

Real Estate, Usufruct Right and the Issue of the *Waqf* Assets in Egypt.

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Abstract— In the last decade, Egypt became more and more integrated with the global economy starting from its participation in the Union for Mediterranean (UfM), a partnership with the goal of creating a European Mediterranean Free Trade Area (EMFTA). Nevertheless, Egypt has been and still is an Islamic State still retaining some of the characteristics of the traditional Islamic legal system. This coexistence of Western practices and values of Islamic tradition makes it a fascinating case study in the field of economy and law.

In this paper we will pay particular attention to the development of the law of real estate and land property in Egypt; specifically, we will illustrate how the Islamic character of Egyptian traditional law, attempts of international openness and Egyptian nationalism has combined together during the years.

Firstly, we will summarise the key points in the process of reforms that have been put into practice starting from the Prime Ministerial decree 350/2007 establishing that companies and enterprises have the right to own real estates and lands regardless of their nationality or the nationality of their partners and shareholders. This opening to foreign companies was strongly discourage in 2012, by law no. 14 which gives the Minister of the Defence the responsibility of setting regulations concerning land attributions in the Sinai Peninsula. Minister of the Defence banned any foreigners land ownerships (so called ‘Sinai law’), this decision severely affecting the real estate market in the Sinai area, where foreign investments had been a key factor. In 2015 amendments to law no 14 have been introduced, loosening the restrictions on investors that wish to acquire land rights in the area on the Sinai Peninsula. It extends the scope of persons that are outside the range of the Sinai law allowing Non-Egyptians that receive title to a land by inheritance, testament or gift to keep the right of usufruct under certain conditions.

We will then focus on the crucial role of the usufruct right. We point out that due to the above-mentioned legal innovation, the usufruct system in Egypt also upholds national security, and guarantees that land—especially that of a special nature like the Sinai Peninsula—will not fall into the hands of foreigners.

A particular case of usufruct is the “*waqf*” or religious endowment, consisting of income-producing property whose usufruct is assigned by its original owner to a mosque or to carry out charitable works (e.g. building schools, orphanages and hospitals). The original owner of an endowed property retains his or her ownership in it, but the usufruct right is conveyed to an endowment authority. In Egypt, the Endowments Authority, established since 1971, is affiliated with the Ministry of Religious Endowments: it is the sole competent authority empowered to

manage and invest in endowment assets. Such investments can have an impact in real estate system and in the usufruct right scheme in the name of a more pervasive State involvement in this field of investments. All these aspects will be broadly analysed in this paper.

Keywords—Egypt; Real Estate; Usufruct Right; Waqf

I. THE PUBLIC PROCUREMENT SYSTEM IN EGYPT AND HIS IMPACT FOR THE SOCIAL REFORMS.

During the first half of the twentieth century and so on, the Egyptian economy’s dependence on land ownership and property law as crystallizes in the Egyptian Civil Code [1] (ECC) meant that other sectors of the economy and commerce as the industry contributed only in minor part of Gross Domestic Product (GDP) [2]. Indeed, foreign capital contributed to the growth and the industrialization of Egyptian economy in the decade 1960-1970s [3]. The role of foreing capital investment in the economy of the country also appears quite evident. Therefore, since 1960 with several different Statal-Plans for the development and the growth of the economy, Egyptian authorities relied massively on foreign capital [4]. Put it differently, foreign investment on land property defined the principal social, economic and political system. According to the ‘sociological approaches’ of the early twentieth century, circuleted through different models and patterns and as manifested in numerous civil codes, such the Swiss code, the Soviet code or the proposed Franco-Italian code of contracts [5] (where was evident a tension between nationalism interests and an orginal modern view of comparison of different european models of codification that appears clearly also in the political debate between two eminent legal scholars such Vittorio Scialoja and Emilio Betti [6] about the socio-economical function of a juridical notion as the *negotio*), property laws were permeated with a prominent social purpose as a tool for securing social objectives and social solidarity. ‘Abd al-Razzāq al-Sanhūrī, renowned legal scholar and professor who drafted the revised Egyptian Civil Code of 1948¹ (al-Qānūn al-Madanī), sought in vane [7] to

¹ G. BECHOR, *The Sanhuri Code, and the Emergence of Modern Arab Civil Law (1932 to 1949)*, Brill, 2007, pp.99-101; N. SALEH, *Civil Codes of Arab Countries: The Sanhuri Codes*, Arab Law Quarterly, Vol. 8, No. 2, 1993, pp.161-167; F. CASTRO, *Il modello islamico*, Giappichelli, Torino, 2007, pp. 186-218 and F. CASTRO “Abd al-Razzaq Ahmad al-Sanhuri (1895-1971): primi appunti per

include immediately in the New Code the term ‘social function’² (*al-waẓīfāt al-ijtimā’iyyah*) as regards to property law³. Nevertheless, the flexible social function of property law in Egypt, as regulated in Article 802 and 806⁴ of the Civil Code, was able to adapt itself during the political change from the period of the monarchy, when the civil code was written, to the Arab Socialism regime⁵ beginning with the Nasserite revolution of 1952⁶. Therefore, the situation appears clear simply considering the words of Guy Bechor regarding the ductility of the sanhūrīan civil code model, which would be able to be interpreted and adapted according to the mutable necessities (*ad-ḍarūra*)⁷ of society:

una biografia”, in ‘Studi in onore di Francesco Gabrieli nel suo ottantesimo compleanno’, Roma, 1984, *passim*.

J. N. D. ANDERSON, *The Shari'a and Civil Law*, in *Islamic Quarterly*, 1954, pp. 29-46; Y. LINANT DE BELLEFONDS, *Le Droit Musulman et le Nouveau Code Civil Egyptien*, in *Annales Economiques et Sociales*, 1965, p. 4; E. HILL, *Al-Sanhuri and Islamic Law. The place and Significance of Islamic Law in the life of and work of 'Abd al-Razzāq al-Sanhūrī, Egyptian Jurist and scholar 1895-1971*, Arab Law Quarterly, Vol. 3, Issue 2, pp.182-214.

² A. SHALAKANY, *Between Identity and Redistribution: Sanhuri, Genealogy and the Will to Islamise*, *Islamic Law and Society*, Volume 8, Issue 2, 2001, pp. 201-244. The original Civil Code proposal, Article 1162 made by al-Sanhūrī says: “*The owner of a thing may use it, enjoy it and perform disposition (taṣarruf) in it, provided he acts within the limits of the law, without any intervention by another, on condition that this take place in accordance with the social function of property*” in G. BECHOR, p. 101; *Ibid.* “*the right of property is both individual (ḥaqq fardī) and a social function (waẓīfā 'ijtimā'īyya)*”, p.103.

³ Art. 802 of the Egyptian Civil Code of 1948: “*The owner of a thing has alone the rights to use it, enjoy it and undertake disposition of it, within the limits of the law*”.

⁴ Art. 806 of the Egyptian Civil Code of 1948: “*The owner is obliged to obey the rules, orders and regulation, relating to public good or the good of a given individual*”. It also appear quite evident a relation between this dispositions and the Islamic tradition with the notions of “*ḍarar*” and “*ta'addī*” (‘abuse of right’ and ‘ousting’), see D. Santillana, *Istituzioni di diritto musulmano mālikita con riguardo anche al sistema sciafita*” Vol. II, IPO, Roma, 1925, pp. 266-280.

⁵ “*The Soviet Union was a major and stable supplier of foreign loans to Egypt during 1960-1972 (...) From 1968 through 1972, the U.S.S.R disbursed \$319 million to Egypt which amounted to about 37 percent percent of foreing loans received by the Egyptian governemnt.*”: see N. ABDALLA, p.87.

⁶ As pointed out by ZOHNY, pp. 169-183: “*Both Presidents Gamal Abdul Nasser (1956-1970) and Anwar Sadat's (1970-1981) (...) administrations were not successful in importing, or developing locally, the state-of-the-art technologies necessary to satisfy local consumers and build an export oriented economic and development goals of their respective administration. (...) Both Nasser and Sadat's legislators gave low priority to this vital area of law that is "procurement law"*. See also on this point R.A. HINNEBUSCH, *The Politics of Economic Reform in Egypt*, *Third World Quarterly*, Vol. 14, No.1 (1993), p.160.

⁷ See ‘*ḍarūra*’ by Y. LINANT DE BELLEFONDS in *Encyclopedia of Islām*, edited by B. LEWIS, CH. PELLAT and J. SCHACHT, Vol II, Leiden, Brill, 1991, pp. 163-164: “*Necessity (also "iḍṭirār")*, in works of fiqh has a narrow meaning when it is used to denote what

“*In 1967, Sanhūrī (...) published the eighth volume of Al-Wasīṭ⁸, (...) he was obliged to adapt the purpose of social function as manifested in the Code in order to respond to the changes that had occurred in the meantime in what was now an authoritarian regime. He extended (...) the flexibility of the concept of social function in order to enable it to absorb the Socialist ideas (...). While during the 1940s Sanhūrī had emphasized the relativity of individual property rights vis-à-vis society, the emphasis now shifted to their relativity vis-à-vis the State⁹*”.

Several decades have gone from this initial arrangement. However, we can deduce the importance of legal concepts such as those mentioned above, as they are affected by a widespread and often uneven network of legislative reforms. This regulations have often innovated the legal system of the country in terms of individual property rights, investments and social policies. Especially, it is interesting to analyze the social impact of the various and layered ordinary laws (*qawanīn*) related to the investments of foreign private subjects for the purchase of real estate: these laws were able to influence the ability to attract foreign capital to Egyptian banks and other financial operators in the country, with a primary role in investment and welfare policies¹⁰.

II. FOREIGN INVESTMENT AND PROPERTY LAW IN EGYPT DURING THE 20TH CENTURY. A BRIEFLY OVERVIEW

Since the half of last century, foreigners, individuals and companies, have been entitled to own real estate in Egypt subject to certain conditions and some restrictions. Along the twentieth century, the regulation of foreign ownership of real estate spreads across several laws and regulations [8]. The nature of the real estate (e.g., residential, investment, agricultural) and its location¹¹ (e.g. the proximity of the property to Egypt's borders, lands in strategic areas, such as those adjacent to the western, eastern and southern borders; islands located in the Red and Mediterranean Seas; and the

may be called the technical state of necessity, and a wider sense when authors use it to describe the necessities or demands of social and economic life, which the jurists had to take into account in their elaboration of the law which was otherwise independent of these factors”.

⁸ “*Al-Wasīṭ fi Sharh al-Qānūn al-Madani*”, litt. “*The Explanation of the Civil Code*”.

⁹ G. BECHOR, p. 109.

¹⁰ About the idea of a ‘Islamic Welfare’ (*al-takāful al-ijtimā'ī*) in the classical sources see M.H. KAMALI, *The Right to Education, Work, and Welfare in Islām*, Islamic Text Society, Cambridge 2010, pp. 189-260.

¹¹ Its crucial here to note that drawing up laws on foreign ownership and investment, the identification of the specific characteristics of a particular geographic area appears an essential part. Clearly, it denote the peculiar political program of a government and the strategies for the future development.

Suez Canal area and the so called “Free Zone”¹²⁾ they are the two essential factors around which, during the decades, the principal regulatory and legislative interventions have been organized by the State.

More specifically about the pivotal importance of the location in the development of notable areas of the country, there are two species of ‘free zones’ in the country. ‘Public free zones’ are established in specific locations by General Authority For Investment and Free Zones (GAFI)¹³ including, Alexandria, Suez, Port Said, Damietta, Ismailia and Cairo. ‘Private free zones’ are established exclusively for a specific project or company, subject to the approval of GAFI¹⁴. The types of activities permitted in the free zones are mixing, blending, repackaging, manufacturing, assembling, processing and repair operations. Public free zones are usually located adjacent to seaports and airports to facilitate import/export procedures. Private free zones are established exclusively for specific projects that either need to be located near the sources of their raw materials services, or which, by their nature, are located outside the public free zones. Private free zone status is more difficult to obtain due to the requirements set out by GAFI, determines the scope of the ownership rights and any applicable restrictions¹⁵.

More in details, until 1951 foreigners investors had been entitled to own land in Egypt but in that year, Law No. 37 was enacted prohibiting the ownership of agricultural land by non-Egyptians. Agricultural lands were exclusively reserved to Egyptians¹⁶. After that firstly restrictions, Law No. 15 of 1963

on the Prohibition of Foreign Ownership of Agricultural Lands prohibits the acquisition of agricultural lands by foreigners both individuals and companies, whether by way of freehold ownership, usufruct or any other type of real property right [9]. In the ground of this Law, no foreigners, whether natural persons or juridical persons, might acquire agricultural or desert land [9]. Transitional provisions were included in the Law whereby foreigners who held such lands at the time lost their title which by way of nationalization. They were compensated by Government bonds. Foreigners who inherited agricultural lands likewise lost their right to the land and were compensated by the State [9]. The nature of ownership forbidden to foreigners stated to be “full ownership” (“*ḥaqq al-raqaba*”), bare ownership (“*milk al-raqaba*”) and “usufruct” (“*ṣāḥih ḥaqq al-intifā*”): the Islamic concept of “*ḥaqq al-intifā*”¹⁷, i.e. the ownership of “*manfa‘a*” is wider than “usufruct” in its modern sense). In contemporary legal doctrine and terminology the term “*manfa‘a*” or its ownership, i.e. “*milk al-manfa‘a*” is replaced by “usufruct”; “*raqaba*” is still used in the sense of bare ownership and this distinction was well preserved in the “*Murshid al-ḥayrān* of Muhammad Qadrī Pascia, artt. 4-5 “*al-intifā‘ al-jā‘iz*” Art. 13 of Egyptian Civil Code: “*Usufruct is the right to use and enjoy a thing of which the bare ownership belongs to another*”¹⁸. The linguistic specifications appear to be fundamental for better understanding the link between the classical Islamic law categories concerning real rights or contracts and the substance of the individual rights and they relationships in the field of foreign capital investments in Egypt.

Thus, from 1960 to 1972, foreign capitals mainly in the form of loans came to Egypt from government and private sources. However, with heavily nationalization measures of 1957-1963, foreign private investment was discouraged, “*with the exception for the Italian Fiat Automobile Company which, in conjunction with Egyptian public capital, produced Nasr*

¹² According to Investment Law No.72 of 2017 Section I: General Provisions, Chapter (1), “Definitions” a Free Zone area is: “*A part of the State Territory located within its borders and is governed by its administrative authority, and where the dealings are conducted in accordance with special customs and tax provisions*” (cf. Art. 1, Law No.72 of 2017).

¹³ For the composition and jurisdiction of this Authority cf. Section IV, Chapter (2) of Law No.72 of 2017 “The General Authority for Investment and Free Zones (“*al-ḥay‘at al-‘āmat li-lstiṭmār*”, الهيئة العامة للاستثمار).

¹⁴ http://www.globalsmes.org/news/index.php?func=detail&detailid=630&catalog=35&lan=en&search_keywords=.

¹⁵

<http://www.gafi.gov.eg/English/StartaBusiness/InvestmentZones/Pages/FreeZones.aspx>. According to Art. 1 of Law No.72 of 2017 an ‘Investment Zone’ is: “*A geographic area with defined size and borders, allocated to conduct one or more specialized and specific investment activity and other complementing activities, and the development infrastructure thereof are conducted by the Developer of such zone*”.

¹⁶ On this subject see: S. MARGOLD, *Agrarian Land Reform in Egypt*, in *The American Journal of Economics and Sociology*, Vol. 17, No. 1, Oct., 1957, pp. 9-19; R. BUSH, *Politics Power and Poverty. Twenty Years of Agricultural Reform and Market*, in *Third World Quarterly*, Vol. 28, No. 8, 2007, pp. 1599-1615; O.C. KIRSCH, *Agricultural cooperatives as an instrument of agricultural policy. Experience with cooperative promotion of production in Egypt*, in *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America*, Vol. 10, No. 2 (1977), pp. 255-267; D.E. WAHDAN, *Planning Imploded. Case of Nasser Physical*

Planning, in *Economic and Political Weekly*, Vol. 42, No. 22, Jun. 2-8, 2007, pp. 2099-2107; R. BUSH, *An Agricultural Strategy without Farmers. Egypt's Countryside in the New Millennium*, in *Review of African Political Economy*, Vol. 27, No. 84, Jun., 2000, pp. 235-249

¹⁷ S. HORII, *Pre-emption and Private Land Ownership in Modern Egypt: no Revival of Islamic Legal Tradition*, *Islamic Law and Society*, Vol. 18, No.2, 2011, pp. 186-187. About the *intifā* program under Sadat government see R.A. HINNEBUSCH, pp. 159-161 where the Author highlighted the “*(...) the inherit of Sadat's legacy of intifā. Intifā sought to replace étatism with foreign, Arab, and private capital as the engines of development but, in failing fully to roll back Nasser's heritage, it did not create the necessary investment climate*”.

¹⁸ See F.J. ZIADEH, *Property Law in the Arab World*, London: Graham & Trotman, 1979, pp. 61-62: “*The right of usufruct is real right or “ḥaqq ‘ayn” (e.g. it can be mortgaged) for the use of and exploitation of a thing that belongs to another, and this right lapses with the death of the usufructuaris, “muntafi‘in” (...). The right to usufruct, as it were, diminishes the right of the owner over his property. Of the three elements of the right of ownership, namely, user, exploitation and disposal, only the last is retained by the owner. But the owner recovers these elements with the expiration of the period of the usufruct or with the death of the usufructuary*”. See also S. HORII, pp. 193-194.

cars”¹⁹: one of the company’s facilities was located in the city of Helwan.

In 1974, Law No. 43 on “Investment of Arab and Foreign Capital and the Freezone”[2] established that companies created under this Law are permitted to own urban land, but in 1976, Law No. 81 forbided, with certain exceptions²⁰, the acquisition by foreigners of urban land wheter it is vacant or wheter it as been upon. This proihhibition is also stated to apply to foreigners, wheter natural persons or legal entities. However, in this Law, a legal entity is deemed to be non-Egyptian, even if it is constituted in Egypt, in the event that more then one-third of its share capital is owned by foreigners²¹. This Law further provides that a lease for a term exceeding a period of fifty years will be deemed to be ownership as forbidden by the Law²².

In contrast with the *impasse* of the 1980s²³, from the ‘90s and so on Egypt “*appears in the process of a major break with the past which will produce a mixed, less étatist and more market-cetred economy*”²⁴. Law No. 230 of 1996 on the

¹⁹ N. ABDALLA, p. 90. The Author also specified here that in this period: “*However, large amounts of the capital inflow to Egypt were in the form of loans, which have to be repaid (...). As early as 1965 and 1966 Egypt became unable to fulfill contractual debt service obligations.*” p. 94.

²⁰ M.H. DAVIES, pp. 69-73.

²¹ Article 1 of Law No.81 of 1976. This constitutes an exception to the rule that companies established in Egypt are of Egyptian nationality.

²² M.H. DAVIES, pp. 70.

²³ About the ‘80s we can register Law No. 230 of 1989 on ‘Investment Guarantees and Incentives’ (mentioned in A.Y. ZOHNY, p.179 as a symbol, among others specifics laws, of a turning point for the so called ‘egyptian procurement regime’, providing “*a variety of incentives for investments in Egypt, including protection from expropriation, tax holidays, and the establishment of free trade zones*”), however replaced by Law No. 8 of 1997: see T.F. RIAD [10]. Furthermore, provisions like those developed in Paragraph (3), Article (20) of that Investment Law enacted in 1989 about the status of profits distribution system applicate to the companies and their employees, will remain untouched with the Law No.72\2017 (cf. Art. VII.). See Law No. 143 of 1981 on “Desert Lands” with whom Egypt government regulates ownership of this particular kind of territories. This Law restricts ownership of desert land to Egyptian nationals and to Egyptian companies owned by at least 51% of Egyptians; certain limits are placed on the number of *feddans* that may be owned by individuals, partnerships and corporations (e.g. joint stock companies are permitted to own 50,000 *feddans*; partnerships and joint stock companies may own “desert lands” within this limits even if foreign partnership or shareholders are involved provided that at least 51% of the capital is owned by egyptians, see M.H. DAVIES, p.71). Law No. 159 of 1981 on Joint-Stock Companies is specifically cite in artt. 48, 49, 52 and 53, of Law No.72\2017, concerning the provisions of the incorporation of companies and facilities and post-incorporation services.

²⁴ R.A. HINNEBUSCH, p. 159. The Author specified that: “*The 1992 ‘reform’ of the agrarian relations law eliminates the security of tenure enjoyed by tenants since 1952 revolution (...), the superiority of property over labour rights is believed to be necessary to give investors confidence*”, see p. 161.

Regulation of Ownership of Built Properties and Vacant Land by Non-Egyptians (“Law No. 230 of 1996”) governs the ownership by foreigners of property for residential purposes. In applying Law No. 230 of 1996, a company is deemed a ‘foreign company’ if the majority of its capital is not owned by Egyptians, regardless of whether the company is incorporated and registered in Egypt or elsewhere. Law No. 230 of 1996 applies to all kinds of real property disposals by foreigners except inheritance. For purposes of this law, ownership rights include freehold ownership and usufruct rights.

Pursuant to Article 2 of Law No. 230 of 1996, the number of lands or built properties which a foreigner may own must not exceed two properties for residential purposes (for the owner and his immediate family) and the area of each real estate must not exceed 4,000 square meters. Once acquired, a foreigner must hold on the residential real property for 5 years before he is able to dispose of it to others, unless otherwise permitted by virtue of a special resolution issued by the Prime Minister²⁵.

The Council of Ministers has the authority to relax these restrictions and issue special conditions on the ownership of real estate located within touristic areas, designates from time to time. The Law also allows the Council to add fields of activities in which foreign joint stock company can invest [10].

Additionally, ownership of residential lands is conditional to the development of the land. Pursuant to Article 4 of Law No. 230 of 1996, a foreigner who acquires a residential land must start construction works to develop the land within 5 years from the month in which registration of such land with the Notary Public is recorded. In the event the five-years period lapses without commencing construction works, the prohibition to dispose of the vacant land would be extended to a period to the delay period in commencing construction works. More of less we can find the same regulations in Law No. 8 of 1997 of Investment Guarantees and Incentives [10]. This new Law, that can be seen as an *unicuum* with the previous one, offer incentives for Egyptians and foreigners for investment in certain fieldof activities as: reclamation of barren or desert lands; oil service and delivery gas infrastructures; housing projects, as well as in the finance and economy field with investments program in risk capital and project funded by the Social Fund for Development, management, purchase and liquidation of debts²⁶. This Law also includes a favorable tax exemptions of five or ten years from revenues on commercial and industrial activities of individuals or the tax on profits in the case of corporations [10].

To summarize: the principles regarding foreign investments developed in the country during the twentieth century remain in force today. This is possible because the combination of the nature of the property with its territorial localization remains of fundamental importance. This resulted in modulated legal solutions. The nature of property is essential to determine the type of real rights that can be insisted upon and activated by private individuals, whether they are foreign investors or

²⁵ Art. 5 of Law No. 230 of 1996.

²⁶ *Ibid.* pp. 117-118.

nationals. Therefore, it is evident that on a strictly political level, the property regime is able to respond to the policy needs of the various governments that have succeeded in leading the country.

III. FOREIGN INVESTMENT IN THE TWENTY-FIRST CENTURY. THE SO CALLED 'SINAI LAW' OF 2012 AND HIS EMENDAMENTS OF 2015.

The problems (but above all the opportunities) related to the social function of property in the Egyptian legal system have been the pivot around which the stratified regulatory framework for domestic and foreign investments has been revolved. Even nowadays large amounts of capital in the form of investments from abroad, collected by an attractive and convenient internal legislation, strongly affect the policy and economic strategies put in place by the governments in the last few years²⁷. The State tried to find a solution through the reforms providing a new law on investments capable of overcoming the earlier regulatory stratification. Although foreign companies can not access any kind of investment, many of the restrictions are slowly disappearing. Prime Minister Resolution No. 548 of 2005 states that foreigners shall enjoy equal rights with Egyptians for acquiring freehold title to units in Hurghada and the Red Sea and usufruct rights for up to 99 years for residency purposes, subject to obtaining the approval of the Ministry of Defense, Ministry of Interior and the National Security Authority [8]. Units acquired in those areas are exempted from the 5-years restriction on disposal and accordingly may be disposed of at any time after their acquisition [8]. Obviously, geographical location of area where investment are possible is still a central issue in two regulatory interventions reviewing the domestic and foreign investment sector in the country, culminating in the new Law No. 72 launched in June 2017. The first intervention, Law No. 17 of 2015 revision of the previous Law No. 8 of 1997, provides that foreign companies and establishment which investment projects fall within the list of commercial activities defined by the Legge No. 8 del 1997 (Art. 1) and its executive regulations, may own land buildings and develop real estate as necessary for the purposes of establishing their commercial activities, except lands and properties in areas designated by the Council of Ministers from time to time (Art. 2). A company must be incorporated in Egypt in the form of a joint stock company, limited liability company or limited partnership; however, there are no restrictions on the nationality of the shareholders, their residence and their shareholding percentage in the company:

“The companies and establishments shall have the right to possess and own land for building and built premises as required for the exercise of their activities and to expand the same regardless of the nationality or domicile of the partners, or the percentage of their shareholding”²⁸.

The second regulatory intervention actually was not unique but from 2012 the Egyptian legislator, in two times, has dealt with the peculiar situation of the territories of the Sinai

peninsula, strategically and geographically decisive for the political, economic and defensive fate of the country. At first, with Law No. 68 of 2015, the Egyptian government imposed that ownership of land in these areas is limited to the State for public security reasons²⁹; secondly, the Presidential Decree issuing Law No. 95 of 2015 (that introduces amendments to the Decree of the Supreme Council of Armed Forces No. 14 of 2012 on the Integrated Development of the Sinai Peninsula or ‘Sinai Law’), loosens the restrictions on investors who wish to acquire land rights within Sinai Peninsula, widening the scope of persons exempted from the ‘Sinai Law’³⁰. This law had exempted existing projects at the time (19 January 2012) from its application. The new Decree extends the exemption to projects that were still in the process of establishment, if they had preliminary agreements with the government. The Decree allows Non-Egyptians who receive title to a land in the Sinai Peninsula by the mean of inheritance, testament or gift to retain some rights over this land³¹: they can keep the right of usufruct³² over the land as well as title to immovable properties established on that land. However, they have to dispose the title of the land itself to an Egyptian within six months from the date the foreigner acquires the land’s ownership³³.

IV. THE SOCIAL FUNCTION OF THE INVESTMENT. ARTICLE 15 OF LAW NO. 72 OF 2017.

Following this initiative of reform started with the Law No. 95\2015 and with the aim of overrun the previous and disorganic legislation³⁴, a New Investment Law, No. 72 of 2017 (or ‘New Law’) was officially published on 31 May 2017 and came into effect on 1 June 2017³⁵. This law aims to promote foreign investments: in particular, art.2 dictates the ultimate aim towards which the new investment regulations will have to tend, according to the Environmental Law³⁶ (a “comprehensive and sustainable development”). It takes into consideration several aspects, such as: the growth of national economy, the reduction of the unemployment rate, increasing of both exports and foreign investment³⁷, reducing bureaucracy, simplifying³⁸ and enhancing processes³⁹. The

²⁹ <https://www.tamimi.com/law-update-articles/foreign-ownership-of-real-estate-in-egypt/>

³⁰ ECES-Egyptian Center for Economic Studies Reform Bulletin, September 2015, p.7.

³¹ <http://sharkawylaw.com/stay-informed/september-02-2015-issue-61/>.

³² *Ibid.* The maximum period for usufruct rights is extended from 30 to 50 years and can be renewed to another 25 years.

³³ *Ibid.*

³⁴ <https://youssrysaleh.com/Investment-in-Egypt/new-egyptian-investment-law/>.

³⁵ <http://www.riad-riad.com/en/publications/egypts-new-investment-law-2017#corporateSocialResponsibility>.

³⁶ See Law No. 4 of 1994 promulgating the ‘Environment Law’.

³⁷ Art. 2 L. No. 72 of 2017.

³⁸ See the “Investor Service Centre”, part of GAFI’s organization, regulated by art. 21 L. No. 72 of 2017.

²⁷ See artt. I, II, IV and VII of Law No. 72 of 2017.

²⁸ Article 12 of the Investment Law of 1997.

provisions of Investment Law No. 72 shall not affect the benefits and tax exemptions⁴⁰, guarantees and incentives for existing companies and establishments⁴¹. These companies shall retain their privileges, guarantees and incentives⁴² until the end of the related investment periods⁴³. According to the welfare statal plans⁴⁴ as well as the relocation and social reuse⁴⁵ of part of the generated revenues⁴⁶, the legislator established art. 15 Law No. 72 \ 2017: this article introduces some original points compared to Law No. 8 of 1997. For instance, the “Social Responsibility of the Investor” clearly states:

“Toward achieving the goals of the comprehensive and sustainable development, the Investor may dedicate a percentage of his annual profits to create a social development system”⁴⁷.

A devolution of part of the revenues set at 10% calculated on the amount net of expenses and taxes paid to the Treasury⁴⁸ according to Article 23 of the Income Tax Law No. 91 of 2005. The Executive Regulations (approved in October) has detailed⁴⁹ a composite indication of projects that the investor can choose to finance, according to the goals⁵⁰ set by the Ministries⁵¹ and (above all) the “Supreme Council for Investment” (“*al-mağlis al-ā’lāh li-lstiṭmār*”, in Arabic المجلس الأعلى للاستثمار).

The latter is a new institution “established under the chairmanship of the President of the Republic”⁵² created for:

“3- Adopt the policies and the investment plan which prioritise the target investment projects, in line with the State’s

³⁹ Art. 3 L. No. 72 of 2017; <https://youssrysaleh.com/Investment-in-Egypt/new-egyptian-investment-law/>.

⁴⁰ Artt. 4-6 L. No. 72 of 2017.

⁴¹ Art. 9 L. No. 72 of 2017, with a specific regulation for the Free Zones Areas.

⁴² Artt. 10-13 L. No. 72 of 2017.

⁴³ <http://www.shandpartners.com/the-new-investment-law-of-2017-in-egypt/>.

⁴⁴ Ministry of Finance, Financial Statement of the State Budget for Fiscal Year 2015/2016 (in Arabic), June 2015 (<http://www.mof.gov.eg/MOFGallerySource/Arabic/Pre-%20Budget%20Final%20Version%2018-3-2015-II.pdf>).

⁴⁵ Art. 2 L. No. 72 of 2017, No. 3: “Consideration of all aspects with social dimension, protection of the environment and the public health”.

⁴⁶ See the ECES-Egyptian Center for Economic Studies Reform Bulletin, September 2015, pp.1-3 (http://www.eces.org.eg/MediaFiles/Uploaded_Files/c2e2aa39.pdf).

⁴⁷ Art. 15 L. No. 72 of 2017, § 1.

⁴⁸ *Ibid.*, § 2.

⁴⁹ See Part I of Executive Regulations of Law No. 72 of 2017.

⁵⁰ Art. 15 L. No. 72 of 2017, § 1. In particular: “1. Take the necessary action to protect and enhance the environment; 2. Provide programs in the areas of healthcare, social care, or cultural care, or other development areas; 3. Support the technical education or the funding of research, studies, and the awareness campaigns aiming at improving the production; and 4. Training and scientific research”.

⁵¹ *Ibid.*, § 3.

⁵² Art. 68 L. No. 72 of 2017.

general policy, the economic and social development plan, and the applicable investment regimes (...),

5- Follow up the updating and execution of the investment map across the various specialized sectors and geographic locations in line with the national economic plan”⁵³.

The goals of technologies development related to the telecommunications sector and technological innovation in agricultural sector⁵⁴ appear as pivotal. Obviously, even if the article in question is short, it is possible to deduce how the freedom of choice regarding the destination of such devolution by the investor is not completely free of barriers or prohibitions. On one hand we find a timely reminder to the GAFI intervention⁵⁵ as a body responsible for inspection and supervision on the companies over the companies activities⁵⁶, on the other hand the reference to the supervision of the Minister of Investment Affairs (MOI). Even more stringent seems to be the closing statement of Article 15, which provides that:

“In all cases, it is prohibited to use the projects, programs, or services delivered under the social responsibility umbrella to pursue political, party-related, or religious purposes or which entail discrimination among the citizens”⁵⁷.

The control system of this particular activity to which the investor is called receives an equally precise clarification by the law. References to the bodies responsible for overseeing investor activity are contained in the same L. No. 72 of 2017 regarding the resolution of disputes⁵⁸, negotiable out of court, relating to the application and interpretation of the law itself:

“Without prejudice to the right to litigation, any dispute arising between the Investor and any one or more government bodies in relation to the Investor’s capital or the interpretation or enforcement of the provisions of this Law may be settled amicably through negotiations among the disputing parties”⁵⁹.

⁵³ *Id.*

⁵⁴ See Part IV of Executive Regulations of Law No. 72 of 2017.

⁵⁵ Art. 69 L. No. 72 of 2017.

⁵⁶ Art. 71, No. 11, L. No. 72 of 2017. GAFI is also a monitoring organization deeply tied with the Government, seeing as: “GAFI is a public economic authority with a public legal personality that reports to the Minister of Investment (Art. 69)”; “The Authority shall have a Board of Directors that shall assume the development of its general policy (...); The Board of Directors shall be formed by a decree issued by the Prime Minister” (art. 73); “The Board members shall disclose all of their funds and such disclosure shall be audited on an annual basis by an independent entity to ensure there are no violations (...). A report of such auditing shall be submitted to the Supreme Council through the Competent Minister” (art. 73).

⁵⁷ Art. 15 L. No. 72 of 2017, § 4.

⁵⁸ See Section V, L. No. 72 of 2017.

⁵⁹ Art. 82 L. No. 72 of 2017. It should be noted that a plethora of new Committees arise within the GAFI and regulate by Articles 83 (The Grievance Committee), 85 (Ministerial Committee on Investment Dispute Resolution), 88 (Ministerial Committee on Investment Contracts Dispute Resolution) and 91 (The Egyptian Arbitration and Mediation Center), could produce the opposite effect to the

Finally, provisions concerning the supervision of investors, specifically contained in Title V of the Executive Regulations, sanction disciplinary measures for companies that act in violation of the limits imposed by Investment Law and “following the approval of the Board of Directors of GAFI”⁶⁰; in particular we highlight:

“(I) Shortening the duration of the enjoyment of incentives and exemptions;

III) Ending the enjoyment of incentives and exemptions, with the consequent effects on decisions and licenses issued to the company or establishment;

IV) Cancellation of the license to practice the activity. In case of violations that threaten the public health or the security of citizens or national security (...). If the company or establishment continues to commit the offense or commit another offense within one year of the first offense, the license will be canceled”⁶¹.

As a conclusion, we wish to point out that the *waqf* (pl. *‘awqāf*) institution has not only an economic predominance, but it is strictly connected to the welfare policy of Egypt.

The new law on private investment in the country would be capable of attracting foreign capitals and generating a profit; part of these profits will be addressed to sustain welfare strategies (ex art. 15 L. No. 72 of 2017), thus affecting the *‘awqāf*⁶² system. An economic and also political strategy⁶³ leading to the opening to foreign investment has indeed the advantage of sustaining the indigent part of the population in the less developed regions of the country. Given its critical importance for development over the next years, social responsibility appears to have been the *leitmotif* of the recent electoral campaign and part of the political agenda of the re-elected Egyptian government.

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desideratum of L. No. 72 of 2017 (a rationalization of the entire system), if not adequately specified in their areas of jurisdiction.

⁶⁰ Art. 124 of Executive Regulations of Law No. 72 of 2017 (only arabic text available at: <http://www.nib.gov.eg:8091/media/45cb79905440476b9236fc93ec5cd042.pdf>).

⁶¹ *Id.*

⁶² R. A. DEBS, pp. 137-140.

⁶³

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