

Public Sector Corruption in Egypt: Recent Developments at a Glance

Ibtissem Lassoued - Partner, Head of Advisory - White Collar Crime & Investigations / Family Business
i.lassoued@tamimi.com - Dubai International Financial Centre

Salma Kebeich - Associate - Litigation / Arbitration
- Cairo

September 2016

The perception of corruption

Based on the Transparency International Global Corruption Barometer 2016 ("Survey"), 61% of the citizens in the Middle East and North Africa perceived an increase in corruption during 2015.

However, the Transparency International Corruption Perceptions Index ("CPI") 2015 has assessed 168 countries in order to measure the perceived levels of public sector corruption worldwide. Accordingly, Egypt's score is 36 on a scale of 0 (perceived as highly corrupt) to 100 (perceived as very clean) which determines Egypt's ranking as 88th out of 168 countries.

Corruption in the public sector takes several forms. According to the Survey, 50% of the Egyptian public service users paid bribes during 2015 in order to have a service carried out although they were legally entitled to receive the service (e.g. health services). Payments for this type of corruption are often known as facilitation payments or grease payments.

Recent developments

The following points shed some light on recent developments that demonstrate Egypt's appetite to reach a zero tolerance policy regarding corruption.

Conviction of former Agriculture Minister

Grand corruption may exist in Egypt in the form of abuse of power and bribery at the level of high governmental officials abusing their positions in order to grant permits or to secure contracts with governmental entities. As an example of this, the former Agriculture Minister, Salah Helal, was arrested in September 2015 on corruption charges which were followed by the resignation of the entire Council of Ministers. In April 2016, Mr. Helal was sentenced to ten years' imprisonment and a fine of EGP1 million (approximately US\$112,630).

New Civil Service Law

Nepotism or "wasta" is a manifest type of grand corruption in Egypt. It is a type of favouritism based on acquaintances and familiar relationships whereby a public official exploits his or her power in providing recruitment in the public sector or a benefit in favour of a family member or friend. Accordingly, Law No. 18 of 2015 concerning the Civil Service was introduced by Presidential Decree, with the aim of fighting corruption and laxity in the public sector by, for example, determining promotion based on employees' qualification rather than seniority, setting an age of 50 for retirement, extending the probation period for

newly hired employees, introducing the right to terminate unqualified employees upon notice and proposing a new structure for wages. However, the Egyptian Parliament rejected this new law in January 2016. A new draft has been adopted by the Parliament and is currently under review.

New Anti-Corruption Chief Appointed at the Central Auditing Organisation

The Central Auditing Organisation (“CAO”) is one of the principal anti-corruption authorities in Egypt. The CAO was established pursuant to Law No.129 of 1964 as an independent authority under the auspices of the President. The CAO Law was subject to many amendments throughout the years. Pursuant to the latest amendment of 2015, the President is empowered to dismiss the head of the CAO in certain prescribed circumstances. The role of the CAO is to oversee the funds of the state and the public sector and to collaborate with the Parliament to implement its auditing role.

The CAO has seen many developments during the past year. In 2015, Hisham Geneina, the former Head of the CAO, publicly announced that the level of government corruption reached EGP600 billion (approximately \$76 billion) between 2012 and 2015. Subsequently, the President constituted a fact-finding inter-ministerial committee headed by the chief of the Administrative Control Authority in order to investigate Geneina’s allegations.

The fact-finding committee issued a report that refuted Geneina’s claims and can be summarised in the following five points:

- Geneina’s claims are misleading and significantly overestimate the extent of corruption.
- The claims are fabricated since they included events occurring ten years ago and which were announced as if they took place during 2015.
- They intentionally omitted the decisions and investigations that were conducted by the public and administrative prosecution with respect to certain proven incidents.
- They turned positive aspects into negative ones through misusing figures and policies.
- They abused the use of the term “corruption” due to generalisation and the confusion between facts and procedures.

Consequently, in March 2016 Geneina was dismissed by a Presidential Decree and prosecuted for perpetrating the offence of spreading false information and disturbing social peace. Further, the Parliament approved the President’s decision to appoint Hesham Badawy as the new Head of the CAO. Badawy was the State Security Prosecutor-General from 2005 to 2012 and was then appointed as the Head of the Cairo Appeal Court.

On 28 July 2016, Geneina was given a one year suspended prison sentence. However, the judgement was challenged and it will be subject to the Misdemeanour Court of Appeal’s review in September 2016.

Reconciliation: Egypt turns over a New Leaf

In 2015, newly-enacted laws now offer an opportunity for reconciliation with businessmen accused of corruption. Law No. 16 of 2015 amending the Criminal Procedures Code and Law No. 97 of 2015 amending the Illicit Gain Law stipulates that whoever (or his family or heirs) is charged with making an illicit gain or embezzlement of public funds is entitled to request reconciliation during the investigations conducted by the Illicit Gains Authority. Reconciliation entails the return of the amounts illicitly obtained and a fine of the same amount. The reconciliation decision shall be final and irrevocable. Moreover, the criminal action shall be terminated upon the completion of reconciliation.

These laws have encouraged fugitive businessmen to request reconciliation. Indeed, many cases have been settled through reconciliation and other requests are still under review. The most recent reconciliation was finalised in August 2016, with Hussein Salem a tycoon during Mubarak’s regime. Salem

was accused of making illicit gains, embezzlement and corruption. He was sentenced in *absentia* with respect to some accusations and was acquitted of others. The Head of the Illicit Gain Authority has announced in a press conference that reconciliation was finalised with Salem, who forfeited 75% of his wealth, equal to EGP5,341,850.50 (approximately US\$601,668).

It is worth mentioning that reconciliation with the victim or the relevant public entity as a ground for extinction of criminal action is a well-established trend under Egyptian law and the number of criminal offences affected by this procedure has grown throughout the last two decades. By way of example, Article 18bis of Law No. 174 of 1998 amending the Criminal Procedures Code offered reconciliation for contraventions and misdemeanours. The recent laws referred to above merely extended the reconciliation regime to certain felonies related to corruption and public funds. Here, the Egyptian legislator appears to have been influenced by the plea bargain regime without implementing it.

Conclusion

In a nutshell, although corruption remains a major challenge in Egypt, it appears to be regressing and the government is certainly making serious efforts to reduce it. Our view is supported by the recent developments highlighted above and the recent CPI rankings, which show Egypt improving in the rankings each year.