Infitah in Egypt: An Appraisal of Egypt's Open-Door Policy for Foreign Investment

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INFITAH IN EGYPT: AN APPRAISAL OF EGYPT'S OPEN-DOOR POLICY FOR FOREIGN INVESTMENT

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I. INTRODUCTION

There is a saying in Egypt that the Nile flows to the Mediterranean and Europe, not to Africa or to the Middle East. Although a part of the African continent, Egypt has historically turned to the Mediterranean and the West for trade and commerce.[1] If these traditional patterns were temporarily interrupted during the 1950's and 1960's, the government of President Anwar-el-Sadat has begun to move cautiously to realign traditional trading alliances. At the same time, President Sadat has made no secret of his desire to make Cairo the leading financial center of the Middle East—a position long held by Beirut in Lebanon.[2] Unfortunately, because of Egyptian caution on the one hand and an overabundance of investor wariness on the other, Egypt's efforts to encourage the return of private capital to the country have not met with total success. Because of political and historical realities, the Egyptian Government has been slow to implement its open-door policy; because of their worries about political stability and about the future viability of the Egyptian economy, American, Japanese and European investors have in turn adopted a cautious "wait and see" attitude. The result has been something of a stalemate, with little non-Arab investment returning to Egypt after the Nasser years.

To analyze why this stalemate occurred, Part Two of this Article will outline the problems faced by the foreign investor in Egypt—problems which have created wariness in the foreign investor.[3] Part Three will discuss the legal structure of Egypt's open-door policy (*infitah*) which has tried to alleviate investor worries and attract private foreign capital back to the country.[4] Since Law No. 43 of 1974[5] with its accompanying amendments which were enacted in

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1. The Khedive Tewfik in the nineteenth century remarked: "Egypt is not an African but a European country." Kerr, *Egypt Under Nasser* 50 (Headline Series, Foreign Policy Association No. 161, 1963).

2. The Times (London), Oct. 7, 1976, at 23, col. 1 & at 24, col. 1.

3. *See* notes 8-50 *infra* and accompanying text.

4. *See* notes 51-141 *infra* and accompanying text. Because of the dominance of foreign capital in Egypt prior to the Nassser period, one author has characterized Egypt's open-door policy as a "reopening." Salacuse, *Egypt's New Law on Foreign Investment: The Framework for Economic Openness*, 9 Int'l Law. 647, 649 (1975).

5. Law No. 43 of 1974, Concerning the Investment of Arab and Foreign Funds and the Free

1977[6] is the linchpin of *infitah,* it will provide the central focus for this analysis. Finally, Part Four of this Article will suggest reasons for the cautious implementation of the open-door policy by the Egyptian Government.[7]

II. The Problems of the Foreign Investor in Egypt

At first glance Egypt seems to represent an ideal climate for foreign investment. With its thirty-eight and one half million people,[8] Egypt has the largest potential market in the Middle East—a market that is expanding at a rate of approximately one million, sixty-five thousand people a year.[9] Although there are weaknesses in some areas, Egypt also has the largest pool of trained middle-management and technical personnel in the area.[10] Westerners, and particularly Americans, are genuinely liked in the country and the government of President Sadat seems dedicated to increasing trading ties with Europe and the United States. Similarly, the reopening of the Suez Canal[11] and the potential oil reserves in the Nile Delta, the Western Desert and in the Sinai and Gulf of Suez areas[12] have contributed beneficially to the investment climate. While these are all important "plus" factors, Egypt is still plagued with political and economic instabilities which make the foreign investor somewhat cautious.

A. *Political Instability*

The continuing Arab-Israeli confrontation forced Egypt to spend approximately forty percent of its 1975 budget on arms.[13] The military

Zones, *as amended by* Law No. 32 of 1977 (Egypt) [hereinafter cited as Law No. 43] (copy on file with the *Fordham Law Review*). Law No. 43 itself repealed an earlier investment law relating to Arab capital. Law No. 65 of 1971 (Egypt), *repealed by* Decree of June 19, 1974, art. 4 (enacting Law No. 43). Special investment legislation also applies to the hotel and tourist industries. Law No. 1 of 1973 (Egypt); Law No. 2 of 1973 (Egypt).

6. Law No. 32 of 1977 (Egypt) (amending Law No. 43 of 1974 (Egypt)) (copy on file with the *Fordham Law Review*).

7. *See* notes 142-52 *infra* and accompanying text.

8. Abdel-Meguid, *Doing Business in Egypt, reprinted in* Current Legal Aspects of Doing Business in the Middle East—Saudi Arabia, Egypt, and Iran 166 (1977); N.Y. Times, Apr. 26, 1977, at 8, col. 1.

9. N.Y. Times, Apr. 26, 1977, at 8, col. 1.

10. Goekjian, *Specific Problems and Unique Aspects of Doing Business in Egypt, reprinted in* Current Legal Aspects of Doing Business in the Middle East—Saudi Arabia, Egypt and Iran 179, 181 (1977). *See also* The Times (London), Oct. 7, 1976, at 26, col. 1. There is a "brain" drain of migrating skilled workers, however. *Id.*

11. The Suez Canal was officially reopened on June 5, 1975, after it had been closed for almost eight years because of the damage caused by the Arab-Israeli conflict in 1967. *See* The Middle East, Feb. 1976, at 21.

12. The Times (London), Oct. 7, 1976, at 24, col. 1.

13. N.Y. Times, Jan. 29, 1978, § 4 (Week in Review), at 3, col. 4; *see* Abdel-Meguid, *supra* note 8, at 170.

presence is evident almost everywhere in the country. Various archaeological sites near Cairo have been taken over as military bases. The length of the Suez Canal is heavily fortified; the Sinai Peninsula is virtually closed off, and travel—at least by foreigners—is interdicted in large parts of the rest of the country. Mohamed Heikal, former editor of Al-Ahram, has prophesied that another war with Israel is inevitable.[14] Predictions like these, coupled with the obvious military presence and heavy spending for armaments, can only make a foreign investor abundantly cautious. President Sadat's recent peace initiative, however, has done much to alleviate military tensions in the area—something which can have only a beneficial impact on business prospects in Egypt.

If the potential danger of renewed Arab-Israeli hostilities could be discounted, the Egyptian political scene would appear otherwise stable. In a sense, Egypt has already gone through its revolution and there has now been a return to normalcy.[15] President Sadat has restored a degree of political freedom to the country and in free elections in November, 1976, the Egyptian voters overwhelmingly chose a centrist faction of the Arab Socialist Union to rule the country, rejecting candidates of the right and left.[16] In the same year President Sadat himself was reelected to another six year term as President[17]—a clear indication that the move away from the socialist road of the Nasser years has been institutionalized. But amid these optimistic signs, there is still some lingering concern about the domestic political situation. Food riots in January of 1977 forced President Sadat to reinstitute government food subsidies for certain basic commodities.[18] Although these subsidies constitute a serious drain on the Egyptian economy, Sadat's economic advisers had to be overruled by political realities. Conservative Islamic groups in the country have pressured the Egyptian Parliament into banning the consumption of alcohol in non-tourist establishments.[19] The ban is indicative of the continuing influence of the Mosque in certain areas of government policy—an influence which is a source of worry to non-Muslin business interests. Similarly the reappearance of fundamentalist religious groups such as the

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14. Heikal, *Foreword* to The Road to Ramadan (1975).

15. Goekjian, *supra* note 10, at 181.

16. N.Y. Times, Nov. 1, 1976, at 5, col. 1; *id.*, Nov. 7, 1976, at 10, col. 1.

17. President Sadat was sworn in as Egypt's President for another six-year term on October 16, 1976. N.Y. Times, Oct. 17, 1976, at 7, col. 1.

18. For a description of these riots, in which reportedly over 40 people were killed, see N.Y. Times, Jan. 21, 1977, § A, at 3, col. 1; *id.*, Jan. 22, 1977, at 3, col. 3.

19. Law No. 81 of 1976 (Egypt). Conservative religious groups also unsuccessfully pushed for legislation that would have prescribed the death penalty for Muslims who convert to Christianity or any other religion. N.Y. Times, Sept. 5, 1977, at 31, col. 6; *id.*, Sept. 15, 1977, at 8, col. 4.

Muslim Brotherhood could lead to increased pressure aimed at undermining the liberalizing policies of the Sadat government.[20] Although political terrorism is not a significant factor in Egyptian life, the presence of Libya's volatile leader, Muammar el-Qaddafi, on Egypt's western borders must always be remembered in this context. Qaddafi is the reputed financier of various Muslim dissident groups in Eritrea, Chad, the Sudan, and the Philippines.[21] He is hostile to the present Egyptian leadership and has been linked to various violent enterprises in the country.[22] Finally, in recent months, there have been indications that President Sadat's reinstitution of political freedom may itself be undergoing some degree of modification.[23]

B. *Economic Instability*

Realistically, however, economic (rather than political) conditions pose the major obstacles to foreign investment in Egypt. While Egypt's large and burgeoning population represents an asset in terms of potential future markets, it has caused major social and economic dislocations. Rural immigration to Egypt's cities has resulted in major overcrowding and serious strains on urban facilities. Per capita income in Egypt is $317 a year—among the lowest in the world;[24] the limited arable land along the Nile cannot adequately feed the population and Egypt possesses few natural resources which can be used to generate much-needed foreign exchange. Large expenditures for national defense have aggravated Egypt's already serious trade imbalance.[25] Imports exceeded exports by 1,200 million Egyptian pounds in 1976.[26] In addition, Egypt must pay annually a staggering 1,200 million Egyptian pounds in debt service for foreign loans.[27] This annual

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20. One extremist group, the Takfir Wal Hijira Society, was responsible for the murder of a former cabinet minister and at least two bombings in Cairo. N.Y. Times, Dec. 1, 1977, § A, at 2, col. 3. The Moslem Brotherhood is a fundamentalist Islamic movement first organized in 1928. The Brotherhood had an estimated three million members in 1947. *See* A. Perlmutter, Egypt: The Praetorian State xv (1974). Although not nearly so strong at the present time, the Brotherhood is still considered a force in Egyptian politics.

21. The Middle East, Sept. 1976, at 25; *see* N.Y. Times, Feb. 7, 1978, at 2, col. 6 (Chad).

22. The Middle East, Sept. 1976, at 25. *See also* Egyptian Gazette, Sept. 21, 1976, at 1, col. 1. Recent developments between Libya and Egypt have led to a formal break in diplomatic relations. N.Y. Times, Dec. 6, 1977, at 1, col. 6.

23. N.Y. Times, Feb. 4, 1977, at 6, col. 2.

24. N.Y. Times, Nov. 19, 1977, at 27, col. 1.

25. *See id.*, Jan. 29, 1978, § 4 (Week in Review), at 3, col. 4. Military spending had, however, decreased to 25% of the total budget in 1977. *Id.*

26. The Middle East, Jan. 1976, at 65 (1976 estimate). *See also* N.Y. Times, Jan. 25, 1976, at 58, col. 1 (citing Egypt's three billion dollar balance of payments deficit for 1975).

27. *Id.* (1976 estimate).

balance of payments deficit of 2,400 million Egyptian pounds represents a serious drain on the economy.[28]

The Aswan Dam, although possibly an economic boon in the future, may have exacerbated the already difficult short-term economic situation. Although the Dam has increased total agricultural acreage, its elimination of the annual Nile inundation has reduced the silt content of the soil.[29] To compensate for the lack of this natural alluvium, there has been an increased dependence on artificial fertilizers. Fertilizers are expensive and some claim that the average yield per acre is down, thus effectively neutralizing the benefits of increased acreage.[30] The disappearance of the Nile floods has also hurt the brick-making industry in Egypt by forcing brick-makers to plunder rich agricultural land to produce bricks, and thereby further reducing the productivity of arable lands.[31] Although the energy potential of the Dam is enormous, the existing energy distribution system is primitive and cannot at present make effective use of this potential. The increased use of irrigation as a consequence of the Dam may worsen the already chronic bilharzia problem among the rural *fellahin*.[32] With a yearly population growth of almost three percent, limited natural resources, and a spiralling balance of payments problem, Egypt faces a deteriorating economic future unless new sources of revenue can be found. It is this overall bleak economic picture that frightens would-be foreign investors.

There are some hopeful signs, however. A negotiated end to the Arab-Israeli conflict would reduce Egypt's need to spend heavily on armaments. Much of this revenue could then be diverted to more productive economic investments. Because of Egypt's abundant reservoir of trained manpower, approximately one million Egyptians live and work in other Arab countries, sending back over one billion dollars a year in foreign currency remittances.[33] As the economies of the various Arab countries continue to grow, Egyptian skilled labor will be in even greater demand, increasing further the amount of these remittances. The reopened Suez Canal brings in approximately 500

28. For a discussion of Egypt's dual exchange rate, see notes 83-86 *infra* and accompanying text. Egypt has begun to impose checks on the worsening balance of payments problem. *See* The Times (London), Oct. 7, 1976, at 24, col. 1.

29. *The Middle East Observer* reported that the National Agriculture Research Center of Egypt was conducting studies aimed at finding a remedy for a lack of silt in the soil caused by the dam's blockage of the Nile's flooding. Middle East Observer, Oct. 6, 1976, at 2, col. 6.

30. This information was garnered from the author's conversations with various individuals knowledgeable on the subject of the High Aswan Dam.

31. The Middle East, June 1976, at 17.

32. For reference to bilharzia in Egypt, see, *e.g.*, H. Ayrout, The Egyptian Peasant 73-74 (1963); M. Rowlatt, A Family in Egypt 208 (1956).

33. N.Y. Times, Nov. 19, 1977, at 27. col. 1.

million dollars in yearly revenue[34] and, when deepened to accommodate supertankers, earnings could reach one billion dollars by 1980.[35] Although critics argue that the canal will never lure back the bulk of the oil trade, the Egyptian Government is more sanguine, emphasizing the canal's strategic position between the West and the burgeoning traffic in the Persian Gulf ports. Egypt's oil prospects have improved over the past several years with the return of the Sinai oil fields and with the discovery of new oil fields in the gulf of Suez, in the Nile Delta, and in the Western Desert. Although it may never be a major oil exporter, Egypt has enough oil resources for her own needs and it has been projected that by 1980 yearly export revenues will exceed one billion dollars.[36] Furthermore, the prospects for continued foreign assistance are bright. The United States and various Arab and West-European governments have pledged economic aid to Egypt to assist in correcting her balance of payments deficit.[37] Unfortunately, even the combination of these various positive signs has not totally convinced private capital that now is the time to invest in the Egyptian economy.

C. *Lack of Foreign Exchange*

A third investment obstacle faced by the foreign businessman is the shortage of foreign exchange available in Egypt.[38] Because Egypt must service huge government to government debts and import large quantities of food on the one hand, yet has few sources of foreign exchange on the other, there is a chronic shortage of hard currency for the private investor. Thus, it may be difficult for the investing company to obtain the necessary foreign currency to repatriate its dividends or buy needed equipment or raw materials abroad. The Suez Canal revenues and future revenues from exported oil will hopefully ease this problem in the future. The return of foreign banks to Cairo is also an encouraging development, although certain restrictions placed on the activities of the returning foreign banks have hampered their making hard-currency loans in the local Egyptian market.[39]

D. *Overloaded Infrastructure*

During the Nasser years, the Egyptian infrastructure—telephones, transportation, housing, and sewage—deteriorated substantially.[40]

34. *Id.*
35. The Middle East, Sept. 1976, at 46. *See also* The Times (London), Oct. 7, 1976, at 27, col. 1.
36. The Times (London), Oct. 7, 1976, at 27, col. 1. *See also* The Middle East, June 1976, at 56.
37. For references to American and European aid, see The Times (London), Oct. 7, 1976, at 24, col. 1. For a reference to Arab aid, see N.Y. Times, Nov. 19, 1977, at 27, col. 1.
38. *See* Abdel-Meguid, *supra* note 8, at 171.
39. The Times (London), Oct. 7, 1976, at 23, col. 1.
40. *See* Abdel-Meguid, *supra* note 8, at 170.

The foreign investor in Egypt today bears the brunt of this deterioration. The Cairo telephone system is in shambles.[41] It may take three or four days to make a telephone call to Europe and even then there is no guarantee that the call will go through as scheduled. Calls within Cairo often are impossible during peak hours because the lines are overloaded.[42] In order to cope with this situation, businessmen have had to resort to ingenious measures. Some use messengers for inner city communication. One company reportedly sends a messenger to Athens once a week to make necessary phone calls. Some companies have set up offices in ships moored off the coast to solve communications problems. Fortunately, telex communication is superior to telephone communication and there are ambitious plans to increase existing telex facilities.[43]

While air access to Cairo is good, port congestion in Alexandria is notoriously bad, making it difficult to import equipment.[44] While port congestion seems to be a problem common to many developing countries, it may be more serious in Egypt because of Egypt's large population and its concomitant need to import large quantities of food. The reopening of Port Said may help to alleviate the congestion in Alexandria, however.[45]

Public transportation within Cairo is overcrowded and even dangerous. Buses tilt at perilous angles under the weight of people crowded into and hanging outside of them.[46] There are occassional rumors that some of these buses have tipped over from the numbers of people hanging to their sides. To move around Cairo by car is an exercise in nerve control. The traffic jams are monumental, the noise of horns deafening—and all of this takes place under a broiling sun.

Housing in Cairo has not kept pace with the city's population, making the procurement of office and living accommodations both difficult and expensive.[47] There is also a chronic shortage of hotel rooms, although many new hotels are in the planning stages.[48] Elevators in office and residential buildings are frequently not in working order. Throughout Cairo, localized electrical blackouts are not uncommon.[49] They may last several minutes or several hours, but

41. The Times (London), Oct. 7, 1976, at 26, col. 1.
42. *Id.*
43. *Id.*
44. The Middle East, June 1976, at 67.
45. For a discussion of the reopening of Port Said, see The Middle East, Feb. 1976, at 21.
46. For a picture of a typical trolley in Cairo, see N.Y. Times, Nov. 19, 1977, at 27, col. 1.
47. The Times (London), Oct. 7, 1976, at 24, col. 1.
48. *Id.*
49. *See* N.Y. Times, Jan. 29, 1978, § 4 (Week in Review), at 3, col. 4.

whatever their duration they are an aggravating reminder of the deteriorated infrastructure.

For a company planning to resettle staff and open an office in Cairo, these various problems will have to be faced and handled. Although they are by no means insuperable, they might still convince a foreign investor to look elsewhere in the Middle East for a plant or office site.

E. *Bureaucratic Rigidity*

While it is probably no worse than in any other Middle Eastern country, the Egyptian bureaucracy is bloated and inefficient.[50] The normal problems of red tape are further exacerbated in Egypt by the ever present threat of renewed hostilities with Israel. Simple bureaucratic decisions may have military overtones—making the already slow bureaucratic process even more cumbersome. For example, an architect wishing to learn the force of the wind in Cairo so as to design appropriate windows for an office building may find that obtaining such information requires military approval. The rigid and cumbersome procedures of the bureaucracy impose a remarkable inflexibility on Egyptian institutions.

For the foreign businessman, the most frustrating aspect of the bureaucracy is its inability to give definitive answers. Often two diametrically opposed interpretations of a regulation will be given by different bureaucrats. The administrative confusion is of course not deliberate but seems to stem from an unfamiliarity with the complicated tax and financial problems which the foreign investor must resolve before deciding to commit funds to Egypt. Although perhaps explainable in the light of the Nasser years when Egypt was cut off from developing financial practices in the West, administrative confusion contributes further to investor wariness.

III. EGYPT'S OPEN DOOR POLICY

In Part Two of this Article, the obstacles presented the foreign investor in Egypt were highlighted; Part Three will discuss *infitah,* Egypt's open-door policy aimed at attracting private capital back to the Egyptian local market despite the obvious risks and difficulties. As originally envisaged, Law No. 43 of 1974 was to be the linchpin of *infitah.*[51] Within three years, however, various deficiencies in the law forced the enactment of a series of compensating amendments. Because of their importance, Law No. 43 and the 1977 amendments to it must be discussed in some detail.[52]

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50. *See* Goekjian, *supra* note 10, at 188. President Sadat in referring to the Egyptian bureaucracy remarked: "It took us 5,000 years to develop our bureaucracy, do not expect us to be able to dismantle it in two years." *Id.*

51. On Law No. 43 as originally enacted, see generally Salacuse, *supra* note 4.

52. *See* notes 5-6 *supra.*

A. *Structure of the Investment*

1. Local Participation

Article 4 of Law No. 43 of 1974 requires that foreign capital invested in Egypt take the form of participations with either private or public Egyptian capital.[53] These joint ventures will usually take one of two forms: a joint stock company (société anonyme), or a limited liability company (société à responsibilité limitée). The latter form is similar to a limited partnership.[54]

The law does not place a maximum limit on the foreign share of the joint venture.[55] Thus the foreign investor can own in excess of 50% of the joint venture. There are three exceptions to this rule, however. For banks engaging in local currency transactions, the local Egyptian capital must be at least 51% of the joint venture.[56] Similarly, construction contracting activities undertaken by joint stock companies must have at least a 50% Egyptian capital participation.[57] Finally, housing projects constructed for the purpose of investment can be undertaken only by Arab capital.[58] For non-Arab capital to participate in such housing projects would require the investment to be made through an Arab corporation. This would be permitted as long as most of the capital of the Arab corporation was owned by citizens of one or more Arab countries.

Although in the normal Law No. 43 joint venture there will be Egyptian participation, it is possible in some cases for the Board of Directors of the General Authority for Investment and Free Zones—the agency given the responsibility of overseeing the implementation of Law No. 43—by a two-thirds vote to approve an investment of foreign capital without local participation.[59]

As a matter of good business sense, however, most foreign investors will prefer to have some Egyptian capital in the joint venture. Since the major segment of the Egyptian economy is run by the public sector, there

53. Law No. 43 art. 4.

54. *See* Goekjian, *supra* note 10, at 184. For a discussion of the French models for these business forms, see J. LeGall, French Company Law (R. Pennington ed. 1974).

55. Law No. 43 art. 4; Abdel-Meguid, *supra* note 8, at 169. But some amount of Egyptian participation is required absent special authorization. *See* notes 56-60 *infra* and accompanying text. The requirement that at least forty-nine percent of the shares of a joint stock company must be offered for Egyptian subscription, required by article 11 of Law No. 26 of 1954 (Egypt), is abolished for a Law No. 43 Company. Law No. 43 art. 12.

56. Law No. 43 art. 3(vi).

57. *Id.* art. 3(viii) (added by Law No. 32 of 1977 (Egypt)).

58. Law No. 43 art. 4(a).

59. *Id.* art. 4(c). Foreign capital can "operate without local participation in investment banks and merchant banks whose activities are confined to transactions effected in free currencies so long as they take the form of branches of firms the principal offices of which are situated abroad." *Id.* art. 4(b). In this case, no special permission is required. *Id.*

will undoubtedly be heavy participation in these joint ventures by public sector enterprises. No matter what the nature of the Egyptian capital participating, however, joint ventures under Law No. 43 are still deemed to belong to the private sector of the economy.[60] Being deemed in the private sector is important because private sector status exempts these joint ventures from a variety of laws and regulations which apply to the public sector.

2. Management

The management of a Law No. 43 company is exempted from various restrictions that would otherwise apply to an Egyptian company. For example, the board of directors of such a company is not restricted as to its size[61] or the composition of its membership.[62] A member of the board is not prevented from serving in an administrative capacity in another company,[63] nor is he bound by the normal retirement age.[64] Non-Egyptian members of the board of directors are similarly exempted from the prohibition against membership on the boards of more than two joint stock companies[65] and from the prohibition against serving as managing director of more than one company.[66] Law No. 43 does, however, limit the transferability of shares in the company. Without approval of the General Authority for Investment and Free Zones, shares are not transferable during the first two years of the project.[67]

B. *Approval of the Project*

Even though it participates with local capital, foreign capital will only be given the benefits of Law No. 43 if it is invested in certain approved projects. In this sense, Egypt is not completely opening its door to the return of private foreign capital. Only those investments which realize the "objectives of economic and social development within the framework of the State's general policy and national plan" will be approved.[68] Because Egypt is trying to move from a socialist economy to a mixed public-private economy, careful planning during the transition phases is considered essential.

Approval for a particular investment project must come from the

60. *Id.* art. 9.
61. *Id.* art. 12 (exempting Law No. 43 companies from article 21(1) of Law No. 26 of 1954 (Egypt)).
62. *Id.* (exempting Law No. 43 companies from article 28 of Law No. 26 of 1954 (Egypt)).
63. *Id.* (exempting Law No. 43 companies from article 30 of Law No. 26 of 1954 (Egypt)).
64. *Id.* (exempting Law No. 43 companies from article 33 of Law No. 26 of 1954 (Egypt)).
65. *Id.* (exempting non-Egyptians from article 29 of Law No. 26 of 1954 (Egypt)).
66. *Id.* (exempting non-Egyptians from article 31 of Law No. 26 of 1954 (Egypt)).
67. *Id.*
68. *Id.* art. 3.

General Authority for Investment and Free Zones.[69] Realistically, however, the project application is circulated to several ministries, such as the Ministry of Industry and the Ministry of Economy, which have as their concern the economic development of the country.[70] The law specifies general categories of projects which will be considered for approval.[71] The 1977 amendments expanded the original list of categories by adding certain construction and technical consultant categories.[72] Special priority will be given to those projects which are designed to generate exports, reduce the need to import basic commodities, promote tourism, "require advanced technical expertise or which make use of patents or trademarks of worldwide reputation."[73] Because of its serious balance of payments deficit, Egypt obviously wishes to attract projects which will help to correct that imbalance and assist the country in modernizing its industrial capabilities. Export-oriented projects are particularly important in this regard because they will help create much needed foreign exchange.

Although many foreign companies have presented applications to the General Authority, few projects have actually become operational.[74] There are several explanations for this. The first is bureaucratic. Although approved by the General Authority, a project may still require a variety of permits or commitments from various government agencies before it can get underway. In the Middle East, the foreign businessman will not proceed until every necessary permit has been formally delivered. The Egyptian bureaucracy can be inordinately slow and one ministry can often act at cross purposes with another, delaying and complicating matters further. The second reason concerns the timing of feasibility studies. Quite often a project application will be submitted without a feasibility study. Since feasibility studies are expensive, a company may first wish to obtain approval of the concept of the project before making any outlays for a feasibility analysis.[75] After the project is approved in principle, feasibility studies may dictate that the project should not be undertaken. Even where the project has been approved and the feasibility studies are positive, many companies have been hesitant to proceed because of the problems outlined in Part Two of this Article.[76]

69. *Id.* art. 1.

70. *See* Abdel-Meguid, *supra* note 8, at 168-69.

71. Law No. 43 art. 3(i)-(ix).

72. *Id.* art. 3(vii)-(ix).

73. *Id.* art. 3(ix). For a brief synopsis of Egyptian patent law, see El Azub, *Legal Protection in Acquisition of Foreign Technology Through Licensing Agreements*, 360 L'Egypte Contemporaine 187, 196-205 (1975).

74. The Times (London), Oct. 7, 1976, at 24, col. 1.

75. Abdel-Meguid, *supra* note 8, at 169.

76. *See* notes 8-50 *supra* and accompanying text.

Since few major corporations have as yet moved projects beyond the approval stage, smaller companies may be holding back until the larger companies take the first steps.

C. *Nationalization*

In deciding whether to invest in Egypt, the foreign investor will obviously be concerned by the possibility of the nationalization or confiscation of his investment. The Nasser years proved that this was not an idle worry.[77] The 1971 Constitution of Egypt protects private ownership[78] and Law No. 43 itself states that approved projects "may not be nationalized or confiscated."[79] All seizures of the assets of these projects—temporary or otherwise—must be effected by judicial procedures.[80] Although the Egyptian judiciary has been defended as independent of the government,[81] many companies may doubt that, if push came to shove, they would receive a fair hearing in the Egyptian courts. Privately and publicly, however, President Sadat has labored hard to assure foreign investors that the events of the Nasser years could never be repeated in Egypt. Indeed, Sadat's open-door policy provides ample mechanisms to resolve investment disputes in a fair and equitable manner. Law No. 43 itself offers the foreign investor several forms of arbitration for dispute resolution—either private arbitration schemes or arbitration within the framework of bilateral agreements with Egypt or within the framework of the Convention for the Settlement of Investment Disputes between the State and the Nationals of Other States. Any arbitration awards would then have to be enforced in the courts of Egypt.[82]

D. *Asset Transfer*

Egypt has a two-tiered exchange rate.[83] The official rate of exchange is one dollar to thirty-nine piasters. There are one hundred piasters in an

77. For a brief discussion of the nationalizations of 1961 and 1963, see A. Nutting, Nasser 294-311 (1972).

78. Constitution of the Arab Republic of Egypt arts. 34-35, *reprinted in* 26 Middle East J. 55, 57 (1972).

79. Law No. 43 art. 7. Various bilateral investment agreements between Egypt and other countries often contain additional guarantees against nationalization. *See, e.g.*, Egyptian Gazette, Oct. 31, 1976, at 3, col. 3 (discussing an agreement between Egypt and the Netherlands). Law No. 43 does not, however, contain language as to the amount of compensation that will be paid if nationalization or confiscation occurs. The earlier investment law had such language. Law No. 65 of 1971 (Egypt), *repealed by* Decree of June 19, 1974, art. 4 (enacting Law No. 43); Salacuse, *supra* note 4, at 653.

80. Law No. 43 art. 7.

81. *See* Goekjian, *supra* note 10, at 187. *See also* Habachy, *Doing Business in Egypt—Comments, reprinted in* Current Legal Aspects of Doing Business in the Middle East—Saudi Arabia, Egypt and Iran 190, 191-92 (1977).

82. Law No. 43 art. 8.

83. For a discussion of the official and parallel rates, see Area Handbook for Egypt 435 (1976).

Egyptian pound. The incentive or so-called parallel rate is one dollar to sixty-eight piasters. As originally enacted, Law No. 43 provided that free foreign currency invested in Egypt had to be transferred into the country at the official rate of exchange.[84] The law was unclear as to the rate at which the money could be repatriated. If currency had to be transferred to Egypt at thirty-nine piasters to the dollar but could only be repatriated from Egypt at the parallel rate of sixty-eight piasters, this would amount to a 40% to 50% loss simply due to the dual exchange rate.[85] Law No. 43 required clarification on this point. The 1977 amendments now provide that money shall be both transferred to, and repatriated from, Egypt at the parallel rate of exchange.[86] Thus, a dollar will both enter and leave Egypt at the rate of one dollar to sixty-eight piasters.

Although the 1977 amendments successfully resolved this question, certain other problems concerning the repatriation of capital and profits were not resolved in as satisfactory a manner. Under both the original and amended versions of Law No. 43, the general rule is that the investor must wait five years to export his original investment; after this five year wait, he may then export it in five equal annual installments.[87] Although this general rule does admit of several important exceptions, it is still possible that the foreign investor might have to wait a full ten years before he could fully recoup his investment. In the case of profits, the amendments to Law No. 43 state that non-export oriented projects can transfer their profits only within the limits approved by the General Authority.[88] Although fewer restrictions are placed on the repatriation of profits by export-oriented projects,[89] it is clear from Law No. 43 that although the open-door policy swings wide open into Egypt, it swings back less readily. Although the repatriation restrictions are by no means intolerable, they do make the investor more cautious in determining whether or not to proceed.

E. *Investment Incentives*

In order to encourage foreign investment, Law No. 43 provides certain exemptions from restrictive laws and regulations which would normally apply to the ordinary Egyptian company.

84. Law No. 43 of 1974 art. 2(i) (Egypt) (amended by Law No. 32 of 1977 (Egypt)). For a discussion of the problem caused by the dual exchange rate, see Abdel-Meguid, *supra* note 8, at 170-71.

85. Abdel-Meguid, *supra* note 8, at 170.

86. Law No. 43 art. 2. Capital already transferred to Egypt before the 1977 amendments took effect can be revalued in accordance with these amendments. Law No. 32 of 1977 annex A, art. 5 (Egypt).

87. Law No. 43 art. 21(i).

88. *Id.* art. 22(ii).

89. *Id.*

1. Import and Export Regulations

Article 15 of Law No. 43 exempts the joint venture from import licenses with respect to material, machinery, equipment, and the like, required for the establishment and operation of the project.[90] Similarly, the joint venture can export its products without export licenses.[91] This latter exemption was added by the 1977 amendments. Although these exemptions do make import and export procedures less cumbersome, they obviously do not solve the problem of port congestion in Egypt—congestion that may delay the arrival of necessary machinery whether or not import licenses are required. Although necessary equipment may be brought into Egypt without import licenses, customs duties on those imports may still have to be paid. The joint venture, however, can seek a complete exemption from these duties or some form of payment deferral from the appropriate authorities.[92] The exemption or payment deferral is made conditional on the machinery not being sold locally within stated periods of time.[93]

2. Employment Legislation

Law No. 43 exempts approved joint ventures from all legislation specifically applicable to employees in the public sector and from certain labor statutes applicable to all employees whether or not in the public sector.[94] For example, article 12 exempts companies enjoying the privileges of Law No. 43 from the provisions of article 14, paragraph 5 of Law No. 26 of 1954[95] which requires a company to earmark 25% of its net profits for distribution to its employees, the 25% to be calculated after the company first earmarks 5% of net profits for the purchase of government bonds.[96] The exemption is not total, however, since article 12 does require that some percentage of net profits of a Law No. 43 company be earmarked for employees. The exact percentage, however, is determined by the board of directors of the company with shareholder approval.[97] The Model Statutes for Joint Ventures Established in Accordance with the Provisions of Law No. 43 require that employee distributions follow a first shareholder dividend but precede any share of the profits allocated as remuneration for the directors.[98] Similarly, article 10

90. *Id.* art. 15.
91. *Id.*
92. *Id.* art. 16.
93. *Id.*
94. *Id.* arts. 9, 11.
95. *Id.* art. 12.
96. Law No. 26 of 1954 art. 14(v) (Egypt).
97. Law No. 43 art. 12.
98. Model Statutes for Joint Ventures Established in Accordance with the Provisions of Law No. 43 of 1974 in the Form of Joint Stock Companies art. 52, *reprinted in* Legal Aspects of Doing Business

of Law No. 43 provides that Law No. 43 companies shall not be subject to Law No. 73 of 1973 which provides for labor participation in management.[99] But again, the exemption is not complete because article 10 concludes: "The statutes of the company shall show the method to be applied for labor participation in the management of the project."[100] Thus, some form of labor participation is definitely required even of a Law No. 43 company. The Model Statutes require the appointment of an Assistant Administrative Committee to be selected from among the company's employees and workers—both Egyptian and foreign—when the number of employees and workers reaches a specified number to be determined by the company.[101] This Assistant Administrative Committee has the power to study various subjects but its recommendations are not binding on the board of directors of the company.[102] In essence then, Law No. 43 mandates some labor participation in management, but only in an advisory capacity. Labor need not be represented on the board of directors itself.

Article 11 of Law No. 43 states, however, that Law No. 43 companies are not exempt from certain provisions of Law No. 26 of 1954 dealing with employees and workers of joint stock companies and limited liability companies.[103] These provisions create a ratio between the number of Egyptian laborers that must be employed and their total wages as compared to the total of all laborers employed and their total wages. Egyptian semi-skilled workers must constitute at least 90% of the work force and their wages must comprise at least 80% of the semi-skilled wages paid.[104] Egyptian skilled workers must constitute 75% of the work force and their wages must comprise at least 65% of the total skilled wages paid.[105] Although Law No. 43 does not give the company a completely free hand in determining the composition of its work force, the restrictions seem

with Egypt, Iran, Saudi Arabia and the Gulf States 111, 124-25 (1975) [hereinafter cited as Model Statutes]. One commentator has stated that this exemption preserves the socialist principle but in practice permits the company to minimize the financial burden it entails. Salacuse, *supra* note 4, at 656.

99. Law No. 43 art. 10.

100. *Id.* In the public sector, workers' representation on the boards of directors would be in the region of 50%. Constitution of the Arab Republic of Egypt art. 26, *reprinted in* 26 Middle East J. 55, 56 (1972).

101. Model Statutes, *supra* note 98, art. 33.

102. *Id.* arts. 34, 37. Law No. 32 of 1977 annex A, art. 6 (Egypt), requires the Minister of Economy and Economic Cooperation to issue new Model Articles of Incorporation and Model Statutes. Project owners, however, need not follow these models insofar as their provisions do not relate to Egyptian public policy. It would seem that these matters of labor participation in the management of the joint venture and the distributions made to employees (discussed at notes 99-102 *supra* and accompanying text) would relate to Egyptian public policy.

103. Law No. 43 art. 11.

104. *See* Law No. 26 of 1954 art. 94 (Egypt).

105. *Id.* art. 95.

reasonable. From the perspective of a developing country, it is imperative that its nationals be trained and employed. Foreign companies will be required to assist in this endeavor in return for certain privileges and concessions granted by the host country. Because Egypt does possess a pool of skilled and semi-skilled workers, the requirement that 75% of the skilled work force be Egyptian is not excessively burdensome, assuming a company hires judiciously. One persistent problem in this area, however, is nepotism. Quite often a ministry or a highly-placed individual will suggest a candidate for a position. The individual may not be the right person for the job but it may be difficult to refuse to hire him.

3. Social Insurance Legislation

Article 11 of Law No. 43 does not exempt a company's employees from the Social Insurance Law—unless the company creates a better social insurance scheme.[106] The coverage of the Egyptian Social Insurance Law is fairly broad, encompassing old age, disability, and death insurance, labor accident insurance, health insurance and unemployment insurance.[107] With respect to old age, disability, and death insurance, an employer must contribute 15% of the employee's wages, the employee 10% and the government 1%.[108] In the private sector, health insurance costs the employer 4% of the employee's salary and the employee must contribute 1%.[109] Unemployment insurance costs the employer 2% and labor accident insurance another 3%.[110] These different social insurance programs will cost the employer approximately one quarter of his employee's salary. To be exempted from the provisions of the law, the company must provide even more generous benefits.

4. Tax Laws

As originally enacted, Law No. 43 provided a five-year tax holiday from the 40.55% Egyptian industrial and commercial profits tax only if the profits were not subject to taxation in the foreign investor's home country or in any other country.[111] From the vantage point of an American company, this language was troubling. Since the United States taxes American companies on a worldwide basis, profits from an Egyptian subsidiary which ultimately were returned to the American parent would be subject to United States taxation.[112] Although the United States tax

106. Law No. 43 art. 11.

107. *See* M. Mahmoud, Investment Guide in Egypt 38-41 (1976).

108. *Id.* at 38-39.

109. *Id.* at 39.

110. *Id.*

111. Law No. 43 of 1974 art. 16 (Egypt) (amended by Law No. 32 of 1977 (Egypt)).

112. *See* Ball, *Local Tax Considerations—Egypt, reprinted in* Current Legal Aspects of Doing Business in the Middle East—Saudi Arabia, Egypt and Iran 173, 175-76 (1977) [hereinafter cited as Ball].

might be deferred, the ultimate imposition of the tax might be enough to negate the five-year tax holiday in Egypt. The 1977 amendments have clarified this ambiguity—at least with respect to the industrial and commercial profits tax and the tax on the revenues from moveable capital (dividend revenues). The five-year tax holiday with respect to the industrial and commercial profits tax and the tax on revenues from moveable capital are no longer contingent on non-taxability by any other country.[113] Not so for the general tax on income which is a second tax separate and apart from the industrial and commercial profits tax.[114] The exemption from this second tax is still conditioned upon such income not being subject to similar taxation in the investor's home country. Exactly how this provision will be applied must await future clarification.

Although an extensive discussion of Egypt's taxation of Law No. 43 joint ventures is beyond the scope of this Article, brief reference will be made to certain other tax provisions. The five-year tax holiday can be extended for three additional years by the General Authority[115] but the request for this extended tax-free period must be sought at the time the project is initially approved.[116] The 1977 amendments permit even longer tax holidays for projects involving reconstruction, the establishment of new cities, and land reclamation.[117] The taxholiday—whether it be for five or eight years—begins to run from the first fiscal year after the project commences operations.[118] Since start-up costs will undoubtedly cause heavy initial losses, this provision permits a company to plan so that the first year of its taxholiday does not overlap with this period of heavy losses—a period when the exemption from taxation is of significantly less value. Finally, even after the tax holiday has expired, there is a limited exemption from the general tax on income for the profits distributed by a Law No. 43 project.[119] Interestingly, interest due on foreign currency loans obtained by a Law No. 43 company is permanently exempted from all Egyptian taxation.[120] In structuring the actual form of his participation in a Law No. 43 joint venture, a foreign investor might wish to consider this provision carefully. A limited initial investment coupled with substantial loans, the interest on which is free from Egyptian taxation, could, under some circumstances, be the most profitable method of investment.

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113. Law No. 43 art. 16.
114. *Id.*
115. *Id.*
116. *See* Ball, *supra* note 112, at 175.
117. Law No. 43 art. 16.
118. *Id.*
119. *Id.* art. 17.
120. *Id.* art. 18.

5. Free Zones

In addition to regulating the return of private foreign capital to the local Egyptian market, Law No. 43 also provides for the formation and operation of free zones—geographical enclaves where businesses can operate as if they were not in Egypt.[121] The 1977 amendments to Law No. 43 did not make substantial modifications in the overall structure and operation of these free zones.

Under the open-door policy, two types of free zones are possible—public free zones like Port Said where many companies may operate as part of an industrial park, or private free zones where a particular company could choose a location anywhere in Egypt for its own operations.[122] The Board of Directors of the General Authority is the supreme authority controlling the affairs of the free zones.[123] The Board formulates general policies and lays down the executive regulations to govern the financial, administrative, and technical aspects of the free zones.[124] In the case of public free zones, the Board will form a local board of directors to operate the zone consistent with the general policies announced by the General Authority.[125] Private free zones will be supervised directly by the General Authority until affiliated with a public free zone.[126] By late 1976, thirteen private and four public free zones had been established in Egypt.[127]

From the perspective of both the investor and the Egyptian Government, the concept of the free zone offers obvious benefits. The foreign investor can obtain approval for a wider range of projects in the free zone than he could in Egypt itself simply because, by being in the free zone, he is not competing in the local market. Storage projects or manufacturing projects of any kind could, for example, receive approval for operations in a free zone even though they might not otherwise meet the criteria for a normal Law No. 43 project.[128] Once he operates in the free zone, the investor is exempted from a wide range of Egyptian regulations that would otherwise be applicable were he operating outside the free zone. In a sense, the free zone company has a permanent tax holiday since Egyptian corporate taxes are not levied against the project and exchange control and capital repatriation restrictions are not applicable.[129] Ordi-

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121. *See id.* arts. 30-57.
122. *See id.* art. 30 (providing for the creation of public and private free zones).
123. *Id.* art. 31.
124. *Id.* arts. 31-32.
125. *Id.* art. 33.
126. *Id.* art. 31(v).
127. Abdel-Meguid, *supra* note 8, at 169.
128. Law No. 43 art. 35.
129. *See id.* arts. 46, 49. Article 42 places restrictions on the withdrawal of Egyptian currency

nary customs duties and procedures are waived and foreign employees receive certain relief from Egyptian taxation.[130] Just as in the case of the ordinary Law No. 43 project, the free zone company receives guarantees against nationalization.[131] In addition, while non-free zone companies are required to hire a stated proportion of Egyptian nationals,[132] the free zone company is not subject to rigid ratios—although it seems clear that some minimum proportion of Egyptian nationals must be hired and appropriate training provided.[133]

From the perspective of the Egyptian Government, the free zone provides various forms of direct and indirect foreign currency revenue since most of the transactions in the zone will presumably be handled in foreign currency. First, the government will receive rent on the property leased. Second, the free zone will employ local manpower and presumably pay these employees in foreign currency. Third, Egypt will be able to sell services or supplies to the businesses operating in the zones. Fourth, the businesses in the zones may purchase raw or semi-manufactured local products—such as cotton—for their manufacturing needs. Fifth, the existence of a free zone will provide a place where some products not available in the local Egyptian market can be purchased by Egyptians. Similarly, because the free zone company must provide training programs for its Egyptian workers,[134] the country as a whole will benefit from the skills learned by these Egyptian workers.

To analyze how the free zone system operates, Port Said, the largest public free zone in Egypt, should be examined. At the northern end of the Suez Canal, Port Said was largely deserted after the 1967 war with Israel and was further damaged during the 1973 war. In May 1975 the city was declared a free zone and, in the next month, the Suez Canal was reopened.[135] The Government of Iran earmarked $250 million for the reconstruction of the city.[136] By the end of 1976, fifty-five industrial and commercial projects were under way in the city. Because of the unique location of Port Said at the Mediterranean entrance to the canal, many of these projects were warehousing operations.[137] A shoe factory, a cement works, and a milk production plant have also been established.[138] A wide variety of consumer items from abroad can be purchased in the city.

from the free zones, but not on the withdrawal of foreign currency. *Id.* art. 42. *See also* Ball, *supra* note 112, at 174.

130. Law No. 43 arts. 36, 47.

131. *Id.* art. 48.

132. *See* notes 103-05 *supra* and accompanying text.

133. Law No. 43 arts. 50, 54.

134. *Id.* art. 54.

135. The Middle East, Feb. 1976, at 21.

136. The Times (London), Oct. 7, 1976, at 24, col. 6.

137. The Middle East, Feb. 1976, at 21.

138. *See id.*

Egyptians are permitted to come to Port Said to purchase goods but items taken back into the country are subject to the normal Egyptian import duties just as if the items were purchased abroad. On leaving the city and returning to Egypt, an individual must pass through an Egyptian customs search which is thorough and exacting. However, the 1977 amendments to Law No. 43 provide that the duties on goods brought back to Egypt from a free zone are reduced by 50% if the item contains 40% or more of local Egyptian components.[139] Although road access to Port Said was severely damaged in 1973, the Egyptian Government is rapidly repairing the major routes to the city. Normal urban services have been restored and most of the original population has returned to the area.[140] Because of the success of the free zone project in Port Said, the city of Suez, at the southern end of the canal, may also soon have a large free zone.[141]

Although many companies may choose not to do business in the free zone—wishing instead to compete in the local Egyptian market—the free zone will still be an attractive concept for companies wishing to set up storage or processing plants in the Middle East. With ready access to the Mediterranean and to the Suez Canal, and with a pool of trained labor, Egypt will offer opportunities that other countries in the area cannot provide.

IV. CONCLUSION

Although Law No. 43 as initially enacted was criticized as only a half-open-door policy, many of the early problems with the law have been corrected by the 1977 amendments. But objections still remain—particularly with respect to the restrictive provisions dealing with the repatriation of capital. It would be unrealistic, however, to expect that Egypt could change the policies of the past twenty-five years overnight. Egypt is attempting to move from a socialist to a mixed economy and the transition will inevitably be a tortuous one. But in judging the pace of change, the investor must keep in mind certain historical and political realities because these at least explain the reasons for Egypt's perhaps overly cautious attitude towards the return of private capital to the country.

In order to encourage Western merchants to live in the Muslim world, it had become customary for Muslim rulers to grant foreign merchants the privilege of being subject, not to Muslim courts, but to their own consular courts.[142] As early as 1290 there was signed a commercial treaty between

139. Law No. 43 art. 37.
140. The Times (London), Oct. 7, 1976, at 27, col. 1.
141. *Id.* Alexandria is also becoming a large free zone area. *See* Egyptian Gazette, Oct. 11, 1976, at 3, col. 2.
142. *See* J. Brinton, The Mixed Courts of Egypt 1-5 (1968).

Egypt and Genoa which stated: "If a Sarrazin [Egyptian] or a Christian of a foreign state, has a litigation with a Genoese, the consul shall decide the case."[143] *"Actor sequitur forum rei"* went the maxim—the plaintiff must seek redress in the foreign defendant's forum. Over the centuries, these "capitulations" or "gracious concessions" grew to such an extent that during the eighteenth century, most foreigners in Egypt were subject only to the substantive law of the country of their origin, and not to the laws of Egypt.[144] As one commentator summarized the situation:

> The consul's jurisdiction was necessarily confined to the enforcement of the laws of his own country, except insofar as those laws expressly called for the application, in special cases, of the foreign law. Therefore, foreigners were subject only to their own laws, as such laws were interpreted by their own consuls. Thus, the laws of the country where they resided, being unenforceable in any forum against them, became for them practically nonexistent . . . .[145]

In 1875, there were approximately 80,000 foreigners in Egypt.[146] By the 1920's that number had increased to almost 160,000.[147] At various times in the late nineteenth and early twentieth centuries, fourteen nations had capitulatory privileges—privileges which covered the vast majority of this foreign population.[148] Since they prevented foreigners from being punished for violating Egyptian laws, the capitulations represented a major limitation on Egyptian sovereignty. Foreigners, for example, could violate certain Egyptian criminal laws, such as the narcotics laws, with virtual impunity simply because narcotics offenses were not then recognized as crimes in the West.[149] Although extremely unpopular, these capitulations were not finally abrogated until 1937.[150] The Western powers successfully resisted their abrogation for so long in fear that their citizens would be tried under Islamic Law, a system

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143. *Id.* at 3.

144. M. Howell, Egypt's Past, Present and Future 274 (1929).

145. Brinton, *supra* note 142, at 5.

146. *Id.* at 18.

147. Howell, *supra* note 144, at 276. This was out of the then population of approximately 15 million.

148. *See* Brinton, *supra* note 142, at 25. The list included Germany, Austria, Belgium, Denmark, Spain, the United States, France, Great Britain, Greece, Italy, Sweden, Holland, Portugal, and Russia. After the dissolution of the political union of Norway and Sweden, Norway received capitulatory rights. For the status of Brazil, China, and Japan, see *id.* at 25 n.1. The United States was given capitulatory powers in 1830. Treaty with the Ottoman Porte, May 7, 1830, United States-Ottoman Empire, art. IV, 8 Stat. 408, T.S. No. 267.

149. The Egyptians criminalized the use of hashish in 1884. Decree of March 10, 1884 (Egypt). The United States passed legislation controlling marihuana use only in 1935. *See* Act of Aug. 2, 1937, ch. 553, 50 Stat. 551 (codified at 21 U.S.C. § 841 (1970)).

150. The capitulations were abrogated by the Treaty of Montreux. *See* Brinton, *supra* note 142, at 193-99.

that was considered by many in the West to be excessively harsh and even brutal.[151]

It is in part because of the unpopularity of the capitulations, which were viewed as instruments of Western imperialism, that the present Egyptian Government cannot afford the appearance that it is attempting to entice foreign business back to Egypt at any price. Any unreasonable concessions or any preferential treatment afforded foreign business could easily be branded as a return to the capitulatory system. Thus, Law No. 43 had to be cautiously implemented to avoid such criticism. In the post-Nasser era, the charge of giving in to Western business interests could have disastrous political ramifications. Consequently, on an issue like the implementation of Law No. 43, where ideally the principles of economics should prevail, the realities of politics must also be carefully weighed. Viewed in this light, Law No. 43 is a realistic attempt by the Egyptian Government to bring foreign private capital back to the country. Although the open-door policy can be criticized as overly cautious, the pace of change will necessarily have to be slow. It is, in fact, amazing that so much has been accomplished in the space of just four years. President Sadat and his ministers have so far been largely successful in "de-politicizing" *infitah*. How long this will continue depends, of course, on the shrewdness of Egyptian policymakers and the demonstrated benefits of *infitah*. Unfortunately, Western business views Egyptian caution—which is dictated by Egypt's internal political situation—as a lack of commitment to *infitah* and, as a result, the amount of foreign investment has been relatively small. Unless the Egyptian Government can demonstrate the benefits of *infitah*, pressures will mount for a more radical solution to Egypt's economic problems. President Sadat's continued commitment to *infitah* has, however, not gone unnoticed. The new amendments to Law No. 43 have been a particularly positive gesture by Egypt. There are signs that certain large American companies are now seriously responding to the potential of the Egyptian market.[152] Although there have been false starts in the past, prospects for success appear to have improved in recent months. Once a few companies make the commitment to Egypt, the psychological momentum will undoubtedly continue to build. When that occurs, the Nile will course ever more strongly towards the Mediterranean and the Atlantic without fear of diversion.

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151. *See id.* at 18 (referring to the fears of the Italian community in Egypt).

152. Egypt and the Ford Motor Company have signed an agreement for a thirty million dollar joint venture to manufacture trucks. N.Y. Times, Oct. 30, 1977, at 9, col. 1. The agreement with Ford could break the psychological barrier which has been holding up large company investment in Egypt. *See* The Times (London), Oct. 7, 1976, at 24, col. 1. For a reference to Egypt's dealings with Coca-Cola, see N.Y. Times, Sept. 8, 1977, § A, at 8, col. 1.