

PRIVATISATION AND THE CREATION OF A MARKET-BASED LEGAL SYSTEM

The Case of Egypt

BY

BAHAA ALI EL-DEAN



BRILL
LEIDEN · BOSTON · KÖLN
2002

CONTENTS

Acknowledgements	xi
Preface	xiii
Introduction	1
What is Privatisation?	1
Privatisation in emerging economies	2
Legal consequences of Privatisation in emerging economies	3
Chapter One: Protection of Property Rights	9
Introduction	9
1. The Egyptian constitution	10
1. The constitution and the privatisation process	10
2. Constitutional protection of private property	13
2. Private property in Egyptian law	14
1. Civil law	15
1. Limitations to party autonomy	15
2. Administrative law	20
1. Administrative contracts	21
2. Property rights under administrative law	22
3. The Law of Investment Guarantees and Incentives of 1997	23
1. Provisions on the protection of private property	24
2. A critique of the protection of private property under the Investment Law	25
3. Proposals for reform	30
1. Constitutional reform	30
1. Political considerations	30
2. The economic system	31
3. Protecting private property	33
Conclusion	34

Chapter Two: Introducing Securities Regulation as a Means of Developing Stock Markets	36
1. The relevance of stock markets	36
2. Egyptian Capital Market Law	38
1. The main features of law 95 for 1992	39
2. Regulating the market	42
3 A critique of the current law and practice	43
3. Reforming securities law: general issues	48
1. Approaching reform: aspirations, needs and prevailing conditions	48
2. Designing a securities law	52
4. A framework for a securities law in Egypt	55
1. Disclosure regulation	56
1. Disclosure requirements	57
2. Supervision of disclosure	58
3. Sanctions for non-disclosure	61
4. Exemptions	64
2. Insider trading	67
1. Definition of an insider and insider information	68
2. Prohibited activities	69
3. Sanctions and enforcement	71
3. Market manipulation	73
1. Prohibited activities	74
2. Stabilisation and prohibition of market manipulation	76
3. Sanctions and enforcement	77
Conclusion	78
 Chapter Three: Reforming the Law on Secured Transactions	 80
Introduction	80
1. Egyptian law on taking security	82
1. The law on taking security	82
1. Mortgage	82
2. Pledge	85
3. Business charge	86
4. Enforcement of security	87
2. A critique of the current law and practice	90

2. Basis for reform	97
1. The Model Law on Secured Transactions	97
1. The main features of the Model Law	98
2. An analysis of the Model Law	102
3. The Hungarian law on secured transactions	104
2. Article 9 of the American Uniform Commercial Code	107
1. The main features of Article 9	108
3. Reforming the law on secured transactions	112
1. Reform efforts in Egypt	113
1. Pledge under the New Commercial Code	113
2. Law on mortgage lending	114
3. An appraisal of the reform efforts	115
2. A proposed framework for a law on secured transactions	118
1. Philosophy and objectives of the law	118
2. Scope of the law	120
3. Forms of security	122
4. Creation of security and registration	123
5. Rights of parties and priorities	125
6. Universal business charge	126
7. Enforcement procedures	129
Conclusion	132
 Chapter Four: Introducing Competition Law	 134
Introduction	134
1. The role and function of competition law in market economies	135
2. Competition law in emerging economies: is it needed?	140
1. Arguments against the need for competition laws in emerging economies	140
2. The validity of the arguments against competition laws	143
3. Introducing competition laws in emerging economies	146
1. Common issues	146
1. Competition law and trading partners	146
2. The general approach of the law: per se v. rule of reason	147
3. Objectives of the law	148
4. Scope of the law	149

5. Enforcing competition law	150
6. Fears and concerns	152
7. Lack of expertise	153
2. International experiences	155
1. East European experiences	155
1. The Polish law	155
2. The Hungarian law	156
2. Latin American experience	157
1. The Mexican law	158
3. An evaluation of the international experiences	160
4. Introducing competition law in Egypt	163
1. Causes for delay	163
2. Introducing a law: problems and challenges	165
1. Competition law and trading partners	165
3. Draft law(s)	167
Conclusion	168
Chapter Five: Reforming Bankruptcy Law	173
Introduction	173
1. The changing role of bankruptcy law under different economic policies	174
1. Bankruptcy law in a market economy	174
2. Bankruptcy law in command and planned economies	176
2. Egyptian Bankruptcy law: a dual system	176
1. Historical development	177
1. Commercial bankruptcy (<i>al-eflass</i>)	178
1. Scope of application	178
2. The underlying philosophy of the system	179
3. The main features of commercial bankruptcy law	180
2. Civil bankruptcy (<i>al-ea'sar</i>)	185
3. The need for reform	186
2. The new bankruptcy law of 1999	188
3. A critique of the new law	191
3. Reforming bankruptcy law: a general overview	195
1. International experience with reference to Hungary	196
2. Adopting Western bankruptcy models	200

3. Privatisation and bankruptcy reform: the why and the how?	203
4. Reforming bankruptcy law in Egypt	207
1. Aims of bankruptcy law	207
2. Achieving the aims of the law	208
Conclusion	217
Chapter Six: Judicial Reform	219
Introduction: The relevance of judicial reform	219
1. The Egyptian judicial system	221
1. Drawbacks of the system	222
1. Backlog and delay	222
2. Lack of technical ability	225
3. Appeal procedure	226
4. Enforcement procedures	226
2. Efforts undertaken for reforming the judicial system	228
1. Reforms carried out by the Ministry of Justice	228
2. Recommended reforms	229
1. Civil prosecution (case management)	230
2. Judicial mediation	231
3. Appraisal of the recommended reforms	232
3. Reforming the judicial system	236
1. Preliminary issues	236
2. A long term comprehensive plan	237
1. Judges	238
2. Lawyers, legal fees and legal education	240
3. Bailiffs and court officers	242
4. Jurisdiction of the courts	242
5. Appeal and enforcement procedures	243
6. Alternative dispute resolution (ADR)	244
7. Experts	246
8. Other issues	246
3. Establishing a commercial court	248
Conclusion	254
Conclusion and Recommendations	256
Bibliography	271
Index	287