



Business Climate Review of Egypt
**Recommendations for Improvements of
Investment Policies and Promotion**

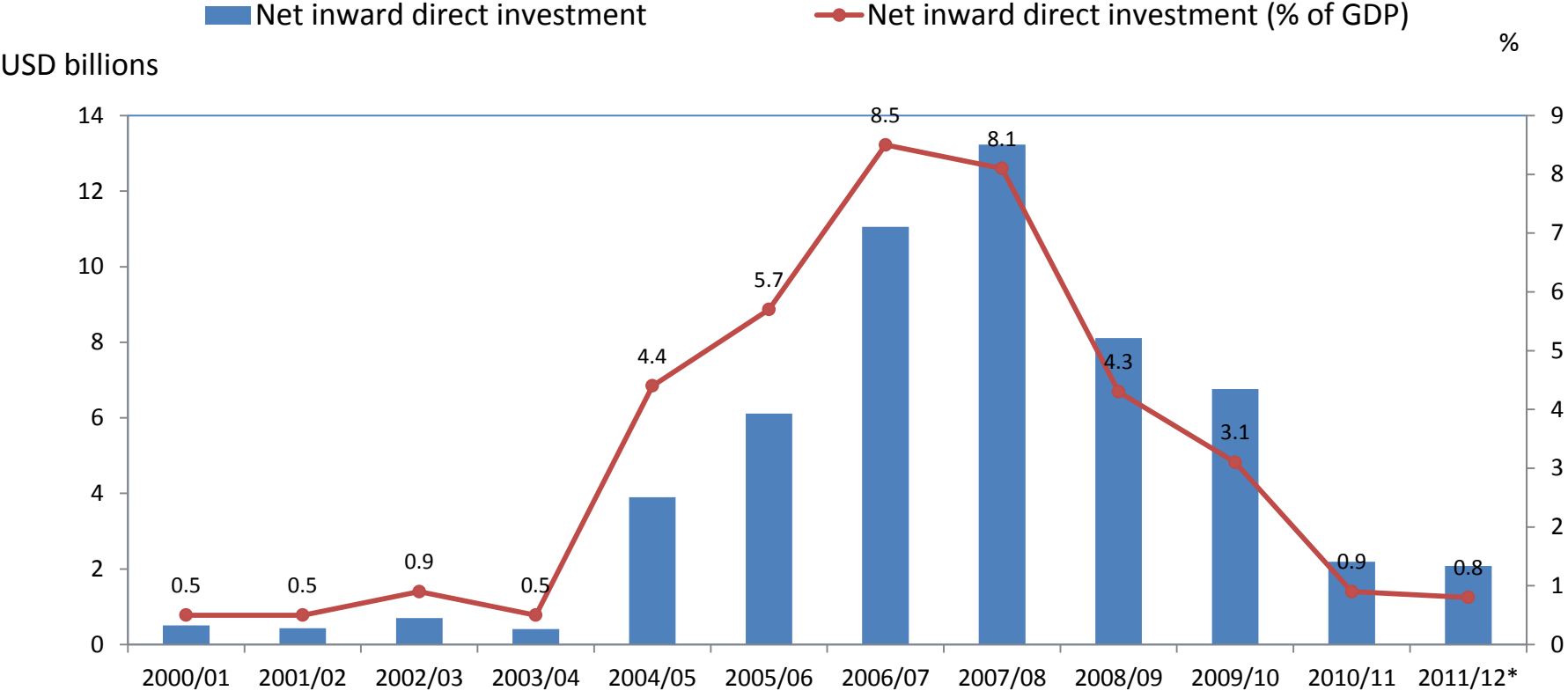
**Deauville Partnership Regional Investment Forum,
Cairo, 25 June 2013**



Agenda

1. FDI Inflows
2. The 2009-2010 BCDS: a targeted approach
3. The BCR process
4. Overview of the key issues
5. Restrictions to national treatment
6. Approval procedures
7. Guarantees against expropriation
8. International arbitration and amicable settlement
9. Transfer of FDI-related capital
10. Land ownership and titling
11. FDI Incentives
12. International Investment Agreements (IIAs)

FDI inflows have been decreasing significantly after a period of sustained increase, due to the global financial crisis and the 2011 events in Egypt



Source of data: Central Bank of Egypt

*Preliminary data

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BCDS: Target and Approach

- The Business Climate Development Strategy (BCDS) is a **process** that defines **where** and **how** a country should implement reform to improve the business climate and country competitiveness.
- It is targeted at improving the **business environment** to **increase investment** and competitiveness, thereby contributing to **growth** and **employment**
- It is a **co-operative and systematic approach** following three steps



BCDS: A Comprehensive Assessment Framework

Assessing 12 policy dimensions over a total of 242 indicators

I. Business Operation Environment

- Investment Policy and Promotion
- Privatisation Policy and Public Private Partnerships
- Tax Policy and Administration
- Trade Policy and Facilitation
- Better Business Regulation
- SME Policy and Promotion

II. Rule of Law

- Anti Corruption
- Corporate Governance
- Business Law and Commercial Courts

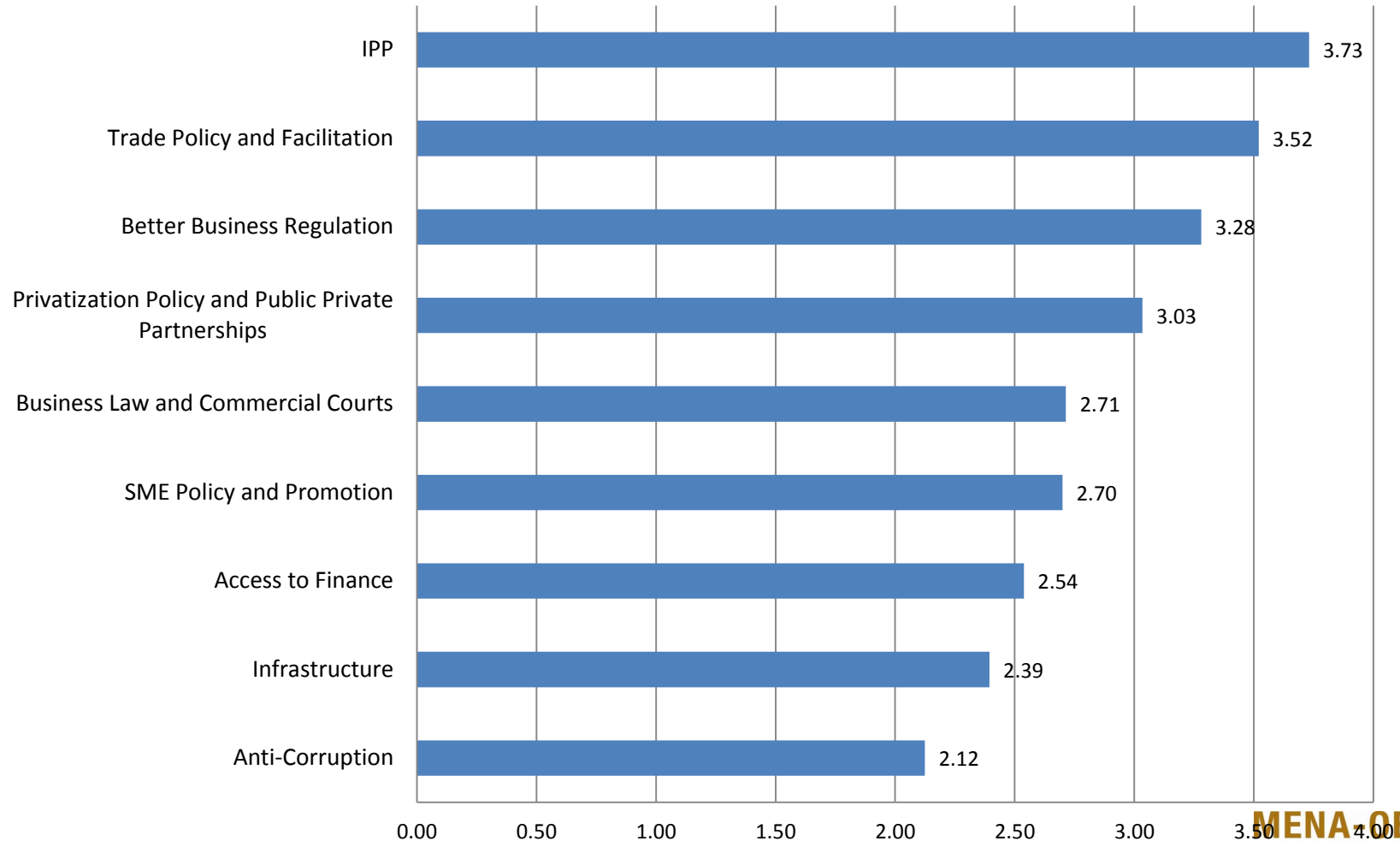
III. Factor Markets

- Infrastructure Policy
- Human Capital Development
- Access to Finance

Covering all policy areas that can support business climate reforms

2009-10 BCDS Overall Scores

Egypt Weighted Dimension Scores*



Weighted average

*excludes Tax Policy, Human Capital and Corporate Governance

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BCR: An assessment in 3 stages

- **Stage 1:** The private sector was assessed from Feb-Jul 2012; results were collected and presented at a workshop in Cairo on 23-24 September 2012.
- **Stage 2:** The government received the results. Feed-back and self-assessment was gathered (approximately Nov 2012-May 2013).
- **Stage 3:** A public-private workshop was held to discuss priorities and implementation (26 June 2013). Final results will be collected and final report to be published end 2013.
- **Result: Recommendations + Implementation suggestions**

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Overview of the key issues

1. Restrictions to national treatment

- List of restrictions to national treatment:
 - Egypt is an open economy with few restrictions to NT
 - *More restrictions on paper than in practice? Need for clear negative list*

2. Approval procedures

- Definition of criteria and procedures: Discretionary powers of some authorities
 - *Transparency and efficiency need to be further improved*

3. Guarantees against expropriation/Cancellation of contracts (including privatisation contracts)

- *Respect of legal requirements (substantial/procedural) crucial*

4. International arbitration and amicable settlement

- New institutional mechanisms to amicably settle disputes send a *positive signal to the business community*;
 - *Ensuring transparency and respect of due process*

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Restrictions to national treatment

Aggregate score 2010: **4**

Business community score 2012: **3.5**

Proposed score: 3

Purpose of the indicator

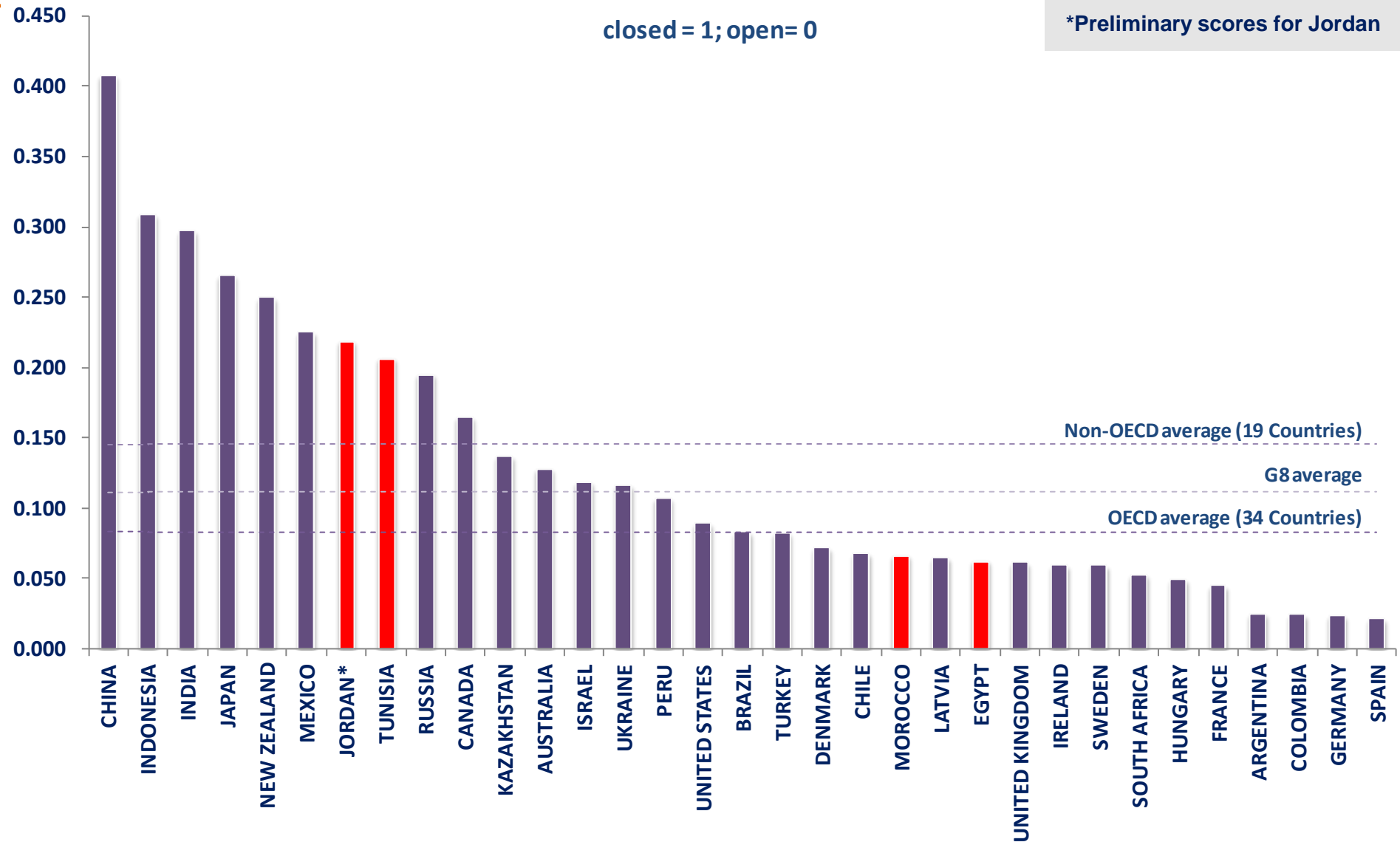
- National treatment (NT) standard:
 - “No less favourable treatment” granted to foreign investors than what is granted to national investors in like circumstances.
 - Applied at the pre- and post-establishment phases of the investment.
- Indicator assesses whether the existing restrictions are: Clearly defined and codified; Reduced or removed under the terms of bilateral/multilateral negotiations or other instruments; Subject to a review on a periodic basis.

Key findings

Egypt is *de jure* one of the most open economies in the region, but clarity and coherence in practice are issues.

NT embodied in most of Egypt’s BITs and WTO and OECD instruments.

FDI Regulatory Restrictiveness Index



Source: OECD

*Preliminary scores for Jordan

**Only selected countries are displayed. Averages account for all countries included in the Index, not only the ones displayed.

Restrictions to national treatment

Aggregate score 2010: **4**

Business community score 2012: **3.5**

Proposed score: 3

- According to the list provided in 2007 in the context of Egypt's adherence to the OECD Declaration, restrictions apply in the following sectors:
 - Land and real estate;
 - Construction;
 - Maritime transportation;
 - Air transportation;
 - Courier service;
 - Commercial agents
- However:
 - *Some are not restrictions to national treatment*
 - *Restrictions can be avoided*
- Egypt achieves the best ranking (0.062) from all MENA countries and ranks below the OECD average and among non-members of the OECD.

Restrictions to national treatment

Aggregate score 2010: 4

Business community score 2012: 3.5

Proposed score: 3

Recommendations

- To improve transparency and predictability for investors:
 - **Revise and update** the 2007 list of restrictions – **STRONG SIGNAL to investors**
 - Consider the following **preliminary list**:
 - **Commercial Agency** (based on the Commercial Agency Law No. 120 of 1982);
 - **Import activities** (based on the Law on Importers' Registrar No. 121 of 1982);
 - **Journalism** (based on the Journalism Law No. 96 of 1996);
 - **Employment intermediation/recruitment** (based on the Labour Law No. 12 of 2003);
 - **Investments in Sinai Peninsula** (*i.e.* maximum foreign shareholding of 45%) (based on the Decree Law No. 14 of 2012);
 - **Engineering** (based on the Law No. 66 of 1974 on the Establishment of the Egyptian Engineers Syndicate);
 - **Legal services** (based on the Law on Legal Practice No. 17 of 1983);
 - **Auditing and accounting services** (based on the Syndicate of Commercial Professions Law No. 40 of 1972).

The OECD Declaration on International Investment and Multinational Enterprises as an anchor for reform

Adherence

- Egypt in 2007

Actions before and after adherence

- Publication of a list of restrictions to national treatment
- Review of the investment policies with the OECD
- Peer review in the Investment Committee
- Regular reporting on progress
- Establishing a national contact point for the MNE Guidelines

OECD support

Policy dialogue and experience sharing

Assessment of reform progress

Demand-driven assistance on investment regime improvements

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Approval procedures

Aggregate score 2010: 4

Business community score 2012: 2.5

Proposed score: 2.5

Purpose of the indicator

- Regulation of FDI entry can include **screening procedures and approval procedures for all sectors or for specific sectors.**
- Indicator tests the **transparency** (*e.g.* publishing criteria for approval) and **predictability** (*e.g.* not subject to discretionary powers) of such FDI screening procedures.

Key findings

Distinction between screening procedures applying to foreigners only, and screening procedures applying to both foreign and domestic foreigners:

- ***Security checks* applying, in practice, to foreign investors only:**
 - **Restriction to national treatment**
 - However, **do not prevent establishment** of companies.
 - **Unclear criteria and procedures** upon which an investor might get approved or rejected:
 - GAFI not informed;
 - **Rejections:**
 - ***Rare but discretionary;***
 - ***Not reasoned;***
 - ***However, possibility to appeal.***

Recommendations

- **Improve transparency with regards to security checks and approval procedures:**
 - Clearly define and codify criteria and procedures
 - Investors should be **informed of the outcome** of the security check **prior establishing company**
 - Make publicly available in both Arabic and English languages guidelines for required screening procedures
 - Rejections of screening procedures should be reasoned

Key findings

▪ ***Companies establishment:***

- **No restrictions on foreign ownership** (JSCs and LLCs).
- **No distinction between domestic and foreign investors.**
 - Second best MENA country in starting a business.
 - However, rank has fallen since 2011.
- **Costly and time consuming formalities** remain (*e.g.*: legalisation of foreign public documents).

Recommendations

- **Simplify and streamline legalisation procedures**

Key findings

- **Operational licensing procedures applying to both foreign and domestic investors:**
 - Required in specific **sectors for both domestic and foreign investors.**
 - **Temporary licences** currently granted to investors in FZ; not yet implemented in IZ.
 - Concerns raised by the private sector representatives:
 - **No clarity** with regards to approval procedures and time-lines.
 - In practice, **additional or different requirements** than those provided in the laws are requested.
 - **Delays and non-renewal of licences**

Recommendations

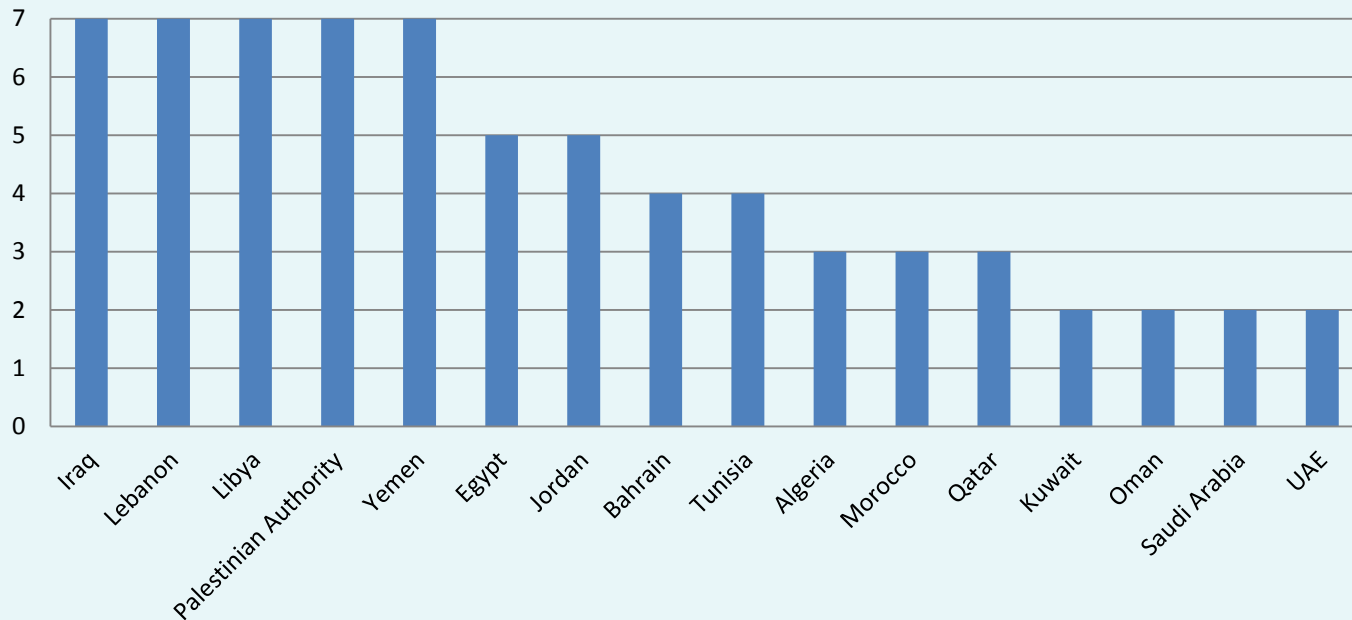
- **Improve transparency with regard to approval procedures:**
 - Make publicly available in both Arabic and English languages guidelines for required screening procedures, prior approvals and licences
- **Consider expanding the temporary licenses**

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High country rating = high cost to mitigate expropriation risk

Country risk classification for selected MENA countries



Source : OECD (2013), *Country Risk Classifications of the Participants to the Arrangement on Officially Supported Export Credits*, OECD, Paris, as of 25/01/2013

Guarantees against expropriation

Aggregate score 2010: **3**

Business community score 2012: **3**

Proposed score: 2

Purpose of the indicator

- Expropriation: Sovereign right of a State/Main political risk for an investor.
- To be legal, the expropriation of private property must fulfil the following conditions:
 - 1) the expropriation serves a **public purpose**;
 - 2) the measure is **non-discriminatory**;
 - 3) undertaken under **due process of law**; and
 - 4) the investor is **duly compensated** (adequate, prompt, effective).
- Indicator assesses whether the domestic law respects the above mentioned conditions for a lawful expropriation.

Key findings

- Lawful expropriation guaranteed by Constitution (providing for compensation “paid in advance”) and most BITs.
- Investment Law and SEZs Law address expropriation and nationalisation.
- However Egypt’s legal framework does not *explicitly cover indirect expropriation*.

- **Cancellation of privatization transactions issues :**
- **11 controversial court decisions** since 2011 nullifying previous privatization transactions when prices below the market value or suspicion of corruption:
 - **Administrative judgments are immediately enforceable**
 - **Potential violation of BITs and ICSID arbitrations** against Egypt (some cases related to expropriation among the 9 ICSID registered since 2011)
 - **Lack of clarity** regarding the **jurisdiction of the judiciary courts** (material scope of the administrative, commercial, criminal courts)
 - *Crystallised fear among the investor community to have their business contracts (included privatisation contracts) questioned.*
 - Rumours about a new law/commission to address the issue.

Guarantees against expropriation

Aggregate score 2010: **3**

Business community score 2012: **3**

Proposed score: 2

Recommendations

- **Consider the creation of more efficient mechanisms to address disputes over cancellation of privatisation contracts.**
- **Ensure consistency and due process in handling cases against previous privatisation transactions by (See below on amicable settlement indicator).**
- **In the case of expropriation, ensure prompt, adequate and effective compensation through time-efficient proceedings.**
- **Ensure that court decisions do not challenge constitutional guarantees or treaty rights of investors.**

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International Arbitration and Amicable Settlement

Aggregate score 2010: **3.5**

Business community score 2012: **3.5**

Proposed score: 3.5

Purpose of the indicator:

- Arbitration: neutral forum to settle investor-State disputes.
- Indicator examines whether:
 - State is party to international and regional conventions on arbitration;
 - National legislation is friendly to arbitration (recognition of arbitration/enforcement of arbitral awards) and provides for other alternative dispute resolution means/institutional mechanisms to settle disputes.

Key findings

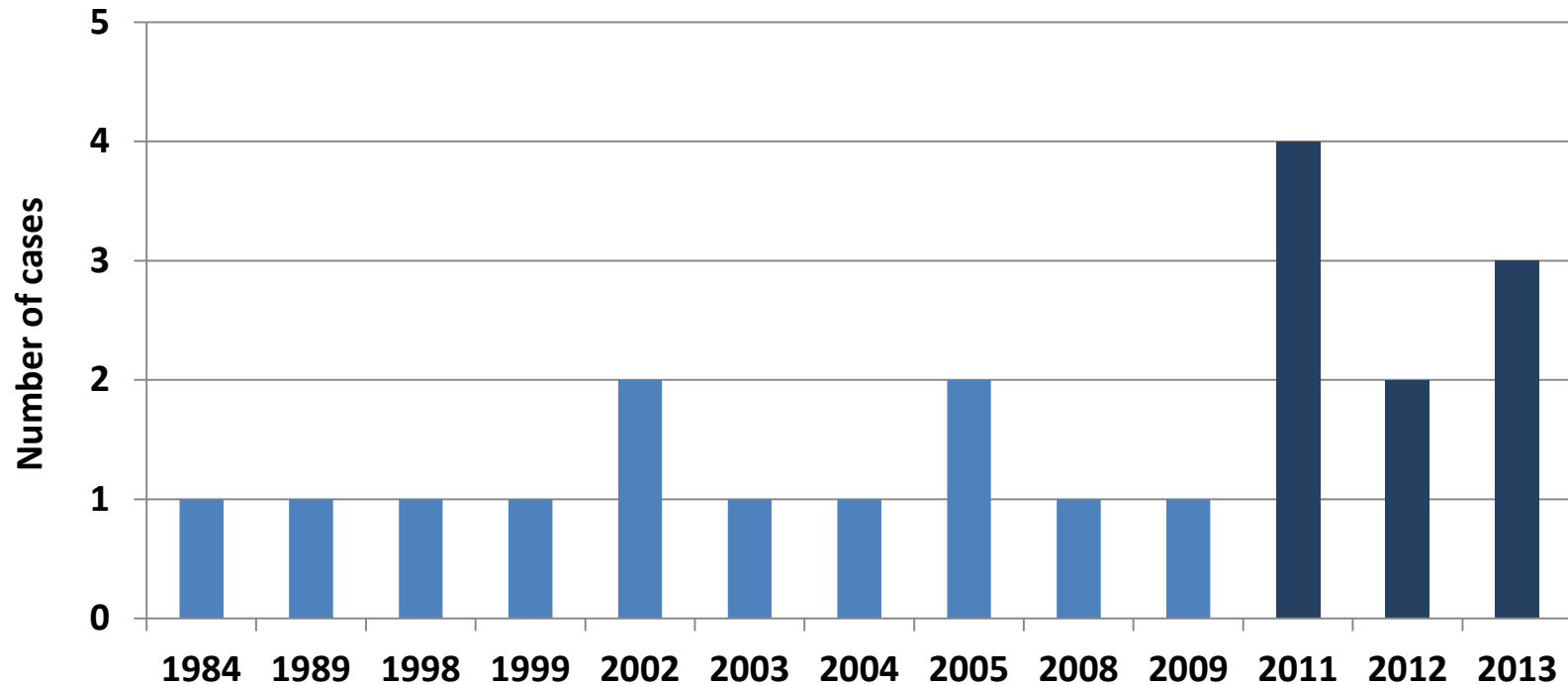
- **International Arbitration**
- ***International and regional levels:***
 - Egypt party to the main international and regional conventions on arbitration.
- ***National legal framework:***
 - Investment arbitration under the Investment Law.
 - Commercial arbitration under the Arbitration Law.
 - *Friendly international commercial arbitration regime.*

International Arbitration and Amicable Settlement

Aggregate score 2010: 3.5
Business community score 2012: 3.5
Proposed score: 3.5

- *Significant increase of the caseload since 2011:*

ICSID caseload involving Egypt



International Arbitration and Amicable Settlement

Aggregate score 2010: 3.5

Business community score 2012: 3.5

Proposed score: 3.5

- **Amicable settlement mechanism:**
- **“Reconciliation”** in cases involving charges of embezzlement, profiteering and squandering of public funds (Law No. 4/2012 adding articles 7 bis and 66 bis to the Investment Law)
 - Conditional to investor’s return of all funds, moveable property, lands or property subject to the criminal offense
 - Reconciliation may result in the dismissal of the criminal lawsuit for the investor
 - **This mechanism is implemented by a “Contract Committee”** (Prime Minister’s Decree No. 1067/2012 implementing Law No. 4/2012)
 - Chaired by the Prime Minister
 - In case an amicable settlement is reached, it shall be enforceable and binding
 - *Successful amicable settlement reached with a real estate investor. Other negotiations still on-going.*

International Arbitration and Amicable Settlement

Aggregate score 2010: **3.5**
Business community score 2012: **3.5**
Proposed score: 3.5

- **Disputes prevention mechanism**
 - **Governmental Group for Settlement of Investment Disputes** chaired by the Minister of Justice to examine investors' requests and complaints when it comes to their relations with Ministers or other public entities (Decree No. 1115/2012):
 - Chaired by the Minister of Justice
 - Binding recommendations to the governmental bodies involved
 - However, it was reported that the Governmental Group has not met once
 - *Unclear division of responsibilities and access procedure for investors. Multiplicity of committees is not desirable.*
 - *A single functioning committee would send good signal.*

International Arbitration and Amicable Settlement

Aggregate score 2010: **3.5**

Business community score 2012: **3.5**

Proposed score: 3.5

Recommendations:

- **Clarify the respective roles of the committees** and operationalize the settlement committees to work in a **timely, consistent and transparent manner involving MOI/GAFI in a leading role.**
- **Ensure due process of law.**
- **Consider settlement committees best practices.**
- **Set a clear framework with timelines** for the settlement process.

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Transfer of FDI-related capital

Purpose of the indicator

- Ability to freely transfer FDI-related capital under specific circumstances.
- Indicator assesses whether restrictions on the transfer of FDI-related capital exist and whether they are discriminatory.

Key findings

- Free transfer of capital allowed by the Banking Law as well as most BITs concluded by Egypt.
- Private sector representatives:
 - No difficulties in transferring FDI-related capital.
- End 2012, the Central Bank of Egypt (CBE) imposed restrictions to lower the impact of deficit in the balance of payments and prevent the outflow of foreign currency and of illicit gains.

Recommendations

- **Clarify existing restrictions to free transfer of capital.**
- **Ensure that transfer of funds restriction recently imposed are temporary and do not impact FDI.**
- **Streamline existing FDI capital transfers in relation to bankruptcy and liquidation.**

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Land ownership and titling

Purpose of the indicator

- Secure and transferable rights of property are a prerequisite: restrictions should be clearly defined and codified in law
- Registration provides investors with increased security.
- Indicator assesses whether ownership rights are clearly defined and if there is a discrimination between domestic and foreign investors.

Key findings

- Incorporated companies allowed to own land and real estate for their activities, regardless of the nationality or domicile of the shareholders (Investment Law).
- State-owned lands can be allocated for free by the Prime Minister
- In FZs, lands owned by the State and managed by GAFI which is responsible for allocating to investors
- In IZs, lands are owned by private sector developers which is responsible for developing the infrastructure and allocating the lands to investors.
- Restrictions apply to strategic areas (*e.g.*, Sinai and borders) and agricultural lands.
- Registration procedure is cumbersome and paper-based.
- Titling is not secure.

Land ownership and titling

Aggregate score 2010: **2.5**

Business community score 2012: **2.5**

Proposed score: 2.5

Recommendations

- **Streamline the registration procedure.**
- **Regular publishing by GAFI of available lands to be allocated.**
- **Dedicate more industrial land to investors.**

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Purpose of the indicator

- One of the countries' strategy to attract FDI.
- Indicator assesses the transparency of the eligible criteria and procedures, predictability of the duration, existence of a “sunset clause”, and cost-benefit analysis support.

Key findings

- Incentives offered (Investment Law and its Executive Regulation):
 - Fiscal incentives/exemptions for companies operating in certain sectors;
 - Acquisition, free of charge, of state-owned land;
 - Regulatory/tax incentives in FZs and SEZs;
 - Bureaucracy free environment in Izs.
- Some incentives streamlined and eliminated with the tax reform of 2005.

- Private sector representatives:
 - Granted on a non-discriminatory basis;
 - Eligibility criteria/procedures publicly available.
 - However, incentives are often removed after investment and without clear sunset clauses.

Recommendations

- **Ensure transparency in the implementation of the incentives schemes.**
- **Ensure that incentives if removed have a clear sunset clause.**
- **Undertake regular cost-benefit analysis of all kind of incentives with the assistance of the OECD.**
- **Assess performance of companies benefiting from incentives (especially in FZs).**

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International Investment Agreements (IIAs)

Aggregate score 2010: **3.5**

Business community score 2012: **4**

Proposed score: 4

Purpose of the indicator

- IIAs attract FDI by offering to foreign investors minimum levels of protection in line with international standards.
- Indicator assesses:
 - Number of IIAs **signed and ratified**;
 - **Scope** of treaties (*e.g.*, broad definition of investor/investment);
 - Application at the **pre- and post-establishment** phases;
 - **Substantial protection** granted;
 - Dispute settlement **mechanisms** provided;
 - **Implementation and revision** of treaties.

International Investment Agreements (IIAs)

Aggregate score 2010: **3.5**
Business community score 2012: **4**
Proposed score: 4

Key findings

- **At the international level:**
 - **Adherence** to the *OECD's Declaration on International and Multinational Enterprises* in July 2007.
 - **Wide coverage for investment protection:**
 - *Large network of **103 BITs offering investment protection***
 - ***New BIT model** adopted to sign the *Egypt-Switzerland BIT (2010)**
 - **Good regional coverage:**
 - *About 15% of BITs signed with other MENA countries*
 - *More than 25% of BITs signed with OECD countries*

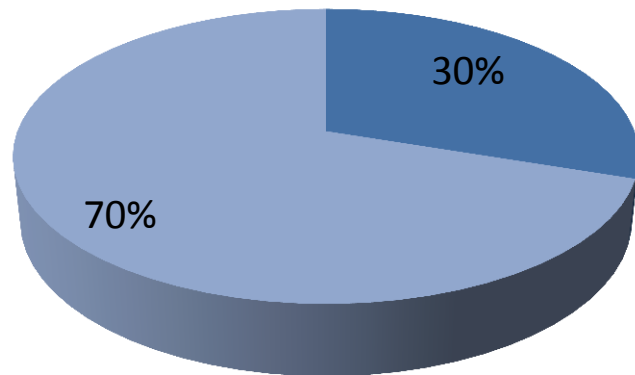
8. International Investment Agreements (IIAs)

Aggregate score 2010: 3.5
Business community score 2012: 4
Proposed score: 4

- About 70% of Egypt's BITs are in force.
- More than 90% of its Intra-MENA BITs are in force.

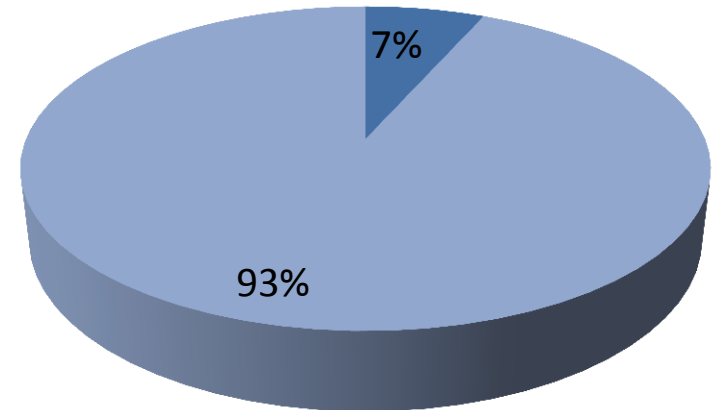
BITs concluded by Egypt

■ Only signed BITs ■ Total ratified BITs



Intra-MENA BITs concluded by Egypt

■ Only signed intra-MENA BITs ■ Intra-MENA ratified BITs



Source: OECD-MENA Investment Programme 2013/UNCTAD/Kluwer Arbitration

8. International Investment Agreements (IIAs)

Aggregate score 2010: **3.5**

Business community score 2012: **4**

Proposed score: 4

▪ At the regional level:

- Egypt party to the **1980 LAS Unified Agreement recently amended**;
- **Trade negotiations** Egypt is party to:
 - The **Greater Arab Free Trade Area (GAFTA)**, established by the Economic and Social Council of the LAS in 1997;
 - The **Agadir Agreement** (Egypt, Jordan, Morocco, and Tunisia) (2004)
 - **Association Agreement with EU** (2004);
 - FTA with Turkey (2007), EFTA (2007) and Mercosur (2010);
 - Possible future Deep and Comprehensive Free-Trade Agreement (DCFTA) negotiations with the EU in case Egypt expresses interest.

8. International Investment Agreements (IIAs)

Aggregate score 2010: **3.5**

Business community score 2012: **4**

Proposed score: 4

Recommendations

- **Abide by bilateral and regional commitments.**
- **Screen BITs which are neither ratified nor re-negotiated.**
- **Strengthen the investment regional dimension to foster intra-regional investment.**