Investment Minister Yahya Hamid to amend 3 items in the Law for Investment Guarantees and Incentives, Bids, and Tenders. The first amendment added Article 66bis.1 to the guarantees and incentives law, issued in Act No.8 of 1997, as well as the draft amendment to Article 7bis. of the law on guarantees and incentives. This meant reconciliation with investors will take place in the presence of their representatives to complete the procedure, which was to reassure the investors. The Cabinet approved the investment minister's proposal on the draft amendment to Law 89 on tenders and bids, allowing economic authorities, special entities, and public bodies to act freely, commensurate with the intended investment climate target. This was established by the current transitional government, through amendments to the same law (the first paragraph of the first article of Law 89 on tenders and bids). This confirms that successive governments are treading the same path, giving privileges to investors, encouraging corruption, and encouraging the theft of public funds.

12 Youm7, "Investment Minister," *op. cit.*

13 See note 10.

14 "Al-Arabi: Announcement of Final Drafts of Laws to Enhance the Investment Climate," *Al-Wafd*, <http://www.alwafd.org/%D8%A7%D9%82%D8%AA%D8%B5%D8%A7%D8%AF/561433-%D8%A7%D9%84%D8%B9%D8%B1%D8%A8%D9%8A-%D8%A7%D8%B9%D9%84%D8%A7%D9%86-%D8%A7%D9%84%D9%88%D8%A7%D9%86%D9%8A%D9%86-%D8%A7%D9%84%D9%86%D9%87%D8%A7%D8%A6%D9%8A%D8%A9-%D9%84%D8%AA%D8%AD%D8%B3%D9%8A%D9%86-%D9%85%D9%86%D8%A7%D8%AE-%D8%A7%D9%84%D8%A7%D8%B3%D8%AA%D8%AB%D9%85%D8%A7%D8%B1>.

15 "Privatization Program Cancelled: Deputy prime minister announces end privatization era and committee to review past contracts," *Al-Masri Al-Youm* (20 July 2011), <http://today.almasryalyoum.com/article2.aspx?ArticleID=304418>.

avoid conflict of interests, to avoid repeating the conflation of power and money, as in the Mubarak era. However, all the subsequent governments and policies made an explicit return to Mubarak's policies, which favor the investor, the intermarriage between the economic and political elites, the immunity to former corrupt deals, and blatantly welcoming the perpetuation of corruption.

## Egypt in the Framework of International Investment: Bilateral Investment Treaties (BITs)

The structure of international trade and investment is one of the main frameworks that determine Egyptian policies. Current trade and investment agreements do not merely liberate prices and abolish customs, they are agreements centered on local economic policies, which put unfair conditions on public policies, particularly concerning subsidies, investments, taxes, and industry. For example, the European Union, at the beginning of the so-called Arab Spring, began negotiating with Egypt, Tunisia, Morocco, and Jordan on Deep and Comprehensive Free Trade Agreements (DCFTA), focused on supporting foreign investors in the countries of the Arab Spring. This will be through the amendment of policies and laws that govern monopoly, competition, and public procurement and guarantee that foreign investors in Egypt are not governed by the Egyptian law, overstepping local jurisdiction and forcing the state to address the issue at the international investment courts, which will be later described and their bias towards investors. Thus, DCFTAs and Bilateral Investment Treaties (BITs) are beginning to restrict the state's ability to come up with public policies that fit its interests. The World Trade Organization (WTO) is considered one such framework, which encourages the spread of "free" economy and opening up of markets, through multilateral treaties, which included an agreement to put an end to state subsidies to farmers.

With this backdrop, this report will analyze one type of agreements, the Bilateral Investment Agreements, or Treaties (BITs), which currently have the biggest impact on Egypt, since they restrict its ability achieve accountability for Mubarak era corruption and undermine Egyptian courts and the historic decisions that had annulled corrupt privatization and land sales deals.

BITs are agreements putting rules and conditions for the control and organization of investment arrangements between two states, thus they are bilateral. Different sources give varying information on Egypt's entry into BITs. For example, the investment general authority GAFI maintains that Egypt is party to 69 BITs. However, information from ICSID refers to 92 treaties,<sup>16</sup> while the United Nations Conference on Trade and Development (UNCTAD) states they are 100.<sup>17</sup> The US government, on the other hand, in its yearly Investment Climate Statement on Egypt for the year 2013, says that Egypt is party to 111 BITs.<sup>18</sup> Finally, the current Egyptian investment minister claims that Egypt has signed bilateral agreements "with most of the world's countries to protect investment."<sup>19</sup> This clear discrepancy in the number of BITs is probably due to their respective nature, which are mainly and mostly secret and negotiations between the two countries happen behind

16 ICSID website, <https://icsid.worldbank.org/ICSID/FrontServlet>.

17 Full list of Bilateral Investment Agreements concluded, 1 June 2013, Egypt, [http://unctad.org/Sections/dite\\_pccb/docs/bits\\_egypt.pdf](http://unctad.org/Sections/dite_pccb/docs/bits_egypt.pdf).

18 US Department of State, "2013 Investment Climate Statement: Egypt," February 2013, <http://www.state.gov/e/eb/rls/othr/ics/2013/204635.htm>.

19 Abdul-Ati, *Al-Masri Al-Youm*, *op. cit.*



closed doors. The disparity sheds light on the continuing gap in the government's ability to provide information to citizens, since the number of BITs calculated by the country's investment authority GAFI is the lowest.<sup>20</sup>

GAFI identified seven positive features of these BITs.<sup>21</sup> They are:

1. Protection of investment;
2. Treatment of Investments & Investors;
3. Free transfer of investment related payments;
4. Compensation;
5. Multiple alternatives for Settlement of Investment Disputes;
6. Definitions;
7. Investment promotion.

Based on the seven points indicated by GAFI, Egypt considers that signing such agreements is the one of the best strategies to encourage direct foreign investment. In fact, Egypt is not the only country to adopt this type of investment policies. African states have joined what is termed "the race to the bottom," where they compete to ease their investment climate to compete with other countries in attracting investors. They end up in a race to the bottom, without attracting the prospective investments.

Therefore, it should not be a surprise that most African countries, including Egypt, provide investors with all sorts of privileges automatically, without even looking into the added value of their investments. It is worth noting that the relationship between entering into such agreements and attracting foreign investments is no longer a done deal. Several developing countries, especially in Latin America, are beginning to revise their bilateral trade agreements, to cleanse them from the unfair conditions that restrict countries in their ability to create public policy, an issue which will be discussed later.

The rise in the number of BITs in the past few years was a result of the failure of WTO negotiations on multilateral agreements to protect investments. This failure was caused to a great extent by the efforts of developing countries, which put an end to such unfair treaties during WTO rounds of negotiations. These countries had felt the brunt of the negative impact of investment protection agreements on their economies and the space allowed for policies and decision making. UNCTAD's report showed that litigation in international investment courts witnessed an unprecedented surge in 2012, maintaining that the huge rise was a result of BITs. It also indicated that 68% of the countries affected by the arbitration were developing countries.<sup>22</sup>

<sup>20</sup> Annexed is a list of BITs collected from above sources.

<sup>21</sup> "Bilateral Trade Agreements," GAFI, <http://www.gafi.gov.eg/en/investegypt/tradeagreements.aspx>.

<sup>22</sup> UNCTAD IIA Issue Note, "Latest Development in Investor-State Dispute Settlement," April 2012, [http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d3\\_en.pdf](http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d3_en.pdf).

UNCTAD's website also points out that investment rules linked to Free Trade Agreements (FTAs) "can hamper 'the ability of governments to act for their people'."<sup>23</sup> This is what happens when protecting investments becomes an end to itself, instead of a means to attain economic development as part of a strategic plan freely drawn by the state to boost its resources and achieve sustainable development.

### Bilateral Investment Agreements: Unwarranted Restrictions

From this background, BITs put conditions on investment between signatory countries, which apply on investors from the first country in the second and from the second country in the first. For example, the BIT signed between Egypt and Italy applies to Italian investors in Egypt and Egyptian investors in Italy. The danger of this agreement could be illustrated by referring to an important case in its context, the case of Wajih Siag. It was one of the most famous international litigation issues covered by Egyptian media and which several countries use as an example to stress their positions rejecting unfair BITs.

The details of the case go back to 2009, when businessman Waguih Siag and his partner Clorinda Vecchi filed for damages against Egypt at the World Bank's ICSID, based on the bilateral investment treaty between Egypt and Italy. They filed the lawsuit as Italian citizens who invested in two companies, Touristic Investments and Hotels Management Company (SIAG) and Siag Taba Company. Siag and his partner alleged that Egypt violated its commitments under the BIT between the two countries, by: "(i) failing to protect their investment; (ii) failing to provide the claimants and their investment fair and equitable treatment; (iii) subjecting the claimants and their investment to unreasonable and discriminatory measures; and (iv) failing to apply the most favoured nation principle."<sup>24</sup>

An ICSID tribunal at the World Bank ruled in favor of Siag and Vecchi on 1 June 2009, basing the decision on the BIT signed with Italy. Egypt was fined US \$74 million plus interest, which is equivalent to LE415 million at current rates, in addition to litigation costs amounting to around \$6 million plus interest.

The Siag case is not only important due to the heavy losses incurred by Egypt, considered some of the highest damages awarded at the time, but also for revealing the various pitfalls of BITs. Following are the most relevant:

**Nationality of investor:** The major part of the Siag case revolved around the plaintiff's nationality. Waguih Siag was an Egyptian citizen who became a naturalized Italian citizen and used this to file a lawsuit against Egypt. To a major extent, the case involved deciding whether Siag was still an Egyptian national during the time of the events or if he had concluded his relation with Egypt and became an Italian. Egypt's defense at the time was that Siag had used his Egyptian passport and identity paper on several occasions and, thus, was still an Egyptian and did not give

23 Sanya Reid Smith, "Leading Academics Voice Concerns over Investment Treaties," Third World Network (2 September 2010), <http://www.twinside.org.sg/title2/FTAs/info.service/2010/fta.info.164.htm>.

24 Elizabeth Whitsitt, "Waguih Elie George Siag and Clorinda Vecchi v. Arab Republic of Egypt: A Question of Nationality?", International Institute for Sustainable Development, Investment Treaty News(8 June 2009), <http://www.iisd.org/itn/2009/06/08/waguih-elie-george-siag-and-clorinda-vecchi-v-arab-republic-of-egypt-a-question-of-nationality/>.

up his Egyptian nationality. However, the court decided that Siag had relinquished his Egyptian nationality to become an Italian citizen according to Italian law and thus has the right to file a lawsuit against Egypt as a foreign investor,<sup>25</sup> based on the BIT between Italy and Egypt. Thus, proving Siag's Italian nationality was the most important point in the case, since it is the foundation of the international investment court's jurisdiction. It also demonstrates the great advantage enjoyed by foreign investors, compared to Egyptian investors. Egyptian investors in Egypt need to respect Egyptian laws and initiate litigation or complaints at the Egyptian courts. However, foreign investors do not have to go pass the local courts and could file lawsuits in international courts, forcing Egypt under the jurisdiction of investment courts, merely on the basis of the bilateral investment agreements.

**Definition of Investor and Investment:** An issue which is often raised in the objections of states and economists to BITs has been the broad and pliable definition of investors and investment. The majority of bilateral agreements do not entail a definition of these terms and therefore could be applied to a wide range of situations and cases. This means that arbitration courts looking into investment disputes, who only follow the rules of the BITs, are governed by the elastic definition, which was made clear in the Siag case.

Thereby, the court decided that Siag and his partner's buying shares in companies and their partnerships with others in various projects is considered an investment. The ruling maintained "the BIT [between Egypt and Italy], like many BITs contains a broad definition of 'investment,'" and therefore, "the claim fell "within the definition of 'investment' of the BIT,"<sup>26</sup> even if the invested capital and equipment and exploited resources were originally from Egypt and not Italy.<sup>27</sup>

**Overstepping Local Courts and Disregarding their Decisions:** One of the most significant issues, unique to investment arbitration, is that it skips over the local courts. International law, in general, is based on the principle of exhaustion of local remedies, which entails that claimants should first seek local courts, exhausting all possible domestic legal procedures, including complaints, lawsuits, litigation, and appeals. International law also requires that claimants going before international committees or tribunals should demonstrate the exhaustion of all domestic remedies, as a condition for accepting the case.

However, BITs do not fall under this rule at all. They allow foreign investors to overstep local courts and disregard domestic means of redress. Moreover, they overrule any existing decisions by local judges and render them null and void. This has meant, for example, that Egypt is facing international litigation on a number of cases, which had previously been decided in domestic Egyptian courts. The most relevant of which are cases involving land sales (such as Al-Futtaim and Damac cases, based on the BIT between Egypt and the UAE) and privatization (such as Shebin Textiles, filed by the Indian investor on behalf of Indorama Ventures, based on the BIT with the UK).

25 *Ibid.*

26 ICSID, "Decision in Jurisdiction: WAGUIH ELIE GEORGE SIAG (CLAIMANT) AND CLORINDA VECCHI and THE ARAB REPUBLIC OF EGYPT (RESPONDANT)," pp58,59. Available at: [http://www.iisd.org/pdf/2007/itn\\_siag\\_vs\\_egypt.pdf](http://www.iisd.org/pdf/2007/itn_siag_vs_egypt.pdf).

27 *Ibid.*, p58.

Although Egyptian courts had ruled that these investments suffered from corruption in contracts and sales and purchase operations, international courts did not care for corruption or the principles of justice. Its procedures are merely focused on the implementation of the bilateral agreement, which means the protection of investors in all cases, even if the investment is demonstrated to be corrupt.

Thus, it is important to remember that international investment cases are not founded on justice, but on the literal understanding of the agreement. Courts specialized in arbitrating such cases do not recognize the justice we know and seek. It only cares about the items of the agreement, which stipulate special protection for investors in all circumstances.

**Exorbitant and Lengthy Procedures:** Some might claim that foreign investors prefer international courts due to sluggish legal procedures in many developing countries including Egypt. This claim, however, is unfounded. The average duration of litigation in international investment arbitration courts is estimated at 3.6 years.<sup>28</sup> For example, the case filed by Southern Pacific Properties (Middle East) Limited against the Arab Republic of Egypt (ICSID Case No. [ARB/84/3](#)), one of the lengthiest international arbitration cases, took around 7.7 years of litigation.<sup>29</sup> Thus, when foreign investors turn to international arbitration, they do so for the unfair privileges accorded by those courts and the extraordinary protection provided by BITs to the investor.

In addition, there is the exorbitant costs of arbitration, considered to be one of the most critical challenges to countries that sign on to BITs. These bilateral agreements force the state to appear before the arbitration courts, entailing exorbitant costs, even if a settlement is ultimately reached. The average cost of such procedures ranges from hundreds of thousands to millions of dollars. For example, Egypt paid around US \$6 million in the case ARB/05/15 in court fees alone filed by Siag. In the previously mentioned case, it paid about \$74 million, in addition to annual interest (around 6%), as compensation to Siag, when the court ruled in favor of the Italian company.<sup>30</sup>

**Enforcement of Decisions:** Contrary to all other international agreements, many BITs contain articles impose on the state the enforcement of their provisions. Although states are sovereign and they all have the right to enjoy their full sovereignty, when Egypt and other countries signed on to various BITs, they gave up parts of this sovereignty and chose to agree on unfair rules. In addition to being forced by the BITs to appear before international tribunals, Egypt is also obliged to respect the decisions of such courts, even if they contravene the decisions of domestic Egyptian courts or the most basic principles of justice.

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28 “Icsid Arbitration: How Long Does it Take?” The International Journal of Commercial and Treaty Arbitration, <http://www.goldreserveinc.com/documents/ICSID%20arbitration%20%20How%20long%20does%20it%20take.pdf>.

29 *Ibid.*

30 Whitsitt, *op. cit.*

## Egypt Ranks Third in International Investment Litigation

Several international tribunals have been set up to arbitrate investment disputes. Some of the most important are: United Nations Commission on International Trade Law (UNCITRAL), International Chamber of Commerce (ICC), the Cairo Regional Centre for International Commercial Arbitration (CRCICA), Stockholm Chamber of Commerce, Arab Investment Court, and, last but not least, the International Centre for Settlement of Investment Disputes (ICSID) which is affiliated with the World Bank. It should be mentioned that most lawsuits filed against the Egyptian government were through the World Bank's ICSID.

International investment arbitration courts follow different procedures in access to information about the cases presented. However, they generally conducted in secret, to a varying degree between one court and another. Thus, known cases are certainly not the only ones being considered. They are just the ones published by the specialized courts. The secrecy of such courts and procedures is believed to be closely tied to the secrecy shrouding BITs, which raises several questions about the utility of this regime for states, especially developing countries, which face the brunt of the unfair system.

ICSID was the outcome of a multilateral treaty established by the Executive Directors of the International Bank for Reconstruction and Development (IBRD) of the World Bank. The treaty was introduced for signature on 18 March 1965 and entered into force on 14 October 1966.<sup>31</sup> The Center aims to remove major impediments faced by investors, which, according to the pact, are a result of "the absence of specialized international methods for investment dispute settlement." Therefore, the declared goal of ICSID establishment is to provide the necessary space for foreign investors in any country to conduct their business and enjoy their rights. The theory is that guaranteeing the rights of investors would encourage direct investment.

However, all these assumptions were proven incorrect. Foreign investors in any country have the right of redress in domestic courts. Additionally, all investors, before investing in a foreign countries, usually review the investment climate and the judiciary's impartiality, before deciding whether to invest. The assumption that international arbitration will increase the opportunities of foreign investment is false, since most countries are party to bilateral treaties. The relative advantage offered by the treaties is only enjoyed by foreign investors. They were freed of all conditions and rules of good investment and given the ability to exploit international arbitration at any time to reap colossal profits, even if their investment was proven to be corrupt. International investment courts are putting countries and foreign investors on opposing sides. States try to get out of these cases with the lowest possible losses, while foreign investors seek the maximum award.

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31 ICSID Website, <https://icsid.worldbank.org/ICSID/FrontServlet>.

Egypt is one of the countries facing the highest number of cases involving litigation in international investment courts and always in the top 10, regardless of the source. The 2012 UNCTAD report, for example, ranks Egypt at number 7 with 17 cases historically.<sup>32</sup> However, in a study conducted by several experts and researchers from Kluwer Arbitration showed that Egypt is actually ranked third, after Argentina and Venezuela, with 17 cases.<sup>33</sup> ICSID, however, indicates the presence of 22 cases of litigation against Egypt at the Center alone.<sup>34</sup> It should be noted that at least ten of those cases were filed since the 2011 revolution, which puts Egypt in the top four countries between the years 2011 and 2013.<sup>35</sup> The most recent cases are three filed by Osama al-Sharif and one by the Italian company APA, according to the table annexed at the end of this report.

One of the major lawsuits against Egypt after revolution was the one by the French-based multinational Veolia. One of its several claims maintained that applying a minimum wage in the country would hurt the Veolia's investments and represent a violation of Egypt's commitments in the BIT with France.<sup>36</sup> Thus, under the provisions of more than 100 bilateral treaties it signed with other states, Egypt has to seek the permission of all foreign investors from the 100 plus countries party to the agreement to be able to review any of its legislations or develop its domestic policies. What happens then to Egyptian sovereignty? What chance do Egypt and similar developing countries have when reforms demanded by their people and the local economy are tied down on the legislative and policy levels?

Around 11 court procedures remain, in addition to 11 that were decided by ICSID, for a total of 22 cases. In the 11 concluded cases, the court ruled in favor of the defendant (Egypt) in only two cases, four were in favor of the claimant (foreign investors), and the remaining were settled by sharing court expenses with the plaintiff.<sup>37</sup> However, the major problem is that these claims are costly even if Egypt does not lose them, since the court imposes extremely large fees on both the plaintiff and the defendant.

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32 UNCTAD IIA Issue Note, *op. cit.*

33 Inna Uchkunova, "ICSID: Curious Facts," Kluwer Arbitration Blog (25 October 2012), <http://kluwerarbitrationblog.com/blog/2012/10/25/icsid-curious-facts/>.

34 ICSID Website, (click "search" in link to display results) <https://icsid.worldbank.org/ICSID/FrontServlet?requestType=SearchRH&actionVal=SearchSite&SearchItem=egypt>.

35 UNCTAD IIA Issue Note, *op. cit.*

36 European Trade Union Confederation, "ETUC Resolution on EU Investment Policy," ETUC (5-6 March 2013), <http://www.etuc.org/a/11025>.

37 See Annex.

## Breaking the Chains: Egypt's Exit within an International Framework

Bilateral trade agreements open the doors of international courts for investors, guaranteeing their rights regardless of the laws of the country where the investment takes place. Unfortunately, this scenario will lead to empowering investors to claim the position of the victims in any dispute and seek international arbitration. The conditions of bilateral agreements biased towards the protection of investors result in the governments of signatory countries having to pay compensations amounting to billions of dollars.

BIT also have a direct role in restricting the state's ability to create developmental policies and make decisions related to the protection of workers' rights, wages, and development policies. In addition, there are even more complicated dimensions to such treaties, such as the rules limited the ability of developing countries to encourage foreign investors to hire and train local workers, transferring knowledge and technology to them. This impedes attempts by states to expand local inputs and prevents the country from using investments to its advantage and the state's ability to fulfil its obligations towards its citizens.

Thus, it seems that Egypt needs to reconsider and reevaluate the direct and indirect impacts of BITs, knowing that it is not impossible for states to object to the current global investment climate, as what several Latin American countries, South Africa, Australia, and other countries have done.<sup>38</sup>

Given the high cost of arbitration and the restrictions imposed on the legislative capacity of member states in such tribunals, it should not come as a surprise that several countries are beginning to challenge the current investment arbitration system. In particular, Latin American states, are some of the most vocal in their objections to the current international investment regime, since they are the countries that suffer its impacts the most. These countries took several courses of action to regain their sovereignty and break out from the constraints of the current investment regime.

For example, Argentina used a legal loophole in the ICSID charter to its advantage, based on Articles 53 and 54 thereof. The two Articles were interpreted by Argentina to maintain that the states have the right to stipulate that investors should first successfully litigate cases related to investment in domestic courts, before they are awarded the compensation determined by ICSID. Thus, Argentina successfully and legally evaded the implementation of the investment court's rulings.<sup>39</sup>

Opposition is not limited to Latin America, however. Since 2011, The Australian government, for example, has stopped including rules related to investment arbitration between foreign investors and the state in its trade agreements with

38 Eberhardt, Pia, Cecilia Olivet, "Profiting from Injustice: Challenging the Investment Arbitration Industry," Open Democracy, <http://www.opendemocracy.net/cecilia-olivet-pia-eberhardt/profitting-from-injustice-challenging-investment-arbitration-industry>.

39 Uchkonova, *op. cit.*

other countries. In 2012, South Africa suspended its BIT with Belgium, after it lost a case to a Belgian company and began reviewing the articles of various other BITs, in an attempt to avoid the mistakes of the past and amend unfair articles.<sup>40</sup>

These governments are paving the way towards reforming the investment arbitration regime to break out of the unfair system it imposes and create a new regime, which adheres to justice, respects the state and its sovereignty, and recognizes foreign investments as a major strategic source for development, as long as they respect the rules of the state and does not illegally aim for its resources.

After studying the lawsuits filed against Egypt and looking into the experiences of other states, it is clear that BITs are being used as a tool by investors to seek international courts, due to the great privileges guaranteed in such agreements.

Such incentives are unfortunately being exploited and instead of encouraging investment, they allow profits for investors at the expense of the state and its people. This leads to the question of alternatives. Yet, several other countries started to pave the way practically for fairer investments, whether by reviewing the treaties, reassessing their benefits, rejecting some of the more biased treaties, or refraining from implementing unfair rulings. Egypt could head in the same direction and join such states, which exposed those conventions as unjust and decided to work in the interest of the common good.

After the January Revolution, Egyptian governments could have reviewed the country's international commitments and treaties and began combatting, which wastes billions of Egyptian pounds every year, instead of reconciling with corruption and conceding with such unfair treaties. Moreover, the Egyptian government should allow the space for social participation in such decisions and negotiations on investment and trade agreements. It should also ensure transparency in decision making, since public scrutiny is the first and only guarantee for integrity and maintaining the common good.

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40 Eberhardt & Olivet, *op. cit.*





# Appendix

## Appendix

Table 1: Pending cases against Egypt in the International Court for Settlement of Investment Disputes (ICSID) – 11 Cases Total

Case Title	Claimant	Agreement	Nationality of Investor	Date
<a href="#"><u>ARB/13/23</u></a>	ASA International S.P.A	Italy – Egypt (1994)	Italy	2013
<a href="#"><u>ARB/13/5</u></a>	Ossama Al Sharif (Bulk liquids terminal project)	Not Enough <sup>1</sup> Information		2013
<a href="#"><u>ARB/13/4</u></a>	Ossama Al Sharif (Customs system project)	Not Enough Information		2013
<a href="#"><u>ARB/13/3</u></a>	Ossama Al Sharif (Port development project)	Not Enough Information		2013
<a href="#"><u>ARB/12/11</u></a>	Ampal-American Israel Corporation and others	United States of America - Egypt BIT (1982)	USA/Germany	2012
<a href="#"><u>ARB/12/15</u></a>	Veolia Proprete	France – Egypt BIT (1974)	France	2012
<a href="#"><u>ARB/11/32</u></a>	Indorama International Finance Limited	United Kingdom – Egypt BIT (1975)	United Kingdom	2011
<a href="#"><u>ARB/11/16</u></a>	Hussein Sajwani, Damac Park Avenue for Real Estate Development S.A.E., and Damac Gamsha Bay for Development S.A.E	United Arab Emirates – Egypt (1997)	United Arab Emirates	2011
<a href="#"><u>ARB/11/7</u></a>	National Gas S.A.E	United Arab Emirates – Egypt (1997)	United Arab Emirates	2011
<a href="#"><u>ARB/11/6</u></a>	Bawabet Al Kuwait Holding Company	Kuwait-Egypt (2001)	Kuwait	2011
<a href="#"><u>ARB/09/1</u></a>	H&H Enterprises Investments, Inc	United States of America – Egypt (1982)	United States of America	2009

Sources:

<https://icsid.worldbank.org/ICSID/FrontServlet>

Table 2: Concluded Cases against Egypt in the International Court for Settlement of Investment Disputes (ICSID) – 11 Cases Total

Case Title	Claimant	Agreement	Result/Settlement
<u>ARB/08/18</u>	Malicorp Limited	United Kingdom – Egypt (1975)	Each party bears 50% of the proceedings cost
<u>ARB/05/19</u>	Helnan International Hotels A/S	Egypt- Denmark BIT (1999)	Each party bears 50% of the proceedings cost
<u>ARB/05/15</u>	Waguih Elie George Siag and ClorindaVecchi	Italy- Egypt BIT (1989)	State lost
<u>ARB/04/13</u>	Jan de Nul N.V. and Dredging International N.V. (suez canal dredging project)	Belgium- Luxembourg- Egypt BIT (1977 and 2002 BITs)	State won
<u>ARB/03/11</u>	Joy Mining Machinery Limited (Phosphate mining project)	United Kingdom - Egypt BIT (1975)	Settlement agreed and proceedings discontinued
<u>ARB/02/15</u>	Ahmonseto, Inc. and others	United States – Egypt BIT (1982)	Discontinuance of the proceeding for lack of payment of the required advances
<u>ARB/02/9</u>	Champion Trading Company and Ameritrade International, Inc.	United States – Egypt BIT (1982)	State won
<u>ARB/99/6</u>	Middle East Cement Shipping and Handling Co. S.A.	Greece – Egypt (1993)	State lost
<u>ARB/98/4</u>	Wena Hotels Limited	United Kingdom – Egypt (1975)	Both Wena and Egypt bear 50% of the arbitration cost.
<u>ARB/89/1</u>	Manufacturers Hanover Trust Company	Absent	State lost
<u>ARB/84/3</u>	Southern Pacific Properties (Middle East) Limited	Absent	State lost

Source: <https://icsid.worldbank.org/ICSID/FrontServlet>

Table 3: Bilateral Investment Treaties signed by Egypt<sup>1</sup>:

Bilateral Investment Treaties until 2013		
Country	Date of Signature	Date of Entry into Force
France	22/12/1974	1/10/1975
United Kingdom	11/06/1975	24/02/1976
Japan	28/01/1977	14/01/1978
Sweden	15/07/1978	29/01/1979
Somalia	29/05/1982	16/04/1983
Kingdom of Saudi Arabia	13/03/1990	18/12/1990
Tunisia	8/12/1989	2/01/1991
Arab Libyan Jamahiriya	3/12/1990	4/07/1991
Lebanon	16/03/1996	2/06/1992
United States of America	11/03/1986	27/06/1992
Ukraine	21/12/1992	10/10/1993
Argentina	11/05/1992	3/12/1993
Uzbekistan	16/12/1992	8/02/1994
Albania	22/05/1994	6/04/1994
Spain	3/11/1992	26/04/1994
Italy	2/03/1989	1/05/1994
Czech Republic	29/05/1993	4/06/1994
Indonesia	19/01/1994	29/11/1994
Greece	16/07/1993	6/04/1995
Turkmenistan	23/05/1995	28/02/1996
China	21/04/1994	1/04/1996
Romania	24/11/1994	3/04/1996
Kazakhstan	14/11/1993	8/08/1996
South Korea	18/03/1996	25/05/1997
Hungary	23/05/1995	21/08/1997
Canada	13/11/1996	3/11/1997
Poland	1/07/1995	17/01/1998
The Netherlands	17/01/1996	1/03/1998
Sri Lanka	11/03/1996	10/03/1998
Yemen	6/06/1992	10/04/1998
Jordan	8/05/1996	11/04/1998
Latvia	24/04/1997	6/1998/
Morocco	14/05/1997	1/07/1998
Syrian Arab Republic	28/04/1997	5/10/1998
Kingdom of Bahrain	4/10/1997	11/01/1999
United Arab Emirates	11/05/1997	11/01/1999
Belarus	20/03/1997	18/01/1999
Croatia	27/10/1997	2/05/1999
Cyprus	21/10/1998	11/05/1999

1 This list was compiled by UNCTAD.

Palestinian Territories	28/04/1998	19/06/1999
Malawi	21/10/1997	7/09/1999
Slovakia	30/04/1997	1/01/2000
North Korea	19/08/1999	12/01/2000
Slovenia	28/10/1998	7/02/2000
Comoros	13/11/1994	27/02/2000
Sultanate of Oman	25/03/1998	3/03/2000
Algeria	29/03/1997	3/05/2000
Bulgaria	15/03/1998	8/06/2000
The Russian Federation	23/09/1997	12/06/2000
Mali	9/03/1998	7/07/2000
Malta	20/02/1999	17/07/2000
Denmark	24/06/1996	29/10/2000
Malaysia	14/04/1997	3/11/2000
India	9/04/1997	22/11/2000
Portugal	29/04/1999	23/12/2000
Austria	12/04/2001	29/04/2001
Bosnia and Herzegovina	11/03/1998	29/10/2001
Thailand	18/02/2000	27/02/2002
Vietnam	6/09/1997	4/03/2002
Singapore	15/04/1997	20/03/2002
Kuwait	17/04/2001	26/04/2002
Belgium and Luxembourg	28/02/1999	24/05/2002
Turkey	4/10/1996	31/07/2002
Australia	3/05/2001	5/09/2002
Sudan	8/07/2001	1/04/2003
Mongolia	27/04/2004	25/01/2005
Finland	3/03/2004	5/02/2005
Armenia	9/01/1996	1/03/2006
Qatar	12/02/1999	14/07/2006
Iceland	8/01/2008	15/06/2009
Germany	16/06/2005	22/11/2009
Ethiopia	27/07/2006	27/05/2010
Switzerland	7/06/2010	15/05/2012
Azerbaijan	24/10/2002	
Cameroon	24/10/2000	
Central African Republic	7/11/2000	
Chad	14/03/1998	
Chile	5/08/1999	
Congo	18/12/1998	
Djibouti	21/07/1998	
Gabon	22/12/1997	
Georgia	10/08/1999	
Ghana	11/03/1998	

Guinea	6/03/1998	
Islamic Republic of Iran	25/05/1977	
Jamaica	10/11/1999	
Macedonia	22/11/1999	
Mozambique	8/12/1998	
Niger	4/03/1998	
Nigeria	20/06/2000	
Pakistan	16/04/2000	
Senegal	5/03/1998	
Serbia	24/05/2005	
Seychelles	22/01/2002	
South Africa	28/10/1998	
Swaziland	18/07/2000	
Tanzania	30/04/1997	
Uganda	4/11/1995	
Zambia	28/04/2000	
Zimbabwe	2/06/1999	

**قرار رئيس جمهورية مصر العربية****بالقانون رقم ٨٢ لسنة ٢٠١٣**

في شأن تعديل بعض أحكام القانون رقم ٨٩ لسنة ١٩٩٨  
بإصدار قانون تنظيم المناقصات والمزايدات وبعض أحكام قانون  
تنظيم المناقصات والمزايدات

**رئيس الجمهورية المؤقت**

بعد الاطلاع على الإعلان الدستوري الصادر في الثامن من يوليو ٢٠١٣ ؛  
وعلى قانون تنظيم المناقصات والمزايدات الصادر بالقانون رقم ٨٩ لسنة ١٩٩٨ ؛  
وبعد موافقة مجلس الوزراء ؛  
وبناءً على ما ارتآه مجلس الدولة ؛

**قـرـر****القانون الآتي نصه :****( المادة الأولى )**

يُستبدل بنص الفقرة الأولى من المادة الأولى من القانون رقم ٨٩ لسنة ١٩٩٨  
بإصدار قانون تنظيم المناقصات والمزايدات ، وبنص الفقرة الأولى من المادة (٧)  
من القانون المذكور ، النصان الآتيان :  
**المادة الأولى (الفقرة الأولى) :**

يُعمل بأحكام القانون المرافق في شأن تنظيم المناقصات والمزايدات ، وتسرى أحكامه  
على وحدات الجهاز الإداري للدولة - من وزارات ، ومصالح ، وأجهزة لها موازنات خاصة -  
وعلى وحدات الإدارة المحلية ، وعلى الهيئات العامة خدمية كانت أو اقتصادية ،  
وذلك فيما لم يرد بشأنه نص خاص في القوانين أو القرارات الصادرة بإنشائها أو بتنظيمها  
أو في لوائحها الصادرة بناءً على تلك القوانين والقرارات .

Law Number 82

of year 2013:<sup>2</sup>

## المادة ٧ (الفقرة الأولى):

يجوز فى الحالات العاجلة التى لا تحتتمل اتباع إجراءات المناقصة أو الممارسة بجميع أنواعهما ، أن يتم التعاقد بطريق الاتفاق المباشر بناءً على ترخيص من :

( أ ) رئيس الهيئة أو رئيس المصلحة ومن له سلطاته فى الجهات الأخرى وذلك فيما لا تجاوز قيمته خمسمائة ألف جنيه بالنسبة لشراء المنقولات أو تلقى الخدمات أو الدراسات الاستشارية أو الأعمال الفنية أو مقاولات النقل ، ومليون جنيه بالنسبة لمقاولات الأعمال .

(ب) الوزير المختص ومن له سلطاته أو المحافظ فيما لا تجاوز قيمته خمسة ملايين جنيه بالنسبة لشراء المنقولات أو تلقى الخدمات أو الدراسات الاستشارية أو الأعمال الفنية أو مقاولات النقل وعشرة ملايين جنيه بالنسبة لمقاولات الأعمال .

(ج) الوزير المختص بالصحة والسكان بالنسبة للأمصال واللقاحات والعقاقير الطبية ذات الطبيعة الاستراتيجية وألبان الأطفال وذلك وفقاً للضوابط والشروط التى تحددها اللائحة التنفيذية .

## ( المادة الثانية )

يُنشر هذا القرار بقانون فى الجريدة الرسمية ، ويُعمل به من اليوم التالى لتاريخ نشره .

صدر برئاسة الجمهورية فى ٥ ذى القعدة سنة ١٤٣٤ هـ

( الموافق ١١ سبتمبر سنة ٢٠١٣ م ) .

**عدلى منصور**

Law Number 4 of year 2012:<sup>3</sup>



**المجلس الأعلى للقوات المسلحة**

مرسوم بقانون رقم ٤ لسنة ٢٠١٢

بتعديل بعض أحكام قانون ضمانات وحوافز الاستثمار

الصادر بالقانون رقم ٨ لسنة ١٩٩٧

**رئيس المجلس الأعلى للقوات المسلحة**

بعد الاطلاع على الإعلان الدستوري الصادر في ١٣ من فبراير سنة ٢٠١١ :

وعلى الإعلان الدستوري الصادر في ٣٠ من مارس سنة ٢٠١١ :

وعلى قانون العقوبات الصادر بالقانون رقم ٥٨ لسنة ١٩٣٧ :

وعلى قانون الإجراءات الجنائية :

وعلى قانون ضمانات وحوافز الاستثمار الصادر بالقانون رقم ٨ لسنة ١٩٩٧ :

وعلى القانون رقم ١٣ لسنة ٢٠٠٤ بتعديل بعض أحكام قانون ضمانات وحوافز الاستثمار :

وبعد موافقة مجلس الوزراء :

**قـــــرر**

المرسوم بقانون الآتي نصه . وقد أصدرناه :

**( المادة الاولى )**

يضاف إلى قانون ضمانات وحوافز الاستثمار الصادر بالقانون رقم ٨ لسنة ١٩٩٧

مادتان جديدتان برقمي ٧ مكرراً ، ٦٦ مكرراً) ، نصهما الآتي :

**مادة (٧ مكرراً) :**

يجوز التصالح مع المستثمر في الجرائم المنصوص عليها في الباب الرابع من الكتاب الثاني

من قانون العقوبات التي ترتكب منه بصفته أو بشخصه أو التي اشترك في ارتكابها

وذلك في نطاق مباشرة الأنشطة المنصوص عليها في هذا القانون وفي أية حالة تكون عليها

الدعوى الجنائية قبل صدور الحكم البات فيها .

ويشترط للتصالح أن يرد المستثمر كافة الأموال أو المنقولات أو الأراضي أو العقارات محل الجريمة أو ما يعادل قيمتها السوقية وقت ارتكاب الجريمة إذا استحال ردها العيني ، على أن يتم تحديد القيمة السوقية بمعرفة لجنة من الخبراء يصدر بتشكيلها قرار من وزير العدل . وفي حالة صدور حكم نهائي غير بات بإدانة المستثمر يشترط للتصالح بالإضافة إلى ما سبق إتمام وفائه بكامل العقوبات المالية المقضى بها .

ويحرر بالتصالح محضر يوقعه المستثمر أو وكيله بموجب توكيل خاص يبيح له ذلك ومثل عن الجهة ويعتمد من الوزير المختص بعد العرض من رئيس الهيئة العامة للاستثمار وتخطر جهات التحقيق أو المحكمة المختصة على حسب الأحوال بمحضر التصالح المعتمد والنائب العام لوقف تنفيذ العقوبة المقضى بها .

ويترتب على تمام التصالح وفقاً لما سبق انقضاء الدعوى الجنائية بالنسبة للمستثمر ، ولا يمتد الانقضاء لباقي المتهمين معه في ذات الواقعة ولا يستفيدون منه .

**مادة (٦٦ مكرر):**

يصدر رئيس مجلس الوزراء قراراً بتشكيل لجنة لتسوية المنازعات التي تنشأ عن العقود المبرمة بين المستثمرين والجهات التابعة للدولة تكون مهمتها بحث ما يثار بشأنها من منازعات بين أطرافها تتعلق بالعقود المشار إليها وذلك من أجل تسويتها على نحو يضمن الحفاظ على المال العام ويحقق التوازن العمدي ، وفي حالة وصول اللجنة مع الأطراف إلى تسوية ودية نهائية تكون تلك التسوية واجبة النفاذ وملزمة بعد اعتمادها من مجلس الوزراء .

#### ( المادة الثانية )

يلغى كل حكم يخالف أحكام هذا القانون .

#### ( المادة الثالثة )

ينشر هذا المرسوم بقانون في الجريدة الرسمية ، وتكون له قسوة القانون ، ويعمل به اعتباراً من اليوم التالي لتاريخ نشره .

صدر بالقاهرة في ٩ صفر سنة ١٤٣٣ هـ

( الموافق ٣ يناير سنة ٢٠١٢ م ) .

**المشير / حسين طنطاوي**

رئيس المجلس الأعلى للقوات المسلحة

#### (Footnotes)

1 Information is not clear yet because the case was only recently raised. However, it can be predicted that this case was raised using the BIT with Switzerland.



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