

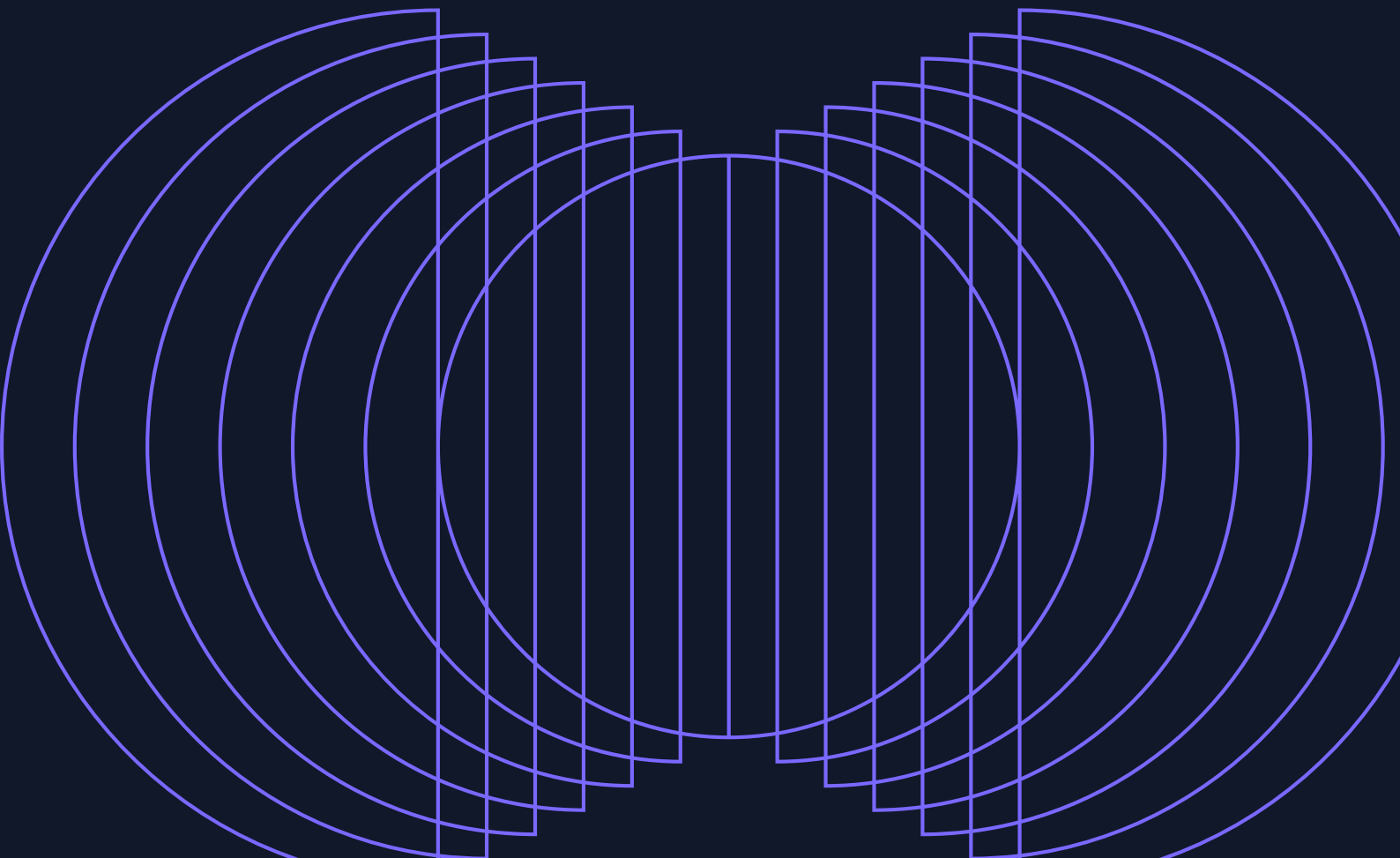
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Foreign Investment Regulation	3	Technology Mergers & Acquisitions	50
Mohamed Hashish, Farida Rezk and Nadine Diaa Soliman, Hashish & Partners		Mohamed Hashish, Farida Rezk, Mariam Rabie and Omar Aboul-Ella Soliman, Hashish & Partners	
Employment Law	7	Financial Services M&A	55
Laila Aziz Soliman, Hashish & Partners		Mohamed Hashish and Farida Rezk Soliman, Hashish & Partners	
Construction	13	Corporate Reorganisations	60
Mohamed Hashish, Rana El Helbawi, Farida Rezk, Heba El Abd and Zeina Sherif Soliman, Hashish & Partners		Frederic Soliman and Laila Aziz Soliman, Hashish & Partners	
Private M&A	22	Restructuring	66
Mohamed Hashish, Farida Rezk and Zeina Sherif Soliman, Hashish & Partners		Mohamed Hashish, Farida Rezk and Zeina Sherif Soliman, Hashish & Partners	
Telecoms & Media	28	Complex Commercial Litigation	69
Mohamed Hashish, Farida Rezk and Zeina Sherif Soliman, Hashish & Partners		Soliman, Hashish & Partners	
Securities Finance	35	Issuance of New Law on Incentives for Green Hydrogen Projects	71
Frederic Soliman and Laila Aziz Soliman, Hashish & Partners		Frederic Soliman Soliman, Hashish & Partners	
Fintech	43	Jurisdictional Summaries	73
Mohamed Hashish and Farida Rezk Soliman, Hashish & Partners		Mohamed Hashish, Farida Rezk and Nadine Diaa Soliman, Hashish & Partners	
		Contributors	74

Foreign Investment Regulation

Mohamed Hashish, Farida Rezk and Nadine Diaa

Soliman, Hashish & Partners

INTRODUCTION

The Egyptian government's extensive efforts in improving the business environment in the country over the past few years have meant that Egypt has managed to attract more foreign direct investment (FDI) across multiple industries, predominantly within the fintech and infrastructure sectors. This achievement has been supported by a plethora of international recognition. Egypt was recognised as one of the top five destinations globally for greenfield FDI in 2016, with Cairo also ranked among the top 10 cities hosting start-ups that year. According to The fDi Report 2020, Egypt replaced South Africa as the second top destination by project numbers in the Middle East and North Africa (MENA) region, experiencing an increase of 60 per cent, up from 85 to 136 projects. Egypt also secured first place among all MENA countries ranked by capital investment in 2020, with 12 per cent capital investment at a total value of US\$13.7 billion and with financial services among the top five sectors in the country in 2019.

The Egyptian market's credentials (including investment costs, staffing, and local and market demands) are very attractive to all businesses at all levels from start-ups to large multinational entities.

Despite international and local crises faced by the country over the years (including revolutions, covid-19, the Ukraine–Russia war, inflation and the threat of potential recession), Egypt has somehow maintained strong liquidity and financial status as a result of its FDI performance.

Two of the main sectors attracting FDI in Egypt are fintech and infrastructure. During the past few years, fintech has become increasingly dominant within the Egyptian market, as the most popular business models in the Egyptian jurisdiction are payment platforms and financing services. According to several reports, digital payments will be the market's dominant segment by 2025. In addition, over the past five years, investments pumped into the fintech sector, including fintech-enabled start-ups, reached US\$250 million. Investments in this sector reached nearly US\$159 million in 2021, compared with just US\$900,000 in 2017, according to The fDi Report 2020.

According to a report by FinTech Egypt, a platform that connects the ecosystem's stakeholders, in the first half of 2022, the fintech sector saw a twelvefold increase compared with 2017, including five deals with investments amounting to approximately US\$10 million.

The infrastructure sector has also grown significantly over the past 10 years as a result of projects that have been both planned and implemented in the country, as well as changes to and upgrading of roads. Egypt has also completed infrastructure projects totalling 1.7 trillion Egyptian pounds in less than two years.

Generally, the Investment Law No. 72 of 2017 (the Investment Law) and its Executive Regulation, issued in Prime Ministerial Decree No. 2310 of 2017 (the Executive Regulation), are the primary laws and regulations that govern and regulate FDI in Egypt, along with other laws, regulations and a number of bilateral investment treaties (BITs) and double taxation treaties between Egypt and other countries, which aim to improve and encourage foreign investments in Egypt and protect non-Egyptian investors.

The General Authority for Investment and Free Zones (GAFI) is the main competent authority that regulates and facilitates investments in Egypt and promotes the country as a safe environment locally, regionally and internationally, thereby also stimulating investment. Furthermore, GAFI also monitors and reviews FDI by requiring non-Egyptian-owned companies to submit a report consisting of information and data regarding their non-Egyptian participation (FDI Data) on dates determined by Decree No. 2731 of 2019, to establish statistics showing investment inflow, trends and developments.

YEAR IN REVIEW

According to multiple media sources, Egypt's investment in infrastructure projects over a period of seven years reached US\$500 billion.

The government is in the process of completing a number of megaprojects, including:

- 1 the New Administrative Capital, the first phase of which has a total area of approximately 44.1 square kilometres and a total construction value of 20 billion pounds;
- 2 a new 4.4 billion-pound line for the third phase of the metro, the fourth phase of the metro (at a cost of US\$1.2 billion) and the country's first skytrain (valued at US\$1.5 billion);
- 3 the Zohr gas field, which is the largest ever natural gas field discovered in the Mediterranean Sea;
- 4 Benban Solar Park, which is a photovoltaic power station under construction, with a planned total capacity of 1,650MWp, making it the largest solar installation in the world;
- 5 El Dabaa Nuclear Power Plant, which is the first nuclear power plant planned for Egypt;
- 6 the world's sixth largest high-speed rail system (with a total value of US\$8.7 billion); and
- 7 implementing a plan to upgrade sea ports and promote international trade, with an approximate overall value of US\$4 billion.

Furthermore, Egypt Vision 2030 began in 2016 with the launch of the economic reform programme (ERP), aimed at improving living standards in various areas, including the economy. Egypt launched the second phase of the ERP in April 2021, focusing on structural reforms such as transforming the economy into a productive economy, increasing its resilience and its ability to absorb external and internal shocks, both to encourage investment and to improve the economy overall.

With regard to recently issued legislation, the Prime Minister issued Decree No. 982 of 2022 encouraging investment and expediting relevant procedures. According to Decree No. 982 of 2022, all competent authorities receiving requests from investors for necessary licences, approvals or permits to establish or start investment project activities must respond to such requests within 20 working days of the submission date, provided that all documents submitted are complete. The competent authorities must respond with a rejection or approval via registered correspondence

with acknowledgement of receipt or through modern communication methods agreed with the investor upon submission of the request.

Furthermore, one of the investment incentives announced by the government to attract FDI is the 'golden licence' or unified approval. According to the Investment Law, companies that obtain a golden licence are granted a one-time approval to establish, operate and manage a specific project, and to receive the licences required to establish the necessary facilities, without the need for the multiple approvals and procedures ordinarily required by government authorities. For investors to obtain a golden licence, a number of conditions must be satisfied. It is worth noting that, as at May 2023, 15 licences have been issued to investment projects in Egypt.

It is also worth noting that recent amendments have been made to the Executive Regulation of the Investment Law to promote FDI. Such amendments include the relaxation of certain requirements and permitting the Cabinet to approve establishing projects in the private free zones subject to various conditions as stipulated under the said amendments. Furthermore, these amendments have relaxed some of the requirements for establishing projects in the private free zones.

FOREIGN INVESTMENT REGIME

Policy

Foreign investments are subject to screening in Egypt based on specific criteria, including the investor's nationality and the company's activities, as activities carried out by non-Egyptian investors, as well as the investor's nationality, may be restricted by relevant Egyptian laws and may require certain conditions to be met. Therefore, screening must be performed to ensure the satisfaction of these conditions and requirements. Foreign ownership restrictions are applicable in several sectors and locations:

- 1 conducting importation activities for resale or trading purposes and commercial agencies or intermediary businesses; and
- 2 carrying out business in the Sinai Peninsula.

A security clearance must be obtained for any foreigner to work or do business in Egypt. In practice, GAFI usually approves changes in shareholding structures without requiring a security clearance, except in the case of certain nationalities, such as China, Russia, Ukraine, Nigeria, Israel, Iran, Belarus, Bangladesh, Iraq and Palestine. These restricted nationalities require an advance security clearance. However, it is worth noting that GAFI has started to relax the conditions of obtaining the security clearance prior to incorporation with respect to some nationalities.

Additionally, under Egyptian law, foreign investments are subject to review and screening by GAFI. All companies incorporated in Egypt that are entirely or partially owned by non-Egyptian investors (collectively, non-Egyptian-owned companies), regardless of the percentage of the ownership or the applicable legal regime, must regularly submit their FDI Data to GAFI, pursuant to Decree No. 2731, within:

- 1 30 days of the incorporation date or the date of any change in the non-Egyptian-owned company's capital, purpose, shareholding structure or board members (as the case may be);
- 2 45 days of the end of each quarter of the calendar year; and
- 3 four months of the end of the relevant non-Egyptian-owned company's financial year.

Furthermore, failure to satisfy the FDI requirement will entail a penalty of 50,000 pounds for non-Egyptian-owned companies, in accordance with the Investment Law.

Laws and regulations

The main law governing investment matters in Egypt is the latest Investment Law and its Executive Regulation. The Investment Law provides features that will attract more FDI into Egypt and will improve

the investment climate by providing guarantees for all types of investment projects, to ensure fair and equitable treatment of both local and foreign investors without discrimination. In addition, the Investment Law provides general and additional incentives for investors, subject to approval by the Prime Minister, including granting:

- 1 a residence permit to foreign investors throughout the term of their investment projects in Egypt;
- 2 the right to repatriate profits or receive international finance without any restrictions, subject to the terms of the applicable BIT (if any);
- 3 the right to import directly raw materials, equipment, spare parts or transportation means as necessary for investment projects without requiring registration with the Importation Registrar;
- 4 a tax reduction of up to 80 per cent of the paid-in capital on the date of commencing investment projects in Egypt, for a term of seven years;
- 5 the establishment of a special customs gate for imports and exports relating to an investment project;
- 6 the allocation of plots of land free of charge for strategic business activities; and
- 7 other incentives.

In accordance with the Investment Law, there are various investment systems under which investors can choose to operate. Each of these provides certain benefits to investors, including tax and approval benefits. These systems include, mainly, the internal investment system, the free zones system, the private free zones system, the investment zones system and the technological zones system.

There are also other laws that should be considered in relation to foreign investment in Egypt, including the following:

- 1 Companies Law No. 159 of 1981 and its Executive Regulation (the Companies Law), which form the basis for assisting investors in establishing their business in Egypt and facilitating market entry. It applies to domestic and foreign investments in any sector that take the form of joint-stock companies (JSCs), limited liability companies (LLCs) or companies limited by shares; and
- 2 Bankruptcy Law No. 11 of 2018, which regulates corporate bankruptcy and preventive reconciliation and introduced the out-of-court restructuring system.

As part of the applicable regimes, Egypt also has many BITs and DDTs in place to facilitate and protect FDI in Egypt. The terms and conditions of each specific treaty in relation to FDI in Egypt should always be taken into consideration.

Scope

In accordance with the Executive Regulation, the following investment activities are, in general, subject to the provisions of the Investment Law: manufacturing, wholesale and supply chains, education and health, transportation, tourism, agriculture, housing and construction, sports, natural resources and petroleum, electricity, telecommunications and technology.

Voluntary screening

Voluntary screening is not applicable and not regulated by Egyptian law.

Procedures

GAFI reviews FDI developments and progress through the periodic FDI reports submitted regularly by non-Egyptian-owned companies.

Prohibition and mitigation

Information on this topic is not publicly available.

SECTOR-SPECIFIC REQUIREMENTS

Prohibited sectors

There are a few sectors that are either partially or entirely restricted in Egypt with regard to foreign investment, such as carrying out business activities in the Sinai Peninsula.

Restricted sectors

Foreign investment in certain activities and within some sectors is restricted, and certain requirements must be satisfied for a foreign investor to be able to perform these activities under the relevant Egyptian laws.

As a general rule, according to the Importers Registrar Law, no person, whether natural or juristic, may import any product for trading purposes unless:

- 1 the person is registered with the Importers Registrar;
- 2 at least 51 per cent of the company's share capital is owned by Egyptian nationals; or
- 3 an Egyptian manager is appointed to maintain responsibility for any importation activities.

However, foreign investors can still achieve full control over this type of business by using a specific structure.

Furthermore, in accordance with the Commercial Agencies Law, commercial agency-related activities may be carried out by companies that are 100 per cent owned by Egyptian nationals. However, foreign investors can still achieve full control over this type of business by using a specific structure. Notably, in accordance with the Companies Law, non-Egyptian employees' total salaries in any entity subject to this Law (such as JSCs, LLCs and one-person companies (OPCs)) must not exceed 20 per cent of the total salaries of all employees working for the same entity.

However, according to the Executive Regulation, an increase in the maximum ratio for foreign employees, from 10 to 20 per cent, can be authorised for companies established under the provisions of the Investment Law, provided that:

- 1 approval is obtained from the Ministry of Manpower; and
- 2 there is no possibility of employing Egyptian personnel with the necessary qualifications.

TYPICAL TRANSACTIONAL STRUCTURES

There are several corporate structures for ownership regulated by the Companies Law, including the following.

JSC

This type of private company resembles a US corporation and a French *société anonyme*, and it can be either a publicly listed company or a closed company.

The share capital of a JSC must be owned by at least three shareholders, of any nationality. The incorporation of a JSC requires a minimum capital of 250,000 pounds if the JSC is not to be publicly listed on the Egyptian Stock Exchange.

LLC

This type of company corresponds to the French *société à responsabilité limitée* and is similar to an incorporated partnership or a US closed company.

According to the Companies Law, the share capital of an LLC must be owned by at least two partners, who can be individuals or juristic persons of any nationality. In general, there is no minimum capital requirement under Egyptian law with respect to the incorporation of an LLC unless otherwise required by law or by virtue of a decision from the competent supervisory authority. However, in all cases, the issued capital of an LLC must be paid in full upon application for incorporation.

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OPC

OPCs can be owned by either a natural or a juristic person. However, OPCs are not permitted to carry out the following activities:

- 1 incorporating another OPC;
- 2 public offerings;
- 3 dividing their share capital into transferable shares;
- 4 receiving finance by issuing bonds; and
- 5 similarly to LLCs, conducting any business activities relating to insurance, banking, savings, receiving funds and investment management.

Prior to acquiring any assets or shares in Egypt, foreign investors should consider a number of issues under Egyptian law, such as the terms and conditions of any BIT or DDT of relevance to the direct acquiring entity's jurisdiction, as well as any necessary security clearances applicable to that jurisdiction.

OTHER STRATEGIC CONSIDERATIONS

Notably, in light of the recent amendments to the Competition Law,¹ in late 2022, the pre-closing clearance for any transaction was newly introduced as opposed to the post-notification regime. Such pre-approval is required for any transaction that constitutes an 'economic concentration'. Under the new amendments, economic concentration is defined as any change of control or material influence as a result of a merger or acquisition or establishment of a joint venture. However, the process and applicability of the newly introduced regime are still subject to the issuance of the Executive Regulation for the said Competition Law.

OUTLOOK AND CONCLUSIONS

The International Monetary Fund expects FDI in Egypt to rise over the next two years to US\$11.7 billion in financial year 2022–2023 and US\$16.5 billion in financial year 2024–2025. In addition, FDI as a percentage of GDP is predicted to be 2.9 per cent in 2023–2024 and 3 per cent in 2024–2025.

Furthermore, Fitch Ratings, the American credit rating agency, has confirmed that the Egyptian economy's stability will attract more FDI in the non-oil sectors over the coming years.

Major investment projects such as Honeywell International's investment in Egypt are also expected to launch in the near future, enhancing the investment climate in Egypt.

Notably, it is reported that amendments will be made to the Investment Law whereby all investment projects established by virtue of the provisions of the Investment Law may apply for the golden licence without any set conditions. The golden licence grants investment projects a single approval for the establishment, operation and management of the project, with no need to obtain any further licences.

¹ Law No. 3 of 2005.

Employment Law

Laila Aziz

Soliman, Hashish & Partners

INTRODUCTION

The Egyptian Labour Law No. 12 of 2003 (the Labour Law) is the primary legislation applicable to employees of the private sector in Egypt. Ministerial decrees may be issued to govern employment matters (i.e., salary increase rate and standard internal work regulation), in particular, the Ministry of Manpower decrees. In certain employment matters, the labour provisions provided in the Egyptian Civil Law No. 131 of 1948 (the Civil Code) are applicable. Furthermore, Internal Work Regulations certified by the Ministry of Manpower are to be adopted by each employer as a complementary guide to the employer–employee relationship.

The Judicial Authority Law No. 46 of 1972, which was recently amended in 2019, provides that each Court of First Instance shall have a number of circuits and shall issue judgments by virtue of three judges. In 2008, a Labour Court was established, which is deemed as one or more circuits of the Court of First Instance and maintains exclusive jurisdiction to adjudicate all individual employment disputes in accordance with the provisions of the Labour Law. The Labour Court is composed of three judges appointed from the Court of First Instance in each jurisdiction.

Regarding governmental agencies, the following governmental agencies are responsible for the enforcement of the Labour Law and all other relevant provisions:

- 1 Ministry of Labour and its relevant offices, or both, as per the Labour Law;
- 2 Social Insurance Authority or its related offices as per the Social Insurance and Pensions Law No. 148 of 2019 (the Social Insurance Law);
- 3 Egyptian Tax Authority (ETA) or its related departments, or both, as per the Income Tax Law No. 91 of 2005 (the Income Tax Law); and
- 4 Trade Union Syndicates as organised by Law No. 213 of 2017 related to Trade Union Syndicates and the Protection of the Right to Organise Trade Unions.

YEAR IN REVIEW

The minimum salary for private sector employees was increased twice in 2023, with an increase effective from 1 January 2023, and the minimum fixed salary was 2,700 Egyptian pounds, by virtue of Ministerial Decree No. 103 of 2022. As of 1 July 2023, the minimum salary increased again to 3,000 Egyptian pounds by virtue of Ministerial Decree No. 46 of 2023.

In accordance with the annual statistical publication of the annual bulletin issued by the Central Agency for Public Mobilisation and Statistics, the labour force in the Egyptian market was estimated at approximately 29,358 million people. The labour force for men reached approximately 24,296 million, while that for women reached 5,062 million. The unemployment rate among young people aged 15–29 years was approximately 15 per cent of the total labour force in the same age group, the same rate as in 2020.

By virtue of Court of Cassation Judgment No. 12226/92 JY dated 30 May 2023, an employer shall be entitled to dismiss an employee without compensation, which shall not be deemed an arbitral dismissal in the event that the employee is accused of joining a prohibited terrorist entity, carrying weapons, blocking roads, or disrupting public or private transportation. Any such accusation shall be defined as an act against honour, trust and public morals that threatens Egypt's national security. Furthermore, a draft of a new labour law has been approved by the House of Senate on 31 January 2022, and is pending final approval from the House of Deputies.

SIGNIFICANT CASES

By mid-2021, the Court of Cassation (CoC) Judgment No. 21613/89 JY dated 23 June 2021 issued a significant judgment regarding employees reaching retirement age, which is 60 years old in Egypt.

The CoC judgment provided that the employment contract of employees who reach retirement age while in employment shall be terminated automatically without the need for prior notification. However, an employee may remain employed after reaching retirement age, subject to the employer's consent, in which case a new indefinite employment contract shall be concluded between the two parties, and it may not be terminated without prior notice nor without justification, provided that the worker's continuation of work after reaching retirement age was not due to the fact that the employment contract was for a fixed period, and its term had not yet expired, nor was it intended to complete the period of contribution to social insurance required for pension entitlement.

BASICS OF ENTERING AN EMPLOYMENT RELATIONSHIP

i Employment relationship

An employer shall be required to draft an employment contract in Arabic, which may be drafted in bilingual form with another language based on the employee's nationality and the employer's language requirements. The employer and employee shall execute the employment contract in three copies, of which one copy shall be kept by the employer, one copy shall be delivered to the employee, and the third copy shall be submitted to the National Social Insurance Authority.

Fixed-term employment contracts may be concluded between an employer and employee for any determined period of time, renewable by virtue of a written agreement. In the event that the period of the fixed-term employment contract ends and the employee continues working with the employer without a renewal thereof, then the employment contract is considered an open-term employment contract.

In accordance with the Labour Law, the employment contract shall include the following:

- 1 name of the employer and the address of the place of work;
- 2 name of the employee, their qualifications, and profession or craft, social insurance number and home address, and all necessary identification information;

- 3 nature and type of work subject of the contract;
- 4 salary and the method and time of its payment, as well as any benefits in cash and in kind; and
- 5 probation period (if any), which shall not exceed three months.

If no written contract exists, the worker may alone establish his or her rights by all methods of evidence. The employer shall deliver to the employee a receipt for the documents and certificates deposited with the employer.

In accordance with the Social Insurance Law, the employer shall be required to submit the employment contract (accompanied by all registration documents) to the National Social Insurance Authority within two weeks from the start date of employment. Therefore, the parties shall be required to execute an employment contract as soon as the employee commences employment under the employer. The commencement date shall be included in the employment contract.

An employment contract shall govern the employment relationship, provided that there are no violations of Egyptian laws, and in particular, the Labour Law. Therefore, the employment contract may not be revoked nor amended, except by virtue of a mutual written agreement of the parties. However, in the event that a rule or stipulation, or both, originating from the employment contract, employment practice, or any other employer resolution or internal work regulation granting the employee greater rights or benefits, or both, not provided by the provisions of the Labour Law, that rule or stipulation, or both, shall remain valid and replace the provisions of the Labour Law because it provides better benefits and interests for the employee, in accordance with the Labour Law.

ii Probationary periods

Probationary periods are allowed. The probationary period shall be specified in the employment contract. The employee may not be subject to a probationary period exceeding three months, nor be placed under probation more than once by the same employer.

At any time during or at the end of the probationary period, the employer shall be entitled to terminate the employment contract due to the employee's incompetency without the need for prior notice and without any remuneration or indemnity other than the salary due to the employee for the period prior to the date of termination.

iii Establishing a presence

As a general rule, no foreign company may practice any activity in Egypt except after establishing an entity in accordance with the provisions of the Commercial Register Law No. 34 of 1976. Therefore, a foreign company may not hire employees to conduct work on its behalf in Egypt, without first establishing an Egyptian entity. The employees carrying out any activity in Egypt shall be required to be registered with the National Social Insurance Authority under the Egyptian employer's file. Moreover, employee outsourcing is prohibited and criminalised in Egypt.

A foreign company that is not registered in Egypt may engage an independent contractor by virtue of a written agreement, i.e., a consultancy agreement or services agreement.

In accordance with the Income Tax Law, a permanent establishment (PE) shall be defined as each fixed business place through which some or all works of projects of a non-resident in Egypt is carried out, in particular the following:

- 1 place of management;
- 2 branch of a foreign company;
- 3 building used as a sales outlet; and
- 4 office, factory, workshop, mine, oil field, natural gas well, quarry or any other place for extracting natural resources.

Furthermore, a PE shall be defined as a person working for an affiliated project who has the authority to conclude and ratify contracts in

the name of the project, unless such person's activity is restricted to the procurement of commodities or goods for the project.

Employees hired by an Egyptian company shall be entitled to the following legal benefits, in accordance with the Labour Law, Income Tax Law, and Social Insurance Law:

- 1 21 days of annual leave for employees with at least one year of employment;
- 2 social insurance registration with the National Social Insurance Authority for old age, incapacity and death benefits; and
- 3 taxes deducted from the gross salaries of the employees, for collection and payment to the ETA under the company's tax file.

In accordance with the Tax Procedures Law No. 206 of 2020, companies are required to submit a quarterly declaration to the competent tax office in each year, indicating the number of employees, their complete data, their total salaries, the amounts deducted from their salaries under the tax account and the amounts paid to the ETA for same.

RESTRICTIVE COVENANTS

The Civil Code permits the stipulation of a non-compete clause in an employment contract. Its applicability and validity, however, shall be subject to the following conditions:

- 1 a non-compete clause shall be required to be limited in terms of duration, region or place, and work, in particular after the termination of the employment; and
- 2 a non-compete clause shall be required for the benefit of the employer and to protect the rights and interests thereof.

Notably, in the event that the non-compete clause is not restricted geographically, the clause shall be considered null and void. In the event that compensation has been agreed upon and the non-compete clause is breached by the employee, the compensation and non-compete clause may be deemed invalid by the Egyptian Labour Court if the compensation amount agreed upon in the employment contract has been exaggerated and acts as a means to force the employee to remain in the employer's service for a period longer than the employment term.

Generally, non-solicitation of customers and employees are not treated differently in Egypt. However, non-solicitation of employees shall be deemed as a non-compete clause in accordance with the provisions of the Civil Code, whereas non-solicitation of employees should be restricted in terms of duration, region or country, and scope of work.

WAGES

i Working time

The Labour Law explicitly provides that the maximum working hours for employees shall not exceed eight hours per working day or 48 hours per working week, excluding breaks.

There are no limits on the amount of night working hours provided that the total hours worked per day do not exceed eight hours per working 24-hour day or 48 hours per working week. However, the employer shall not require women to work between 7:00 pm and 7:00 am.

ii Overtime

The law requires overtime compensation. If an employer requires its employees to work overtime, exceeding normal working hours, in order to address extraordinary work circumstances or emergencies, the Labour Law requires the employer to compensate its employees for the overtime, in addition to the employee's normal hourly salary.

Generally, overtime working hours may not exceed two hours per working day, provided that during a normal working day, the employee has worked eight hours, excluding breaks.

In addition to the employee's regular hourly salary, the employee is entitled to overtime pay equal to their normal hourly salary plus 35 per cent as compensation for the additional working hours performed during the day. For overtime during the night, the employee is entitled to overtime pay equal to the normal hourly salary plus 70 per cent for the additional working hours performed during the night. This amount is provided in addition to the employee's regular hourly salary. If an employee works on their weekly rest days, the employee shall be entitled to overtime pay equal to 100 per cent of the actual daily salary, in addition to the employee's regular daily salary. The employer shall also grant the employee another rest day in lieu of that day during the following week. In the event that an employee works on a public holiday, the employee is entitled to an amount equal to double their actual daily salary, in addition to their regular daily salary.

There are limits to the amount of overtime that may be performed daily. The employee's total working hours per day should not exceed 10 working hours, which includes the standard maximum eight working hours and the maximum two hours of overtime.

FOREIGN WORKERS

In accordance with the Labour Law, employers are required to establish a file for every employee, whether local or foreign. The file shall include the employee's name, profession, skill grade, place of residence, marital status, date of commencement of employment, salary, statement of leave obtained, and a statement of developments and penalties imposed on the employee. Furthermore, the Minister of Manpower Decree No. 146 of 2019 provides that companies who employ foreign employees shall be required to keep a separate exclusive register for foreign employees. Such companies shall be required to regularly submit the register to the competent labour office.

As per the Minister of Manpower Decree No. 146 of 2019, the total number of foreign employees must not exceed 10 per cent of the company's registered workforce.

In accordance with the Minister of Manpower Decree No. 146 of 2019, foreigners shall be prohibited from working:

- 1 as a tour guide;
- 2 in the importation or exportation sector; and
- 3 in customs clearance.

The Minister of Manpower Decree No. 146 of 2019 provides that foreigners are not allowed to work in Egypt without first obtaining a work permit from the Ministry of Manpower.

As a general rule, discrimination with regard to salaries based on race, religion, language, creed or sex is prohibited.

Furthermore, the Social Insurance Law provides that each company shall be required to insure all its employees with the National Social Insurance Authority, regardless of whether the employees are local or foreign.

The employment of foreigners in all private sector establishments, public sector units, the public business sector, public bodies, local administration and the administrative apparatus of the state are subject to the provisions of the Labour Law, taking into consideration the reciprocity conditions.

GLOBAL POLICIES

In accordance with the Labour Law, a company is required to put in place an internal work regulation and disciplinary sanctions regulations, explicitly clarifying the rules governing the organisation of work and disciplinary sanctions, the regulations of which shall be certified by the competent labour office in accordance with the Minister of Manpower Decree No. 185 of 2003 (Certified Internal Regulations).

In accordance with the Minister of Manpower Decree No. 185 of 2003, the provisions of the Certified Internal Regulations are deemed

an integral part of the employment contracts made by and between the company and its employees. Therefore, employees' approval on the Certified Internal Regulations is not be required, considering that the provisions of the Certified Internal Regulations are in accordance with the standard template guide provided by the labour office, subject to minor amendments by the employer.

Any internal working regulations are required to be certified by the competent labour office at the Ministry of Manpower, taking into account the relevant union committee's opinion.

The Minister of Manpower Decree No. 185 of 2003 provides the maximum penalties that may be imposed on the employee internally without prejudice to the company's right to waive these maximum penalties depending on the work conditions.

To certify any internal working regulations before the competent labour office, the internal work regulations are required to be in Arabic, the national language of Egypt.

The Labour Law does not explicitly require the employee's signature on any internal working regulations, provided that the internal working regulations have been certified by the competent labour office. Nevertheless, companies may proceed with one of the following:

- 1 attach internal working rules as an annex to the employment contract; or
- 2 notify each employee with a copy of the internal working regulations for their acknowledgment.

A company with more than 10 employees shall post the Certified Internal Regulations inside the company's workplace, visible to employees, in an area in which employees easily access. However, in the event of any uncertified internal working regulations, each company shall have the sole discretion to determine the method to post or distribute the internal working regulations, i.e., via publishment on the company intranet site.

As a general rule, the Minister of Manpower Decree No. 185 of 2003 provides the maximum disciplinary rules to be applied to employees under the Labour Law, which shall be reflected in the Certified Internal Regulations. The company shall have the sole discretion to incorporate the Certified Internal Work Regulations in the employment contract. However, the employer may be entitled to stipulate in the employment contract disciplinary rules below the maximum provided by the Minister of Manpower Decree No. 185 of 2003.

PARENTAL LEAVE

By virtue of the Labour Law, a female employee who has spent 10 months in the service of one or more employers is entitled to maternity leave for a period of 90 days with compensation equal to the comprehensive salary covering the period preceding and following the delivery, provided that she submits a medical certificate indicating the date on which the delivery is likely to occur. Generally, the employer must pay the maternity leave compensation. The Labour Law does not provide any entitlements for male employees with respect to paternity leave. However, whether to grant this entitlement as an additional benefit to male employees is subject to the employer's sole discretion.

In order for female employees to be entitled to maternity leave, a medical certificate, indicating the date on which the delivery is likely to occur, must be submitted.

Entitlements to maternity leave include a maximum leave for a period of 90 days with compensation equal to the comprehensive salary covering the period preceding and following the delivery.

The Labour Law prohibits an employer from terminating the employment contract of a female employee or arbitrarily dismissing a female employee during the paid maternity leave period. However, this prohibition shall not be applicable in the event of the automatic expiry of a definite employment contract of the female employee on maternity leave.

TRANSLATION

As a general rule, all employment documents must be provided or issued in the Arabic language, the national language of Egypt. Nevertheless, other languages may be incorporated in the employment documents in a bilingual form alongside the Arabic version, taking into account the employee's nationality and preferred language.

Under Egyptian law, Arabic translation is required for all employment documents, in order to obtain validation before any governmental authority.

In accordance with the Labour Law, the employment contract must be concluded in Arabic, taking into account that an original copy of the employment contract shall be submitted to governmental authorities, upon employment. In the event that the employment documents have been issued in a foreign language, the documents shall be required to be translated by an accredited translation agency in Arabic, for their validity before governmental authorities.

Employment documents that are not translated into Arabic will be unenforceable before Egyptian courts. However, the employer and the employee are entitled to provide the court with an official translation. Furthermore, if the employment contract has not been concluded in Arabic, the company will be in violation of the Labour Law and the Social Insurance Law because the employee will therefore not be insured.

EMPLOYEE REPRESENTATION

The Trade Union Organisations and the protection of the right to organise Trade Unions Law No. 213 of 2017 (the Trade Union Law) grants the employees of an establishment the full right to establish, join and withdraw from a union committee, in accordance with the applicable Egyptian laws and internal regulations of the relevant union committee.

A union committee should compose of at least 50 employees. The general assembly of the union committee must elect a board of directors from its members ranging from seven to 21 members, depending on the size of the union committee.

The election by the members of each union committee's board of directors must satisfy certain conditions, such as being a member of the union committee, having at least a basic educational certificate and not being a representative of the employer or a governmental officer. Elections shall be held by direct secret ballot within the last 60 days of the term of the trade union session at the latest, in accordance with the rules and procedures specified in the statute regulations. Elections should take place under the supervision of public committees that are formed by the competent minister.

The term of a union committee's board of directors should be four years. A union committee is entitled to directly exercise and manage several subjects with the employer for the protection and the legitimacy of the rights of their members, to defend their common interests and to improve working conditions, including resolving individual and collective disputes relating to their members and managing collective labour agreements at the company level. An employer may not temporarily suspend or apply a disciplinary sanction against a board member of a union committee from working at the company without first obtaining a court decision or judgment from the competent court.

An employer must allow the union committee members to exercise the union committee's activities without the obstruction of the normal working operations of the employer's establishment. Moreover, an employer should:

- 1 allow the union members to communicate with the employees and conclude frequent meetings with them;
- 2 carry out the union committee's elections at the employer's premises;

- 3 submit all necessary valid information for the collective labour agreements negotiations; and
- 4 refrain from terminating an employee due to their involvement in the union committee or discriminating in salaries or benefits attributed to the employees based on their involvement in the union committee.

An employer shall be required to enable the members of a union committee to practice the union committee activities, including holding meetings with the employees as frequently required, provided that the employees' work is not negatively affected.

DATA PROTECTION

i Requirements for registration

In accordance with the Data Protection Law No. 151 of 2020 (the DPL), every company that processes or controls data collected from employees is required to obtain all the required licences and authorisations from the Personal Data Protection Centre, as may be required in accordance with the Executive Regulation of the Data Protection Law.

These include:

- 1 appointing a data protection officer (DPO);
- 2 not retaining collected data for a duration longer than necessary for fulfilling the purpose thereof; and
- 3 notifying employees of any breach of their personal data.

A company must obtain explicit prior written consent from employees and shall notify employees of the purpose of data collection. The company should refrain from using this data collection for any other purpose.

A company is required to obtain the explicit prior written consent from an employee regarding data processing.

An employer shall not have the right to disclose any data of its employees to any unauthorised persons without the explicit consent of the employees. In accordance with the Labour Law, an authorised person shall be defined as a person who has the authority to inspect the employer's files by virtue of a decree issued by the Minister of Justice.

A company is required to ensure that all technical and organisational measures are in place and the necessary standards have been applied in order to protect and secure the personal data to preserve its confidentiality, and not to penetrate, destroy, change or tamper with the personal data.

ii Cross-border data transfers

In accordance with the DPL, a company or other data processor shall be prohibited from transferring personal data collected or processed to a foreign country, except with a level of protection not less than the level provided for in the DPL, and with a licence or permit from the Personal Data Protection Centre.

The explicit consent of an employee shall be required if the level of protection in the foreign country is less than the level of protection provided by the DPL. This may occur in certain limited events, such as the conclusion of a contract whereby the cross-border transfer of data shall be necessary.

Under Egyptian law, safe harbour registration is not regulated. Moreover, a joint-user agreement may be required provided that a licence has been obtained from the Personal Data Protection Centre and the nature of parties' scope of work necessitates the transfer of the personal data.

In the event of access requests to the personal data acquired, any person in control of the personal data (i.e., the controller and processor) will not be allowed to transfer or grant access to the personal data unless a written request has been submitted by a person of capacity or in accordance with a legal basis (i.e., power of attorney), and the availability and retention of documents necessary to implement the access have been verified.

iii Sensitive data

Sensitive data is defined under the DPL as any information that indicates the psychological, mental, physical, genetic or biometric condition, financial data, religious, political views or security status of the individual.

Data controller and processors must not collect, store, process, share or transfer any sensitive data without obtaining a prior licence or authorisation, or both, from the Personal Data Protection Centre, the prior written consent of the employee related to the sensitive data and without prejudice to the general obligations of the data controller or processor, or both.

iv Background checks

The Egyptian Labour Law does not prohibit an employer from conducting background checks on potential hiring candidates.

The Minister of Manpower Decree No. 185 of 2003 explicitly provides that as part of the hiring documents, employees shall be required to submit a criminal record certificate to its employer. Regarding credit checks, the Minister of Manpower Decree No. 185 of 2003 does not explicitly allow credit checks as part of the hiring process. However, an employee shall be required to submit all other documents requested by the employer as part of the hiring process.

Employers should be aware that any background checks made, and personal data collected from the employees such as criminal records, shall be deemed as sensitive data under the DPL, which requires the prior written consent of the employees.

v Electronic Signatures

As per the Electronic Signature Law No. 15 of 2004 (the Electronic Signature Law) and its Executive Regulation, an electronic signature shall be validly permissible upon satisfaction of the following conditions:

- 1 the electronic signature is linked to the signatory alone;
- 2 the website alone controls the electronic medium; and
- 3 the possibility of detecting any modification or alteration in the electronic editor or electronic signature data.

The Executive Regulation of the Electronic Signature Law, as amended in 2020, specifies the required technical controls for electronic signatures, in particular the establishment of a secure electronic signature creation formation system.

Electronic signatures must be valid and enforceable for offer letters and employment contracts, provided that the necessary conditions stipulated in the Electronic Signature Law are met. However, in practice, employment contracts must be signed by wet-ink signature for the purpose of submission to several governmental authorities.

DISCONTINUING EMPLOYMENT

i Dismissal

As a general rule, an employee may not be dismissed unless the employee commits a gross error, in accordance with the Labour Law, such as:

- 1 assuming a false identity or submitting false documents;
- 2 repeatedly failing to observe the instructions required to be followed for the safety of the employees and the company; and
- 3 divulging the secrets of the employer, leading to the occurrence of serious damages to the employer.

The employer has the burden to prove that the employee has committed a gross error. The employee may not be dismissed without gross error, regardless of whether the employment is for a definite or indefinite period. The employment contract of an employee will be automatically terminated in the event of the expiration of its definite period, and therefore no proof of gross error would be required by the employer.

The National Social Insurance Authority must be notified of an employee's dismissal within one week of the employee's dismissal for the de-registration of the employee from the National Social Insurance Authority.

In the event of a dispute between an employer and employee regarding the application of the provisions of the Labour Law, or the employment contract in relation to the employee's dismissal, the employer or employee may request to convene a committee of the competent labour office within 10 days from the date of the dispute for its amicable settlement. Therefore, it is at the discretion of the company or employee to request the reunion of such committee to settle an employment dispute.

In the event of an employee's termination, no exit or social plan is explicitly required under the Labour Law or the Social Insurance Law as a standard plan for termination. However, the National Social Insurance Authority must be notified within one week of the employee's termination for the de-registration of the employee from the National Social Insurance Authority. Therefore, the employer is entitled to provide the terminated additional benefits for the end of service as part of a social plan, whether already stipulated in the employment contract or in the employee's exit plan post-termination.

As a general rule, an employee does not have rehire rights. However, in the event that the employee was dismissed without gross error and the competent labour court has reviewed the dismissal case as arbitral dismissal, the competent labour court, within its sole discretion, may proceed with the reinstatement of the employee to the employment from which he or she was arbitrarily dismissed, in addition to the payment of compensation.

The automatic termination of an employment contract for a definite period upon its expiry date shall not require a notice period. In the event of termination of an employment contract for an indefinite period, a two-months' prior notice shall be required if the employee's period of service with the employer does not exceed 10 years or a three-months' prior notice if the employee's period of service exceeds 10 years.

The Labour Law explicitly prohibits the waiver of the notice requirement or the reduction of its duration, even by virtue of a mutual agreement between an employer and employee. However, the employer may exempt the employee from all or part of the notice in the event of the employee's resignation.

The Labour Law protects the following categories of employees from dismissal without a legitimate and substantial justification:

- 1 pregnant female employees, unless the definite employment contract automatically expires;
- 2 dismissal based on colour, sex, marital status, family responsibilities, religion or political opinion;
- 3 employees that filed a complaint against the employer; and
- 4 employees that used their entitlement to annual leave.

As a general rule, severance and indemnities are not required in the event of the automatic expiration of an employment contract for a definite period. Nevertheless, severance packages may be required to be provided to employees in the event of dismissal without cause initiated by the employer for indefinite employment contracts, taking into account the dismissed employee's damages, including the employee's financial benefits with not less than two months of comprehensive salary for each working year (i.e., unused annual leave). Employees who reach the age of 60 years (retirement age) under the employment of an employer shall be entitled to an end of service indemnity if they worked after reaching the age of 60 years.

Upon dismissal without cause and in the event of a dispute, parties may enter into a mutual settlement agreement for disputes arising out of the implementation of the employment contract or the Labour Law, or both, for the protection of the employer and employee's rights. However, any settlement to the detriment of the employee's rights will be null and void.

ii Redundancies

In order for a company to make employees redundant, the company is required to be in a state of dissolution, liquidation, closure, bankruptcy or insolvency. There shall be no difference in the event of individual or multiple redundancies. In cases of economic necessity, the employer has the right to close the company completely or partially, or reduce its size or activity, or a combination of these, in a manner that may affect its workforce. However, the employer must adhere to the specific conditions and procedures stipulated in the Labour Law.

When an employer intends to close, downsize or modify their company, a request must be submitted to a designated labour committee formed by the Prime Minister. This request should include the justifications for the action and the number and categories of employees who will be affected. The committee is required to issue a decision within 30 days of receiving the request. If the request is approved, the decision will specify the implementation date of the redundancies.

The employer shall notify the relevant union committees (if any) and the concerned trade syndicates concerned of the application submitted and of the decision issued to close the establishment in whole or in part or to reduce its size or activity. The implementation of the decision is from the date fixed by the relevant union committees (if any) and the concerned trade syndicates that considered the application or grievance, as the case may be.

A social plan is not required, but the employer has sole discretion to determine a social plan for terminated employees.

The Egyptian law does not explicitly provide the employee rehiring rights and offers of suitable alternative employment is not required to be made by the employer.

In the event of termination of an indefinite employment contract, the employee shall be entitled to two-months' prior notice if the employee's period of service with the employer does not exceed 10 years or three-months' prior notice if the employee's period of service with the employer exceeds 10 years. Pay in lieu of notice shall be permissible upon an amicable settlement with the employee, which must consist primarily of payment of the full salary for the notice period.

In the event of partial closure or reduction in the size or activity of the company, the employer should consult with the trade union organisation after the issuance of the decision and prior to implementation regarding the objective criteria for the selection of employees to be dismissed.

In all cases, these criteria must consider the balance of interests of both the company and those of the employees.

In accordance with the Labour Law and upon termination of the employment contract for economic reasons in accordance with the aforementioned redundancy procedures, the employer shall pay to the terminated employee a bonus equivalent to the comprehensive salary for one month for each of the first five years of service and one and a half months for each year exceeding that period.

In cases where an employer is entitled to terminate an employment contract for economic reasons, the employer may, instead of exercising this right, temporarily modify the contract terms. Specifically, the employer may assign an employee to perform work that is different from their original job, even if it differs from their usual duties. Additionally, the employer may reduce the employee's salaries by no less than the minimum salary.

TRANSFER OF BUSINESS

Under Egyptian laws, business transfer is not regulated by a particular law. However, the Labour Law and the Companies Law No. 159 of 1981 (the Companies Law) provides certain provisions in this regard. As per the Labour Law, explicit outsourcing transactions are prohibited in Egypt and are subject to sanctions.

The process of transferring, terminating and subsequently compensating employees in a business transfer depends on the executed employment contract. The termination and compensation rules of an employment contract for a definite period vary from the termination and compensation rules of an employment contract for an indefinite period.

Regarding the transfer of employees, new employment contracts must be drafted for the transferred employees to the new company. The new and former employers shall be jointly liable in satisfying employees' rights and benefits that were accrued prior to the transfer, as well as the obligations arising from the new employment contracts, which may include the seniority benefits attributable to senior employees under both the new and previous employers. That being said, newly drafted employment contracts with a new employer are to include the employees' benefits that were already accrued in their employment under the previous employer.

OUTLOOK AND CONCLUSIONS

Employers are required to increase all employees' salaries to reach the minimum salaries of 3500 Egyptian pounds in accordance with Ministerial Decree No. 90 of 2023.

Furthermore, employers are recommended to prepare for the potential adoption of a new labour law that will amend essential labour provisions to ensure more balanced protection of both employees and employers.

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LOCAL MARKET

Foreign pursuit of the local market

- 1 | If a foreign designer or contractor wanted to set up an operation to pursue the local market, what are the key concerns they should consider before taking such a step?

The following key concerns should, inter alia, be carefully considered by foreign designers and contractors:

- the foreign ownership restriction that may apply to their specific activities in Egypt;
- the best countries that should be used to hold their investment in Egypt as each country has its own bilateral treaties that shall apply to such investment;
- the regulations governing their specific activities in Egypt and the feasibility of complying with such regulations;
- the gap between local regulations and international standards or compliance requirements, if any; and
- any technical, financial and tax-related issues that may be triggered by conducting their activities.

REGULATION AND COMPLIANCE

Licensing procedures

- 2 | Must foreign designers and contractors be licensed locally to work and, if so, what are the consequences of working without a licence?

According to the Egyptian Federation for Construction and Building Contractors (EFCBC) Law No. 104 of 1992 as amended (the EFCBC Law), all constructors, whether natural or legal persons, working in Egypt in any of the fields of, inter alia, construction, buildings, public utilities, land reclamation and fixtures works (the Construction Fields) are required to be registered with the Construction Union (the Registration Requirement), noting that the Registration Requirement is also applied to non-Egyptian constructors working in Egypt.

The EFCBC has six main divisions that contain the following specialisations in accordance with the Executive Regulation of the EFCBC Law:

	First Division	Second Division	Third Division	Fourth Division	Fifth Division	Sixth Division
1.	Buildings	Roads, passages and airports	Water and drainage networks and plants	Public utilities, thermal and water energy plants	Electronic, and electromechanical works	Operating and maintenance works for buildings
2.	Foundations	Tunnels	Fuel and gas networks	Sea, river and dredging works	Low voltage networks	Maintenance, restoration, and preservation of antiquities
3.	Metal constructions	Bridges		Land reclamation	Electric, water, gas and diesel work.	Operating and maintenance works for roads and bridges
4.	Supplemental works	Railways		Water wells	New and renewable electricity work	Maintenance of railways
5.					Elevator, escalator and walkers work	Operating and maintenance of subways
6.						Operating, and maintenance, for water, sewage, desalination, lifting and treatment of plants and networks
7.						Operating and maintenance of gas and fuel stations and network
8.						Operating and maintenance of electrical power stations, lines and transformers
9.						Maintenance of green areas

Each aforementioned division is divided into several tiers.

Furthermore, the requirements of each tier as well as the limits of the construction fields-related activities that can be carried out by the members of each tier differ from tier to tier, the limits and requirements of which are regularly amended from time to time by virtue of a ministerial decree issued by the Egyptian Minister of Housing.

The EFCBC Law imposes a fine of not less than E£1,000 and not more than E£10,000 in either of the following cases:

- executing or entering into a contract for carrying out any activities related to the Construction Fields without meeting the Registration Requirement on the date of such contract; or
- the use of or order to use any person that does not meet the Registration Requirement.

Furthermore, according to the Engineers' Syndicate Law No. 66 of 1974 (Law 66), no one in Egypt is allowed to assign any engineering work to any person except for the engineers and/or engineering consultancy firms that are admitted before the Engineers' Syndicate. However, the Engineers' Syndicate may, upon the request of the relevant employer, grant a temporary permit to non-Egyptian engineering consultancy firms to work in Egypt on an exceptional basis.

Competition

3 | Do local laws provide any advantage to domestic contractors in competition with foreign contractors?

Construction contracts with governmental entities must be awarded based on the most qualified and lowest bid; however, in accordance with the Public Contracts Law, the exception is that Egyptian contractors shall be accorded priority if their bids do not exceed the lowest foreign bid by more than 15 per cent.

Foreign contractors may be registered with the EFCBC as corresponding members whereby each corresponding member may carry out all activities related to the Construction Fields that can be carried out by the first-tier active members that are registered locally in Egypt and with the EFCBC in the country of the said corresponding member unless the said corresponding member is specialised in providing any special services that are not provided by any of the active members.

Corresponding members are required to have a partnership of not less than 51 per cent with at least one of the active members of the EFCBC (the Local Partnership Requirement) with the exception of specific limited cases.

Competition protections

4 | What legal protections exist to ensure fair and open competition to secure contracts with public entities, and to prevent bid rigging or other anticompetitive behaviour?

The Executive Regulation of the Public Contracts Law includes the main principles promoting fair and open competition, as follows:

- publishing a brochure of terms and conditions that includes rules, provisions, procedures and conditions stipulated in the relevant laws, regulations and contracting method;
- publishing the transactions that are offered by all the contracting methods on the public contracting portal, except for transactions related to national security; and
- publishing the reason for the decisions issued regarding any of the contracting procedures on the public contracting portal.

In accordance with the Public Contracts Law, bidders are prohibited from submitting more than one bid for one transaction. In the event of a violation of this prohibition, the administrative authority shall exclude the violating bids, transfer the temporary insurance to the administrative

authority, terminate the contract, devolve the final insurance and charge the contractor with any loss incurred.

Administrative authorities are obliged to notify the Egyptian Competition Authority of any violation of the Public Contracts Law that is relevant to the provisions of the Law on the Protection of Competition and the Prevention of Monopolistic Practices.

Bribery

5 | If a contractor has illegally obtained the award of a contract, for example, by bribery, will the contract be enforceable? Are bribe-givers and bribe-takers prosecuted and, if so, what are the penalties they face? Are facilitation payments allowable under local law?

According to the Public Contracts Law, the contract must be terminated if it appears that the contracting party used fraudulent and/or manipulative methods in dealing with a governmental entity or in awarding the contract.

Moreover, according to the Penal Code No. 58 of 1937 (the Penal Code), bribery is sanctionable with life imprisonment, and a fine that may reach the value of the promise or gift.

Facilitation payments are not organised under Egyptian Law, and according to the Public Contracts Law, the contracting brochure must include the timeline for each procedure.

Reporting bribery

6 | Under local law, must employees of the project team members report suspicion or knowledge of bribery of government employees and, if so, what are the penalties for failure to report?

According to the Criminal Procedures Law No. 150 of 1950, anyone who is aware of the occurrence of a crime is obliged to inform the Public Prosecution or a judicial officer; however, Egyptian law does not state a penalty for not reporting a crime, except for crimes related to national security.

Political contributions

7 | Is the making of political contributions part of doing business? If so, are there laws that restrict the ability of contractors or design professionals to work for public agencies because of their financial support for political candidates or parties?

According to the Civil Service Law No. 81 of 2016, it is not permissible for anyone working at a public agency to participate in any political works, including the provision of donations or offering financial support to political parties.

Compliance

8 | Is a construction manager or other construction professional acting as a public entity's representative or agent on a project (and its employees) subject to the same anti-corruption and compliance rules as government employees?

According to the Penal Code, the definition of bribery is expanded to include private fields, and as such they are subject to the same anti-corruption and compliance rules, with the exception of the relevant sanctions, which are less severe than those of governmental employees.

Generally, such relationship between private contractor and public entity is governed by the agreement and both parties are free to define articles related to anti-corruption and compliance rules, without prejudice to the general rules and regulations of Egyptian law.

Other international legal considerations

- 9 | Are there any other important legal issues that may present obstacles to a foreign contractor attempting to do business in your jurisdiction?

Foreign constructors, whether natural or legal persons, working in Egypt in any of the fields of, inter alia, construction, buildings, public utilities, land reclamation and fixtures works (the Construction Fields) are required to be registered with the Construction Union (the Registration Requirement).

Furthermore, according to the Engineers' Syndicate Law No. 66 of 1974 (Law 66), no one in Egypt is allowed to assign any engineering work to any person except for the engineers and/or engineering consultancy firms that are admitted to the Engineers' Syndicate.

CONTRACTS AND INSURANCE

Construction contracts

- 10 | What standard contract forms are used for construction and design? Must the language of the contract be the local language? Are there restrictions on choice of law and the venue for dispute resolution?

The standard contract forms used for construction and design that are commonly used in Egypt are the International Federation of Consulting Engineers (FIDIC) and the Egyptian Syndicate for Engineers, which also provides standard forms for design and supervision.

In Egypt, the most common types of construction contracts include:

- lump sum contract;
- unit price contract;
- cost-plus contract; and
- design build contract.

Under Egyptian Law, the contractual language is not regulated. However, in practice, any document submitted to courts or governmental authorities must be in the Arabic language or at least bilingual. Furthermore, under the Egyptian Civil Code No. 131 of 1948 (the Egyptian Civil Code), generally contracting parties have the freedom to select the governing law and jurisdiction of their contracts.

Payment methods

- 11 | How are contractors, subcontractors, vendors and workers typically paid and is there a standard frequency for payments?

According to the Non-cash Payments Law No. 18 of 2019, state authorities and agencies, private legal persons and establishments are committed to payment by non-cash means of payment in the payment of dues to suppliers, contractors, service providers and others. In the case of state authorities and agencies, non-cash payment methods shall be used when the amount exceeds E£1 and for private legal persons and establishments when the amount exceeds E£5,000. For the purposes of this question, non-cash payment means each payment method that results in an addition to one of the beneficiary's bank accounts, such as deposit, transfer and debit orders, credit and debit cards, mobile payment, or other means approved by the Governor of the Central Bank of Egypt.

As regards the standard frequency, the standard payment methods under FIDIC-related boilerplates are commonly used.

Contractual matrix of international projects

- 12 | What is the typical contractual matrix for a major project in your jurisdiction in terms of the contractual relationships among the various construction project participants?

In the majority of construction projects in Egypt, the typical contractual matrix includes:

- employer;
- contractor;
- sub-contractor; and
- engineering consultants.

It is worth noting that the contractual relationship varies, whereby the employer may enter into a contract with the public and private entity, and the contractor would enter into a contract with the said employer for implementation of works as a main contractor. However, subcontractors may be hired by the main contractor for the execution of works. Furthermore, the engineering consultant may contract with the employer and/or the contractor for the supervision, design and management of the project.

However, such contractual relationship varies from one project to another, depending on the parties involved in the design and delivery of the project.

PPP and PFI

- 13 | Is there a formal statutory and regulatory framework for PPP and PFI contracts?

The Public Private Partnership Law No. 67 of 2010 and its Executive Regulations are the main regulations for PPP, which is aimed at certain areas of infrastructure, including, inter alia, roads and industrial development, whereby investments under an operating contract may take place, or alternatively a concession contract where the private entity carries out the operation, sale and provision of services to the end user as supervised by the public entity.

It is also worth noting that the Public Procurement Law No. 180 of 2018 regulates contracts that are entered into by and between the private sector and public entities, which includes the procurement and implementation thereof.

Joint ventures

- 14 | Are all members of consortia jointly liable for the entire project or may they allocate liability and responsibility among them?

Under the Egyptian Civil Code No. 131 of 1948 (the Egyptian Civil Code), engineer and contractor are jointly and severally responsible for a period of 10 years for the total or partial demolition of constructions or other permanent works erected by them, even if such destruction is due to a defect in the ground itself, and even if the employer authorised the erection of the defective construction, unless the construction was intended by the parties to last for less than 10 years. The warranty imposed extends to defects in constructions and erections that endanger the solidity and security of the works. The 10-year period runs from the date of delivery of the works. However, the said warranty does not apply to the rights of action that a contractor may have against their subcontractors.

It is also worth noting that the engineer who only undertakes to prepare the plans without being entrusted with the supervision of their execution, is responsible only for defects resulting from the said plans.

Any provision under a contract excluding or restricting the warranty of the engineer and the contractor shall be considered null and void.

Tort claims and indemnity

- 15 | Do local laws permit a contracting party to be indemnified against all acts, errors and omissions arising from the work of the other party, even when the first party is negligent?

Generally, in contracts, Egyptian law allows the inclusion of indemnification provisions by one party to the other in the case of acts, errors and omissions arising from one party. However, it is worth noting that according to the Egyptian Civil Code, contracting parties may not exclude or limit their liability for gross negligence, wilful misconduct and fraud, and any conflicting provision would be deemed null and void under Egyptian law.

Liability to third parties

- 16 | Where a contractor constructs a building that will be sold or leased to a third party, does the contractor bear any potential responsibility to the third party? May the third party pursue a claim against the contractor despite the lack of contractual privity?

The contractor may be held liable for any damages sustained by a third party due to causing harm to the third party, whether intentionally or negligently, as regulated under the Egyptian Civil Code, in addition to other liabilities.

Insurance

- 17 | To what extent do available insurance products afford a contractor coverage for: damage to the property of third parties; injury to workers or third parties; delay damages; and damages due to environmental hazards? Does the local law limit contractors' liability for damages?

The extent of coverage provided for by insurance to a contractor depends on the specific terms of the relevant insurance policy. However, the Egyptian Civil Code allows the limitation of liability with the exception of liability for gross negligence, wilful misconduct and fraud. That being said, any contractual provision dismissing the liability of the contractor for the aforementioned circumstances would be deemed null and void under Egyptian law.

Under the Construction Law No. 119 of 2008, building permits may not be issued nor the commencement of executing works amounting to E£1 million or more, or a building consisting of four stories, until a liability insurance policy is issued. Such insurance policy shall cover the civil liability to the engineer and the contractor to third parties.

LABOUR AND CLOSURE OF OPERATIONS

Labour requirements

- 18 | Are there any laws requiring a minimum amount of local labour to be employed on a particular construction project?

As a general rule, according to the Companies Law No. 159 of 1981 (the Companies Law), in joint stock companies, limited liability companies and partnerships limited by shares, the minimum amount of local employees shall not be less than 90 per cent of the workforce of the company.

However, exceptionally, and in accordance with the Executive Regulations of the Investment Law No. 72 of 2017 (the Investment Law), foreign workers may comprise up to 20 per cent of the total workforce of the company in construction projects, subject to (1) the unavailability of local labour possessing the necessary qualifications, and (2) the company being established in accordance with said Investment Law.

Local labour law

- 19 | If a contractor directly hires local labour (at any level) for a project, are there any legal obligations towards the employees that cannot be terminated upon completion of the employment?

According to the Civil Code No. 131 of 1948, the statute of limitations of employment claims is one year from the date of termination of the employment.

However, the statute of limitations with regard to employees' rights with respect to the employment, participation in profits and the total revenue begins from the date of the employee's receipt of a declaration of any dues from the employer according to the latest inspection.

Labour and human rights

- 20 | What laws apply to the treatment of foreign construction workers and what rights do they have? What are the local law consequences for failure to follow those laws?

The Labour Law No. 12 of 2003 (the Labour Law) applies to foreign workers. Although the Labour Law specifies foreign workers' employment requirements, such as obtaining work permits, it does not provide a separate set of rights granted to foreign workers, and therefore the employee rights stated in the Labour Law apply to foreigners as well.

According to the Labour Law, if any of the provisions of the foregoing law are violated, the employer will be subject to a fine, and in some cases the employee may be entitled to compensation.

Close of operations

- 21 | If a foreign contractor that has been legally operating decides to close its operations, what are the legal obstacles to closing up and leaving?

The Companies Law allows non-Egyptian companies (including contractors) to open a branch in Egypt in order to perform works of a contractual nature.

For a foreign company to open a branch in Egypt, such foreign company must be awarded a contract (such as a construction agreement) to be performed in Egypt prior to the registration with the competent Commercial Registry Office. However, the operation period of the branch shall be limited to the term of the awarded contract. This being said, as long as the said branch does not have in place any other contract to implement in Egypt after the completion of the originally registered awarded contract, the branch's operation is required to be closed.

Legally, a branch is simply deemed as a part of the foreign company establishing such branch, which has no separate legal existence and, therefore, the said foreign company is fully liable for all obligations and liabilities of its branch in Egypt.

PAYMENT

Payment rights

- 22 | How may a contractor secure the right to payment of its costs and fees from an owner? May the contractor place liens on the property?

Under Egyptian law there are several guarantees that may be considered and incorporated in construction contracts in Egypt. The Egyptian Civil Code regulates the means of security that guarantee the rights of creditors. This includes the right of retention; a contractor may refrain from performing his or her obligation so long as the creditor does not offer to perform an obligation incumbent on the contractor arising out of the

obligation of the debtor and connected therewith, or as long as the creditor does not supply adequate security to guarantee the performance of such obligation. This right belongs especially to the possessor or holder of a thing, if they have incurred expenditure of a necessary or useful kind on the thing, then, in such case, refuse to return the thing until they have been repaid the amount due to them, unless the obligation of restitution results from an unlawful act.

Furthermore, it is worth noting that mortgage can be constituted by an authentic document and the mortgagor may be the debtor or a third party who consents to mortgage their property in the interests of the debtor. In both cases, the mortgagor must be the owner of the mortgaged property and must have the legal capacity to dispose of it. It is worth noting that, in accordance with Egyptian law, a mortgage in expectancy is void, which means that if the building or property is not established yet then no mortgage may be constituted. It is also worth noting that, in accordance with the Egyptian Civil Code a mortgage may be granted to secure a conditional, future or contingent debt, and may also be granted to secure an opened credit or the opening of a current account, provided that the amount of the debt secured, or the maximum amount that such debt may attain, is axed in the mortgage deed.

It is also worth noting that, according to the Egyptian Civil Code, parties have the freedom to determine the terms and conditions of their contracts as long as it does not conflict with any public order provision. With that being said, the contracting parties may include forms of guarantee such as performance bonds and letters of guarantee in order for the contractor to ensure payment of costs and fees incurred for the execution of works.

'Pay if paid' and 'pay when paid'

23 | Does local law prohibit construction contracts from containing terms that make a subcontractor's right to payment contingent on the general contractor's receipt of payment from the owner, thereby causing the subcontractor to bear the risk of the owner's non-payment or late payment?

As a general rule under the Egyptian Civil Code, payment is due upon receipt of the works, unless the custom or the relevant agreement stipulates otherwise. Furthermore, the general contractor may entrust a subcontractor with the execution of the works partially or in its entirety; however, the said contractor shall remain liable for the subcontractor before the owner.

Notwithstanding the aforementioned, it is worth noting that, under the Egyptian Civil Code, subcontractors who work for the general contractor shall have the right to claim payment from the owner directly for an amount not exceeding the amount owed to the general contractor. It is also worth noting that the rights of subcontractors have priority over those whom the general contractor has assigned sums due to him or her by the owner.

Contracting with government entities

24 | Can a government agency assert sovereign immunity as a defence to a contractor's claim for payment?

According to the Egyptian Civil Code, immovable and movable assets that are allocated to the public services and owned by the Egyptian state or any of its public entities shall have immunity from disposal, seizure or acquisition by prescription. This being said, theoretically, any immovable and movable assets that are not allocated to the public services in Egypt may be subject to seizure. However, there are other ways to enforce payment-arbitration related awards against the state's assets.

Statutory payment protection

25 | Where major projects have been interrupted or cancelled, do the local laws provide any protection for unpaid contractors who have performed work?

Under the general rules of the Egyptian Civil Code, in bilateral contracts if one of the parties does not perform their obligation, the other party may, after serving a formal summons to the debtor, demand the performance of the contract or its rescission, and claim damages, if due, in either case. The court may grant additional time to the debtor, if necessary, as a result or depending on the circumstances.

FORCE MAJEURE

Force majeure and acts of God

26 | Under local law are contractors excused from performing contractual obligations owing to events beyond their control?

Under the general rules of the Egyptian Civil Code, the impossibility of performing obligations under a contract are considered a force majeure event, whereby contractors shall not be liable for any damages resulting from the non-performance of their obligations in the event that the required performance becomes impossible for any reason that is not attributable to nor controllable by such contractor including, inter alia, a sudden incident, force majeure and/or fault of third parties.

In light of the above, in order for an event to be deemed a force majeure under Egyptian law, it must meet the following three main conditions, which shall be assessed by the competent court on a case-by-case basis:

- be unpredictable;
- cannot be prevented to be considered; and
- the impossibility of performing the obligations shall exist for anyone in the situation of the contractor.

It is also worth noting that that the Egyptian Civil Code also provides for circumstances of hardship, whereby the main conditions to be satisfied in order to claim hardship are as follows:

- exceptional unforeseen circumstances at the time of concluding the agreement;
- difficulty in performing the contract obligations but not impossible; and
- resulting in inordinate losses to the contractor.

That being said, the competent court may reduce the contractual obligations of the contractor as a result of a hardship event.

DISPUTES

Courts and tribunals

27 | Are there any specialised tribunals that are dedicated to resolving construction disputes?

Generally, Egyptian law does not determine specific tribunals to resolve construction disputes; however, despite the non-existence of specific courts designated to hear construction-related disputes, there have been designated specialised circuits within the competent national courts dealing with construction-related matters, where sitting judges are familiar with construction matters.

According to the Civil and Commercial Procedures Law No. 13 of 1968 (the Civil and Commercial Procedures Law), the competent national courts with respect to matters pertinent to construction is the court of the defendant's domicile or the court of which the agreement is concluded or executed in its circuit.

Dispute review boards

28 | Are dispute review boards (DRBs) used? Are their decisions treated as mandatory, advisory, final or interim?

The Dispute Review Board (DRB) is regulated by the Cairo Regional Centre for International Commercial Arbitration (CRCICA), which is the leading arbitral institution in Egypt, and is an independent, non-profit international organisation established in 1979. CRCICA offers alternative dispute resolution services. CRCICA has its own set rules and according to CRCICA's Dispute Board Rules, the scope of the DRB is as follows:

- Issue recommendation with respect to each referral, whereby the parties shall duly consider each recommendation, which carries great weight, however it is not immediately binding.
- If a party is dissatisfied with the recommendation, the dissatisfied party shall, within 28 days following receipt, submit a Notice of Dissatisfaction to the other party and the DRB.
- After submission of a Notice of Dissatisfaction, either party may submit the dispute to arbitration or litigation.
- If neither party submits a Notice of Dissatisfaction to the other party and the DRB within 28 days, the recommendation shall become final and binding.
- If either party fails to comply with a recommendation that has become final and binding, then the other party may submit the failure to comply with the recommendation to arbitration or litigation.

Mediation

29 | Has the practice of voluntary participation in professionally organised mediation gained acceptance and, if so, how prevalent is the practice and where are the mediators coming from? If not, why not?

Mediation is organised by CRCICA's Mediation Rules, according to which there are two different types of mediation, institutional and ad hoc. CRCICA's Panel of Mediators includes experienced accredited mediators with various professional backgrounds, which allow the parties a wide range for selection of their mediators or neutrals, according to the nature of the dispute. The parties are not obliged to appoint their mediators or neutrals from amongst this Panel. Usually, for cost efficiency, the mediators are Egyptian nationals. However, the advantages of mediation have not been fully explored nor recognised in Egypt, particularly in the construction industry. This can be attributed to many factors including lack of awareness, misconception of the process and/or lack of supportive legislation.

Confidentiality in mediation

30 | Are statements made in mediation confidential?

According to the Law Establishing the Economic Court No. 120 of 2008 (the Economic Court Law), preparatory judges can arrange for a mediation hearing between disputing parties, and the hearing shall be confidential, and any information cannot be used before any other courts or third parties.

According to CRCICA's Mediation Rules, unless the parties expressly agree in writing to the contrary, every person involved in mediation, including the parties and their representatives, the mediator and CRCICA, undertake to keep confidential all documents, information and materials as well as proposals and terms of any settlement in connection with the mediation.

Arbitration of private disputes

31 | What is the prevailing attitude towards arbitration of construction disputes? Is it preferred over litigation in the local courts?

Most construction contracts include an arbitration clause, as contracting parties typically prefer arbitration in construction disputes over litigation for various reasons, including:

- neutrality;
- flexibility;
- time and cost-efficiency;
- confidentiality;
- enforceability; and
- final and binding awards.

Governing law and arbitration providers

32 | If a foreign contractor wanted to pursue work and insisted by contract upon international arbitration as the dispute resolution mechanism, which of the customary international arbitration providers is preferred and why?

Usually, foreign contractors choose arbitration providers that are widely accepted, such as ICC and LCIA. Similarly, the preference of hearing will be given to jurisdictions with high levels of neutrality and impartiality within the local legal system as well as a better track record in enforcing agreements to arbitrate. Generally, it is preferred to hold hearings in Cairo, Egypt to save costs and travel time, especially considering that CRCICA provides modernised hearing rooms that are fully equipped with high-speed internet access, privacy, confidentiality, audio visual equipment and a translation booth with simultaneous interpretation equipment.

Furthermore, it may be preferable to choose Egyptian law as the governing dispute law to avoid any contradiction that may arise when enforcing arbitral awards in Egypt.

Dispute resolution with government entities

33 | May government agencies participate in private arbitration and be bound by the arbitrators' award?

According to Prime Minister Decree No. 2592 of 2020, all governmental entities and state-owned companies are prohibited from concluding any contract with a foreign investor or agreeing to arbitrate without first referring the matter to the Higher Authority for Studying and Opening International Arbitration Cases.

Such requirement is a matter of public policy and, in the absence of the approval of the competent minister or whoever assumes their authority with respect to public entities, the arbitration agreement would be null and void.

However, the effectiveness of this Decree in investment arbitration disputes in which the state's defences are based on national law requirements may not prevail in cases where the state commits a violation of international investment treaties. Egypt has been a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards since February 1959, which was incorporated into the Egyptian legal system in June 1959, without any reservations; according to the New York Convention, foreign arbitration awards shall be applicable in Egypt.

Arbitral award

34 | Is there any basis upon which an arbitral award issued by a foreign or international tribunal may be rejected by your local courts?

According to the Arbitration Law No. 27 of 1994 (the Arbitration Law), an arbitral award may be rejected on the following grounds:

- invalidity of the arbitration agreement;
- lack of legal capacity of either party;
- violation of a party's right to a due process, including the inability of either party to present their case as a result of not being given proper notice of the appointment of an arbitrator or of the arbitral proceedings or for other reasons beyond their control;
- if the arbitral award failed to apply the law agreed by the parties to the subject matter of the dispute;
- if the constitution of the arbitral tribunal or the appointment of arbitrators is in violation of the law or the parties' agreement;
- if the arbitral award dealt with matters that falls outside the scope of the arbitration agreement or exceeded the agreement; and
- if the award is vitiated or a procedure affecting the judgment was vitiated in a manner that affects the verdict.

Furthermore, the Arbitration Law grants the court adjudicating the action for annulment of the power to set aside an arbitral award that violates Egyptian public policy; for instance, if the subject matter of the arbitration agreement is inarbitrable (ie, a criminal act).

Limitation periods

35 | Are there any statutory limitation periods within which lawsuits must be commenced for construction work or design services and are there any statutory preconditions for commencing or maintaining such proceedings?

According to the Civil Code No. 131 of 1948 (the Civil Code), the guarantee lawsuit must be commenced within three years as of the date that the defects occurred in the construction works.

However, according to the Civil Code, the duration of the defects that occurred in the construction works is restricted to 10 years as of the date of handing over the construction works. Accordingly, the guarantee lawsuit for the defects that occurred in the constructions works cannot be submitted if the said defects occurred after the lapse of 10 years.

ENVIRONMENTAL REGULATION

International environmental law

36 | Is your jurisdiction party to the Stockholm Declaration of 1972? What are the local laws that provide for preservation of the environment and wildlife while advancing infrastructure and building projects?

The Environmental Law No. 4 of 1994, as amended by virtue of Law No. 9 of 2009 and Law No. 102 of 1983 promulgating nature reserves in Egypt (the Environmental Law), prohibits the performance of activities that may damage or cause the deterioration of nature reserves, or harm wildlife, marine or plant life, or affect their aesthetic level. In particular, the following activities are prohibited:

- Hunting, transporting, killing or disturbing terrestrial or marine creatures, or carrying out actions that would eradicate them.
- Hunting, taking or transporting any organisms or organic materials such as shells, corals, rocks or soil for any purpose.
- Destroying or moving plants located in a nature reserve area.
- Destroying geological or geographical formations, or areas that are home to animal or plant species or their reproduction.

- Polluting the soil, water or air of a protected area in any way.
- Performing construction works of buildings or facilities, building roads, driving vehicles or practicing any agricultural, industrial or commercial activities in a nature reserve, except with obtaining a permit from the Egyptian Environment Affairs Agency (the EEAA).

Violating the aforementioned provisions of the Environmental Law shall be sanctioned with a fine ranging from E£500 and E£5,000, and/or imprisonment for a period not exceeding one year. In the event of recidivism, the violator shall be sanctioned with a fine ranging from E£3,000 and E£10,000, and/or imprisonment for a period of not less than one year, and the violator shall also be charged with the expenses of removal of the works and confiscation of the machinery used in committing such violation.

Local environmental responsibility

37 | What duties and liability do local laws impose on developers and contractors for the creation of environmental hazards or violation of local environmental laws and regulations?

In general, environmental hazards and issues are regulated in accordance with the provisions of the Environmental Law, as well as the Waste Management Law No. 202 of 2020 (the Waste Management Law) and their Executive Regulations, whereas the relevant regulator is the EEAA and the Waste Management Regulatory Authority (the WMRA).

Hazardous materials are defined in the Waste Management Law as waste that contains organic or non-organic components or compounds that have a harmful effect on human health and/or the environment as a result of their physical, chemical or biological characteristics or that contain any dangerous qualities such as contagious, flammable, explosive or toxic substances.

Pursuant to the Environmental Law, any entity producing, handling or creating hazardous compounds and waste as defined above, must undertake all the necessary precautions to ensure that no pollution occurs to the environment, and must hold a hazardous waste disposal register, and violation of this provision shall be sanctioned by either imprisonment for one year or a fine ranging from E£10,000 and E£20,000. The Environmental Law also stipulates that any disposal of waste and hazardous material should be subject to obtaining the relevant licence.

The Waste Management Law prohibits any person from circulating hazardous waste without obtaining a licence from the WMRA and a licence from the Ministry of Environment. Moreover, it prohibits the disposal or delivery of hazardous substances and waste except in places designated for such purpose, and violation of this shall be sanctioned by imprisonment for a period of not less than three years and not exceeding 15 years and a fine ranging from E£200,000 and E£1 million.

The Environmental Law stipulates that all companies that may have an impact on the environment shall hold an environmental register.

In addition, demolition and construction waste are defined under the Waste Management Law as waste that does not result in physical or chemical reactions, such as the waste resulting from exploiting quarries, demolition, building, construction, development and repair, roads, bridges, land cleaning and building sewers, and the Waste Management Law imposes an obligation on all entities performing demolition and construction works to transport, dispose of and recycle such types of waste via licensed individuals, as well as an obligation on the licensees to recycle or dispose of such waste on the sites designated for such purpose.

In the context of air pollution, entities (in general) are obliged in accordance with the Environmental Law in the event of establishing a project, to ensure that its site is in compliance with the accepted limits of air pollutants within the permissible limits; hence, the responsible entities must ensure that no leaked or emitted air pollutants exceed the

maximum permissible levels as specified in the Executive Regulations of the Environmental Law. The Environmental Law also prohibits the use of machines, engines or vehicles that emit exhaust fumes exceeding the limits set by the Executive Regulations.

With respect to water pollution, the Environmental Law prohibits all entities from discharging or throwing any untreated waste or liquids that may cause pollution along Egyptian seashores or adjoining waters either directly or indirectly, intentionally or unintentionally, and building permits shall only be granted for entities near the seashore, which would result in the discharge of polluting substances and wastes subject to the said entity conducting an Environmental Impact Assessment.

CROSS-BORDER ISSUES

International treaties

38 | Is your jurisdiction a signatory to any investment agreements for the protection of investments of a foreign entity in construction and infrastructure projects? If so, how does your model agreement define 'investment'?

Egypt has entered into multiple bilateral investment treaties (BITs) with several countries, whereby a foreign investor regardless of their scope of work is provided with an extra layer of protection for their investment rights in Egypt. However, it is worth noting that the provisions of each BIT may differ from one to the other. However, for example, the BIT between Egypt and the United Kingdom defines investment as every kind of asset and in particular includes, inter alia:

- movable and immovable property and other property rights such as mortgages, liens or pledges;
- shares, stock and debentures of companies or interests in the property of such companies;
- claims to money or to any performance under contract having a financial value;
- intellectual property rights and goodwill; and
- business concessions conferred by law or under contract, which is similar to most of the BITs of which Egypt is a signatory.

Tax treaties

39 | Has your jurisdiction entered into double taxation treaties pursuant to which a contractor is prevented from being taxed in various jurisdictions?

Egypt has entered into multiple double taxation treaties with several countries, whereby these treaties prevent taxpayers, including contractors, from being subject to double taxation in various jurisdictions.

Currency controls

40 | Are there currency controls that make it difficult or impossible to change operating funds or profits from one currency to another?

Generally, under the Banking Law No. 194 of 2020 all dealings within entities in Egypt must only be made in Egyptian pounds (EGP) with a few exceptions as follows:

- contracting, supply or services agreement made with a non-Egyptian company and provided that any payment shall be made through any bank that is licensed by the Central Bank of Egypt (CBE);
- contracting or supply agreement made with an Egyptian company within the non-Egyptian component required to implement such agreement and provided that any payment shall be made through any bank that is licensed by the CBE;
- insurance agreement requiring the payment of the insurance prime and compensations in any currency other than EGP and provided

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that any payment shall be made through any bank that is licensed by the CBE;

- transactions with touristic entities or any other transaction requiring payment in any currency other than EGP, provided that approval is obtained from the CBE as well as the competent minister;
- transactions with entities working under the Free Zones and Special Nature Economic Zones; or
- securities and any other financial investments including its revenues.

It is worth noting that due to the recent devaluation of the EGP, currency controls have been put in place by heavy regulations imposed by the CBE regulating conversion and transfer of funds to a foreign currency for the sake of reserving foreign currency in Egypt.

Removal of revenues, profits and investment

41 | Are there any controls or laws that restrict removal of revenues, profits or investments from your jurisdiction?

Most foreign investors in Egypt who are protected under a relevant BIT are granted repatriation rights by virtue of the BIT, whereby Egypt, without delay, shall allow the transfer out of its territory in any freely usable currency of the net profits, dividends, royalties, technical assistance and in-kind service fees, interest and other due returns, accruing from any investment made by the foreign investor, provided that the said investor shall not be subject to any discriminatory banking, administrative or legal restrictions, and no taxes or fees shall be applicable on the transfer process.

Furthermore, any company in Egypt that is established under the Investment Legal System by virtue of the Investment Law No. 72 of 2017 shall be entitled to own, manage, use, and dispose of the project and to make profits from the project and to transfer such profits abroad, as well as liquidate the project and transfer the proceeds of such liquidation, in whole or in part abroad without prejudice to the rights of third parties.

However, given the fact that the country has been facing unavailability of foreign currency and restrictions imposed by the Central Bank of Egypt, it has been challenging for banks in Egypt to provide foreign currency for the transfer of profits abroad, which has been deemed, by most banks, a force majeure event.

UPDATE AND TRENDS

Emerging trends

42 | Are there any emerging trends or hot topics in construction regulation in your jurisdiction?

One of the hottest topics to be considered is the importation-related regulations, especially for contractors that rely on imported materials, as well as the foreign currency liquidity-related issue that has been facing contractors operating in Egypt and, therefore, one of the most important issues that should be addressed is to secure a reasonable source of foreign currency.

The current economic issue in Egypt with respect to the availability of foreign currency is now almost resolved, in general, after the full floating of the Egyptian currency and the major foreign investment deals concluded recently that secured a good reserve of foreign currency with the Egyptian government.

Law No. 187 of 2023 on Reconciliation in Some Building Violations and the Legalisation of their Conditions was issued in December 2023, providing for the consideration of requests for reconciliation, legalisation of status and grievances submitted to the competent administrative authority with respect to building violations committed.

Private M&A

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STRUCTURE AND PROCESS, LEGAL REGULATION AND CONSENTS

Structure

- 1 How are acquisitions and disposals of privately owned companies, businesses or assets structured in your jurisdiction? What might a typical transaction process involve and how long does it usually take?

There are two main categories of privately owned companies in Egypt: partnerships and corporations.

Partnerships

There are two types of partnerships in Egypt:

- general partnership (GP): the capital contribution of a GP can be made by at least two active partners who are deemed by law to be jointly liable for all obligations arising from the operation of the GP; and
- limited partnership (LP): the capital contribution of an LP can be made by at least one active partner who is deemed by law to be liable for all obligations arising from the operation of the LP in addition to one other limited or salient partner, who must neither be personally liable for those obligations nor involved in the management of the LP.

Corporations

In general, the concept of piercing the corporate veil does not apply to corporations in Egypt except in the case of active partners in a limited partnership by shares (LPS); therefore, the liability for operating corporations is only limited to the paid-in capital thereof. This general rule is subject to certain exceptions where the liability may be exposed to the board members, managers, shareholders or partners.

There are four types of corporations in Egypt:

- joint-stock companies (JSC): in general, the capital of a JSC must be owned by at least three shareholders, who can be individuals or juristic persons of any nationality;
- limited liability companies (LLC): LLCs must be owned by at least two partners, who can be individuals or juristic persons of any nationality;
- one-person companies (OPC): OPCs can be owned by one partner, who can be an individual or a juristic person of any nationality; and
- LPS: as in the case of an LLC, an LPS requires at least two partners, one of whom must be an active partner who is deemed by law to be liable for all obligations arising from the operation of the LPS.

Acquisition of shares

An acquisition of a share structure may differ from the aforementioned types; however, the acquisition of shares in a GP, an LP or an LPS is, in general, not preferable for buyers as it involves unnecessary personal liability exposure.

It is worth noting the following:

- acquiring share capital in an LLC or an OPC is simpler than in a JSC, and acquiring shares in a JSC may take longer than acquiring shares in an LLC or an OPC;
- founding and in-kind shares in a JSC and an LPS cannot both be transferred before publishing the financial statements of the first two full fiscal years following the incorporation of the company, except for certain cases and provided that approval is obtained from the General Authority for Investment and Free Zones (GAFI);
- acquiring share capital in an LLC is subject to a pre-emption right (or right of first refusal) that must be waived in a specific way to complete the acquisition; and
- acquiring share capital in a JSC that is listed on the Egyptian Stock Exchange (EGX) involves more procedures and filings than those that apply to JSCs that are not or were not listed on the EGX.

Acquisition of businesses and assets

An acquisition of a business can be made in two different ways:

- spin-off (eg, horizontal spin-off) or split-off (eg, vertical split-off) to acquire the target business; or
- assignment of the contracts that are related to the business by way of subrogation.

In respect of an acquisition of assets, the structure is determined based on several elements, including the type and location of the assets and the legal system governing the company owning the assets.

There are also a number of elements that must be taken into consideration in structuring any acquisition and disposal transactions in Egypt, such as:

- the legal systems governing the target company, business or asset (if any);
- the country from which the target company, business or asset will be acquired;
- the location of the target company, business or asset; and
- whether the target shares in the JSC are centrally registered with the Misr for Central Clearing, Depository and Registry (MCDR).

Legal regulation

- 2 Which laws regulate private acquisitions and disposals in your jurisdiction? Must the acquisition of shares in a company, a business or assets be governed by local law?

Private acquisitions and disposals are generally governed by the following laws:

- the Civil Code;
- the Trade Code;
- the Companies Law;
- the Capital Market Law; and
- the Investment Law.

According to the Civil Code, the application of non-Egyptian law to an acquisition and disposal transaction is valid, but this does not apply to any provisions relating to private international law. This non-application also includes the formalities and procedures that are mandatory under Egyptian law.

Furthermore, the Civil Code adopts the basic principle of *pacta sunt servanda*, the principle of which has also been confirmed by several judgments issued by the Court of Cassation. The agreement governing the acquisition or disposal transaction shall have the same level of enforceability as Egyptian law, provided that the agreement's provisions do not contradict the provisions in respect of public policy and order in Egypt; otherwise, the contradictory provisions shall be deemed null and void.

In light of the above, Egyptian law will recognise and treat the validity and binding nature of obligations contained in an acquisition or disposal agreement as being governed by non-Egyptian law. However, the Egyptian courts will not give effect to the application of non-Egyptian law to a provision if it has an effect contrary to Egyptian public policy and morality.

Legal title

- 3 | **What legal title to shares in a company, a business or assets does a buyer acquire? Is this legal title prescribed by law or can the level of assurance be negotiated by a buyer? Does legal title to shares in a company, a business or assets transfer automatically by operation of law? Is there a difference between legal and beneficial title?**

Egyptian law does not differentiate between legal and beneficial title. Acquisition of shares in a non-listed JSC, in practice, can be proved by a number of documents, including a transfer notification issued by the EGX, an amendment to the articles of incorporation governing the JSC and a certificate issued by the MCDR.

In respect of the acquisition of shares in an LLC or an OPC, the acquisition can be proved by an authentic or informal title deed – unless otherwise required by the articles of incorporation of the LLC or OPC – and the relevant allotment ownership ledger.

Multiple sellers

- 4 | **Specifically in relation to the acquisition or disposal of shares in a company, where there are multiple sellers, must everyone agree to sell for the buyer to acquire all shares? If not, how can minority sellers that refuse to sell be squeezed out or dragged along by a buyer?**

Egyptian law does not, in general, regulate or recognise the concepts of drag-along and squeeze-out; however, a full acquisition of the share capital in a JSC, an LLC or an LPS requires the consent of all shareholders.

The latest amendment made to the Companies Law in 2018 introduced for the first time in Egypt the concept of having a shareholders' agreement to regulate the relationship between shareholders in corporations. Several conditions must be met for the shareholders' agreement to be enforceable in respect of the non-signing shareholders. In practice, this shareholders' agreement may include certain drag-along and squeeze-out provisions.

The Capital Market Law and its Executive Regulation grant a tag-along right to minority shareholders in listed and delisted JSCs upon acquisition of 90 per cent or more of the share capital or voting rights of the JSC.

Exclusion of assets or liabilities

- 5 | **Specifically in relation to the acquisition or disposal of a business, are there any assets or liabilities that cannot be excluded from the transaction by agreement between the parties? Are there any consents commonly required to be obtained or notifications to be made in order to effect the transfer of assets or liabilities in a business transfer?**

If the acquisition of a business is made by way of implementing a spin-off or split-off for the target business, the only way to exclude any assets or liabilities from the transaction is to exclude them from the spin-off or split-off before the acquisition transaction.

If the acquisition of a business is made in the form of assignment of the contracts related to the target business by way of subrogation, the possibility of excluding any asset or liability can only be determined on a case-by-case basis.

Consents

- 6 | **Are there any legal, regulatory or governmental restrictions on the transfer of shares in a company, a business or assets in your jurisdiction? Do transactions in particular industries require consent from specific regulators or a governmental body? Are transactions commonly subject to any public or national interest considerations?**

In general, there are no material nationality requirements or foreign ownership restrictions for acquiring share capital in companies in Egypt except for partnership, as foreign ownership in a partnership cannot exceed 49 per cent of its share capital.

However, foreign ownership restrictions apply to some sectors and locations, such as:

- undertaking import business for the purpose of resale or trading, commercial agencies or intermediary business; and
- doing business in the Sinai Peninsula.

Regulatory and government consents are also required in certain cases, such as:

- acquisition of any non-banking financial company controlling 10 per cent or more of the size of its relevant market;
- acquisition of more than 10 per cent of the share capital or voting rights in, or any percentage that leads to actual control of, any bank registered with the Central Bank of Egypt; and
- acquisition of any private hospital.

According to Law No. 305 of 2015 on work permit procedures and requirements for foreigners, a security clearance must be obtained for any foreigner to work or do business in Egypt. In practice, GAFI usually approves the change of shareholding structures without having the security clearance, except in the case of some nationalities, such as China, Russia, Ukraine, Nigeria, Israel, Iran, Belarus, Bangladesh, Iraq and Palestine.

- 7 | **Are any other third-party consents commonly required?**

Acquiring share capital in an LLC is subject to a pre-emption right (or right of first refusal) that must be waived in a specific way to complete the acquisition.

Egyptian law does not, in general, regulate or recognise the concepts of drag-along and squeeze-out. However, a full acquisition of the share capital in a JSC, an LLC or an LPS requires the consent of all shareholders.

Regulatory filings

- 8 | Must regulatory filings be made or registration (or other official) fees paid to acquire shares in a company, a business or assets in your jurisdiction?

Acquiring shares in a JSC must be made through the EGX regardless of whether the JSC is listed on the EGX. This transfer process involves, among other things, payment of government fees to the EGX through the licensed brokerage firm that will execute the transfer.

Following the transfer process, the articles of incorporation of the JSC are amended to reflect the transfer by virtue of an extraordinary general shareholders' meeting and then filed with GAFI. The amendment process involves, among other things, payment of government fees to GAFI, the Financial Regulatory Authority, the notary public and the Egyptian Bar Association. This amendment process is also required in the case of an LLC, GP, LP or LPS, although in those cases filing before the EGX is not required.

In general, acquiring businesses or assets in JSCs that are listed on the EGX involves more procedures and filings than those that apply to JSCs that are not or were not listed on the EGX.

With the exception of acquisitions of businesses or assets in JSCs that were listed on the EGX, the filing requirements associated with this type of acquisition can only be determined on a case-by-case basis.

ADVISERS, NEGOTIATION AND DOCUMENTATION

Appointed advisers

- 9 | In addition to external lawyers, which advisers might a buyer or a seller customarily appoint to assist with a transaction? Are there any typical terms of appointment of such advisers?

Tax and financial advisers are usually required to assist with a transaction. It is also common for buyers in major industrial transactions to engage human resources, environmental and technical advisers.

There are no typical terms of appointment for those advisers other than the common terms applied in respect of confidentiality, conflict of interest and scope of work.

Duty of good faith

- 10 | Is there a duty to negotiate in good faith? Are the parties subject to any other duties when negotiating a transaction?

As a general rule, Egyptian law does not explicitly recognise the duty to negotiate in good faith.

However, according to the Civil Code, a contract must be performed in accordance with its contents and in compliance with the requirements of good faith; therefore, if the parties agree under any pre-closing agreement (eg, memorandum of understanding or letter of intent) that they must act in good faith, they must both negotiate in good faith.

Documentation

- 11 | What documentation do buyers and sellers customarily enter into when acquiring shares or a business or assets? Are there differences between the documents used for acquiring shares as opposed to a business or assets?

It is common for buyers and sellers to enter into a master acquisition agreement (eg, a share or asset purchase agreement) in addition to any other ancillary documents (if applicable), such as escrow agreements.

However, in respect of the acquisition of assets or businesses, the contractual structure is more sophisticated than in a share purchase agreement – it involves multiple separate agreements, depending on the nature of the assets or business being acquired.

- 12 | Are there formalities for executing documents? Are digital signatures enforceable?

The transaction documents can usually be executed physically by the authorised signatories during a face-to-face session. Execution can also be done by circulation, but signature verification should be obtained, taking into consideration that it is not easy in practice to obtain such verification from banks that are registered with the Central Bank of Egypt.

Documents can also be executed electronically, given that according to the e-Signature Law, electronic correspondence, electronic signatures and electronic documents have the same degree of authenticity as non-electronic correspondence, signatures and documents governed by the Evidence Law, provided that certain technical conditions are met, the conditions of which can be verified by one of the licensed electronic signature service providers in Egypt.

DUE DILIGENCE AND DISCLOSURE

Scope of due diligence

- 13 | What is the typical scope of due diligence in your jurisdiction? Do sellers usually provide due diligence reports to prospective buyers? Can buyers usually rely on due diligence reports produced for the seller?

As a general rule under the Civil Code, the seller is not answerable for any defects of which the purchaser was aware at the time of the sale or any defects that could be discovered by the purchaser by examining the subject of the sale with the care of a reasonable person, unless the purchaser proves that the seller confirmed the absence of those defects.

There is no typical scope of due diligence in Egypt as it depends on the level that the buyer is willing to conduct. However, conducting full due diligence is usually recommended to be in line with the general rule above. Buyers can rely on due diligence reports produced by the sellers if the sellers conduct the due diligence with the care of a reasonable person.

Liability for statements

- 14 | Can a seller be liable for pre-contractual or misleading statements? Can any such liability be excluded by agreement between the parties?

It depends on the final agreement; however, sellers are usually liable for binding provisions under any pre-contractual document. They are, in all cases, also liable for any misleading statements.

According to the Civil Code, if a party does not perform their contractual obligations, the other party is entitled to request the defaulting party to perform their obligations. If the defaulting party does not perform their obligations, the affected party may claim damages.

The damages are estimated by the competent court on a case-by-case basis, based on the value of the suffered losses and deprived profits that the defaulted party would have expected at the time of concluding the contract, unless otherwise agreed upon in the contract or stipulated by law. Contractual liabilities may be limited, expressed in the form of liquidated damages or waived, except for liabilities resulting from gross negligence or fraud.

Publicly available information

15 | What information is publicly available on private companies and their assets? What searches of such information might a buyer customarily carry out before entering into an agreement?

Public record information in respect of private companies is relatively limited. The following public record information can usually be obtained:

- commercial registers, which indicate, among other things, the date of registration, current board members and directors, business activities, places of business, share capital and powers and authorities of the board members and directors – however, commercial registers do not include, for example, information on the shareholding structure;
- real estate registered titles, which requires knowledge of the exact address of the target real estate; and
- litigation cases check, which is a time-consuming process as it requires conducting a separate check at each court.

Impact of deemed or actual knowledge

16 | What impact might a buyer's actual or deemed knowledge have on claims it may seek to bring against a seller relating to a transaction?

As a general rule under the Civil Code, the seller is not answerable for any defects that the purchaser was aware of at the time of the sale or any defects that could be discovered by the purchaser by examining the subject of the sale with the care of a reasonable person, unless the purchaser proves that the seller confirmed the absence of those defects.

PRICING, CONSIDERATION AND FINANCING

Determining pricing

17 | How is pricing customarily determined? Is the use of closing accounts or a locked-box structure more common?

Determining pricing depends on the outcome of the due diligence. However, the use of closing accounts is more common. In many transactions, retaining payment for a specific time is also very common.

Form of consideration

18 | What form does consideration normally take? Is there any overriding obligation to pay multiple sellers the same consideration?

All types of consideration are accepted in practice in Egypt, but cash is much more common than any other form. Individual sellers may be offered different deal terms, including in respect of the form of consideration.

Earn-outs, deposits and escrows

19 | Are earn-outs, deposits and escrows used?

Escrows are usually used more than other forms.

Financing

20 | How are acquisitions financed? How is assurance provided that financing will be available?

Acquisitions are usually funded by the buyers' own sources. However, acquisition financing is also commonly used through banks and international financial institutions.

In practice, assurance is made in the form of undertakings in the pre-contractual documents.

Limitations on financing structure

21 | Are there any limitations that impact the financing structure? Is a seller restricted from giving financial assistance to a buyer in connection with a transaction?

Banks registered with the Central Bank of Egypt (CBE) may provide acquisition financing of up to 50 per cent of the acquisition value only, unless prior approval is obtained from the CBE. There is no general restriction on a seller from giving financial assistance to a buyer unless such restriction is imposed on the specific seller by law or by virtue of any provisions within the seller's governing statutory documents.

CONDITIONS, PRE-CLOSING COVENANTS AND TERMINATION RIGHTS

Closing conditions

22 | Are transactions normally subject to closing conditions? Describe those closing conditions that are customarily acceptable to a seller and any other conditions a buyer may seek to include in the agreement.

Closing conditions are determined on a case-by-case basis; however, in practice, closing conditions usually include, among other things, regulatory approvals, payment, top management restructuring and execution of ancillary documents (if any).

23 | What typical obligations are placed on a buyer or a seller to satisfy closing conditions? Does the strength of these obligations customarily vary depending on the subject matter of the condition?

Closing conditions are usually subject to obligations related to a specific timeline and acting in good faith. However, additional obligations may be added, depending on the subject matter of the closing conditions.

Pre-closing covenants

24 | Are pre-closing covenants normally agreed by parties? If so, what is the usual scope of those covenants and the remedy for any breach?

Pre-closing covenants are usually related to, among other things, conduct of business, authorisation, breach of representation and warranties, as well as no transfer or encumbrances.

Termination rights

25 | Can the parties typically terminate the transaction after signing? If so, in what circumstances?

The transaction can be terminated after signing, subject to the terms and conditions thereof, including non-satisfaction of any pre-closing or post-closing conditions or breach of specific material representations and warranties.

26 | Are break-up fees and reverse break-up fees common in your jurisdiction? If so, what are the typical terms? Are there any applicable restrictions on paying break-up fees?

Although break-up fees and reverse break-up fees are permissible in Egypt, they are not usually used.

REPRESENTATIONS, WARRANTIES, INDEMNITIES AND POST-CLOSING COVENANTS

Scope of representations, warranties and indemnities

- 27 | Does a seller typically give representations, warranties and indemnities to a buyer? If so, what is the usual scope of those representations, warranties and indemnities? Are there legal distinctions between representations, warranties and indemnities?

Sellers usually provide buyers with representations, warranties and indemnities related to the satisfaction of all authorisations to enter into the transaction; the transaction documents being binding, legal and valid towards the seller; non-conflict with any other documents; absence of encumbrances; and obligations not to dispose of, sell or create any right over the target.

Limitations on liability

- 28 | What are the customary limitations on a seller's liability under a sale and purchase agreement?

Sale and purchase agreements do not usually include any limitations on a seller's liability, except for certain disclosures made to the buyers in respect of any defects in the target.

Transaction insurance

- 29 | Is transaction insurance in respect of representation, warranty and indemnity claims common in your jurisdiction? If so, does a buyer or a seller customarily put the insurance in place and what are the customary terms?

It depends on the nature of the target shares, assets or business.

Post-closing covenants

- 30 | Do parties typically agree to post-closing covenants? If so, what is the usual scope of such covenants?

Parties typically agree to post-closing covenants, such as an obligation on the seller to take any further action reasonably requested by the buyer for the purpose of carrying out the transaction agreement.

TAX

Transfer taxes

- 31 | Are transfer taxes payable on the transfers of shares in a company, a business or assets? If so, what is the rate of such transfer tax and which party customarily bears the cost?

Any profit realised by unlisted corporations or persons through transactions involving transfers of shares is subject to capital gains tax at a rate of 22.5 per cent on net taxable income.

According to the Income Tax Law, profits arising from a company's re-evaluation – including the merger of two or more resident companies, the split of a resident company into two or more resident companies, the transformation of a partnership into a corporation, the transformation of a corporation into another form of corporation and the transformation of a juristic person into a corporation – are also taxable at a rate of 22.5 per cent on net taxable income. The capital gains tax is borne by the seller in all cases.

Capital gains realised by a corporation through selling its shares in companies listed on the Egyptian Stock Exchange (EGX) are usually subject to capital gains tax at a rate of 10 per cent.

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According to the Stamp Tax Law, stamp duty tax is levied on transactions involving the transfer of shares in a company – regardless of whether the shares are issued by Egyptian or foreign companies and regardless of whether the securities are listed on the EGX – at a rate of 0.05 per cent on the gross transaction value, without the deduction of any costs. It is borne equally by the purchaser and the seller.

There may be deviations from the aforementioned rules if an applicable double taxation treaty to which Egypt is a party applies.

Corporate and other taxes

- 32 | Are corporate taxes or other taxes payable on transactions involving the transfers of shares in a company, a business or assets? If so, what is the rate of such transfer tax and which party customarily bears the cost?

Transactions involving the transfer of shares in a company are not subject to value added tax (VAT). However, transfers of assets may be subject to VAT, the current standard rate being 14 per cent.

EMPLOYEES, PENSIONS AND BENEFITS

Transfer of employees

- 33 | Are the employees of a target company automatically transferred when a buyer acquires the shares in the target company? Is the same true when a buyer acquires a business or assets from the target company?

According to the Labour Law, employees are automatically transferred in all cases of transfer of business, including mergers, acquisitions and sales. The Labour Law provides additional protection for employees through the provision of joint liability of the new and former employer in satisfying employees' rights that accrued before the transfer of the business.

Notification and consultation of employees

- 34 | Are there obligations to notify or consult with employees or employee representatives in connection with an acquisition of shares in a company, a business or assets?

The Labour Law does not oblige employers to obtain the approval of or to consult employees in the case of acquisitions of shares in a company, business or assets.

Transfer of pensions and benefits

- 35 | Do pensions and other benefits automatically transfer with the employees of a target company? Must filings be made or consent obtained relating to employee benefits where there is the acquisition of a company or business?

Both the new and former employers are jointly liable to satisfy the employees' rights, benefits and pensions that accrued prior to the transfer.

UPDATE AND TRENDS

Key developments

- 36 | What are the most significant legal, regulatory and market practice developments and trends in private M&A transactions during the past 12 months in your jurisdiction?

The most significant developments that have taken place recently include the amendments to the Antitrust Law No. 3 of 2005 at the end of 2022, by virtue of Antitrust Law No. 175 of 2022 (the Antitrust Law) and the issuance of the Executive Regulations thereof in April 2024. The new amendments replaced the old post-notification regime to the Egyptian Competition Authority (ECA) of any transaction, with a required pre-merger control system for any transaction that constitutes 'economic concentration', granting the ECA the authority to review and approve proposed mergers, acquisitions and joint ventures prior to entering into said transactions, subject to meeting the relevant criteria with respect to financial thresholds. Under the new amendments, economic concentration is defined as any change of control or material influence as a result of a merger or acquisition or the establishment of a joint venture. In April 2024, the Egyptian Prime Minister issued Decree No. 1120 of 2024, issuing the Executive Regulations of the Antitrust Law, thereby introducing the application of the new amendments to the Antitrust Law. The new pre-merger control system went into effect as of 1 June 2024.

Telecoms & Media

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COMMUNICATIONS POLICY

Regulatory and institutional structure

1 | Summarise the regulatory framework for the communications sector. Do any foreign ownership restrictions apply to communications services?

Egypt is one of the three largest economies in Africa and is strategically positioned at a crossroads between the East and the West, making the country a significant player in international trade in the Middle East and Africa. Egypt is home to the Suez Canal, which connects the Mediterranean Sea with the Red Sea and is a key artery in global trade.

The total area of Egypt is 1,001,450 square kilometres, including 995,450 square kilometres of land and 6,000 square kilometres of water. According to the Egyptian Central Agency for Public Mobilisation and Statistics, the population reached more than 106 million people in 2024. Egypt is divided into 27 governorates, 217 cities and 4,617 villages. The governorates with the highest population are Cairo (9.7 per cent), Giza (9 per cent) and Sharqiyya (7.5 per cent).

The Egyptian government has worked hard to attract more foreign direct investment (FDI) into the country, and these efforts resulted in the recognition of Egypt as one of the top five destinations globally for greenfield FDI in 2016. Also, in 2021, Egypt was named as one of the top 17 African countries with a tech ecosystem, according to *fDi Intelligence* in its report 'African Tech Ecosystems of the future 2021/2022'.

Egypt replaced South Africa as the second-ranked destination by projects in the region, experiencing a 60 per cent increase from 85 to 136 projects, which cover both the Middle East and Africa. Software and IT services are the top project sectors.

Furthermore, Egypt also managed to top all ranked countries in the Middle East and Africa for capital investment in 2019 by acquiring 12 per cent capital investment with a total value of US\$13.7 billion.

Despite international and local crises faced by the country over the years, including revolutions, the covid-19 pandemic, the Russia–Ukraine war, the Israeli–Palestinian conflict, inflation, devaluation of the Egyptian pound, foreign currency shortage and the threat of potential recession, Egypt has maintained strong liquidity and financial status as a result of FDI.

The telecom sector in Egypt is primarily governed by Telecommunication Regulation Law No. 10/2003 (the Telecoms Law). Also, there are several other key laws and regulations related to the telecom sector, including the following (as amended to date):

- Penal Code No. 58/1937;
- Presidential Decree No. 236/1985 approving the International Telegraph (currently Telecommunication) (ITU) Convention, which ITU Convention entered into force in Egypt on 10 October 1985;
- Presidential Decree No. 379/1999 regulating the Egyptian Ministry of Communication and Information Technology (MoCIT);
- E-signature Law No. 15/2004 and its Executive Regulation;
- Economic Court Law No. 120/2008;

- Cybercrime Law No. 175/2018; and
- Personal Data Protection Law No. 151/2020 (the Data Protection Law).

The National Telecommunication Regulatory Authority (NTRA) is mainly empowered by the Telecoms Law to regulate and enhance telecommunication services in Egypt. In addition to the NTRA, other key entities are involved in the telecom sector, namely:

- MoCIT is empowered by Presidential Decree No. 379/1999 to, inter alia, expand, regularly develop and improve communication and information services as well as encourage investment in the telecoms sector based on the antitrust basis;
- the Information Technology Development Agency is empowered by the E-signature Law to, inter alia, promote and develop the information technology and communication industry, support small and medium-sized enterprises in using e-transaction and regulating e-signature services activities; and
- the Economic Court has executive jurisdiction over settling litigation related to the Telecoms Law.

Authorisation/licensing regime

2 | Describe the authorisation or licensing regime.

Under the Telecoms Law, no one is allowed to establish or operate any telecom network, provide any telecom service to third parties, transmit international calls or announce doing so unless a licence is obtained from the NTRA.

The term 'telecom' is defined by the Telecoms Law as 'any means of sending or receiving signs, signals, messages, texts, images or sounds of whatsoever nature and whether the communication is wired or wireless'.

The restriction above does distinguish between the different types of telecom services and includes one exception only for establishing or operating a private network that does not use a wireless system.

In practice, telecom services are generally classified as follows:

Main service	Sub-service
Fixed services	<ul style="list-style-type: none"> Fixed telephony Virtual fixed telephony Access
International services	<ul style="list-style-type: none"> International gateway International submarine cable
Data services	<ul style="list-style-type: none"> Class A Class B Class C Global peering Registrar
Cellular	<ul style="list-style-type: none"> Mobile services Bulk SMS (one to many) Value-added service (VAS) Wireless trunk Nilesat Very-small-aperture terminal (VSAT)
Satellite services	<ul style="list-style-type: none"> Global mobile personal communications services (GMPCS) Navigation services (aviation or maritime)
Infrastructure leasing	<ul style="list-style-type: none"> Infrastructure Towers
Automatic vehicle location	
Accounting authorities	
Wireless institutes	

The licence of each telecom service allows the relevant licensees to provide such service within a very specific scope.

Generally, all licences are granted under a licence agreement with the NTRA noting that all licences for major services (eg, fixed telephony and cellular) are granted by the NTRA through a bidding process. However, the other licences may be granted by the NTRA upon request. This request is required to be assessed from a different perspective including, inter alia, the market demand and the financial and technical adequacy of the applicant.

Licences are granted for a period between one and 15 years, depending on the services that are the subject of such licences.

The NTRA applies a different fee structure for issuing licences for each type of service as per the following examples:

Service	Applicable fees and security
Wireless infrastructure leasing	<ul style="list-style-type: none"> A one-time licensing fee of 50,000 Egyptian pounds; 3 per cent of the total annual revenues; a licence burden annual fee of 10,000 Egyptian pounds plus the inflation rate declared by the Central Bank of Egypt (CBE); and a performance bond of 500,000 Egyptian pounds.
Registrar	<ul style="list-style-type: none"> A one-time licensing fee of 50,000 Egyptian pounds; 3 per cent of the total annual revenues; a licence burden annual fee of 10,000 Egyptian pounds plus the inflation rate declared by the CBE; and a performance bond of 20,000 Egyptian pounds.
GMPCS	<ul style="list-style-type: none"> No one-time licensing fee; 3 per cent of the total annual revenues; a licence burden annual fee of 1,000 Egyptian pounds plus the inflation rate declared by the CBE; annual charges for the equipment of the licensee's subscribers; and a performance bond of 150,000 Egyptian pounds.

Service	Applicable fees and security
Access	<ul style="list-style-type: none"> A one-time licensing fee of 1 million Egyptian pounds; 8 per cent of the total annual revenues; a licence burden annual fee of 500,000 Egyptian pounds plus the inflation rate declared by the CBE; annual charges for the equipment of the licensee's subscribers; and a performance bond of 50 million Egyptian pounds.
Class A	<ul style="list-style-type: none"> No one-time licensing fee; 3 per cent of the total annual revenues; a licence burden annual fee of 10,000 Egyptian pounds plus the inflation rate declared by the CBE; and a performance bond of 500,000 Egyptian pounds.
Class B	<ul style="list-style-type: none"> No one-time licensing fee; 3 per cent of the total annual revenues; a licence burden annual fee of 10,000 Egyptian pounds plus the inflation rate declared by the CBE; and a performance bond of 150,000 Egyptian pounds.
Global peering	<ul style="list-style-type: none"> No one-time licensing fee; 3 per cent of the total annual revenues; a licence burden annual fee of 10,000 Egyptian pounds plus the inflation rate declared by the CBE; and a performance bond of 200,000 Egyptian pounds.
Bulk SMS (one to many)	<ul style="list-style-type: none"> A one-time licensing fee of 500,000 Egyptian pounds; 3 per cent of the total annual revenues; a licence burden annual fee of 1,000 Egyptian pounds plus the inflation rate declared by the CBE; annual charges for the equipment of the licensee's subscribers; and a performance bond of 500,000 Egyptian pounds.
VAS	<ul style="list-style-type: none"> An upfront royalty fee of 3 million Egyptian pounds; 3 per cent of the total annual revenues; a licence renewal fee of 1 million Egyptian pounds; a licence and liability fee of 20,000 Egyptian pounds; and a cash deposit guarantee of 500,000 Egyptian pounds.
VSAT	<ul style="list-style-type: none"> No one-time licensing fee; 3 per cent of the total annual revenues; frequency charges to be determined on a case-by-case basis; a licence burden annual fee of 1,000 Egyptian pounds plus the inflation rate declared by the CBE; and a performance bond of 100,000 Egyptian pounds.

Flexibility in spectrum use

3 Do spectrum licences generally specify the permitted use or is permitted use (fully or partly) unrestricted? Is licensed spectrum tradable or assignable?

All spectrum licences generally specify the permitted use and are not tradable or assignable, fully or partly, under the Telecoms Law unless prior approval is obtained from the NTRA. Also, all licence agreements include a change of control restriction, so that the licensee may not even merge with any third party unless prior written approval is obtained from the NTRA.

Ex-ante regulatory obligations

4 Which communications markets and segments are subject to ex-ante regulation? What remedies may be imposed?

All licences are required, under the Telecoms Law, to include several ex-ante provisions concerning transparency, price control, cost accounting, accounting separation, access to and use of specific network facilities and non-discrimination.

For example, the NTRA has the right to review any audited financial statement including, inter alia, appointing an auditor other than the

licensee's auditor to review the said financial statement. Furthermore, each licensee is required to obtain an approval from the NTRA before applying tariffs or changing them.

Structural or functional separation

5 | Is there a legal basis for requiring structural or functional separation between an operator's network and service activities? Has structural or functional separation been introduced or is it being contemplated?

According to the Telecoms Law, all licensed operators are required to not support one service in favour of another service. All licensed operators are required to comply with the ITU's recommendations and international standards. That said, if, for any reason, a structural or functional separation is required as per the NTRA's instructions, the ITU's recommendation or international standards, then the relevant operator should comply with this requirement.

The first time the NTRA introduced structural or functional separation was for Telecom Egypt to ensure its non-discriminatory behaviour.

Universal service obligations and financing

6 | Outline any universal service obligations. How is provision of these services financed?

According to the Telecoms Law, the provision of any telecom service must be based on four principles, one of which is the availability of the universal service.

The NTRA is required by the Telecoms Law to transfer its budget's surplus, except for the amount allocated to the state by the Cabinet of Ministers, to the Universal Service Fund on an annual basis. Any amounts to be transferred to the Universal Service Fund must be utilised on, inter alia, infrastructure projects required for the universal service, reallocation for the spectrum, indemnifying telecom services operators and providers for the price difference between the approved economical price for the services and that which may be determined in favour of the telecom consumers.

Number allocation and portability

7 | Describe the number allocation scheme and number portability regime in your jurisdiction.

There is a specific number allocation plan adopted by the NTRA, which is updated from time to time depending on the increase of telecom service subscribers in Egypt, whereby each operator has a dedicated first two to three digits. There are also dedicated numbers for emergency services (eg, ambulance, police and fire brigade).

There is also a mobile number portability regulation adopted by the NTRA whereby mobile subscribers may freely shift between operators without losing their numbers. This regulation includes several mandatory terms and conditions applied to both operators and subscribers.

Customer terms and conditions

8 | Are customer terms and conditions in the communications sector subject to specific rules?

Yes, all telecom service providers are required to have written contracts with their customers in Egypt. These written contracts are required to follow the form approved by the NTRA and cover, inter alia:

- the type of services that are subject to the customer agreement;
- the confidentiality requirement for the customers' data and communications;
- the terms of payment including interest, administrative fees, tax and any other burdens;

- the duration and its renewal;
- rights in the case of default or termination; and
- the agreement is personal and may not be assigned to any third party without the approval of the licensed telecoms provider.

Any violation of the requirements above will result in a penalty from the NTRA as per the Penalties Regulation. For example, in 2016, the NTRA imposed a penalty of 250,000 Egyptian pounds on Etisalat Misr for not complying with this mandatory requirement.

Net neutrality

9 | Are there limits on an internet service provider's freedom to control or prioritise the type or source of data that it delivers? Are there any other specific regulations or guidelines on net neutrality?

The provision of telecom services in Egypt must always be based on transparency; therefore, internet service providers may not control or prioritise the type or source of data they deliver.

The Administrative Courts rendered a judgment ordering the NTRA to block pornographic content; however, the NTRA challenged this judgment on the basis that the Telecoms Law does not grant this power to the NTRA.

However, the Cybercrime Law of 2018 allows the competent authorities in Egypt to block any website that is broadcast from Egypt or abroad if that website contains any statements, digits, images, videos or any other advertising material that is deemed a crime under the Cybercrime Law. This blockage is subject to judicial review within 24 hours.

Platform regulation

10 | Is there specific legislation or regulation in place, and have there been any enforcement initiatives relating to digital platforms?

Digital platforms are mainly regulated by the following:

- the Telecoms Law;
- Law No. 180/2018 regarding press, media and the Supreme Council of Media (SCoM) Regulation (the Media Law) and its Executive Regulation; and
- SCoM Decree No. 26/2020, issuing the SCoM Licensing Regulation (the Media Licensing Regulation).

Digital platforms may not be created unless a licence is obtained from the SCoM and that licence also requires an approval from the NTRA.

According to the Media Licensing Regulation, companies carrying out any business activity related to creating digital or satellite platforms must be owned by the state with a minimum authorised capital of 50 million Egyptian pounds.

Next-Generation-Access (NGA) networks

11 | Are there specific regulatory obligations applicable to NGA networks? Is there a government financial scheme to promote basic broadband or NGA broadband penetration?

There is no specific well-developed regulation yet applicable to NGA networks. However, our law firm obtained the first-ever authorisation from the NTRA for using a wide area network or Multiprotocol Label Switching in Egypt.

The main general regulatory requirement that is currently adopted by the NTRA is to have NGA networks implemented by a licensed provider of Class A services.

Data protection

12 | Is there a specific data protection regime applicable to the communications sector?

There are two main laws in Egypt governing the use, collection, storage, transfer and protection of personal data in Egypt as follows.

Data Protection Law

The Data Protection Law applies to any personal data that is subject to any electronic processing whether partially or entirely.

The Personal Data Law shall not apply to any personal data that is being:

- saved by natural persons for third parties and that is processed for personal usage only;
- processed for official statistics purposes or in the application of laws or regulations in Egypt;
- exclusively processed for media purposes and provided that the said personal data is correct and accurate and not to be used for any other purposes without prejudice to any applicable press and media regulations in Egypt;
- related to judicial seizure records, investigations and lawsuits;
- held by the national security authorities; and
- held by the CBE and the entities that are subject to its control and supervision except for money transfer and forex companies provided that they take into account the rules established by the CBE regulating personal data.

It is worth noting that any entity that is subject to the Data Protection Law is required to legitimise its position with the provisions of the said Data Protection Law within a year starting from the issuance date of its Executive Regulation, which has not yet been issued.

Furthermore, as part of Soliman, Hashish & Partners' membership to the American Chamber of Commerce in Egypt, the authors attended a high-level discussion with regard to Egypt's New Personal Data Protection Law with key representatives from the Ministry of Communication and Information Technology overseeing the issuance of the Executive Regulation and establishment of the Data Protection Centre, whereby it was confirmed that the issuance of the Executive Regulation is subject to the establishment of the regulator first being the Data Protection Centre.

It was re-confirmed during the meeting that the Executive Regulation is already in an agreed form and ready for issuance; however, the Executive Regulation will only be issued after the establishment of the Data Protection Centre, noting that the following phases will very likely be followed by the government as highlighted during the said meeting:

- pre-launching phase: this phase will likely involve policy settling, guidelines and framework, capacity building and awareness, expert consultation and international relations;
- issuance of the Executive Regulation: this phase will likely involve expert consultation, policy harmonisation, collaboration, licensing permits and accreditation, data protection officer registration, cross-border data transfer, sector-specific guidance and international relations; and
- grace period for legitimisation with the Executive Regulation: during this phase, the persons who are subject to the Data Protection Law are granted, by law, one year as of the issuance date of the Executive Regulation to legitimise their position with the Executive Regulation.

Anti-Cybercrimes Law No. 175 of 2018

According to article 2 of the Anti-Cybercrimes Law No. 175 of 2018 (the Anti-Cybercrimes Law), any person, whether a natural or legal person, that uses, collects, or processes personal data whether a natural or legal

person shall maintain the privacy of the data stored and not disclose the same without an order of a relevant judicial authority.

Furthermore, any IT services provider shall retain and store users' data for at least 180 days continuously including identification, the content of services' system, communication traffic, terminals and any other data required by the NTRA.

In addition to the Data Protection Law and the Anti-Cybercrimes Law, few other laws deal with special nature personal data such as the Telecoms Law, whereby telecom services providers are required to ensure and maintain the confidentiality of any customer's data.

Cybersecurity

13 | Is there specific legislation or regulation in place concerning cybersecurity or network security in your jurisdiction?

Yes, the Cybercrime Law concerns any person providing, directly or indirectly, users with any information technology and telecom service including, inter alia, processing or data storage. These providers are required to retain and store users' data continuously for at least 180 days, including identification, the content of the services' system, communication traffic, terminals and any other data required by the NTRA.

Big data

14 | Is there specific legislation or regulation in place, and have there been any enforcement initiatives in your jurisdiction, addressing the legal challenges raised by big data?

Unfortunately, there is no special regulation yet for big data. However, it is within the NTRA's ongoing strategy to regulate it.

Data localisation

15 | Are there any laws or regulations that require data to be stored locally in the jurisdiction?

Consumer Protection Law No. 181/2018 and its Executive Regulation require all providers of services and products in Egypt, except for the entities that are subject to the supervision of the CBE and the Egyptian supervisory authority, to have all advertising, data, information, documents, invoices, receipts, contracts including e-documents with the consumer to be in Arabic or a bilingual or multilineage form, providing that Arabic must be one of these languages.

Key trends and expected changes

16 | Summarise the key emerging trends and hot topics in communications regulation in your jurisdiction.

The Telecom Law was amended at the end of 2022, to extend the prohibition of the importation, manufacturing, assembling telecommunication equipment without a permit, to also possessing, using, operating or installing or marketing any telecommunication equipment until after obtaining a permit from the relevant authorities, being NTRA and national security authorities and increasing the penalty for the violation of such requirement to a financial penalty between 2 million Egyptian pounds and 5 million Egyptian pounds.

Furthermore, it is worth noting that Egypt aims to be a significant information and communications technology hub in North Africa and the Middle East, with the New Administrative Capital (NAC) being built as one of the many smart-city projects that are attracting and simulating investments into 5G and fibre broadband in Egypt, in addition to the adoption of many internet of things and artificial intelligence solutions. One of the largest telecom companies in Egypt, Etisalat, plans on launching 5G in the NAC. In 2022, it was reported that 5G trials were supposed to be held in Egypt that mainly focused on the NAC.

Moreover, because of Egypt's strategic geographical position that makes the international cable infrastructure an important asset to the country, in 2021, Telecom Egypt, Egypt's first integrated telecom operator and one of the largest subsea cable operators in the region, planned to launch Hybrid African Ring Path by 2023, which is a new subsea system that will encircle the African continent. The system will connect Africa's eastern and western bounds to Europe, spanning South Africa, Italy and France along the continent's east coast, and to Portugal along its west coast. Highly reliable terrestrial routes will connect the cable landing points within South Africa, Europe and Egypt, forming a complete ring around the continent. It is worth noting that, the 2Africa cable had already made landing at Telecom Egypt's cable landing station in Ras Ghareb on the eastern coast of Egypt in November 2022, and the latest landing of 2Africa cable was in Port Said, at the northern end of the Suez Canal on Egypt's Mediterranean coast in April 2023.

Furthermore, in January 2023, Telecom Egypt also announced in connection with Huawei Technologies, the world's leading provider of information and communication technology, infrastructure and smart devices, the activation of the first eco-friendly wireless network tower made of fibre-reinforced polymer. This deal has resulted in Telecom Egypt being the first telecom operator in Africa to activate and install such a tower. This green tower emits less CO2 and is more environmentally friendly while contributing to improving the signal quality in comparison to standard antennas.

In late 2023, Telecom Egypt also signed an agreement with the Internet Corporation for Assigned Names and Numbers (ICANN) to install and operate the ICANN Managed Root Server in the Egyptian company's regional data hub to speed up internet in Egypt. Noting that according to Speedtest by Ookla, Egypt ranked 99th in the world for mobile speeds and 86th for fixed broadband speeds during March 2024.

In March 2024, agreements were entered into by the Information Technology Industry Development Authority, the executive IT arm of the Ministry of Communication and Information Technology, Telecom Egypt and three private companies including El-Sewedy Electrometer, El-Araby and a consortium of Bio Business Company, and HitekNOFAL Optics for the local manufacturing of routers.

MEDIA

Regulatory and institutional structure

17 Summarise the regulatory framework for the media sector in your jurisdiction.

The media sector is governed by various laws and regulations, including the following:

- Investment Law No. 72/2017 and its Executive Regulation (the Investment Law);
- Law No. 180/2018 regarding press, media and the Supreme Council of Media (SCoM) Regulation (the Media Law);
- Prime Minister Decree No. 411/2000 establishing the Media Public Free Zone (MPFZ); and
- SCoM Decree No. 26/2020, issuing the SCoM Licensing Regulation (the Media Licensing Regulation).

Most of the key media projects in Egypt operate inside the MPFZ, which is a public free zone governed by various directives of the Chairman of the General Authority for Investment (GAFI).

All projects operating under the Investment Law are qualified by a large number of investment incentives.

For any media project to be qualified for operation inside MPFZ, the project must, in general, take a specific legal form and must comply with the Arab Media Ethical Charter and MPFZ's Business Controls and Principles.

The services generally allowed to operate inside the MPFZ include, inter alia, radio, television, information broadcasting, e-content production and marketing. The MPFZ may also authorise hotels, banks and malls to operate inside the MPFZ to provide their services to the licensed media projects.

According to the Media Law and the Media Licensing Regulation, which was published on 13 May 2020, SCoM is empowered, inter alia, to:

- receive notification for establishing Egyptian newspapers or non-Egyptian newspapers that are issued or distributed in Egypt;
- grant licences to visual, audio or digital channels that are either registered in Egypt with GAFI or non-Egyptian channels that are being broadcast from Egypt;
- determine and apply the rules and requirements protecting the audience in Egypt;
- grant licences to broadcast relay stations, websites, digital and satellite platforms, fibre satellite distribution and content distribution;
- authorise the importation of satellite and internet broadcasting devices; and
- authorise the importation of non-Egyptian prints.

Ownership restrictions

18 Do any foreign ownership restrictions apply to media services? Is the ownership or control of broadcasters otherwise restricted? Are there any regulations in relation to the cross-ownership of media companies, including radio, television and newspapers?

According to the Media Law and the Media Licensing Regulation, which was published on 13 May 2020, foreign ownership restrictions apply to holding the majority stake or any stake giving the right to manage any Egyptian satellite or terrestrial television, as well as any Egyptian digital, wired or wireless station. However, non-Egyptian satellite and terrestrial television as well as non-Egyptian digital, wired and wireless stations may be licensed to operate in Egypt providing an approval is obtained from the SCoM. This approval requires, inter alia, operating inside a specific media area, the ability to block any content involving, inter alia, violence, suicide, self-harm or nudity.

Licensing requirements

19 What are the licensing requirements for broadcasting, including the fees payable and the timescale for the necessary authorisations?

According to the Media Law and the Media Licensing Regulation, which was published on 13 May 2020, a licence from the SCoM is required for any company to be in a position to operate a broadcast relay station in or to Egypt. This licence requires the following:

- payment of 250,000 Egyptian pounds to the SCoM;
- obtaining an approval from the National Telecommunication Regulatory Authority; and
- incorporation of a company in the form of a sole person company, limited liability company or joint-stock company with a minimum authorised capital of 5 million Egyptian pounds.

If the licence request is accepted, it should be valid for five years, renewable upon a request at least six months before the end of the said five years.

Foreign programmes and local content requirements

20 | Are there any regulations concerning the broadcasting of foreign-produced programmes? Do the rules require a minimum amount of local content? What types of media fall outside this regime?

According to the Media Law and the Media Licensing Regulation, which was published on 13 May 2020, a licence from the SCoM is required for any company to be in a position to operate and distribute recorded or live content in Egypt, whether through satellite or the internet. This licence requires the following:

- payment of 500,000 Egyptian pounds to the SCoM for the company and 50,000 Egyptian pounds for each website; and
- incorporation of a company in the form of a sole person company, limited liability company or joint-stock company with a minimum authorised capital of 50 million Egyptian pounds;

If the licence request is accepted, it should be valid for five years, renewable upon a request at least six months before the end of the said five years.

All content must, inter alia:

- comply with the Egyptian Constitution, applicable laws, regulations and professional codes and ethics; and
- be stored for at least one year and hosted by a server that is located at a secure location in Egypt, which location may not be changed without prior approval from the SCoM.

Advertising

21 | How is broadcast media advertising regulated? Is online advertising subject to the same regulation?

The Media Law and the Media Licensing Regulation, which was published on 13 May 2020, differentiate between Egyptian and non-Egyptian media advertising companies as follows:

For Egyptian media advertising companies:

- a licence is required from the SCoM;
- non-Egyptians may not hold any majority stake or any other stake that allows them to manage the company;
- incorporation of a company in the form of sole person company, limited liability company or joint-stock company with a minimum authorised capital of:
 - 100,000 Egyptian pounds for holding websites;
 - 5 million Egyptian pounds for general or news television stations;
 - 2 million Egyptian pounds for specialised television stations;
 - 15 million Egyptian pounds for each broadcasting station; and
 - 2.5 million Egyptian pounds for each electronic, television station or channel; and
- shareholders must subscribe to at least 35 per cent of the company's capital.

For non-Egyptian media advertising companies:

- an approval is required from the SCoM;
- this approval requires, inter alia, operating inside a specific media area, the availability of blocking any content involving, inter alia, violence, suicide, self-harm or nudity; and
- payment of the licensing fee as per the following table.

Fee (Egyptian pounds)	Type of media
1 million	General and news media
500,000	Specialised media
100,000	general website
3 million	<ul style="list-style-type: none"> • social networking or promoting an individual's websites; • audio, video and text service on demand websites; and • goods, products and services marketing websites.
100,000	Any other website

Must-carry obligations

22 | Are there regulations specifying a basic package of programmes that must be carried by operators' broadcasting distribution networks? Is there a mechanism for financing the costs of such obligations?

The Media Law and the Media Licensing Regulation, which was published on 13 May 2020, do not yet specify any must-carry obligations or a mechanism for financing the cost of such obligation.

Regulation of new media content

23 | Is new media content and its delivery regulated differently from traditional broadcast media? How?

New media content is subject to the same regulation as advertising.

Digital switchover

24 | When is the switchover from analogue to digital broadcasting required or when did it occur? How will radio frequencies freed up by the switchover be reallocated?

The digital switchover started in Egypt in 2013. The National Telecommunication Regulatory Authority is empowered under Telecommunication Regulation Law No. 10/2003 to reallocate and manage radio frequencies.

Digital formats

25 | Does regulation restrict how broadcasters can use their spectrum?

No.

Media plurality

26 | Is there any process for assessing or regulating media plurality (or a similar concept) in your jurisdiction? May the authorities require companies to take any steps as a result of such an assessment?

The Media Law and the Media Licensing Regulation, which was published on 13 May 2020, do not yet specify any process of media plurality in Egypt.

Key trends and expected changes

27 | Provide a summary of key emerging trends and hot topics in media regulation in your country.

The Media Licensing Regulation entered into force in Egypt on 14 May 2020. It does not yet involve any practice in Egypt and includes several provisions that need clarification on how they will be applied in reality.

However, it is worth noting that, SCoM is currently drafting new legislation that would require social media platforms to obtain a licence to access mobile users in Egypt, as announced by the head of the SCoM Karam Gabr in January 2023.

REGULATORY AGENCIES AND COMPETITION LAW

Regulatory agencies

28 Which body or bodies regulate the communications and media sectors? Is the communications regulator separate from the broadcasting or antitrust regulator? Are there mechanisms to avoid conflicting jurisdiction? Is there a specific mechanism to ensure the consistent application of competition and sectoral regulation?

According to Antitrust Law No. 3/2005, as amended (the Antitrust Law), the Egyptian Competition Authority (ECA) is the competent regulator for antitrust. However, there has been a dispute between the ECA and the National Telecommunication Regulatory Authority (NTRA) regarding jurisdiction over any antitrust issue related to the telecoms sector.

Law No. 180/2018 regarding press, media and the Supreme Council of Media (SCoM) Regulation (the Media Law) also grants SCoM the power to guarantee freedom of competition and to prevent dominant practices within the media sector. This is similar to the provisions included in Telecommunication Regulation Law No. 10/2003 and, given that the Media Law was just issued, we are not sure if there will be a dispute between the ECA and the SCoM as there has been between the ECA and the NTRA.

However, in all cases, the Egyptian administrative litigation courts have the jurisdiction to order which authority is the competent one.

Appeal procedure

29 How can decisions of the regulators be challenged and on what bases?

All decisions of the regulator are subject to the review of the administrative litigation courts if these decisions are not in line with the applicable laws or reasonable. The administrative litigation courts have the jurisdiction to assess the validity or legality of each decision.

Furthermore, in the case of a dispute between the NTRA and any licence, the licensee may resort to arbitration under most of the telecom licence agreements.

Competition law developments

30 Describe the main competition law trends and key merger and antitrust decisions in the communications and media sectors in your jurisdiction over the past year.

In December 2022, Antitrust Law No. 3 of 2005 was amended by Antitrust Law No. 175 of 2022, whereby these amendments have replaced the post-notification regime of notifying certain transactions to the ECA within 30 days after entering into the transaction, to a pre-merger control system, whereby the ECA is given the authority to review and approve proposed mergers and acquisitions prior to entering into the transaction.

The new pre-merger control requires pre-approval from the ECA for transactions that constitute 'economic concentration' between the contracting parties (namely, a change in control or material influence of a person resulting from a merger, acquisition or joint venture).

It is worth noting that the amended Executive Regulations of said the amended Antitrust Law, was issued in early April 2024, whereby such amendments will enter into force as of 1 June 2024, and the pre-approval from the ECA will be required for any transaction, which will be closed as of such date.

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In September 2021, the NTRA and the ECA signed a memorandum of understanding to form a joint executive committee to enhance free competition practices in Egypt's telecom market. This cooperation reflects both authorities' interest and goals in the welfare of the telecom market and the consumer in Egypt.

This cooperation would create and provide companies operating in the telecom sector with a fair environment, which would enable such companies to operate on a non-discriminatory basis. Furthermore, the NTRA would be enabled to communicate better with the ECA, therefore positively impacting the control of anti-competitive practices that could harm the telecom industry in Egypt as well as attracting more investments via the expertise exchanged between both authorities.

Moreover, cooperation between the ECA and NTRA will take place in the exchange of technical support provisions as well as the standardisation of methods of economic and legal analysis conducted in the telecom sector especially those related to the definition of the relevant market and different means of control of practices that might harm free competition. In addition, the ECA also aims to restrict any decrees or policies that may harm competition in the telecom sector, to ensure competitive impartiality.

Securities Finance

Frederic Soliman and Laila Aziz

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LEGAL AND REGULATORY FRAMEWORK

Laws and regulations

1 | What are the relevant statutes and regulations governing securities offerings?

Securities offerings are governed by the following laws and regulations:

- the Capital Market Law No. 95 of 1992 and its Executive Regulations;
- the Central Depository and Registry Law No. 93 of 2000 and its Executive Regulations;
- the Companies Law No. 159 of 1981 and its Executive Regulations;
- the Financial Regulatory Authority (FRA) Regulations; and
- the Egyptian Exchange (EGX) Regulations.

Regulator

2 | Which regulatory authority is primarily responsible for the administration of those rules?

The FRA and the EGX are the main authorities responsible for the administration of securities offerings rules.

PUBLIC OFFERINGS

Mandatory filings

3 | What regulatory or stock exchange filings must be made in connection with a public offering of securities? What information must be included in such filings or made available to potential investors?

According to the Capital Market Law No. 95 of 1992 (the Capital Market Law), all public offerings of securities should be through a prospectus prepared using the Financial Regulatory Authority's (FRA) approved forms and ratified by the FRA.

Primary public offering

The prospectus in the primary public offering of *stocks* for incorporation of the company should include the following disclosures:

- company information (name, legal form, objective, issued and paid capital, and fiscal year, etc);
- the types of offered shares and the rights ascribed to them;
- the founders' names and their shareholding percentages, as well as stating any contributions in kind (if any);
- the company's plan of utilisation of the money collected from the offering, and its expectations regarding the outcomes of such utilisation;
- the places where the FRA-approved prospectus could be obtained;
- the FRA ratification date and number thereof;
- the offering starting and closing dates and the entity through which the subscription will be made;

- the required amount to be paid upon subscription, which should not be less than one quarter of the nominal value in addition to the issuing expenses;
- the company's auditors' details; and
- the summary of the contracts concluded by the founders within the five years preceding the offering, which they intend to assign to the company after its incorporation.

The prospectus in the primary public offering of *stocks* for capital increase should, in addition to the above disclosures, include:

- the commercial register date and number of the company;
- previous operations of the company;
- the board members and responsible managers, and their experiences;
- the names of shareholders holding more than 5 per cent of the nominal shares, and the shareholding percentage of each;
- the summary of the approved and audited financial statements of the previous three fiscal years, or the period from incorporation of the company, whichever is less, prepared according to the forms set forth by the FRA;
- the date of the general assembly or the board resolution approving the capital increase, and the legal basis of such resolution;
- the capital increase amount and the number of shares and their values, provided that a fair value is determined for such shares. This fair value is determined according to a report by an FRA-approved independent financial consultant, or according to a study prepared by the company, depending on certain criteria;
- the reasons for the capital increase and the company's expectations of the benefits of this increase;
- the pre-emption rights of existing shareholders; and
- the statement of pledges and other real rights of all assets.

The prospectus in the primary public offering for *bonds* should include the following disclosures, in addition to the above disclosures:

- the type of securities and their interests and the calculation basis thereof;
- the number and date of the FRA's approval to issue the securities for public subscription;
- the terms of issuance of the securities, and the conditions and timings of their restitution;
- a statement of guarantees and securities presented by the company to the holders of the securities;
- the net value of the company's assets as determined by an auditor's report according to the latest financial statement approved by the general assembly, in addition to a declaration by the company's board that the issued securities do not exceed this value, unless the company was authorised to issue the securities with a value exceeding the net value of its assets; and

- a summary of the resources of the cash flows, liquidity ratio, profitability and financial structure of the issuing company, and an auditor’s report on the future predictions according to the Egyptian Auditing Standards.

Secondary public offering

According to the FRA Regulations, secondary public offerings should be made through the Egyptian Exchange (EGX). The issuing company should first satisfy the registration requirements in the FRA and the EGX listing rules.

The prospectus in the secondary public offering of stocks should include six sections, covering the following disclosures in particular.

- Section one: general information about the issuing company, including:
 - the primary existing litigation cases and the financial allocations thereto;
 - existing loans or pledges;
 - investments of the issuing company in the subsidiaries and sister companies;
 - details of the main shareholders offering the shares;
 - main shareholders’ structure before the offering; and
 - their expected structure after the offering.
- Section two: special disclosures, including:
 - disclosures about the nature of the company’s work;
 - disclosures about the offering (reasons for the offering, the position of the main shareholders according to listing rules, shareholders with frozen shares for specific time periods according to extraordinary general assembly resolutions); and
 - subsequent disclosures to be made after the execution of the offering.
- Section three: a summary of the independent financial consultant’s report on the fair value of the share and the auditor’s report on the consultant’s report, as well as a declaration of the chair on the validity of the assumptions presented to the independent financial consultant.
- Section four: a summary of the financial statements of the company (comparative tables for three years).
- Section five: the terms and conditions of the offering according to the offering manager’s statement.
- Section six: the terms and mechanism of the share price stability after the offering.

The information statement in the secondary public offering of bonds should primarily include the following disclosures.

- Information regarding the issuer:
 - disclosure of the legal type of the company, its objective, authorised, issued and paid capital;
 - disclosure of the shareholders owning 5 per cent or more, and the board of directors;
 - disclosure of the insurances over the assets, current pledges and privileges attached to them and the tax position of the issuer;
 - disclosure of the net value of the assets according to the latest approved financial statements; and
 - disclosure of the primary litigation cases raised against the issuer, which have an impact on its financing structure, and the allocations made thereto (if any).
- Information regarding the issuance:
 - the general assembly resolution of the issuing company approving the issuance, and the board resolution (if the general assembly authorised the board to issue detailed conditions of the issuance);

- disclosure on the issuance conditions, including the total value, number and duration of the bonds, consummation and repayment dates, repayment priority of the bonds in the event that the issuing company is bankrupt, interest rate and the calculation basis thereof, in addition to the payment date thereof;
- disclosure on the issuing company’s credit ranking certificate or the issued bonds;
- discourse on the objective of the issuance and means of usage of the bonds’ collections;
- disclosure on the bonds’ early repayment provisions, in addition to clarifying any indemnities that may be due to the bonds’ holders as a result thereof;
- disclosure on the guarantees or the securities in favour of the bonds’ holders;
- disclosure on all the risks ascribed to the issuer and the issuance, and the hedging or mitigation means for such risks;
- disclosure of the position of registering the bonds in the central depository and registry and the EGX; and
- disclosure on the subscription data of the bonds, including the entity receiving the subscription, minimum and maximum rates of the subscription, date of opening and closing of the subscription, and the allocation and restitution methods.
- Information regarding the financial disclosures of the issuer:
 - the financial statements issued according to the Egyptian Accounting Standards for the previous three fiscal years, or the period from incorporation of the company, whichever is less, enclosing therewith a report issued by an auditor duly registered with the FRA;
 - a summary of the resources of the cash flows, liquidity ratio, profitability and financial structure of the issuing company, in addition to any ratios that the FRA could require and an auditor’s report on the future predictions according to the Egyptian Auditing Standards; and
 - declarations and undertakings of the issuing company during the entire duration of the bonds, in addition to the events of defaults and the measures to be undertaken in the event of their occurrence.

Review of filings

- 4 | What are the steps of the registration and filing process? May an offering commence while regulatory review is in progress? How long does it typically take for the review process to be completed?

After the prospectus or information statement and all the required FRA forms and documents are prepared, they should be submitted for the FRA’s review and approval. Offering may not commence while FRA review is in progress. According to the Capital Market Law, the issuer and its auditor should provide FRA with all the required data and documents to ascertain the information included in the prospectus or information statement, the periodic reports and the issuer’s financial statements. The review process may take approximately three business weeks.

Securities exchanges

- 5 | What securities exchanges exist in your jurisdiction and do such exchanges provide alternative listing segments? (Please describe for what type of issuer or security each segment is designed and the main requirements for a listing on each segment.)

As per the Capital Market Law, securities may be listed and traded in a marketplace called the Egyptian Exchange. The Egyptian Exchange is

designed for all types of issuers and securities in accordance with the FRA Regulations.

The FRA Regulations are the legal framework regulating the controls and procedures for the listing and delisting of securities at the EGX, and these rules apply to all types of securities listed on the EGX such as shares, bonds, financing instruments, investment fund documents, Egyptian depository certificates and other securities. According to the FRA Regulations, the main requirements for listing at the EGX shall differ depending on the type of security. However, the main requirements for the listing of stocks are as follows.

- The percentage of shares to be offered for sale at the EGX shall be based on an offer prospectus or disclosure report to offer approved by the FRA shall not be less than 25 per cent of the total listed shares of the company, or one quarter per thousand of the market capital free to trade at the EGX with no less than 10 per cent of the company's shares, or shares equivalent to 1 per cent of the market capital free to trade at the EGX.
- The number of shareholders of the company after the offering shall not be less than 300 shareholders, taking into account that the allocated shares shall be distributed in light of the EGX Regulations in order to verify the non-fictitious offering.
- The percentage of free float shares shall be at least 10 per cent of the total shares of the company, or 1/8 per thousand of the market capital free to trade at the EGX with at least 5 per cent of the company's shares, or shares equivalent to 0.5 per cent of the market capital free to trade at the EGX.
- The number of issued shares required to be registered shall not be less than 5 million shares;
- The requesting company shall submit the approved financial statements for the two fiscal years preceding the registration application.
- The issued capital shall be fully paid up and not less than 100 million Egyptian pounds or its equivalent in foreign currencies, based on the latest annual financial statements or the last periodic financial statement, accompanied by a comprehensive audit report from the auditor and certified by the company's general assembly.
- The submission of undertakings that the percentage of retention of the main shareholders of the company and/or their replacement from the rest of the shareholders of the company shall not be less than 51 per cent of the shares owned by them in the company's capital, if available. In the event that the percentage of the retained shares are less than 25 per cent of the shares of the company's issued capital, such percentage shall be satisfied by the contributions of the members of the board of directors and the founders of the company or from other shareholders of the company;
- The submission of a report on the company's business model, management structure, previous work and governance policy to be followed after registration; and
- The percentage of net profit before the deduction of taxes for the last financial year preceding the registration application shall be not less than 5 per cent of the paid-up capital to be registered.

In 2007, the Egyptian Exchange founded the first securities exchange market for small and medium sized companies, governed by the Nile Exchange. The main requirements for the listing of securities at the Nile Exchange are as follows.

- The percentage of shares to be offered for sale at the Nile Exchange shall be based on an offer prospectus or disclosure report for the purpose of an offering approved by the FRA shall not be less than 25 per cent of the total listed shares of the company, or a quarter per thousand of the market capital free to trade at the Nile Exchange with no less than 10 per cent of the company's shares.
- The number of shareholders in the company shall not be less than 100 shareholders after the offering, taking into account that the

allocated shares shall be distributed in light of the Nile Exchange Regulations, in order to verify the non-fictitious offering.

- The percentage of free float shares shall not be less than 10 per cent of the total shares of the company or one eighth per thousand of the market capital shall be free to trade at the Nile Exchange with no less than 5 per cent of the company's shares.
- The number of issued shares required to be registered shall not be less than 100 thousand shares;
- The issued capital must be fully paid, with a minimum of one million Egyptian pounds and less than 100 million Egyptian Pounds, based on the latest approved annual financial statements or the last periodic financial statements.
- The shareholders' equity in the last annual or periodic financial statements prior to the date of the registration application shall not be less than the paid-up capital.
- The company requesting the registration of its shares shall conclude a contract with one of the certified sponsors registered in the FRA register prepared for that purpose, and the sponsor shall be responsible for assisting the company in registering its securities.

Moreover, according to the Executive Regulations of the Capital Market Law, with the approval of the FRA's Board of Directors and after obtaining the relevant FRA licence, private exchange segments may be established. These shall have their own legal personality and shall take the form of a joint stock company and in which trading shall be limited to one or more types of securities.

Publicity restrictions

- 6 | What publicity restrictions apply to a public offering of securities? Are there any restrictions on the ability of the underwriters to issue research reports?**

According to the Executive Regulations of the Capital Market Law, no publication of any data in the prospectus, for purposes of promoting the securities, should be made prior to the FRA's approval. However, after submission of the prospectus to the FRA, it is permissible to distribute advertisements, or any other forms of publication containing key information regarding the nature of the project activity subject matter of the prospectus, provided that it is clearly stated therein in all cases and in a visible manner that the prospectus has not yet been ratified by the FRA. Furthermore, the publication material should also be pre-approved by the FRA.

Secondary offerings

- 7 | Are there any special rules that differentiate between primary and secondary offerings? What are the liability issues for the seller of securities in a secondary offering?**

According to the Executive Regulations of the Capital Market Law, listed companies at EGX and those that offered their shares for public subscription should apply the pre-emption rights of the existing shareholders in cases of capital increase with cash nominal shares. This capital increase resolution should not limit the pre-emption rights of certain shareholders and should be without prejudice to the rights ascribed to preferred shares.

The period allowed for existing shareholders to subscribe to the capital increase should not be less than 30 days, starting from the date of opening the subscription; however, this period ends (before the lapse of the 30-day period) if the existing shareholders subscribed in the capital increase shares on a pro rata basis.

The extraordinary general assembly, based on a request by the board of directors and for substantial reasons approved by the auditor's report and if the articles of association of the issuing company so state,

could resolve not to apply the pre-emption rights of the existing shareholders, and offer all or part of the capital increase shares directly to public subscription.

Furthermore, the extraordinary general assembly may also resolve, in the same manner, to offer all or part of the capital increase shares in a private subscription to a person, an entity or multiple entities, without applying the pre-emption rights of the existing shareholders, and regardless of whether the capital increase was in cash or through a conversion of debt to equity. That is, provided that the percentage of the shares and the voting rights attributed to the private subscribers and their related parties (if any) are excluded when voting on such resolution and provided that all existing shareholders approve such subscription.

Settlement

8 | What is the typical settlement process for sales of securities in a public offering?

The purchase orders are registered at the brokerage companies, members of EGX, on certain screens dedicated to this purpose by EGX. Settlement is mainly through the central depository and registry company, (ie, Misr for Central Clearing, Depository and Registry, the only current central depository and registry company in Egypt).

PRIVATE PLACINGS

Specific regulation

9 | Are there specific rules for the private placing of securities? What procedures must be implemented to effect a valid private placing?

According to the Financial Regulatory Authority (FRA) Regulations, investors qualified for a private placing should have the necessary financial capability.

Qualifications required for investors in private placings are as follows:

- For individual investors: having liquid assets of 5 million Egyptian pounds and preferably with at least five years of experience in the securities field.
- For public juristic persons:
 - public insurance and pension funds; and
 - capital companies of not less than one million Egyptian pounds paid capital. No specific conditions are stipulated.
- For financial institutions, which are:
 - Egyptian banks and branches of foreign banks under the supervision of the Central Bank of Egypt;
 - investment banks;
 - financial portfolios formation and management companies;
 - venture capital companies;
 - direct investment companies;
 - real estate financing companies;
 - financial lease companies;
 - factoring companies;
 - private insurance funds with an investment portfolio more than one hundred million Egyptian pounds;
 - investment funds;
 - investment funds of Arabic, regional and foreign financial institutions; and
 - regional and international financial institutions.

Any of the following should be satisfied by the above financial institutions:

- the book value of the ownership rights of such institutions should not be less than 20 million Egyptian pounds;

- these institutions must have investments in securities in other joint stock companies (other than the target company of the placing) existing on the date of the placing and with a value not less than 10 million Egyptian pounds; and
- the activity of these institutions extends to the subscription in securities within the institutions' licensed objectives.

Procedures for private placing mainly entail:

- the minimum subscription value for financially capable individual investors is 0.5 per cent of the offering value or 1 million Egyptian pounds, whichever is less. For financial institutions, the percentage is 1 per cent or 10 million Egyptian pounds, whichever is less;
- clients with recorded purchase orders in a private placing may not participate in a public offering;
- subscription in private placing closes before public offering. The number of coverages of the private placing according to the final price should be disclosed after notifying the FRA, provided that the minimum number of days for the private placing should be three days;
- avoidance of conflict of interests should be considered and that the brokerage companies receiving the requests, or the placing manager, should not have a conflicting interest with the offering procedures and its parties; and
- purchase orders in private placings should be made through the FRA's automated systems, and the review and tracking thereof shall be limited to the FRA and the offering manager or managers.

If the private placing is for bonds, then a tranche of not less than 10 per cent of the total offered bonds should be allocated for natural or juristic persons – excluding those subscribing in the first tranche – and these persons shall not be subject to the minimum subscription percentages mentioned above.

Investor information

10 | What information must be made available to potential investors in connection with a private placing of securities?

The information statement should include the following.

- Information regarding the issuer:
 - disclosure of the legal type of the company and its objective, authorised, issued and paid capital;
 - disclosure of the shareholders owning 5 per cent or more, and the board of directors;
 - disclosure of the insurances over the assets, current pledges and privileges attached to them, and the tax position;
 - disclosure of the net value of the assets according to the latest approved financial statements;
 - disclosure of the primary litigation cases raised against the issuer, which have an impact on its financing structure, and the allocations made thereto (if any); and
- Information regarding the issuance:
 - general assembly resolution of the issuing company approving the issuance, and the board resolution (in case the general assembly authorised the board to issue the detailed conditions of the issuance);
 - disclosure of the issuance conditions, including the total value, number and duration of the bonds, consummation and repayment dates, repayment priority of the bonds in the event that the issuing company is bankrupt, interest rate and the calculation basis thereof, in addition to the payment date thereof;
 - disclosure of the issuing company's credit ranking certificate or the issued bonds, or both;

- discourse of the objective of the issuance and means of usage of the bonds' collections.
- disclosure of the bonds' early repayment provisions, in addition to clarifying any indemnities that could be due to the bonds' holders as a result thereof;
- disclosure of the guarantees or the securities in favour of the bonds' holders;
- disclosure of all the risks ascribed to the issuer and the issuance, and the hedging or mitigation means for such risks;
- disclosure of the position of registering the bonds in the central depository and registry and the Egyptian Exchange (EGX); and
- disclosure of the subscription data of the bonds, including the entity receiving the subscription, the minimum and maximum rates of the subscription, the date of opening and closing of the subscription and the allocation and restitution methods.
- Information regarding the financial disclosures of the issuer, which includes:
 - the financial statements issued according to the Egyptian Accounting Standards for the previous three fiscal years, or the period from incorporation of the company (whichever is less), enclosing therewith a report issued by an auditor duly registered with the FRA;
 - a summary of the resources of the cash flows, liquidity ratio, profitability and financial structure of the issuing company, in addition to any ratios that the FRA requires, and an auditor's report on the future predictions according to the Egyptian Auditing Standards; and
 - declarations and undertakings of the issuing company during the entire duration of the bonds, in addition to events of default and the measures to be undertaken in the event of their occurrence.
- that are members of the EGX. The depository bank, its agent and EGX members should duly consider foreign exchange rules issued by the Central Bank of Egypt in this regard. If Egyptian clients converted to depository receipts then sold these outside Egypt, then the local custodian should transfer the interests of the sale of these receipts to the bank account of the client that is under the supervision of the Central Bank of Egypt.
- In all cases, the EGX should inspect all conversions in light of the operations control rules in order to verify that no manipulation or violation has been made in relation to these operations or in relation to whomever executed them or was executed for the benefit of. The EGX must promptly notify the Financial Regulatory Authority of any suspicions in connection therewith. Without prejudice to the EGX listing rules, the company with EGX-listed securities should not convert treasury shares into depository receipts against EGX-listed securities, or vice versa. Furthermore, no acquisition shall be effective that is made through the submission of purchase offers of depository receipts – in this case, they should be converted into local securities.
- Without prejudice to the Capital Market Law No. 95 of 1992 (the Capital Market Law), the Central Depository and Registry Law No. 93 of 2000, the Central Bank and Banking Sector Law No. 194 of 2020, and the Anti-Money Laundering Law No. 80 of 2002, and their executive regulations and the subsequent decrees issued in relation thereto, all depository banks and their local agents and EGX members should verify all their clients' data on the level of the beneficial owner and its related group.
- The depository bank and its local agent should not dispose of the Egyptian securities kept under their custody as coverage for the depository receipts. They should also abide by the relevant provisions of the Capital Market Law's Executive Regulations related to purchase orders with the purpose of acquisition prior to executing these conversions.

Transfer of placed securities

- 11 | Do restrictions apply to the transferability of securities acquired in a private placing? And are any mechanisms used to enhance the liquidity of securities sold in a private placing?

Generally, there are no special restrictions applied. However, in practice, some private offerings require a lock-in period. In addition, the Executive Regulations of the Capital Market Law No. 95 of 1992 entails disclosure to the EGX depending on the ownership percentage.

OFFSHORE OFFERINGS

Specific regulation

- 12 | What specific domestic rules apply to offerings of securities outside your jurisdiction made by an issuer domiciled in your jurisdiction?

According to the Egyptian Exchange (EGX) Regulations, the following rules shall apply in this regard:

- Without prejudice to EGX listing rules, the issuing company, with EGX-listed securities, should obtain the approval of its extraordinary general assembly, and the issuance should not exceed a third of the company's issued capital. Furthermore, the ratio between the foreign depository receipts issued against the shares to the total capital shares of any company should not exceed the ratio between the company's free EGX tradable shares disclosed by the end of each week to the capital itself. If the ratio referred to is in excess, then no new foreign depository receipts shall be issued unless the stipulated ratio is reached.
- Requests for conversion to and from foreign depository receipts should be submitted to the EGX through companies and entities

PARTICULAR FINANCINGS

Offerings of other securities

- 13 | What special considerations apply to offerings of exchangeable or convertible securities, warrants or depository shares or rights offerings?

The Executive Regulations of the Companies Law No. 159 of 1981 states that the following considerations shall apply in the event of an offering of convertible bonds:

- the bond issuing value should not be less than the nominal value of the share;
- the value of convertible bonds in addition to the existing value of the company's shares should not exceed the company's authorised capital; and
- the existing shareholders shall have a pre-emptive right to subscribe in the convertible bonds.

According to the Executive Regulations of the Capital Market Law No. 95 of 1992, the rights of offering for a listed company could be offered separately from the original capital increase shares, unless the extraordinary general assembly waives the application of the pre-emption rights in the capital increase.

UNDERWRITING ARRANGEMENTS

Types of arrangement

14 | What types of underwriting arrangements are commonly used?

Underwriting arrangements in Egypt generally follow the relevant international practices in this regard, with no special guidelines for these arrangements. Such underwriting arrangements may be through a syndicate of underwriters and through firm commitment or employing best efforts.

Typical provisions

15 | What does the underwriting agreement typically provide with respect to indemnity, force majeure clauses, success fees and overallotment options?

According to the Financial Regulatory Authority (FRA) Regulations, the underwriter's main obligations are:

- to subscribe to the securities that were not covered in the offering, and to re-offer these in a public or private offering with the same terms and conditions of the ratified prospectus, and within a maximum of three months as of the date of ratification of this prospectus;
- to abstain from buying the issued shares of the company, as long as the underwriter is the owner of the covered shares;
- to separate the accounts of its clients from its own accounts;
- to disclose on the offering procedures and the results of the subscription according to the applicable rules in this regard; and
- not to give any incorrect information on the offering procedures and the results of the subscription.

Other regulations

16 | What additional regulations apply to underwriting arrangements?

According to the Executive Regulations of the Capital Market Law No. 95 of 1992, the company that undertakes underwriting activities should be licensed by the FRA. The FRA should be notified of the underwriting arrangement. The FRA should provide its comments on this arrangement within 30 days as of the date of receipt of the notification.

ONGOING REPORTING OBLIGATIONS

Applicability of the obligation

17 | In which instances does an issuer of securities become subject to ongoing reporting obligations?

Generally, any company with listed securities at the Egyptian Exchange (EGX) shall be subject to ongoing disclosure obligations. Furthermore, any company which issues bonds for public offering or private placing should undertake reporting to the FRA and the bondholders during the entire duration of such bonds.

Information to be disclosed

18 | What information is a reporting company required to make available to the public?

The following information should be disclosed:

- Disclosure regarding the main shareholders' and related parties' transactions: each shareholder should disclose to the EGX when its, or its related parties' equity grows or decreases by 5 per cent or its multiples of the securities representing the capital or the voting

rights of the listed company. This disclosure should include what the shareholder and its related parties directly own from stocks or foreign depository receipts corresponding to stocks in the listed company, as well as what they indirectly own through 25 per cent or more in the capital of this disclosing shareholder in the listed company. Such shareholders should also disclose their future investment plans and projections in relation to the listed company's management, if the ownership percentage of such shareholder and its related parties reached 25 per cent or more of the listed company's capital or voting rights.

- These disclosures also apply to the listed company's board members, their employees and related parties if there is an executed sale or purchase of 3 per cent or its multiples of the listed company's securities (including subscription rights). The disclosure in this case shall include what the board member and its related parties directly own from securities and foreign depository receipts, as well as what they indirectly own through 25 per cent or more of the capital of the listed company.
- Disclosure, on a quarterly basis and within 10 days after the lapse of each quarter, of its shareholders' and board members' structures, the position of the treasury shares and the changes that occurred to these.
- Disclosure, on a semi-annual basis, of the extent of implementing the company's resolutions in relation to cash increase of its issued capital, and the procedures taken in this regard.
- Furthermore, the EGX should be notified of any changes made to the annual report of the board of directors, or any procedures taken by any administrative authorities against the company (should such procedures affect the position of the company or its financial status), particularly:
 - any amendments to the company's articles of association;
 - changes concerning the auditor during the fiscal year;
 - any changes in the board of directors, its duration or the principal management;
 - change of the registered address of the company or its telephone numbers;
 - capital structure, including shareholdings of 5 per cent or more; and
 - any shareholdings of the company in other companies of 10 per cent or more.
- Disclosure on an annual basis (by the end of each fiscal year) of a report on the extent to which the company achieved the results in the independent financial consultant's report on the share's fair value, provided that this report includes the justification for material deviations (if any).
- The company should disclose the resolutions of its general assembly meetings (ordinary and extraordinary) and board meetings as soon as they are adopted, and before the following trading session at most.
- Disclosure of the announcements of cash or free stock distributions, or both.
- Disclosure of material information in reasonable time, such as:
 - any new bonds issuance or any guarantees or pledges thereof;
 - any resolution which would result in calling or annulment previously issued securities;
 - any proposed changes in the financing or capital structure exceeding 5 per cent of the shareholders' rights in light of the latest periodic financial statements or the financial positions of the company, in addition to any restrictions on the borrowing volume available to the company;
 - any transactions exceeding 5 per cent of the revenues of the previous fiscal year;

- any resolutions related to amending the nominal value of the company's stock;
- any agreement related to entry of strategic investors to buy a quota of the company's stock;
- the existence of lawsuits or arbitration cases against the company in relation to its activities, one of its shareholdings, or any of its assets exceeding 2 per cent of the company's equity rights according to the latest approved financial statements (annual or quarterly);
- any related parties commercial transactions; and
- lawsuits against any board member or one of its principal managers in a matter related to the company and connected with violations attributed to any of them.

ANTI-MANIPULATION RULES

Prohibitions

19 | What are the main rules prohibiting manipulative practices in securities offerings and secondary market transactions?

According to the Capital Market Law No. 95 of 1992 (the Capital Market Law), the Egyptian Exchange's (EGX) or the Financial Regulatory Authority's (FRA) chair could resolve to suspend trading orders that lead to price manipulation, in addition to the annulment of transactions that are made in violation of the governing laws, regulations and decrees, or that are made with unjustified prices. They could also resolve to suspend securities' dealings, the continuance of which would negatively impact the market or the dealers.

Furthermore, the chair of the FRA could suspend any dealer from buying securities in Egyptian exchange markets, whether this dealer was dealing in its own name and for its own account or for the name or the account of another beneficiary, should a price manipulation violation be committed. This suspension shall be based on investigations undertaken by the FRA and shall be justified, and for a period not exceeding six months. The EGX's chair could also undertake the previous procedures according to the FRA's regulations in this regard.

Moreover, the Executive Regulations of the Capital Market Law set forth the following prohibitions to combat price manipulative practices:

- influencing the market or prices with any practices of executing operations that do not change the actual beneficiary;
- exercising operations previously agreed upon with the purpose of implying the existence of trading of specific securities;
- publication or assistance in the publication of misleading or inaccurate news.
- publication of news related to the approaching of securities' price changes in order to influence the prices and dealings thereof;
- issuer's participation in the dealings of its securities in order to influence their prices, or through means leading to a negative impact on the dealers on same; that is without prejudice to the governing regulations of dealings on treasury stocks;
- providing any incorrect or inaccurate information through any type of media that would influence the market or the dealers in order to realise personal gain or for the benefit of a person or a specific entity;
- performing operations or enrolment of orders in stock exchange systems in order to imply the existence of dealings on securities or to manipulate their prices for facilitating their sale or purchase;
- participation in any agreements or practices that would mislead investors or artificially influence the prices of securities, control these prices or the market in general;
- solely undertaking, or through collaboration with others, the entry of orders into stock exchange trading systems with the purpose of

- providing misleading or inaccurate figures on the volume of activity, liquidity, or the price of certain securities in the market;
- solely undertaking, or through agreement with others, the entry of orders into stock exchange trading systems for a certain security to influence the price thereof through increasing, decreasing or stabilising in order to realise illegitimate purposes, such as influencing the value of investments to realise personal gains, or for tax evasion; or to reach a certain price previously agreed upon with another party to realise a purpose in violation of the laws, regulations and professional customs, such as increasing the price of specific securities to obtain credit secured by them;
- exploiting an order or a group of orders issued by a client or a group of clients, the quantity of which could alter the prices of securities; in addition to the prohibition of trading in the same direction of these orders prior to executing them and that would generate profits as a result of illegitimately exploiting the clients' orders. Furthermore, it is prohibited to agree with others or to provide recommendations to them to trade in the same direction of these orders before the execution thereof;
- dealing in fictitious names and accounts to execute deals, or to enrol fictitious orders in stock exchange trading systems that do not correspond to real sale or purchase orders or the enrolment of orders with unjustified prices that would create a misleading superficial event that does not represent actual trading;
- controlling or endeavouring to control requests or orders in the market, and the acquiring or endeavouring to acquire a controlling position over a security in order to manipulate its price, create unjustified prices or to affect the decisions of the dealers;
- publication of untrue or misleading market information in order to shift the orders' prices and the execution towards a certain direction; and
- abstention from offering or requesting securities, whether by selling or purchasing, with the purpose of influencing their prices, despite the existence of sale or purchase orders; in addition to prohibition of agreeing with any party to undertake operations implying the existence of an offer or request on these securities.

PRICE STABILISATION

Permitted stabilisation measures

20 | What measures are permitted in your jurisdiction to support the price of securities in connection with an offering?

According to the Financial Regulatory Authority (FRA) Regulations, the following measures could be adopted by issuing companies in public offerings for price stabilisation.

- The duration of the stabilisation shall be one month starting from the first trading day in the Egyptian Exchange (EGX). Three business days before the lapse of this duration, the offering manager should disclose the final date that the sellers could deposit their sell orders in the EGX's open account system.
- The offering manager shall manage a price stabilisation account in the name of this account, and the main shareholders who offered their stocks shall transfer the value of this account to the offering manager's account at least one business day before the start of the trading day.
- The offering manager shall, during the calculation duration of the price stabilisation, deposit an open purchase order on the EGX's dedicated screens for one month beginning on the EGX trading starting date of the stocks. The targeted shareholders could, as per the terms of the stabilisation account, deposit sell orders for the number of stocks allocated to them only through the offering on the offering execution date at the EGX and according to an account

statement issued by the Misr for Central Clearing, Depository and Registry.

- All orders deposited by those willing to sell shall be executed at the end of the period of calculation of the stabilisation duration. If the quantity of the orders exceeds the amount specified in the purchase order, then the orders shall be executed on a pro rata basis between the quantity of the sell orders and the quantity of the purchase orders on the basis of the final offering price, provided that decimals shall be rounded to the benefit of the minority investors, from the smaller to the bigger, until the consummation of the quantity in the purchase orders.
- Upon liquidation of the account, the stocks, if any, shall be allocated to the selling shareholders in the offering (financiers of the account) in proportion to their shareholding percentage in the stabilisation account, unless the prospectus provides otherwise, and provided that the ownership of these stocks shall be transferred through an EGX-protected operation according to the regulations of EGX's Operation Committee. This case shall also be excluded from abidance with the mandatory tender offer obligation in cases of exceeding the acquisition percentages.

LIABILITIES AND ENFORCEMENT

Bases of liability

21 | What are the most common bases of liability for a securities transaction?

The common bases of liability in light of the Capital Market Law No. 95 of 1992 (the Capital Market Law) and its Executive Regulations are related to the obligations to provide correct and true information in any prepared prospectus or statement and to abstain from any manipulation practices. Furthermore, any information disclosed to the Egyptian Exchange (EGX) as part of the reporting obligations should be correct and true and could be justified to the EGX and the Financial Regulatory Authority (FRA).

22 | What are the main mechanisms for seeking remedies and sanctions for improper securities activities?

According to the Capital Market Law, (1) any person who offered securities through public subscription, public offering or private placings or received any monetary value in violation of the Capital Market Law; (2) any person who intentionally stated data in a prospectus, or in any other reports, documents and company advertisements that is incorrect or in violation to the Capital Market Law, or altered this data after being ratified by the FRA; (3) any person who intentionally issued incorrect data about securities that are to be subscribed to through a licensed entity to receive subscriptions; (4) any person who listed an untrue price, or undertook a fictitious transaction, or endeavoured to fraudulently manipulate market prices; or (5) any person who listed securities on the EGX in violation of the Capital Market Law and its Executive Regulations shall be subject to a penalty of imprisonment for a term not exceeding five years, or a fine of not less than 50,000 Egyptian pounds or equivalent to the amount that the offender sustained as a penalised gain or avoided from losses, whichever is greater, and not exceeding 20 million Egyptian pounds or double the equivalent of the amount that the offender sustained as a penalised gain or avoided from losses, whichever is greater, without prejudice to any severer penalty stipulated in any other law.

Moreover, any person who disposed of securities in violation of the provisions of the Capital Market Law and its Executive Regulations shall be subject to a penalty of a fine not less than 5,000 Egyptian pounds and not exceeding 100,000 Egyptian pounds. Furthermore, any person who acquired securities without submitting a mandatory tender offer

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in the relevant cases shall be subject to penalty of a fine not less than 100,000 Egyptian pounds and not exceeding 500,000 Egyptian pounds. In the latter case, the offender may pay to the FRA the value of the securities subject of the offence, and no reconciliation will be effective unless a mandatory tender offer is submitted and an amount of not less than 1 per cent and not exceeding 10 per cent of the securities are paid to the FRA.

Finally, the criminal lawsuit for any offence under the Capital Market Law shall not be initiated by public prosecutors without the request of the FRA's chair. The chair of the FRA may reconcile the offences stipulated under the Capital Market Law at any stage of the lawsuit in consideration for payment to the FRA of an amount not less than double the minimum extent of the incurred fine.

UPDATE AND TRENDS

Proposed changes

23 | Are there current proposals to change the regulatory or statutory framework governing securities transactions?

The Financial Regulatory Authority recently issued new listing rules to facilitate capital increase procedures for expansion and business development. These new listing rules shall regulate and shorten the time periods for a number of procedures necessary to complete capital increase operations for listed companies, while providing flexibility for companies to increase their capital in stages.

Fintech

Mohamed Hashish and Farida Rezk

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FINTECH LANDSCAPE AND INITIATIVES

General innovation climate

1 | What is the general state of fintech innovation in your jurisdiction?

Fintech is governed by several Egyptian laws and regulations, including the following main laws and regulations (as amended):

- the Non-cash Payment Methods Law No. 18 of 2019;
- the E-signature Law No. 15 of 2004 and its Executive Regulation;
- the Non-Financial Markets and Instruments Law No. 10 of 2009;
- the Microfinance Law No. 141 of 2014;
- the Trade Code No. 17 of 1999;
- the Consumer Finance Law No. 18 of 2020;
- the Cybercrime Law No. 175 of 2018;
- the Investment Law No. 72 of 2017 and its Executive Regulation;
- the Consumer Protection Law No. 181 of 2018 and its Executive Regulation;
- the Small and Microenterprises Law No. 141 of 2004 and its Executive Regulation;
- the Telecoms Law No. 10 of 2003;
- the Media Law No. 180 of 2018;
- the Capital Market Law No. 95 of 1992 and its Executive Regulation;
- the Movable Securities Law No. 115 of 2015 and its Executive Regulation;
- the Anti-Money Laundering Law No. 80 of 2002 and its Executive Regulation;
- the Public Entities Contracts Law No. 182 of 2018 and its Executive Regulation;
- Presidential Decree No. 89 of 2017, founding the National Payments Council;
- the Banking Law No. 194 of 2020 (the Banking Law);
- the Data Protection Law No. 151 of 2020 (the Data Protection Law); and
- the Non-Banking Financial Services Law No. 5 of 2022 (the Fintech Law).

Fintech was not regulated in Egypt until the issuance of the Banking Law. The Banking Law addresses the regulation of several fintech sectors, which includes digital banks, cryptocurrency and e-payments. The current government of Egypt has promoted and continues to promote financial inclusion and the digitalisation of the financial sector in Egypt. In February 2022, the new Fintech Law came into force under Law No. 5 of 2022. The aim of the Fintech Law is to facilitate the integration of technologies into financial services and formulate a regulatory framework for fintech businesses to support non-banking financial services. It covers services such as robo-advisory, microfinance, insurtech, artificial intelligence, mobile applications and digital platforms. The Executive

Regulation of the Fintech Law came into force in April 2022, applying the procedures and conditions for a Fintech licence under the Fintech Law.

Government and regulatory support

2 | Do government bodies or regulators provide any support specific to financial innovation? If so, what are the key benefits of such support?

In May 2019, the Central Bank of Egypt (CBE) launched a regulatory sandbox for the purpose of providing fintech players with a virtual space within which, subject to a specific framework, applicants can experiment with their solutions for a limited period of time on a small scale and under a well-defined parameter.

Furthermore, a number of funding initiatives are available to fintech start-ups in Egypt. For example, in March 2019, the CBE launched the Fintech Innovation Fund with a value of 1 billion Egyptian pounds. In April 2019, the International Finance Corporation launched, in collaboration with two local partners in Egypt, a two-year programme to support the fintech space in Egypt, and the World Bank Group set aside US\$200 million for small and medium-sized enterprises in Egypt, which can also be used by small and medium-sized fintech players.

In response to the covid-19 pandemic, the CBE organised the distribution of free point-of-sale terminals, eased fees and charges and increased contactless payment limits. In November 2020, the e-invoicing system was launched.

FINANCIAL REGULATION

Regulatory bodies

3 | Which bodies regulate the provision of fintech products and services?

Several bodies are responsible for enforcing fintech-related laws and regulations, including:

- the CBE, which is empowered by Law No. 88 of 2003 on the Central Bank of Egypt and the Banking Sector (Banking Law No. 194 of 2020) to, among other things, regulate bank accounts and banking transactions;
- the Information Technology Industry Development Agency, which is empowered by the E-signature Law No. 15 of 2004 to, among other things, promote and develop the information technology and communications industry, support small and medium-sized enterprises in using e-transactions and regulate e-signature services activities;
- the Financial Regulatory Authority (FRA), which is empowered by the Non-Financial Markets and Instruments Law No. 10 of 2009 to, among other things, license the carrying out of non-banking financial activities and the protection of stakeholders within the non-banking financial market; it is also empowered by the new

Fintech Law to issue licences to non-banking financial services who use fintech;

- the National Payments Council, which is empowered by Presidential Decree No. 89 of 2017 to, among other things, reduce the use of cash outside the banking sector, support and encourage the use of electronic methods and channels instead of cash, and protect the consumers of any payment systems and services; and
- the National Telecommunications Regulatory Authority, which is generally empowered by Telecoms Law No. 10 of 2003 to regulate and enhance telecommunication services.

Regulated activities

4 | Which activities trigger a licensing requirement in your jurisdiction?

In general, according to the Banking Law and several judgments issued by the economic courts, neither natural nor juristic persons may practise any banking activity in Egypt without being licensed by and registered with the CBE except for public legal persons who carry out any such work within the limits of their establishment.

'Banking activities' are defined under the Banking Law, as 'banking business: every activity that mainly and habitually deals with accepting deposits, obtaining financing and investing these funds in providing financing and credit facilities or contributing to the capital of companies' funds and all that takes place in banking custom as a bank business'. This definition is also adopted by the Trade Code No. 17 of 1999.

Any person that violates these provisions is subject to imprisonment or a fine of not less than 1 million Egyptian pounds and not more than 10 million Egyptian pounds, in accordance with the Banking Law. There are two main prerequisites that must be satisfied to apply such penalties with respect to any banking activity, namely carrying out the banking activity on a regular basis and having the banking activity as the main activities of any person, including individuals and juristic persons.

Other than the aforementioned general rule, each of the following activities is also regulated and subject to licensing requirements in Egypt:

- microfinancing;
- investment banking;
- brokerage;
- factoring;
- foreign exchange trading;
- payment services;
- e-commerce;
- financial leasing;
- mortgage finance; and
- consumer lending.

Consumer lending

5 | Is consumer lending regulated in your jurisdiction?

Consumer Finance Law No. 18 of 2020 (the Consumer Finance Law) was issued on 16 March 2020, governing any activity aimed at financing the purchase of products or services for consumption purposes as long as the activity will be carried out on a regular basis. Among the activities covered is financing through payment cards or any other means decided by the CBE.

The aforementioned consumer finance-related activities may not be carried out in Egypt unless a licence is obtained from the FRA. The licence requires, among other things, the carrying out of the activities by a joint-stock company with an issued capital of at least 10 million Egyptian pounds.

The Consumer Finance Law (including the licensing requirement) does not apply to all banks registered with the CBE nor any entity licensed to carry out mortgage financing, financial leasing, factoring, microfinancing or the purchasing of properties from real estate developers.

The Consumer Finance Law applies only to vehicles, durable products, educational services, medical services, travel and leisure services as well as any other products and services that are determined by the FRA.

Secondary market loan trading

6 | Are there restrictions on trading loans in the secondary market in your jurisdiction?

In general, there are no restrictions on trading loans in Egypt. However, if the trading is being carried out on a regular basis, then it may be deemed as carrying out banking activities, in which case licensing by and registration with the CBE is required.

The assignment of debts in Egypt is subject to a specific legal framework to be effective in respect of debtor and surety (if any).

Collective investment schemes

7 | Describe the regulatory regime for collective investment schemes and whether fintech companies providing alternative finance products or services would fall within its scope.

As a general rule, no activity relating to investment funds may be carried out unless a licence is obtained from the FRA. Banks registered with the CBE may carry out such activity, provided that the relevant approval is obtained from the CBE.

Investment funds may, in general, be established in the form of a joint-stock company with a minimum issued capital of 5 million Egyptian pounds or its equivalent in any currency.

Licensed investment funds must deposit any securities that they are investing in one of the banks that are registered with the CBE, provided that the bank (and its related parties) does not control or hold more than 10 per cent of the total shares of the investment fund company.

One of the licensing requirements to be qualified for the investment fund underwriting is to have the minimum required infrastructure and technology to do so.

Investment funds may take the form of an open-end fund, closed-end fund, private equity fund, exchange-traded fund, money market fund, debt fund, real estate fund, donor-advised fund or related fund.

Promoting investment funds is generally not allowed prior to establishing them except for in the case of private equity funds and provided that, among other things, a notification is sent to the FRA and that no underwriting is made as part of the promotion.

Most of the alternative financial products and services that are provided by fintech companies generally fall within the scope of either collective investment schemes or banking activities.

Alternative investment funds

8 | Are managers of alternative investment funds regulated?

Managers of alternative investment funds are regulated, including board members.

Peer-to-peer and marketplace lending

9 | Describe any specific regulation of peer-to-peer or marketplace lending in your jurisdiction.

Peer-to-peer and marketplace lending can be deemed as banking activities, in which case licensing by and registration with the CBE is required in accordance with the Banking Law.

Crowdfunding

10 | Describe any specific regulation of crowdfunding in your jurisdiction.

Crowdfunding falls within the definition of banking activities; however, it may also be a form of a donor-advised fund.

In practice, a number of donor-advised funds have been established by a special presidential decree rather than a licence from the FRA. For example, Presidential Decree No. 139 of 2014 established a fund of a private nature called the Tahya Misr Fund for the purpose of assisting the government in, among other things, establishing development and service projects as well as developing slums and micro and small projects.

The government has used the crowdfunding approach to fund a number of public utility projects, such as the crowdfunding that was used in 2014 to fund the development of the New Suez Canal, which cost Egypt approximately 30 billion Egyptian pounds.

Invoice trading

11 | Describe any specific regulation of invoice trading in your jurisdiction.

Invoice trading may be characterised under Egyptian law as a banking activity (if providing credit), and may also be characterised as factoring. However, this can be assessed on a case-by-case basis.

Licensed factors are allowed to provide, among other things, guarantee, collection and account management services.

The following three main conditions are required in the subject of any factoring transaction:

- 1 it must be created from a commercial transaction related to the relevant buyer and debtor but not through cash financing;
- 2 it must not be associated with any third party's existing or future right; and
- 3 it must not be limited or restricted unless otherwise agreed by the relevant factor and buyer.

The subject may also be fully depreciated, provided that points (2) and (3) are satisfied.

The provisions of the Banking Law and several judgments issued by the economic courts also apply to factoring.

Payment services

12 | Are payment services regulated in your jurisdiction?

There is a specific regulation governing payment services that are provided by technical payment aggregators or payment facilitators. Services agreements are subject to specific know-your-customer and anti-money laundering checks and must include specific terms and conditions for those services, including a restriction on subcontracting unless certain conditions are met.

Under the Banking Law, no activity concerning the operation of a payment system or the provision of a payment system may be carried out unless a licence is obtained by the CBE. This new restriction applies to all persons, whether natural or juristic, carrying out the activity in Egypt or providing the services from abroad to any residents in Egypt, with the exception of stock exchanges, futures exchanges, securities settlement systems, licensed central clearing, depository and registry systems, custodian banks and internal systems of the Egyptian Ministry of Finance that do not include payment, collection, setting-off or clearance of payment.

Open banking

13 | Are there any laws or regulations introduced to promote competition that require financial institutions to make customer or product data available to third parties?

The CBE recently introduced a set of regulations regarding open banking, which govern instant payment network services in Egypt. This new regulation allows people to make electronic payments between bank accounts using their mobile phones via application programming interfaces (APIs). However, a licence must be obtained from the CBE by banks wishing to provide such services.

Robo-advice

14 | Describe any specific regulation of robo-advisers or other companies that provide retail customers with automated access to investment products in your jurisdiction.

The new Fintech Law and its Executive Regulation introduced regulations on robo-advisers, which are subject to licensing by the FRA.

Insurance products

15 | Do fintech companies that sell or market insurance products in your jurisdiction need to be regulated?

According to Insurance Law No. 10 of 1981, no one is allowed in person or through an intermediary to carry out any activity related to insurance or reinsurance in Egypt without obtaining a licence from the FRA. Fintech companies that sell or market insurance products fall within the scope of this restriction and are regulated in Egypt.

Furthermore, the new Fintech Law and its Executive Regulation also regulates insurtech, which is subject to licensing by the FRA.

Credit references

16 | Are there any restrictions on providing credit references or credit information services in your jurisdiction?

All services relating to the provision of credit rating and indebtedness references are regulated. Such services require a licence from the CBE.

At present, there is only one licensed company, namely the Egyptian Credit Bureau, that is subject to a specific legal framework governing the provisions of those references.

In general, disclosing credit ratings and indebtedness references related to any person is not allowed unless approval is obtained from the relevant person.

CROSS-BORDER REGULATION

Passporting

17 | Can regulated activities be passported into your jurisdiction?

Not applicable.

Requirement for a local presence

18 | Can fintech companies obtain a licence to provide financial services in your jurisdiction without establishing a local presence?

Fintech companies cannot obtain a licence to provide financial services in Egypt without first establishing a local presence.

SALES AND MARKETING

Restrictions

- 19 | What restrictions apply to the sales and marketing of financial services and products in your jurisdiction?

In general, the sales and marketing of financial services and products in Egypt are regulated and subject to prior licensing and approval.

CRYPTOASSETS AND TOKENS

Distributed ledger technology

- 20 | Are there rules or regulations governing the use of distributed ledger technology or blockchains?

There are no specific regulations or rules applied to distributed ledger technology or blockchains. However, Banking Law No. 194 of 2020 (the Banking Law) prohibits the issuance or trade of cryptocurrencies or electronic money and the creation or operation of platforms for their trading without obtaining a licence from the Central Bank of Egypt (CBE) in accordance with the rules and procedures it specifies.

Cryptoassets

- 21 | Are there rules or regulations governing the promotion or use of cryptoassets, including digital currencies, stablecoins, utility tokens and non-fungible tokens (NFTs)?

The Banking Law prohibits the issuance or trade of cryptocurrencies or electronic money and the creation or operation of platforms for their trading without obtaining a licence from the CBE in accordance with the rules and procedures it specifies.

Token issuance

- 22 | Are there rules or regulations governing the issuance of tokens, including security token offerings (STOs), initial coin offerings (ICOs) and other token generation events?

There is no specific regulation governing STOs or ICOs in Egypt.

ARTIFICIAL INTELLIGENCE

Artificial intelligence

- 23 | Are there rules or regulations governing the use of artificial intelligence, including in relation to robo-advice?

There is no special regulation in Egypt governing artificial intelligence. However, in accordance with Prime Ministerial Decree No. 2889 of 2019, a new national council was established called the Artificial Intelligence National Council (AINC). The AINC is empowered to determine, supervise, and follow up on Egypt's national strategy for artificial intelligence in light of international developments.

In addition, since 2019, the Minister of Higher Education has begun adding special artificial intelligence departments to several engineering universities in Egypt.

The government has created an enabling legal environment to govern the uses of artificial intelligence. This involves the issuance of the Data Protection Law, in July 2020, which regulates the relationship between data owners and users.

Furthermore, robo-advice is now newly regulated under the Fintech Law and is subject to licensing from the Financial Regulatory Authority.

CHANGE OF CONTROL

Notification and consent

- 24 | Describe any rules relating to notification or consent requirements if a regulated business changes control.

Notification and consent requirements depend on several elements, such as the type and location of business that is the subject of the change of control. For example, no one is allowed to acquire between 5 and 10 per cent of the issued capital of any bank registered with the Central Bank of Egypt (CBE) unless a notification is sent to the CBE. Prior approval from the CBE is required to acquire more than 10 per cent of the issued capital. A similar restriction applies to insurance companies.

FINANCIAL CRIME

Anti-bribery and anti-money laundering procedures

- 25 | Are fintech companies required by law or regulation to have procedures to combat bribery or money laundering?

Money laundering is mainly governed by the Anti-Money Laundering Law No. 80 of 2002 (the AML Law) and its Executive Regulation.

The AML Law names 15 entities that must comply with its provisions and its Executive Regulation, including all banks, branches of foreign banks in Egypt and money transfer entities.

Those entities are also subject to several obligations under other laws governing their specific activities. Violating these obligations will result in imposing different penalties including fines or imprisonment, or both.

Guidance

- 26 | Is there regulatory or industry anti-financial crime guidance for fintech companies?

All available guides can be found on the anti-money laundering page of the Central Bank of Egypt's website.

DATA PROTECTION AND CYBERSECURITY

Data protection

- 27 | What rules and regulations govern the processing and transfer (domestic and cross-border) of data relating to fintech products and services?

Data Protection Law No. 151 of 2020 (the Data Protection Law) applies to any personal data that is subject to electronic processing, whether partially or entirely.

The Data Protection Law generally prohibits the transfer of personal data to a foreign country without first obtaining a licence from the new regulatory authority for personal data protection – typically referred to as the Data Protection Centre – and where the level of protection is less than what is provided for by the Data Protection Law. The policies and regulations for cross-border transfer shall be specified by the Executive Regulations, which have not yet been issued. After the date of its issuance, any entity subject to the Data Protection Law is required to legitimise its position within one year.

Cybersecurity

28 | What cybersecurity regulations or standards apply to fintech businesses?

According to Cybercrime Law No. 175 of 2018, all providers of information technology and telecommunications services, including the processing or storing of data, must retain and store users' data for at least 180 continuous days, including identification, the content of the services' system, communication traffic, terminals and any other data required by the National Telecommunications Regulatory Authority.

The providers must also keep all stored and archived data (including personal data) confidential and not disclose the data unless there is a court order to do so.

OUTSOURCING AND CLOUD COMPUTING

Outsourcing

29 | Are there legal requirements or regulatory guidance with respect to the outsourcing by a financial services company of a material aspect of its business?

There are specific legal requirements and regulatory guidance for the outsourcing of specific services. For example, online trading is subject to specific regulations requiring brokerage companies to satisfy certain conditions and requirements to provide any trading solutions online, which include specific technical requirements and conditions on the information technology infrastructure of the brokerage companies.

Another example, according to a circular issued by the Central Bank of Egypt (CBE) in 2014, is that no bank registered with the CBE may provide internet banking solutions, including online lending, unless prior authorisation is obtained from the CBE. This prior authorisation requires all banks registered with the CBE to meet specific legal requirements, including the provision of a penetration test report to the CBE.

According to Banking Law No. 194 of 2020 (the Banking Law), the board of directors determines the important services that are provided to banks such as outsourcing and technical services, and it has the right to set the conditions and procedures for registering their providers with the CBE, provided that they include, in particular, determining the minimum that must be met with regard to governance requirements, risk management, service performance standards and controls for maintaining confidentiality.

Banks are prohibited from seeking assistance from providers of such services who are not registered with the CBE, and the bank shall be fully responsible for these actions.

According to the Banking Law, delegated services are defined as the services delegated by licensed entities to third parties to perform certain functions and services on their behalf. Accordingly, these delegated service providers must register with the CBE.

Cloud computing

30 | Are there legal requirements or regulatory guidance with respect to the use of cloud computing in the financial services industry?

Cloud computing is subject to Cybercrime Law No. 175 of 2018, which applies to any person providing users, directly or indirectly, with any information technology and telecommunications service, including processing or data storage. Such providers must retain and store users' data for at least 180 consecutive days, including identification, the content of services' system, communication traffic, terminals and any other data required by the National Telecommunications Regulatory Authority.

According to Media Law No. 180 of 2018, a prior licence from the Supreme Council for Media Regulation is required to launch any website in Egypt if:

- the website will be created in Egypt;
- the website will be managed by any person in Egypt; or
- any of the website's subdomains will be managed by any person in Egypt.

INTELLECTUAL PROPERTY RIGHTS

IP protection for software

31 | Which intellectual property rights are available to protect software, and how do you obtain those rights?

Software is protected in Egypt in the form of copyright. This protection requires the registration of the software, including, among other things, the first and final 10 pages of the source code, with the Information Technology Industry Development Agency.

IP developed by employees and contractors

32 | Who owns new intellectual property developed by an employee during the course of employment? Do the same rules apply to new intellectual property developed by contractors or consultants?

According to Intellectual Property Rights Law No. 82 of 2002 (the IPR Law), only the person who provides the direction to create a joint work is entitled to exercise the author rights of the work. This rule applies to copyright created by employees during the course of their employment.

For contractors and consultants, it depends on the specific terms and conditions of the relevant development or services agreement.

Joint ownership

33 | Are there any restrictions on a joint owner of intellectual property's right to use, license, charge or assign its right in intellectual property?

According to the IPR Law, if there is more than one author of any work, all participants in the work are considered joint authors, and none of them can individually exercise any right over the work unless otherwise agreed by the authors in writing.

Trade secrets

34 | How are trade secrets protected? Are trade secrets kept confidential during court proceedings?

Trade secrets (including confidential information) are protected by the IPR Law, provided that the secrets:

- are maintained as confidential and are not within the public domain;
- maintain their value as a result of their confidential status; and
- maintain their confidentiality status under the effective protection measures taken by their owner.

According to the IPR Law, the court will maintain the confidentiality of trade secrets.

Branding

35 | What intellectual property rights are available to protect branding and how do you obtain those rights? How can fintech businesses ensure they do not infringe existing brands?

Branding is generally protected as both copyright and trademark.

Remedies for infringement of IP

- 36 | What remedies are available to individuals or companies whose intellectual property rights have been infringed?

There are several remedies under Egyptian law for owners of intellectual property rights, including specific performance and the right to claim damages to cover all the losses incurred by the owner as well as all the profits of which the owner has been deprived as a result of the infringement.

COMPETITION

Sector-specific issues

- 37 | Are there any specific competition issues that exist with respect to fintech companies in your jurisdiction?

To assess whether there is an antitrust-related risk, it must first be determined whether the relevant fintech player is deemed to be in a dominant position in accordance with the meaning given under Antitrust Law No. 3 of 2005 as amended and its Executive Regulations (the Antitrust Law).

For a fintech player and its controlled affiliates in Egypt to be deemed to be in a dominant position under the Antitrust Law, the player must:

- 1 hold a market share exceeding 25 per cent of the market that is relevant to each service provided by the player (the relevant market), the percentage being calculated based on two elements, namely the relevant products (the relevant market products) and the geographic area during a certain period;
- 2 be able to make an impact on changing the prices or the quantity of the market products (the dominant ability); and
- 3 not be in a position to limit the dominant ability, noting that the competitors have the ability to carry out the same business as the fintech player in Egypt whether at present or in the future.

Points (2) and (3) are reviewed and assessed by the Egyptian Competition Authority (ECA) based on specific criteria.

If the fintech player is in a dominant position in the relevant market, then that player must be in a position to conduct certain practices, including entering into any agreement with any of its suppliers or customers that results in limiting competition.

The assessment of any violation under the Antitrust Law is made by the ECA on a case-by-case basis according to specific criteria, including, among other things, the benefits of customers and commercial customs. The assessment is subject to a judicial review by the economic courts.

TAX

Incentives

- 38 | Are there any tax incentives available for fintech companies and investors to encourage innovation and investment in the fintech sector in your jurisdiction?

Investment Law No. 72 of 2017 provides fintech companies, subject to the satisfaction of specific criteria, with several key guarantees and incentives, including:

- exemption from stamp duty and the notarisation fee imposed on articles of incorporation, facilities and loans agreements, security documents or plot of land purchase agreements for five years, starting from the date of registration with the Commercial Registry;
- application of a unified custom duty at a flat rate of 2 per cent of the value of any equipment, machinery and device that is necessary for establishment of the investment projects; and
- tax reduction for seven years, from the date of starting the investment projects in Egypt, subject to a specific formula.

Increased tax burden

- 39 | Are there any new or proposed tax laws or guidance that could significantly increase tax or administrative costs for fintech companies in your jurisdiction?

The Egyptian Tax Authority (ETA) is currently in the process of proposing several amendments to the existing tax regimes in Egypt, whereby a new digital tax will be introduced. However, it is too early to know the rates of the proposed digital tax.

On 26 March 2020, the Minister of Finance issued Decree No. 188 of 2020 introducing a mandatory clearance e-invoicing framework where all issued invoices must be digitally transmitted to the ETA in real time before being sent to the customer. The decree obliges all value added tax-registered businesses to issue an electronic invoice containing the issuer's electronic signature and a unified code for the goods or services.

On 2 August 2020, the ETA issued Decree No. 386 of 2020 listing 134 companies who are obliged to issue electronic tax invoices for their sold goods or rendered services as of 15 November 2020. This date is the first phase of a broader roll-out of the e-invoicing obligation. In addition, voluntary adoption of the e-invoicing system is permitted if certain conditions and controls are satisfied.

On 20 November 2020, the ETA issued Decree No. 518 of 2020 listing 347 companies, as a second phase, who are obliged to issue electronic tax invoices for their sold goods or rendered services as of 15 February 2021. It was announced through the media that, by the end of June 2021, the e-invoicing system would be mandatory for all companies.

Furthermore, Decree No. 125 of 2021 with regard to the e-invoicing implementation requires all companies registered with the ETA, regardless of their size, to issue their invoices electronically from 15 February 2022.

According to the Ministry of Finance, value added tax is no longer deductible from paper invoices as of January 2022.

According to Decree No. 188 of 2023, when determining the net commercial and industrial taxable profits of financiers registered in the electronic tax invoice system, only electronic invoices shall be considered in proving deductible costs and expenses as of 1 July 2023, with the exception of paper invoices previously issued by financiers and written before the date of their obligation to issue electronic tax invoices.

IMMIGRATION

Sector-specific schemes

- 40 | What immigration schemes are available for fintech businesses to recruit skilled staff from abroad? Are there any special regimes specific to the technology or financial sectors?

As a general rule, non-Egyptians are not allowed to work in Egypt without being permitted to do so by the Ministry of Manpower. In practice, the issuance of a work permit takes up to three months and is valid from one to three years.

The proportion of foreign employees must not exceed 10 per cent of the total number of employees and must not exceed 20 per cent of the company's payroll. The 10 per cent threshold may be increased to 20 per cent for fintech businesses subject to specific criteria.

UPDATE AND TRENDS**Current developments**

41 | Are there any other current developments or emerging trends to note?

The issuance of the new Fintech Law is the first set of regulations in Egypt governing the integration of technology into financial services such as robo-advisory, microfinance, insurtech, artificial intelligence, mobile applications and digital platforms.

Furthermore, in July 2023, the Central Bank of Egypt (CBE) issued regulations regarding the licensing and regulatory framework for digital banks in Egypt, which effectively allow for the establishment and operation of digital banks in an effort to support innovation and transformation of the digital economy, while representing an important step in aligning with global developments in the financial technology industry.

The CBE revealed that it is studying the application of Central Bank Digital Currency (CBDC). As stipulated by the CBE, such CBDC is safe and stable as an alternative to other types of cryptocurrencies and to mitigate the risks arising with regards to digital financial services. This constitutes part of the measures taken by CBE against the spread and circulation of cryptocurrencies.

In January 2024, the Financial Regulatory Authority (FRA) issued Decree No. 286 of 2023 (the Decree) regarding the rules and procedures for the establishment and licensing of emerging financial technology companies to engage in non-banking financing activities. The Decree applies to a variety of non-banking financing activities, including, inter alia, real estate financing, consumer financing and factoring. The Decree stipulates the conditions required to enable the incorporation of a non-banking financing company, as well as the procedures for obtaining the required licence to engage in their activities.

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Technology Mergers & Acquisitions

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INTRODUCTION

Egypt has witnessed a surge in M&A transactions over the past year and currently stands out as one of the most popular markets in the region for M&A transactions. According to multiple reliable resources, the total volume of M&As reached 139 deals, and the average deal value rose by 383 per cent in comparison to the first half of 2023, recording a total of US\$3.48 billion. This report predicts further growth in M&A transactions across multiple sectors, namely technology, telecoms and fintech.

As a result of the Egyptian government's extensive efforts over the past few years to improve the business climate in the country, Egypt has managed to attract more foreign direct investment (FDI) across multiple sectors, predominantly within the fintech and infrastructure sectors. This achievement is supported by a plethora of international recognition. Egypt was recognised as one of the top five destinations globally for greenfield FDI in 2016, where Cairo was also ranked among the top 10 cities hosting start-ups in 2016. South Africa was replaced by Egypt as the top second-ranked destination by projects in the Middle East and North Africa (MENA) region, experiencing a 60 per cent increase from 85 to 136 projects, as per the FDI Report (2020). Egypt was also placed at the top of all ranked MENA countries by capital investment in 2020 by acquiring 12 per cent capital investment with a total value of US\$13.7 billion, where financial services were among the top five sectors in 2019.

The Egyptian market's credentials (including investment cost, manpower and local and market demands) are highly attractive to all businesses at a range of levels, from start-ups to large multinational entities.

Despite international and local crises faced by the country over the years (including revolutions, covid-19, the Ukraine–Russia war, inflation, and the threat of potential recession), Egypt has maintained strong liquidity and financial status as a result of FDI.

One of the main sectors attracting FDI in Egypt is fintech. During the past few years, fintech has become increasingly dominant within the Egyptian market, as the most popular business models within the Egyptian jurisdiction are payment platforms and financing services. According to several reports, digital payment is expected to be the market's dominant segment by 2025. In addition, over the past five years, investments pumped into the fintech sector, including fintech-enabled start-ups, reached US\$358.8 million. Investments in this sector reached nearly US\$290 million in 2022, compared to just US\$900,000 in 2017, according to reports.

It is worth noting that the Egyptian government has issued various regulations on fintech in the non-banking financial sector in 2023, regulating the licensing framework for such activities, enhancing financial inclusion and propelling the digital transformation of the financial sector within the country.

Furthermore, recent developments have been made with respect to the Anti-Trust Law No. 3 of 2005 (Anti-Trust Law) in April 2024 to the Anti-Trust Law and its Executive Regulations, whereby the condition of pre-approval for any transaction has been newly introduced as opposed to the post-notification regime. This pre-approval is required for any transaction that constitutes an 'economic concentration'; under the recent amendments, economic concentration is defined as any change of control or material influence as a result of a merger or acquisition or establishment of a joint venture. This recent amendment to the Executive Regulations of the Anti-Trust Law came into force on 1 June 2024, and places an obligation on all transactions that constitute an 'economic concentration' to be notifiable to the Egyptian Competition Authority for pre-approval.

YEAR IN REVIEW

Various deals have taken place over the past year within the technology sector, including, inter alia, the following notable deals:

- 1 Saudi Telecom's internet services subsidiary Solutions by STC has completed the acquisition of an 88.9 per cent stake in Egypt's Giza Systems, with an enterprise value of US\$158 million, in line with Solutions by STC's strategy to lead Saudi Arabia's digital transformation objectives in October 2022;
- 2 MNT-Halan, Egypt's leading and fastest growing fintech ecosystem, announced in February 2023 that Chimera Abu Dhabi has invested more than US\$200 million in equity in exchange for over 20 per cent of the company;
- 3 Nigerian automotive technology company Autochek's acquisition of a majority stake in Egypt's AutoTager was announced in April 2023. The acquisition by Grinta, an e-commerce platform digitising the pharmaceutical supply chain, of the business to business (B2B) e-commerce platform Auto-Cure, aims to boost its business in the country in August 2023;
- 4 Beltone Financial Holding, a large Cairo-listed investment company, announced that it signed the final agreement to acquire 100 per cent of Cash Microfinance in September 2023;
- 5 Noventiq, the global digital transformation and cybersecurity solutions and services provider, announced in February 2023 the closing of the acquisition of Egypt-based DigiTech, which is one of the top-performing and fastest-growing Microsoft partners in Egypt;
- 6 the sale of 9.5 per cent stake in state-controlled Telecom Egypt (ETEL.CA) for 3.75 billion Egyptian pounds in May 2023;
- 7 Liquid Intelligent technologies acquisition of Cysiv MEA, an enterprise cloud and cybersecurity services company in March 2023; and

- 8 the transfer of Vodafone Group's 55 per cent stake in Vodafone Egypt to Vodacom – its South African subsidiary – in a €2.37 billion cash and stock transaction in December 2022.

LEGAL AND REGULATORY FRAMEWORK

The primary laws and regulations governing M&A activity in Egypt are the:

- 1 Egyptian Civil Code No. 131 of 1948;
- 2 Egyptian Companies Law No. 159 of 1981;
- 3 Capital Market Law No. 95 of 1992;
- 4 Investment Law No. 72 of 2017;
- 5 Egyptian Exchange Listing Rules; and
- 6 decrees issued by regulatory authorities, such as the Egyptian Stock Exchange (EGX), the Financial Regulatory Authority (FRA) and the General Authority for Investment and Free Zones (GAFI).

KEY TRANSACTIONAL ISSUES

Company structures

In general, it is important to highlight that there are two main categories of privately owned companies in Egypt: partnerships and corporations.

Partnerships

General partnerships

General partnership (GP) capital contributions can be made by at least two active partners who are deemed by law jointly liable in person for all obligations arising from the operation of the GP.

Limited partnerships

Limited partnership (LP) capital contributions can be made by at least one active partner deemed by law to be liable in person for all obligations arising from the operation of the LP, in addition to one other limited or salient partner who must neither be personally liable for these obligations nor involved in the management of the LP.

Corporations

In general, and as opposed to partnerships, the concept of piercing the corporate veil does not apply to corporations in Egypt, with the exception of active partners in limited partnerships by shares (LPSs); therefore, the liability for operating corporations is only limited to the paid-in capital thereof. However, this general rule is subject to certain exceptions where this liability might be exposed to board members, managers or shareholders and partners (as the case may be).

There are four types of corporations in Egypt:

- 1 joint-stock companies (JSCs): the capital of a JSC must, in general, be owned by at least three shareholders who can be individuals and juristic persons of any nationality;
- 2 limited liability companies (LLCs): LLCs must be owned, in general, by at least two partners who can be individuals and juristic persons of any nationality;
- 3 one-person companies (OPCs): OPCs, as indicated by the name, are owned by one partner who can be either an individual or a juristic person of any nationality; and
- 4 LPSs: LPSs, the same as LLCs, require at least two partners, one of whom must be an active partner deemed by law to be liable in person for all obligations arising from the operation of the LPS.

The acquisition of share structure may differ based on the aforementioned categories. However, the acquisition of shares in GPs, LPs and LPSs is, in general, not preferable for buyers as it involves unnecessary personal liability exposure.

The acquisition of share capital in LLCs and OPCs is much simpler than in JSCs. However, the acquisition of shares in JSCs may constitute a longer process than the acquisition of shares in LLCs or OPCs.

Founding and in-kind shares in JSCs and LPSs may not both be transferred prior to publishing the financial statements of the first two full fiscal years, following incorporation except in certain cases and provided that the approval of the chair of GAFI is obtained. The acquisition of share capital in LLCs is primarily subject to pre-emption rights (or the right of first refusal) that must be waived in a specific way to complete such acquisition.

The acquisition of share capital in JSCs that are listed on the EGX involves more procedures and filings than those applied to JSCs that are not listed on the EGX.

For the acquisition of businesses, this type of acquisition may be made, primarily, in two different ways: spin-offs (horizontal spin-offs) or split-offs (vertical split-offs) to acquire the target business; and assignment of the contracts that are related to such business by way of subrogation.

Regarding the acquisition of assets, the structure can only be determined based on several elements, including the type and location of such assets, and the legal system governing the company owning such assets.

There are also a number of elements that must be taken into consideration when structuring any acquisition and disposal transaction in Egypt, such as:

- 1 the special legal systems governing the target company, business or asset (if any);
- 2 the country from which the target company, business or asset will be acquired;
- 3 the location of the target company, business or asset; and
- 4 whether or not the target shares in the JSC are registered with Misr for Central Clearing, Depository and Registry.

Deal structures

As a general rule, acquisitions involving the transfer of title of shares of JSCs and quotas of LLCs are the most common acquisition structures in Egypt. The transfer of unlisted shares is conducted over the counter (OTC) through an accredited broker registered with the EGX and appointed for such purpose. OTC transactions are not subject to the same level of regulation as public transactions.

Acquisition agreement terms

In Egypt, all types of considerations are accepted in practice, but cash is far more common than any other form, noting that each seller may be offered different deal terms, including the form of consideration.

Furthermore, pre-closing covenants are usually related to, inter alia, conduct of business, authorisation, breach of representation and warranties, as well as no transfer or encumbrance. Furthermore, closing conditions can be determined on a case-by-case basis.

However, in practice, closing conditions usually include, inter alia, regulatory approvals, payment, top management restructuring and execution of any ancillary documents (if any). Finally, it is worth noting that despite the fact that break-up fees and reverse break-up fees are permissible in Egypt, they are not commonly used.

Financing

In Egypt, M&As are usually funded by the purchaser's own sources of income. However, acquisition financing is also commonly carried out through banks and international financial institutions.

In practice, assurance is made in the form of undertakings in the pre-contractual documents.

Tax and accounting

Any profit realised by unlisted corporations or persons through transactions involving the transfer of shares shall be subject to a capital gains tax, at the same corporate income rate of 22.5 per cent on net taxable income. Furthermore, according to the Income Tax Law, profits arising from the company's re-evaluation (including the merger of two or more resident companies, the split of a resident company into two or more resident companies, transforming a partnership into a corporation, transforming a corporation into another form of corporation and transforming a juristic person into a corporation) shall be taxable at the same corporate income rate, namely 22.5 per cent on net taxable income. The capital gains tax shall be borne by the seller in all cases.

Capital gains realised by a corporation through selling their shares in companies listed on the EGX are generally subject to capital gains tax at the rate of 10 per cent, except for in some cases.

According to the Stamp Tax Law, a stamp duty tax shall be enacted on all payable transactions involving the transfers of shares in a company, whether these shares are issued by Egyptian or foreign companies and whether or not such securities are listed on the EGX, at a rate of 0.05 per cent on the gross transaction value without deducting any costs, to be borne equally between the purchaser and the seller.

However, the general rules above may be affected in the case of any applicable double taxation treaty (if any) to which Egypt is a party.

Furthermore, transactions involving the transfers of shares in a company would not be subject to value-added tax (VAT). However, transfer of assets may be subject to VAT, noting that the current standard rate applied in Egypt is 14 per cent.

Furthermore, the Ministry of Investment and International Cooperation (MoIC) sets the accounting standards that, since 2006, have adopted the Egyptian Accounting Standards (EAS) based on the International Financial Reporting Standards (IFRS). In 2019, the MoIC issued Decree No. 69 of 2019 adopting the EAS based on the 2018 IFRS for all public interest entities, which are listed companies, public subscription companies, securities companies and investment funds established by banks and insurance companies, in addition to specific requirements for SMEs.

Furthermore, the MoIC also sets the auditing standards in Egypt and, accordingly, has issued Decree No. 166 of 2008 to adopt the Egyptian Standards on Auditing Review and Other Assurance Services, in accordance with the International Standards on Auditing.

Cross-border issues

Foreign investments are subject to screening in Egypt based on specific criteria, including the investor's nationality and the company's activities, as some of the activities carried out by non-Egyptian investors, and the investor's nationality, may be restricted by relevant Egyptian laws and require certain conditions to be met. Therefore, screening must be performed to ensure the satisfaction of such conditions and requirements.

Foreign ownership restrictions are applied to several sectors and locations: (1) conducting importation activities for resale or trading purposes, commercial agencies and intermediary businesses; and (2) carrying out business in the Sinai Peninsula.

Security clearance must be obtained for any foreigner to work or do business in Egypt. In practice, GAFI typically approves changes in shareholding structures without security clearance, except for some nationalities that are 'Restricted Nationalities', such as Bangladesh, Belarus, China, Iran, Iraq, Israel, Nigeria, Palestine, Russia, and Ukraine. These Restricted Nationalities require prior security clearance.

Additionally, under Egyptian law, foreign investments are subject to review and screening by GAFI. All companies incorporated in Egypt that are entirely or partially owned by non-Egyptian investors, regardless of the percentage of this ownership and the legal regime that is applied (Non-Egyptian Owned Companies), must regularly report FDI data to GAFI within the following timelines:

- 1 no later than 30 days after the incorporation date or the date of any change in the Non-Egyptian Owned Company's capital, purpose, shareholding structure or board members (as the case may be);
- 2 no later than 45 days after the end of each quarter of a calendar year; and
- 3 no later than four months after the end of the relevant Non-Egyptian Owned Company's financial year.

Furthermore, failing to satisfy the FDI requirements will subject the Non-Egyptian Owned Company to a penalty of 50,000 Egyptian pounds, in accordance with the Investment Law. Foreign ownership within some sectors and activities is restricted and certain requirements must be satisfied for a foreign investor to be able to perform such activities under the relevant Egyptian laws.

As a general rule, according to the Importers Registrar Law, no person, whether natural or juristic, may import any product for trading purposes unless such person is registered with the Importers Registrar, at least 51 per cent of the company's share capital is owned by Egyptian nationals. However, a recent exception has been introduced in light of Law No. 173 of 2023, whereby companies with foreign ownership exceeding 49 per cent are permitted to engage in importation activities for 10 years starting from October 2023, subject to the registration in the Importers' Registrar in the General Organisation for Export and Import Control, given that an Egyptian manager is appointed to maintain responsibility for any importation activities.

Furthermore, in accordance with the Commercial Agencies Law, commercial agencies-related activities may be carried out by companies that are 100 per cent owned by Egyptian nationals. However, foreign investors can still achieve full control over this type of business by following a specific structure.

Non-Egyptian employees' total salaries in any entity that is subject to the Companies Law (such as JSCs, LLCs and OPCs) must not exceed 20 per cent of the total salaries of all employees working for the same entity, in accordance with the Companies Law.

However, according to the Executive Regulations of the Investment Law, an increase of the maximum ratio for foreign employees from 10 per cent to 20 per cent can be authorised for companies established in accordance with the provisions of the Investment Law provided that approval is obtained from the Egyptian Ministry of Manpower and there is no possibility of employing an Egyptian person possessing the necessary qualifications.

IP PROTECTION

There are a number of international treaties and conventions on intellectual property rights (IPRs) to which Egypt is a party, including the:

- 1 Patent Cooperation Treaty to seek patent protection for an invention simultaneously in a number of countries by filing an international patent application;
- 2 Paris Convention on the Protection of Industrial Property, adopted in 1883, which applies to industrial property, including patents, trademarks, service marks, trade names, geographical indications and the repression of unfair competition, acceded on 5 March 1951;
- 3 Berne Convention on 2 March 1977 for the protection of works and the rights of their authors. It grants creators the means to control how their creations are used;
- 4 International Registration Systems, governed by the Madrid Agreement, which was entered into by Egypt on 1 July 1951, and the Madrid Protocol related thereto, which was entered into by Egypt on 3 September 2009; and
- 5 Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms acceded on 15 December 1977.

Furthermore, the Intellectual Property Law No. 82 of 2002 (the Intellectual Property Rights Law) and its Executive Regulations is the primary legislation governing IPRs in Egypt. 'Computer software' is defined as any form of instructions and orders expressed by a particular language, symbol or sign that could be used directly or indirectly in a computer to perform a function or achieve a result – whether such instructions and orders are in their original form or any other computer-related form.

In Egypt, the Permanent Office for the Protection of Copyright at the Ministry of Culture oversees copyright-related issues. In addition, the Intellectual Property Rights Protection office at the Information Technology Industry Development Agency is in charge of software-specific issues.

Copyrights under the Intellectual Property Rights Law extend to software and computer programs, like any other work protected under the aforementioned law. Companies shall have the right to transfer all or some of their copyright economic rights by virtue of a written contractual agreement with a detailed indication of each right to be transferred with the extent, purpose, duration and place of exploitation of the transfer, in return for compensation. Furthermore, a licence may be granted by the Ministry of Communications and Information for the copy or translation of protected work under the Intellectual Property Rights Law without consent in certain conditions in return for compensation.

EMPLOYMENT ISSUES

According to the Egyptian Labour Law No. 12 of 2003 (the Labour Law), employees are automatically transferred in all cases of transfer of business, including mergers, acquisitions and sales. The Labour Law provides additional protection for employees through the provision of joint liability of the new employer and former employer in satisfying employees' rights accrued prior to the transfer of the business.

Furthermore, according to the Egyptian Civil Code, if the work that is assigned to an employee exposes the employee to information regarding the employer's customers and confidential information related thereto, the employer and the employee shall have the right to agree that the employee must neither compete with the employer after the termination of his or her employment contract nor participate in a competitive project.

However, this agreement shall only be valid in the following cases: the employee has the legal capacity to enter into the employment contract; and the non-competition clause shall be limited to a specific period, territory and type of work and to the extent necessary to protect the legitimate interests of the employer.

DATA PROTECTION

The Data Protection Law No. 151 of 2020 (Data Protection Law) is the primary legislation regulating the protection of personal data, which has an indirect effect on M&A activity in Egypt, whereby personal data of a juristic or natural person cannot be processed, stored or shared without their prior consent.

Furthermore, public record information in respect of private companies is relatively limited. The following public record information can ordinarily be obtained:

- 1 commercial registers, which show, inter alia, the company's date of registration, current board members or directors, business activities, places of business, share capital and the signatory powers and authorities granted to the board members or directors; however, commercial registers do not include, for example, information on the shareholding structure;
- 2 real estate registered titles, which require knowledge of the exact address of the target real estate; and
- 3 litigation cases checks, which are time-consuming processes as they require conducting separate checks at each individual court.

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However, the application of the Data Protection Law is still subject to the issuance of the Executive Regulations of the Data Protection Law and the establishment of the Data Protection Centre, which have not been issued nor established yet.

SUBSIDIES

According to the Investment Law, the Technological Zones System, which is one of the investment systems, provides the tools and equipment necessary for technological activities to be carried out by a company incorporated under this system. This company shall not be subject to any taxes or customs duties of any kind in accordance with specific requirements and procedures to be determined by the Executive Regulations of the Investment Law.

DUE DILIGENCE

As a general rule, under the Civil Code, the seller is not answerable for any defects of which the purchaser was aware at the time of the sale nor any defects that could be discovered by the purchaser upon examining the subject of the sale with the care of a reasonable person, unless the purchaser proves that the seller confirmed the absence of those defects.

There is no typical scope of due diligence in Egypt, as it is at the buyer's discretion to determine the level of due diligence that he or she is willing to conduct; however, conducting a full due diligence is usually recommended to be in line with the aforementioned general rule under the Civil Code. Buyers can rely on due diligence reports produced by the sellers, if the sellers conduct the due diligence with the care of a reasonable person.

DISPUTE RESOLUTION

Parties usually refer any dispute related to M&A to arbitration.

The Egyptian Arbitration Law No. 27 of 1994 is based on the UNCITRAL Model Law on International Commercial Arbitration. Since its establishment in 1979, the Cairo Regional Centre for International Commercial Arbitration has adopted the UNCITRAL arbitration rules, with various amendments made until 2011, with all amendments being based on UNCITRAL's arbitration rules.

Furthermore, Egypt has ratified several treaties, namely the New York Convention in 1959, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) in 1972 and a number of bilateral investment treaties.

The enforcement of foreign arbitral awards in Egypt is governed by the New York Convention. Under the New York Convention, the enforcement of the arbitral award occurs after depositing the award with the courts and obtaining a writ of execution. The award is then enforced in the same way as that of a court judgment. Furthermore, under the ICSID Convention, the enforcement of arbitral awards may be implemented by the competent court or any other authority, as determined by the state that is a party to the treaty. In Egypt, the Ministry of Justice is the designated authority to oversee the enforcement of arbitral awards, in accordance with the ICSID Convention.

OUTLOOK AND CONCLUSIONS

It is expected that Egypt will witness a huge surge in M&A activity in the technology sector, especially with regards to the fast growth of the mobile payments industry, with an estimated annual growth rate of 19.3 per cent, which is expected to reach US\$22 billion by 2025. Furthermore, the government of Egypt has adopted initiatives for the promotion of investment with regards to fintech. This includes the issuance of the new Fintech Law No. 5 of 2022, granting licences to non-banking financial institutions in the fintech sector. The efforts of the Egyptian government to promote foreign investment and boost post-pandemic growth is reflected in M&A activity, which constitutes an appealing market to foreign investors, especially in the fast-growing technology, media and telecoms and fintech sectors. Subsequently, Egypt has proven to be a popular and key market for investment in the region.

Financial Services M&A

Mohamed Hashish and Farida Rezk

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MARKET AND POLICY CLIMATE

Market climate

1 | How would you describe the current market climate for M&A activity in the financial services sector in your jurisdiction?

Due to the efforts of the government over the past few years in improving the business environment in the country, Egypt has managed to attract more foreign direct investment (FDI) in multiple sectors, including primarily the financial services sector. This achievement is supported by a plethora of international recognition, as follows:

- Egypt was recognised as one of the top five destinations globally for greenfield FDI in 2016, where Cairo was also ranked among the top 10 cities hosting start-ups in 2016.
- South Africa was also replaced by Egypt as the second-ranked destination by projects in the Middle East and Africa region (MENA), experiencing a 60 per cent increase from 85 to 136 projects as per the FDI Report 2020.
- Egypt also placed at the top of all ranked MENA countries by capital investment in 2020 by acquiring 12 per cent capital investment with a total value of US\$13.7 billion, where financial services were among the top five sectors in 2019.
- Net foreign direct investment (FDI) in Egypt grew by 183 per cent in the first quarter (Q1) of 2022, to reach US\$4.1 billion, compared to US\$1.4 billion in the same period of 2021, according to data from the Central Bank of Egypt (CBE).
- Egypt remains the second-largest recipient of FDI in Africa after South Africa, as per the FDI Report 2021.

Despite international and local crises faced by the country over the years (including political unrest, covid-19, the Russia-Ukraine war, the Palestine-Israel conflict, inflation and the threat of recession), the current market climate in the banking sector in Egypt can generally be described, as articulated by Bloomberg: 'a profit bonanza for Egyptian banks is ripening the industry for acquisitions. If only there were more willing sellers'.

There are now 38 banks operating in Egypt, including around 20 regional and international banks.

On 25 January 2022, the CBE announced the issuance of an all-new licence to Standard Chartered Bank to operate in Egypt. This is the first all-new licence to be issued by the CBE since the registration of Arab International Bank in Egypt on 5 June 2012. Since that date, aside from the public entities and international banking institutions operating under a special international instrument (eg, International Monetary Fund (IMF), the World Bank Group and Agence Française de Développement (AFD)), it was not feasible for any new bank to operate in Egypt by obtaining an all-new licence and currently the only practical way to operate in Egypt is to acquire an existing bank registered with the CBE. In the past 10 years,

there have been a number of large acquisitions in the banking sector in Egypt, including the following major acquisitions:

- the recent completion of the legal merger of First Abu Dhabi Bank and Bank Audi Egypt in June 2022;
- the recent acquisition made by Bahrain's Arab Banking Corporation of BLOM Bank Egypt in January 2021; and
- the acquisition of Arab Investment Bank by both the Sovereign Fund of Egypt and EFG Hermes Holding SAE in May 2021.

However, the international non-banking financial institutions do not face the same challenges and limitations, as they can still apply for new licences from the Financial Regulatory Authority (FRA) for the majority of non-banking financial activities, hence the fact that one of the main sectors attracting FDI in Egypt is fintech. During the last few years, fintech has become increasingly dominant within the Egyptian market.

The most notable players in the banking sector, in our opinion, include:

- the National Bank of Egypt and Banque Misr at the governmental level, both of which have been exerting major efforts to improve their services and gain more recognition in Egypt;
- Commercial International Bank and Arab African International Bank at the local and regional level, both of which predominantly compete to attract corporate clients; and
- HSBC, a top-tier international bank in Egypt which has the most advanced online banking services in the market.

The most notable players at the non-banking financial institutions level include, in our opinion, EFG Hermes, Beltone, HC Securities & Investment and CI Capital.

There are several large M&A transactions in the non-banking financial sector in Egypt, including, among others, the following major transactions:

- MNT-Halan, Egypt's leading and fastest-growing fintech ecosystem, announced in February 2023 that Chimera Abu Dhabi has invested more than US\$200 million in equity in exchange for over 20 per cent of the company.
- Beltone Financial Holding, a large Cairo-listed investment company, announced that it signed the final agreement to acquire 100 per cent of Cash Microfinance in September 2023.
- United Arab Emirates' open finance platform Fintech Galaxy's acquisition of Underlie, an Egyptian open banking platform offering application programming interface (APIs) to banks and businesses in December 2022 for an undisclosed amount.
- The recent conclusion by EFG Hermes of the sale of a 60 per cent stake in Auf Group to leading Emirati food company Agthia in November 2022.
- EFG Hermes' Tanmeyah, a microfinance services company, concluded full acquisition of Fatura Netherlands, a provider of B2B e-commerce marketplace and digital solutions, in June 2022. Since

2019, Fatura has expanded its operations across 22 of Egypt's provinces; Tanmeyah serves around 391,000 clients and runs a portfolio of more than US\$208 million.

- Vodafone Group plc's completion of the transfer of its 55 per cent shareholding in Vodafone Egypt to Vodacom Group Limited in December 2022, aiming to accelerate the growth in financial services and the Internet of Things.

Government policy

2 How would you describe the general government policy towards regulating M&A activity in the financial services sector? How has this policy been implemented in practice?

It is important to differentiate, in general, between banking and non-banking financial services. In this regard, it is not permitted to carry out any banking activities in Egypt without being licensed by and registered with the CBE. This restriction covers any activities of receiving deposits, providing refinancing, loans, facilities and contributing to share capital in local companies, as well as any other activities that are considered a banking activity as per the banking custom, on a regular basis and as the main business activities of any person carrying out these activities. However, this restriction does not apply to public juristic persons that carry out any of the said banking activities within their scope of incorporation and international financial institutions that were empowered to do so in Egypt by virtue of any special law or international treaty (eg, IMF, the World Bank Group and AFD).

Any person violating the aforementioned restriction shall be subject to imprisonment for a period of up to three years or a fine of not less than E£5,000 and not more than E£50,000.

The non-banking financial services cover mainly any activities related to the fields of:

- securities, namely capital markets;
- insurance, reinsurance or insurance brokerage activities;
- mortgage finance activities;
- financial leasing activities;
- securitisation and factoring activities; and
- microfinance.

Each of these fields is subject to special and intensive regulation, where the FRA is empowered by law to regulate and supervise these fields such that no one can carry out any of these activities without obtaining the required licences, approval or authorisations from the FRA.

The policies in both non-banking and banking financial services are very strict and implemented in practice.

LEGAL AND REGULATORY FRAMEWORK

Legislation

3 What primary laws govern financial services M&A transactions in your jurisdiction?

The primary laws that govern banking and non-banking financial services include the following:

- the Financial Regulatory Authority (FRA) Decree on the Conditions and Procedures Required for the Incorporation, Licensing and Approval of Financial Technology Institutions No. 58 of 2022;
- Fintech Law No. 5 of 2022;
- Banking Law No. 194 of 2020;
- Capital Market Law No. 95 of 1992;
- FRA's Decree on the Non-Banking Financial Services Regulations No. 53 of 2018; and
- FRA's Decree No. 176 of 2018, adopting the Microfinance and Factoring Legal Framework.

The Egyptian government issued various regulations on fintech in the non-banking financial sector in 2023, regulating the licensing framework for such activities, enhancing financial inclusion and propelling the digital transformation of the financial sector within the country.

Regulatory consents and filings

4 What regulatory consents, notifications and filings are required for a financial services M&A transaction? Should the parties anticipate any typical financial, social or other concessions?

For banking services

Prior approval is required from the Central Bank of Egypt (CBE) for holding more than 10 per cent in any bank registered in Egypt or holding any percentage that leads to the actual control of such a bank. This actual control covers the ability of a person (including the related parties thereof) to appoint the majority of the company's board members, or to control in any way the decisions issued by its board of directors or general assembly.

In this regard, a pre-acquisition application is required to be submitted to the CBE at least 60 days prior to the acquisition. If the acquisition is based on an involuntary reason, such as inheritance, will, or due to a merger, acquisition or split-up, the application must be submitted at least 30 days as of the date on which the controlling party became aware of such acquisition.

The CBE is required by law to notify the person concerned with its decision within 60 days from the date on which all required documents are successfully submitted to the CBE.

Furthermore, any person holding between 5 per cent and 10 per cent of the issued capital of any registered bank in Egypt or voting rights in such a bank shall notify the CBE of such ownership within 15 days as of the ownership date.

For non-banking financial services

No natural or juristic person (including its related parties) may acquire a non-banking financial institution representing 10 per cent or more of the size of its relevant market without obtaining the prior approval of the FRA's board of directors if the acquisition will result in any of the following:

- acquiring one-third of the relevant target company's capital or voting rights;
- acquiring half of the relevant target company's capital or voting rights;
- acquiring two-thirds of the relevant target company's capital or voting rights; and
- acquiring three-quarters of the relevant target company's capital or voting rights.

Furthermore, anyone who owns at least 10 per cent of the capital or voting rights of a non-banking financial institution is not allowed to increase this ownership by 5 per cent or more in the same non-banking financial institution, unless prior approval is obtained from the FRA.

Other than the above, no person is generally allowed to acquire, directly or indirectly, more than one-third of the issued capital of any security brokerage company or managed investment fund that represents more than 10 per cent of the size of its relevant market or any percentage that leads to its 'actual control', except after obtaining the FRA's prior approval.

The term 'actual control' covers any position, agreement or ownership of shares or stakes of any percentage that leads to controlling the appointment of the majority of the members of the board of directors or the decisions issued by it and from the general assembly of the company concerned.

Ownership restrictions

- 5 | Are there any restrictions on the types of entities and individuals that can wholly or partly own financial institutions in your jurisdiction?

For non-banking financial institutions, at least 25 per cent of the share capital of any non-banking financial services company shall be owned by another financial institution and 50 per cent of the said share capital shall be owned by any juristic person, of which 50 per cent shall increase to 75 per cent for mortgage financial services companies. This rule does not apply by law to the banks; however, in practice, the CBE takes into account the adequacy and relevant experience of the buyer who is willing to acquire a stake in banks in Egypt, especially for change of control.

Directors and officers – restrictions

- 6 | Are there any restrictions on who can be a director or officer of a financial institution in your jurisdiction?

There are no specific restrictions imposed by law on who can hold the position of the director of a bank in Egypt. However, prior to appointing the chairman of the board of directors, the board members or the directors of any bank in Egypt, the prior approval of the governor of the CBE must be obtained. This approval takes into consideration the nominated director's relevant experience and qualifications.

For non-banking financial services, directors are in general required to have minimum relevant experience and qualifications, where their appointment is also subject to the approval of the FRA.

Directors and officers – liabilities and legal duties

- 7 | What are the primary liabilities, legal duties and responsibilities of directors and officers in the context of financial services M&A transactions?

Directors and officers are generally liable for complying with all governing laws and regulations applied to the specific activities of the entities where they are responsible for their actual management by having the power to take decisions. This includes, for example, submitting all required reports and obtaining all required approvals for M&A transactions.

This responsibility is deemed a public order provision that cannot be excluded between the acquisition parties, especially for any criminal risk that might be associated with the specific violation.

Foreign investment

- 8 | What foreign investment restrictions and other domestic regulatory issues arise for acquirers based outside your jurisdiction?

In general, there are no foreign ownership or investment restrictions applied to acquisitions within the financial services sector in Egypt. However, as a basic rule under Egyptian law, security clearance shall be obtained for any foreigner seeking to work or do business in Egypt. In practice, the regulatory requirements for obtaining security clearance are highly restrictive for certain countries (such as China, Russia, Ukraine, Nigeria, Israel, Iran, Belarus, Bangladesh, Iraq and Palestine), where security clearance is required to be obtained before authorising any acquisition.

Furthermore, obtaining approvals, licences and authorisations from both the CBE and FRA is subject to a number of elements, including national security and public interest; therefore, granting such approvals, licences and authorisations to the aforementioned nationalities may present a challenge.

Competition law and merger control

- 9 | What competition law and merger control issues arise in financial services M&A transactions in your jurisdiction?

As of December 2022, the government approved the latest amendment to the Antitrust Law No. 5 of 2023, whereby the newly introduced pre-approval scheme replaces the post-notification requirement. The new pre-approval scheme requires that any transaction that constitutes economic concentration obtains the Egyptian Competition Authority's (ECA) pre-approval. It is worth noting that economic concentration is defined as any change of control or material influence as a result of a merger, acquisition or establishment of a joint venture. The implementation of the new pre-approval requirements is still pending the issuance of the Executive Regulations of the new amendment.

DEAL STRUCTURES AND STRATEGIC CONSIDERATIONS

Common structures

- 10 | What structures are commonly used for financial services M&A transactions in your jurisdiction?

It is not yet practically possible to obtain a new bank registration licence in Egypt and, therefore, the only available option is an acquisition of shares. However, as highlighted above, Commercial International Bank, being an existing licensed bank, has managed to acquire the private retail banking portfolio of Citibank Egypt, also an existing licensed bank. With that being said, the acquisition of assets within the banking sector may be made only between two existing banks that are registered with the Central Bank of Egypt (CBE), as long as such assets are interlinked with banking services.

However, for non-banking financial services, investors prefer establishing a new company for the purpose of providing these services unless the relevant licence is not available for issuance by the Financial Regulatory Authority (FRA), such as was the case, for example, regarding the brokerage services licence when it was suspended for a year from June 2020 to June 2021.

Time frame

- 11 | What is the typical time frame for financial services M&A transactions? What factors tend to affect the timing?

M&A acquisition within the financial services sector is a time-consuming process involving a typical time frame of, in practice, at least six months, and during which a large number of documents are required to be submitted.

Tax

- 12 | What tax issues arise in financial services M&A transactions in your jurisdiction? To what extent do these typically drive structuring considerations?

As a general rule, Law No. 76 of 2017 applies to any M&A transactions, as follows:

- capital gains tax, at a rate of 22.5 per cent (the CG tax); and
- stamp duty, at a rate of 0.175 per cent, applicable to both the seller and purchaser.

The stamp duty rate can reach 0.3 per cent for both the seller and the purchaser in the event that the transaction involves the acquisition of 33 per cent or more of the capital or voting rights of a listed company, or in the event that the transaction involves a SWAP of 33 per cent of the assets value of a listed company against shares in another listed company. It is worth noting that the CG tax shall be based on the fair market value determined by an independent financial adviser. However,

in the event of a cross-border transaction, a double taxation treaty (DTT) between Egypt and the other state may reduce the CG tax and the stamp duty rate. The CG tax, stamp duty and DTT are usually the primary tax concerns when considering the transaction's structure.

ESG and public relations

13 | How do the parties address the wider public relations issues in financial services M&A transactions? Is environmental, social and governance (ESG) a significant factor?

Both the CBE and FRA have been working on applying ESG standards in an effort to meet the international ESG standards, which are contemplated to be applied through multiple phases until these standards become mandatory for all non-banking financial institutions. The CBE has also worked on multiple successful initiatives with the existing registered banks in Egypt, whereby these banks were required to comply with the terms of such initiatives. Therefore, the ESG standards contemplated should be taken into consideration for any M&A transaction within the financial services sector.

Political and policy risks

14 | How do the parties address political and policy risks in financial services M&A transactions?

Parties usually address political and policy risks by agreeing on mutual collaboration in the event of such risk, with certain assumptions and remedies.

Shareholder activism

15 | How prevalent is shareholder activism in financial services M&A transactions in your jurisdiction?

Minor shareholders are protected by the relevant financial services laws and regulations against major shareholders where certain procedures are required to be followed strictly to avoid invalidating decisions taken that do not comply with such procedures. For example, the Capital Market Law and its Executive Regulation grant a tag-along right to minority shareholders in listed and delisted joint stock companies (JSCs) upon acquisition of 90 per cent or more of the share capital or voting rights of such JSCs.

Third-party consents and notifications

16 | What third-party consents and notifications are required for a financial services M&A transaction in your jurisdiction?

Third-party consents and notifications are required in certain cases, including, for example, in the event of a shareholders' agreement whereby the other shareholders have a right of first refusal or a pre-emption right (or both) over shares being sold.

As another example, in the event of a merger or change of the company's form, an extraordinary general shareholders' meeting shall be held to approve the said merger or change of the company's form.

DUE DILIGENCE

Legal due diligence

17 | What legal due diligence is required for financial services M&A transactions? What specialists are typically involved?

As a general rule under the Civil Code, the seller is not answerable for any defects of which the purchaser was aware at the time of the sale or any defects that could be discovered by the purchaser by examining the subject of the sale with the care of a reasonable person, unless the purchaser proves that the seller confirmed the absence of those defects.

There is no typical scope of due diligence in Egypt as it depends on the level to which the buyer is willing to conduct due diligence. However, conducting a full due diligence is usually recommended so as to remain in compliance with the aforementioned general rule. Specialist lawyers in banking and finance laws should typically be involved. According to the Circular dated 7 March 2016 amending the acquisition finance regulation, the CBE requires legal and financial due diligence for certain types of transaction.

Other due diligence

18 | What other material due diligence is required or advised for financial services M&A transactions?

Tax and financial advisers are usually required.

Emerging technologies

19 | Are there specific emerging technologies or practices that require additional diligence?

There is no additional due diligence required with regard to emerging technologies or practices in Egypt, such as cryptocurrencies, other than the standard due diligence, namely legal and financial due diligence.

PRICING AND FINANCING

Pricing

20 | How are targets priced in financial services M&A transactions? What factors typically affect valuation?

Valuation by a licensed valuator registered with the Central Bank of Egypt (CBE) or Financial Regulatory Authority (as the case may be) should be made.

Purchase price adjustments

21 | What purchase price adjustments are typical in financial services M&A transactions?

Purchase price adjustments are typically based on the fair market value.

Financing

22 | How are acquisitions typically financed? Are there any notable regulatory issues affecting the choice of financing arrangements?

Acquisitions are usually funded by the buyers' own sources of finances; however, acquisition financing is also commonly used through banks and international financial institutions, noting that banks registered with the CBE may provide acquisition financing of only up to 50 per cent of the acquisition value unless prior approval is obtained from the CBE.

DEAL TERMS

Representations and warranties

23 | What representations and warranties are typically made by the target in financial services M&A transactions? Are any areas usually covered in greater detail than in general M&A transactions?

Representations and warranties are typically made, for example, with respect to the satisfaction of all authorisations to enter into the transaction; the transaction documents being binding, legal and valid towards the seller; non-conflict with any other documents; absence of encumbrances; and obligations not to dispose, sell or create any right over the target.

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Indemnities

24 | What indemnities are typical for financial services M&A transactions? What are typical terms for indemnities?

Indemnities are typically made, for example, with respect to any matters that the buyer does not seek to assume or matters that pose unusual or unexpected risk, with certain limitations as required by law.

Closing conditions

25 | What closing conditions are common in financial services M&A transactions?

Closing conditions are determined on a case-by-case basis; however, in practice, closing conditions usually include, for example, regulatory approvals, payment, top management restructuring and execution of ancillary documents (if any).

Interim operating covenants

26 | What sector-specific interim operating covenants and other covenants are usually included to cover the period between signing and closing of a financial services M&A transaction?

Covenants are usually related to, among other things, conduct of business, authorisation, breach of representation and warranties, as well as no transfer or encumbrances.

DISPUTES

Common claims and remedies

27 | What issues commonly give rise to disputes in the course of financial services M&A transactions? What claims and remedies are available?

The most common issue with respect to financial services M&A transactions is primarily related to acquiring the necessary regulatory approvals and authorisations, where the parties may typically agree on a grace period to obtain the required approvals and authorisations; otherwise, the agreement shall be terminated subject to certain provisions.

Dispute resolution

28 | How are disputes commonly resolved in financial services M&A transactions? Which courts are used to resolve these disputes and what procedural issues should be borne in mind? Is alternative dispute resolution (ADR) commonly used?

Arbitration is the most common ADR in financial services M&A transactions. However, in a few cases, the parties may resort to the competent state court, namely, the Economic Court.

UPDATE AND TRENDS

Trends, recent developments and outlook

29 | What are the most noteworthy current trends and recent developments in financial services M&A in your jurisdiction? What developments are expected in the coming year?

The fintech sector has become increasingly dominant in the Egyptian financial services M&A market, as the most popular business models within the Egyptian jurisdiction are payment platforms and financing services. According to several recent reports, digital payment will be the dominant segment in Egypt's financial services M&A sector by 2025.

Corporate Reorganisations

Frederic Soliman and Laila Aziz

Soliman, Hashish & Partners

LEGAL AND REGULATORY FRAMEWORK

Types of transaction

1 | What types of transactions are classified as 'corporate reorganisations' in your jurisdiction?

Egyptian law does not define, per se, the term 'corporate reorganisation' in relation to solvent companies as such companies do not necessarily suffer financial difficulties that justify their reorganisation.

However, certain legal actions may be deemed an act of corporate reorganisation in accordance with the provisions of Egyptian Companies Law No. 159 of 1981 (the Companies Law) and its Executive Regulation, including, inter alia, the following legal actions:

- the increase or decrease of authorised capital;
- the amendment of rights, privileges or restrictions in relation to types of shares or quotas;
- the amendment of a company's purpose, its shareholding structure, its board of directors' composition or its legal form;
- spin-offs and split-offs within the same group of companies related to the same parent company;
- mergers within the same group of related companies;
- the acquisition of assets; and
- the transfer of assets between related companies.

Furthermore, as per the Executive Regulation of Capital Market Law No. 95 of 1992 (the CM Law), certain legal transactions may be deemed as corporate reorganisations in accordance with the CM Law, requiring notification to the Financial Regulatory Authority (FRA) and its approval thereof, including, inter alia:

- acquisition of company shares or voting rights through open market operations, not exceeding one-third of the voting rights or capital;
- acquisition of company shares or voting rights through open market operations by non-employees or members of the board of directors;
- capital restructuring among related companies or a group of related companies; and
- cases of purchase of treasury shares, reduction of capital by execution of treasury shares or distribution of treasury shares as bonus shares.

Rate of reorganisations

2 | Has the number of corporate reorganisations in your jurisdiction increased or decreased this year compared with previous years? If so, why?

In Egypt, there are currently no publicly available official reports reflecting the actual volume of legal transactions deemed as corporate reorganisations. In practice, companies in Egypt may consider corporate reorganisations as avoiding certain legal obligations or restrictions, including, inter alia, avoiding higher taxation rates, solving problems to

keep up with a certain practice (ie, technological, industrial, commercial or trading). However, there has been a recent increase with regard to the acquisition or sale of assets, stemming from the financial challenges of the new economic landscape, due to the recent devaluation of the Egyptian pound, the rise of disruptive global events such as covid-19, the Russia-Ukraine war and the global recession, whereby affected companies may be forced to consider corporate reorganisation.

Jurisdiction-specific drivers

3 | Are there any jurisdiction-specific drivers for undertaking a corporate reorganisation?

There are certain legislative restrictions regarding foreign nationals investing in (1) certain sectors in Egypt, including commercial agency, real estate brokerage and importation for the purpose of trade and (2) geographical zones, such as investing in the region of the Sinai Peninsula.

Many companies may be eligible to benefit from the exceptions provided by the Executive Regulation of the CM Law, as recently amended by Ministerial Decree No. 1760 of 2020, from the submission of a mandatory public tender offer to the FRA, in the event that a company acquires whether directly or indirectly, by itself or through its related companies, more than one-third of the capital in a target company, as follows:

- the implementation of mergers between related parties;
- capital restructuring among related persons or a group of related companies;
- cases of purchase of treasury shares, reduction of capital by execution of treasury shares or distribution of treasury shares as bonus shares;
- in the event of a capital increase, if it is not the result of purchasing subscription rights during the process of the capital increase; and
- cases that result in the ownership by a person alone or with their related persons of part or all of the shares or voting rights owned by a major shareholder alone or with their related persons in accordance with economic considerations or necessities approved by the Council of Ministers, up to a maximum of 50 per cent of the shares or voting rights of the company.

Furthermore, companies may revert to corporate reorganisation to avoid tax implications, since Income Tax Law No. 91 of 2005 (the Income Tax Law) stipulates that distributed dividends by Egyptian companies to their resident or non-resident shareholders, except for distributions made in the form of bonus shares, shall be subject to a taxable rate of 10 per cent (withholding tax rate).

Therefore, corporate reorganisation may be initiated by a group of related companies to avoid payment of the withholding tax rate. The withholding tax rate shall be applied at each level of company in Egypt.

Moreover, the Executive Regulation of the CM Law provides that capitalisation resulting from a debt-to-equity swap shall be exempt from the submission of a mandatory public tender offer.

Structure

4 | How are corporate reorganisations typically structured in your jurisdiction?

The structuring plan of a corporate reorganisation depends on the chosen method of corporate reorganisation, whether it is a transfer of assets (shares or quotas, or both), merger, acquisition or amendment of the legal status of an entity.

In general, corporate reorganisations are approved by the concerned companies' general meetings, then ratified by the General Authority for Investment and Free Zones (GAFI).

Furthermore, Egyptian Antitrust Law No. 3 of 2005, as recently amended by Law No. 175 of 2022, has exempted corporate reorganisations such as mergers and acquisitions between related companies from the pre-notification of the Egyptian Competition Authority (ECA), aiming to simplify the process of mergers and acquisitions between related companies.

Laws and regulations

5 | What are the key laws and regulations to consider when undertaking a corporate reorganisation?

Key laws and regulations to consider when undertaking a corporate reorganisation include, inter alia, the following:

- Companies Law No. 159 of 1981 and its Executive Regulation;
- Capital Market Law No. 95 of 1992 and its Executive Regulation;
- Income Tax Law No. 91 of 2005 and its Executive Regulation;
- Egyptian Antitrust Law No. 3 of 2005 (the Antitrust Law);
- FRA Resolution No. 11 of 2014 on the rules of Listing and Delisting of Securities at the Egyptian Exchange (the EGX Law);
- Investment Law No. 72 of 2017 (the Investment Law) and its Executive Regulation;
- Ministerial Decree No. 547 of 2018 on Egyptian Transfer Pricing Guidelines (the Transfer Pricing Decree); and
- Unified Tax Procedures Law No. 206 of 2020 (the Tax Procedures Law) and its Executive Regulation.

National authorities

6 | What are the key national authorities to be conscious of when undertaking a corporate reorganisation?

Various national governmental authorities should be contacted for approvals, ratification or inspections during every step of the process of corporate reorganisation.

Procedures to be carried out and documents required for submission in the event of a corporate reorganisation differ depending on the special requirements of each chosen corporate reorganisation method, by which the operation shall be achieved based on the speciality of each corporate reorganisation, taking into account the tax implications.

However, there are key national authorities to be taken into consideration when undertaking almost any corporate reorganisation:

- the GAFI;
- the FRA;
- the Misr for Central Clearing, Depository and Registry;
- the EGX;
- the ECA; and
- the Egyptian Tax Authority.

KEY ISSUES

Preparation

7 | What measures should be taken to best prepare for a corporate reorganisation?

To ensure the best outcomes while carrying out corporate reorganisation procedures, regardless of the chosen type of corporate reorganisation, a full legal, financial and tax due diligence should be conducted to be in a better position to anticipate all the possible risks.

In practice, an initial action plan should be prepared thoroughly by a legal counsel to include all actions to be taken and their duration, to avoid negative results obstructing the desired reorganisation, while having full knowledge of the laws and regulations in application of such laws. The plan should be validated by a tax consultant regarding the efficiency and risk probabilities of a corporate reorganisation.

Furthermore, this initial action plan should include the governmental authorities to be notified, the initial required documents and the expected time period during which the prerequisite action shall be carried out. It is important to note that corporate reorganisations require internal declarations of all assets (whether subject to the reorganisation or not) and the legal forms of the entities involved in a corporate reorganisation.

Employment issues

8 | What are the main issues relating to employees and employment contracts to consider in a corporate reorganisation?

All employment-related matters when undertaking a corporate reorganisation should be treated differently depending on the chosen method of corporate reorganisation. More specifically, a distinction should be made between a merger and an acquisition between related companies, as follows.

- A merger between related companies will result in the termination of the employment contracts of employees in the merged companies that will not survive the merger. Therefore, new employment contracts should be drafted for the transferred employees to the new surviving company in a merger, taking into consideration that the old employer and the new employer (ie, the surviving company in a corporate reorganisation) should be jointly liable in satisfying employees' rights and benefits that were accrued prior to the merging or restructuring of the business, as well as all the obligations arising from the new employment contracts, which may include (1) the seniority benefits attributable to senior employees under the merging companies and (2) the social insurance and pensions benefits not to be interrupted.
- An acquisition between related companies should not result in the termination of employment contracts of employees under the company subject to the acquisition. However, companies facing financial difficulties have the right to completely or partially shut down the entity or reduce its size by terminating the employment contracts of a number of its employees if (1) a downsizing request is submitted to the competent authority for approval and (2) the competent syndication and the employees are notified of both the downsizing request and approval, once issued in accordance with the Labour Law. In this case, the dismissed employee or employees are entitled to an indemnity equivalent to one month of their salary for the first five years and equivalent to one month and a half of their salary for the remaining period.
- In the event that the downsizing request is rejected by the competent authority, a company may still choose to terminate the employment contracts, which will be deemed as an arbitral dismissal in this case, and from which will arise a right of indemnification as per the provisions of the Labour Law, taking into consideration the seniority of each employee and their financial benefits as stipulated in their individual employment contracts.

9 | What are the main issues relating to pensions and other benefits to consider in a corporate reorganisation?

With regard to a merger between related companies, new employment contracts should be drafted for the transferred employees to the new surviving company in a merger, taking into consideration (1) seniority benefits such as annual leave, financial entitlements and the conditions of terminating the employment contract and (2) the pensions benefit under the social insurance.

Financial assistance

10 | Is financial assistance prohibited or restricted in your jurisdiction?

The provision of financial assistance by a private company to fund the acquisition of shares in another company and, in particular, a subsidiary company is not a restricted practice under Egyptian law, and is commonly concluded by virtue of a shareholders' loan agreement or current account.

Furthermore, in accordance with the Executive Regulation of the Companies Law, a company may acquire its treasury shares in one of the following cases:

- in the event of capital reduction;
- if the acquisition is for the purpose of implementing a system of rewarding or motivating employees or managers; and
- if a company's bylaws require the company's approval for the transfer of ownership of shares.

Common problems

11 | What are the most commonly overlooked issues or frequently asked questions in a corporate reorganisation?

In practice, there are common issues considered by a company involved in the process of corporate reorganisation:

- the tax implications of a corporate reorganisation, such as the transfer pricing in the event of transactions made between related companies (eg, the acquisition of cross-border securities);
- the debt-to-equity swap, with a possibility of providing additional rights and management control to one shareholder by virtue of equity;
- the transfer or termination of employees and their indemnification thereto, whereas the old employer and new employer (surviving company) shall be jointly liable in satisfying employees' rights that were accrued before the transfer or restructuring of the business as well as all the obligations arising from the transferred employment contracts;
- the assets and business evaluation by the Economic Performance Sector of the General Authority for Investment and Free Zones prior to any corporate reorganisation, for which approval shall be required to undertake the corporate reorganisation; and
- the total cost of a corporate reorganisation, which should be necessarily expected as per the tax consultant's report and advice.

ACCOUNTING AND TAX

Accounting and valuation

12 | How will the corporate reorganisation be treated from an accounting perspective? How are target assets and businesses valued?

In a corporate reorganisation, all assets or businesses under consideration are required to be valued by the Economic Performance Sector of the General Authority for Investment and Free Zones.

If a listed company wishes to sell an asset exceeding 10 per cent of the equity of the listed company, an auditor, duly registered with the Financial Regulatory Authority List of Auditors, shall issue a valuation report.

Essentially, all corporate reorganisation methods require the company auditor involved in a corporate reorganisation to diligently and efficiently prepare all documents to be requested by authorities from an accounting perspective, as per the Egyptian Accounting Standards, issued by virtue of Decision of the Central Auditing Organisation No. 732 of 2020, including bank transfer statements (of the movement resulting from loan agreements between related parties, of related cash deposits, of company distributed and non-distributed profits and of recent approved capital increase or decrease) and the audited financial statements related to a financial year or several financial years.

Tax issues

13 | What tax issues need to be considered? What are the tax implications of carrying out a corporate reorganisation?

As a general rule, the tax implication varies depending on the chosen corporate reorganisation, the implications of which shall be necessarily covered or anticipated by the company's tax consultants, prior to initiating the corporate reorganisation procedures.

Moreover, under the Income Tax Law, if related companies place conditions in their commercial or financial transactions that differ from those between unrelated companies, which will reduce the tax base or transfer its burden from one taxable company to another exempt or non-taxable company, the Egyptian Tax Authority shall determine the taxable profit on the basis of the neutral price.

Therefore, the Transfer Pricing Decree was adopted in 2018 to provide new tax guidelines when a cross-border transaction between related companies is to be concluded, triggering the submission of specific documents by the concerned companies. According to the Executive Regulation of the Income Tax Law, the neutral price may be determined by virtue of one of the following methods:

- the comparative free price method;
- the total cost added to the profit margin method;
- the resale price method;
- the profit distribution method; or
- the net transaction profit margin.

Aside from the above, the Income Tax Law also stipulates that the capital gains resulting from revaluation shall be taxed in the event of a change in the legal form of a company, including, inter alia, a merger of two related companies, dividing a resident company into two or more resident companies, changing the legal form of a limited liability company to a joint-stock company or vice versa. In this regard, the concerned company may postpone its taxation if the assets and liabilities are recognised at their book value on the date of the change of legal form for the purposes of calculating tax, and if the depreciation of the assets and the carryover of provisions and reserves are calculated in accordance with the rules established before such change.

CONSENT AND APPROVALS

External consent and approvals

14 | What external consent and approvals will be required for the corporate reorganisation?

Depending on the chosen method of corporate reorganisation, the following external approvals or consents, or both, may be required:

- General Authority for Investment and Free Zones certification and approval of related company resolutions in relation to the corporate reorganisation;

- Financial Regulatory Authority approval on the exemption from providing a mandatory public tender offer in the case of a corporate restructuring between related companies, if applicable;
- Misr for Central Clearing, Depository and Registry approval on the transfer of shares;
- Egyptian Exchange declarations and final approval for the execution of the transfer of shares in a joint-stock company, if applicable;
- in the event of a pledge, the right to sell the pledged securities and financial instruments shall be subject to the bank or financial institution's approval; and
- if a mortgaged asset is threatened with loss, damage or loss of value so that it is at risk of becoming insufficient to guarantee the right of the creditor, the creditor may request the competent judge to authorise the sale of the mortgaged asset by public auction or according to the fair market value. Therefore, in the event of a corporate reorganisation that may result in the loss or the devaluation of a mortgaged asset, the creditor's approval on the said corporate reorganisation process may be required.

Internal consent and approvals

15 | What internal corporate consent and approvals will be required for the corporate reorganisation?

As a general rule, corporate reorganisation shall be approved by the shareholders of the concerned company by virtue of a general assembly meeting.

Moreover, in the event of capital increase, a pre-emptive right of the old shareholders in subscribing to the shares of the capital increase with nominal cash shares can be mandatory.

Aside from the above, the concerned companies' articles of incorporation may stipulate additional required internal corporate consents and approvals.

ASSETS

Shared assets

16 | How are shared assets and services used by the target company or business typically treated?

All shared assets and services by a company involved in a corporate reorganisation shall be necessarily subject to the prior evaluation of the whole business in the event of a corporate reorganisation, which is to be concluded by the Economic Performance Sector of the General Authority for Investment and Free Zones. Therefore, it is worth noting that the shared assets and services shall be taken into consideration during the planning process of the reorganisation by the tax experts, legal counsels and auditors to determine their viability.

Egyptian civil law provides that a company involved in a corporate reorganisation, and in particular a merger, may demand the division of shared assets. The agreement governing the shared assets may not prohibit the division for a period exceeding five years. If the term does not exceed that period, the agreement will be executed in the right of the partner and successor.

Transferring assets

17 | Are there any restrictions on transferring assets to related companies?

There are restrictions on commercial transactions made by and between related companies if related companies implement conditions in their commercial or financial transactions that differ from those between unrelated companies, with an objective to reduce the tax base or transfer its burden from one taxable company to another exempt or non-taxable

company. Therefore, the Egyptian Tax Authority (ETA) shall be entitled to determine the taxable profit based on the neutral price of the relevant transaction, which shall be deemed as transfer pricing of transactions concluded between related companies under common ownership or control.

The ETA will verify the proper application of the fair market value by related persons in their transactions with respect to the exchange of goods, services, raw materials, capital equipment, the distribution of shared expenses, royalty returns and other commercial or financial transactions that are carried out.

The Transfer Pricing Decree provides that the transfer pricing guidelines will be the main reference when testing the application of the arm's-length principle in relation to the commercial and financial transactions between related parties. The guidelines will be applicable to all related companies' transactions.

18 | Can assets be transferred for less than their market value?

As a general rule, the valuation of assets depends primarily on two main elements, which are: (1) the fair market value to be determined by the auditor at the planning process of a corporate reorganisation; and (2) the outcome of the due diligence carried out by the financial and legal experts in the event of valuation of a business as a whole involved in a corporate reorganisation.

Specifically, Financial Regulatory Authority (FRA) Resolution No. 11 of 2014 on the rules of Listing and Delisting of Securities at the Egyptian Exchange (the EGX Law) provides that a listed company intending to purchase shares of an unlisted company, or any real estate or other fixed assets whose value represents 10 per cent or more of the equity of the listed company, is required to submit a study to the EGX at the fair market value of the assets or shares subject to the acquisition, prepared by an FRA-registered auditor.

In addition, listed companies are entitled to acquire shares of unlisted companies if their fair market value is equal to or exceeds 100 per cent of the fair market value of the listed company on the effective date of acquisition.

FORMALITIES

Date of reorganisation

19 | Can a corporate reorganisation be backdated or deemed to have already taken place, for example, from the start of the financial year?

Under Egyptian law, a corporate reorganisation may not be backdated or have taken place retroactively, as its procedures will start on the effective date of the first action taken for the submission of any documentation and may not differ from its actual execution date. In addition, certain competent authorities may consider any act related to a backdated corporate reorganisation as an act of intentional fraud or providing misleading information, which may result in the payment of fines or the non-implementation of the corporate reorganisation, or both.

Documentation

20 | What documentation is required in a corporate reorganisation?

As a general rule, it has been established that the documentation required in a corporate reorganisation varies based on the purpose of the reorganisation and the type of reorganisation chosen to fulfil its desired outcomes and intended purposes. Therefore, the documents required will be fundamentally distinguished on the basis of (1) the intended purpose, (2) the desired outcomes, (3) the approvals and permits to be obtained and (4) the governmental authorities to be informed, taking into account that even

though the same authority may be notified for completion and to satisfy different methods of corporate reorganisation, the same authority may request the submission of different documents or data, or both.

However, it is worth noting that the following documents are commonly requested in all corporate reorganisations, by most of the governmental authorities and their internal committees responsible for providing approval:

- the company's bylaws and its subsequent certified amendments;
- the commercial register;
- the company's independent and consolidated financial statements for the financial years based upon which the corporate reorganisation will be made, with the company auditor's reports attached to it; and
- all related agreements upon which the corporate reorganisation is based.

Representations, warranties and indemnities

21 | Should representations, warranties or indemnities be given by the parties in a corporate reorganisation?

Corporate reorganisations are mainly concluded between related companies or a group of related companies and their subsidiaries across multiple levels. Therefore, the parties involved in a corporate reorganisation will not be legally required to give representation, warranties or indemnities. However, these may be presented and provided as an option, depending on internal discussions at high levels of senior management.

Assets versus going concern

22 | Does it make any difference whether assets or a business as a going concern are transferred?

If assets are the subject of a transfer between related companies in a corporate reorganisation deemed as an asset deal, the related companies will continue to exist and operate fully and independently, and such transfer shall require very few procedures and approvals to be acquired for the transfer of the asset. In particular, the purchase of securities in a company will require approvals, such as Misr for Central Clearing, Depository and Registry approval, Egyptian Exchange declaration and approval, if applicable, and shareholders' approval by virtue of a general assembly meeting. A sale purchase of an asset may be the sale purchase of:

- equipment;
- machinery;
- securities;
- intellectual property;
- real estate; and
- services.

If a business is the subject of a transfer between related companies in a corporate reorganisation deemed as a corporate deal, a company will transfer its whole business. Therefore, it constitutes a transfer of all assets and liabilities of a company entailing the transfer of licences, capital, assets, real estate, intellectual property, machinery and equipment, whereby a company will be owned and acquired in its integrity by another related company through mergers (the merged company shall be dissolved and transferred in whole to the surviving company) or acquisitions, or both. The planning process includes a number of different procedures for the transfer of the whole business and its licences thereof with a higher cost than the transfer of an asset.

The distinction between a transfer of assets and a business will be reflected in the tax implications as per the Income Tax Law, the amount of procedures to be achieved through multiple competent authorities and the satisfaction of approvals requirements.

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Types of entity

23 | Explain any differences between public, private, government or non-profit entities to consider when undertaking a corporate reorganisation.

All private entities are governed by a specific set of rules and provisions, in particular in accordance with the Companies Law or the Investment Law, whereas the General Authority for Investment and Free Zones is the main governmental authority charged with all corporate governance requirements of such private companies, including, inter alia, corporate reorganisations and their approvals.

Public entities (ie, governmental authorities, public sector companies owned wholly or partially by the state or one of its authorities) are governed by Public Sector Companies Law No. 203 of 1991 (the Public Sector Law) and its Executive Regulation. Holding companies may be divided and merged by virtue of a decision issued by the prime minister, based on the proposal of the competent minister, and their subsidiaries may be divided and merged by a decision of the board of directors of the company or holding companies and the general assemblies of merged, merging or divided companies, as the case may be. In addition to the Public Sector Law, the provisions of the Companies Law regarding mergers applies to merger cases for public entities.

Non-profit entities are subject to the provisions of Civil Work Law No. 149 of 2019 and its Executive Regulation, which stipulates that all corporate reorganisation requests shall be presented to the ministry concerned with the affairs of associations and civil work, the Fund to support the projects of associations and civil institutions, the Central Unit for Associations and Civil Work and its sub-units.

Post-reorganisation steps

24 | Do any filings or other post-reorganisation steps need to be taken after the corporate reorganisation?

Generally, the involvement and the notification of governmental authorities is required to be made prior to and during the corporate reorganisation, to satisfy the necessary approvals and requirements of the corporate reorganisation.

UPDATE AND TRENDS**Hot topics**

- 25 | What are your predictions for next year and how will these impact corporate reorganisations in your jurisdiction (for example, expected trends or pending legislation)?

In accordance with the Antitrust Law as recently amended by Law No. 175 of 2022, which was published in the Official Gazette on 29 December 2022, corporate reorganisations such as mergers and acquisitions are defined as an economic concentration, which is subject to the pre-notification and inspection of the Egyptian Competition Authority (ECA).

However, the merger or acquisition between companies affiliated or related to the same person, a transaction that may be considered as a restructuring, will not be subject to the pre-notification of the ECA, except in the event of a change of control or material influence directly or indirectly, or in the event that it was proven that there may be harmful effects, limitations or restrictions on the competition within a period not exceeding one year as of the date of the execution of the corporate reorganisation, subject to the condition that an economic concentration transaction is involved.

The Executive Regulation of the Antitrust Law determines the manner of calculating the annual turnover and accumulated assets and determines all the required procedures to be taken and all newly drafted forms by the ECA for the pre-notification. The Executive Regulation of the amended Antitrust Law is expected to be adopted in 2024.

Restructuring

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INTRODUCTION

The Egyptian government in the past few years has been significantly improving the business environment in the country, which has resulted in more foreign direct investment being attracted in multiple sectors in addition to the financial sector. For example, Egypt recently managed to attract the Standard Chartered Bank to operate in the country, where it was granted the first all-new banking licence since 2012.

The Egyptian market's credentials (such as investment cost, workforce, and local and market demand) are very attractive to all businesses at all levels from start-ups to large multinational entities.

Despite the international and local crises that the country has been facing for years (including revaluations, covid-19, the Ukraine–Russia war, inflation, foreign currency shortages and the potential recession), Egypt has somehow been maintaining a good liquidity and financial status.

The Egyptian government, led by the Central Bank of Egypt, have adopted multiple financial initiatives supporting all industries, sectors and even individuals that were affected by any of the international and local crises. These initiatives include, for example, waiving default interest on overdue loans, granting flexible financial support and tax exemptions, all of which initiatives helped a lot of businesses to avoid becoming insolvent or bankrupt.

YEAR IN REVIEW

In order to improve Egypt's economic status and to attract more foreign direct investment as well as local investments, the Egyptian government issued the Restructuring, Preventive Reconciliation and Bankruptcy Law No. 11/2018 (the Bankruptcy Law), which came into effect on 19 March 2018. The Bankruptcy Law aims to regulate corporate bankruptcy and preventive reconciliation and to introduce an out-of-court restructuring system. Before the issuance of the Bankruptcy Law, bankruptcy procedures and preventive reconciliation were regulated by Trade Code No. 17 of 1999 under Chapter 5, which governed the bankruptcy process in Egypt for almost 20 years. By the issuance of the Bankruptcy Law, Chapter 5 of the Trade Code was annulled and replaced by the Bankruptcy Law.

It is worth noting that, since the issuance of the Bankruptcy Law, Egypt's ranking index in the World Bank's resolving insolvency report of 2020 rose from 115 to 104.¹

The Bankruptcy Law applies to commercial companies and traders but does not apply to non-merchant individuals, who continue to be subject to the insolvency provisions under Civil Code No. 131 of 1948. The Bankruptcy Law also does not apply to state-owned companies, which remain subject to Public Companies Law No. 203 of 1991.

Furthermore, in December 2022, Antitrust Law No. 3 of 2005 was amended by Antitrust Law No. 175 of 2022, whereby these amendments have replaced the post-notification regime of notifying certain transactions to the Egyptian Competition Authority (ECA) within 30 days of

entering into the transaction, to a pre-merger control system, whereby the ECA is given the authority to review and approve proposed mergers and acquisitions prior to entering into the transaction. In April 2024, the Egyptian Prime Minister issued Decree No. 1120 of 2024, issuing the Executive Regulations of the Antitrust Law, whereby the application of the new amendments thereto the Antitrust Law have been introduced.

LEGAL FRAMEWORK

Insolvency and bankruptcy activities are generally governed by Bankruptcy Law No. 11 of 2018 (the Bankruptcy Law) and the Egyptian Civil Code.

Generally, the Bankruptcy Law sets out three options or schemes that a debtor undergoing financial difficulties can resort to: (1) restructuring; (2) preventive reconciliation; and (3) bankruptcy.

Restructuring

The term 'restructuring' is defined by the Bankruptcy Law as 'the procedures allowing a trader or a company to overcome financial and administrative difficulty(ies)'. The Bankruptcy Law sets out and develops a restructuring framework or plan providing a debtor facing financial or administrative disturbance, or both, the possibility to reorganise its financial position through, inter alia, asset revaluation, debt restructuring, capital increase, increasing cash inflows, minimising cash outflows and managerial restructuring.

According to the Bankruptcy Law, any trader or company (1) with capital of not less than 1 million Egyptian pounds, (2) that has continuously engaged in the trade business in the two years preceding the filing and submission of the restructuring plan, and (3) that has not committed fraud shall have the right to apply for restructuring, noting that the application of restructuring may not be submitted by a company under liquidation, neither in cases whereby a judgment declaring bankruptcy has been issued against the debtor nor in cases whereby preventive reconciliation procedures have been initiated by the debtor.

The restructuring application shall include a proposed restructuring plan, which shall be submitted to a committee formed out of the experts listed in the Bankruptcy Expert Schedule at the economic courts (the Restructuring Committee). According to the Bankruptcy Law, the Restructuring Committee shall prepare a report to the competent bankruptcy judge within six months of the date of submitting the application with its opinion as to the reasons behind the company's financial or administrative turmoil, the feasibility of restructuring and the proposed plan thereof, which period may be extended by an additional six months at the bankruptcy judge's sole discretion. In all cases, the execution of the restructuring plan should not exceed five years.

The restructuring plan shall be signed by the company's shareholders and be ratified by the competent bankruptcy judge to be binding on all parties. The bankruptcy judge has the authority to appoint an assistant for the debtor from among the listed trustees or the Restructuring

Committee to help the company to implement the plan and negotiate with the creditor, as well as to provide technical and consultancy support.

The debtor shall continue to run its business during the implementation of the restructuring plan and shall continue to be responsible for its obligations and contracts entered into before and after the ratification of the restructuring plan, as long as the restructuring plan is not violated by any of the concerned parties. However, the debtor is prohibited from entering into any agreement or taking any action that might harm the interests of the creditors or violate by any means the restructuring plan, such as, *inter alia*, by selling its assets, giving loans, or imposing a pledge or any encumbrance over its assets.

Generally, according to the Bankruptcy Law, the restructuring plan shall be terminated if any of the following events takes place:

- 1 the completion of the execution of the restructuring plan;
- 2 the impossibility of executing the restructuring plan; or
- 3 the violation of the restructuring plan by any party thereof.

Preventive reconciliation

According to the Bankruptcy Law, 'preventive reconciliation' is defined as 'an application used by the unfortunate debtor to avoid the declaration of bankruptcy'. Preventive reconciliation allows the debtor to avoid bankruptcy by submitting a request for preventive reconciliation to the head of the bankruptcy department at the competent court to reach a settlement with its creditors. The preventive reconciliation application may be submitted by any debtor undergoing financial difficulty, provided that (1) such a debtor did not commit fraud or gross misconduct, (2) such a debtor has been carrying on a business continuously for at least two years preceding the submission of the application, and (3) the application shall be submitted within 15 days of being in default of due payments, noting that to be able to submit the preventive reconciliation request if the debtor is a company, it shall not be in liquidation and shall have obtained the approval of the majority of its shareholders or partners.

The competent court shall have the sole discretion to accept or refuse the submission of the preventive reconciliation request. Following the court approval of the preventive reconciliation request, the debtor can continue to manage its business under the supervision of the appointed trustee, noting that any gratuitous transactions or donations entered into or made by the debtor shall not be enforceable against its creditors. Furthermore, any act, including, *inter alia*, reconciliation, mortgage and disposal of assets outside the regular course of business of the debtor, shall require the prior approval of the court.

All creditors, including secured creditors, are required to submit to the trustee a list with all of their debts and to publish the list in a daily newspaper. A meeting shall be convened by the court including the debtor and all the creditors whose claims have been included in the list to review the settlement plan. To be valid, the settlement plan shall be approved by the majority of the creditors present in the meeting provided that they represent two-thirds of the actual debt. A second meeting is called if no majority is reached. In the event that the debtor has issued corporate bonds or sukuk surpassing a third of the total of the claims included in the list submitted to the court, the general assembly of the bond or sukuk holders is required to approve the settlement plan.

In parallel, the trustee shall prepare a report that covers their detailed opinion regarding the feasibility of the settlement plan proposed by the debtor.

Once the settlement plan is approved by the court and the creditors in the convened meeting, the settlement plan is ratified by the court and shall become binding on all the debtor's creditors.

According to the Bankruptcy Law, preventive reconciliation shall be nullified after its ratification in the event of evidence of occurrence of fraud by the debtor, in particular in cases of voluntarily concealing assets or debts, fabricating debts or intentionally exaggerating their amounts.

The request for nullification of the composition shall be submitted within six months from the day on which fraud is detected; otherwise, the request shall not be accepted. In all cases, the request shall be inadmissible if submitted after the lapse of one year from the date of issuing the reconciliation ratification judgment. The creditors shall not be required to refund the amounts they collected from their debts before the court judgment nullifying the reconciliation was issued, and the debtor shall be released from the amounts paid. Nullifying the reconciliation shall result in clearing the guarantor's obligation to guarantee the execution of the composition terms.

Bankruptcy

According to the Bankruptcy Law, 'bankruptcy' is defined as 'the failure of the company to pay its debts due to financial difficulty'. An application for bankruptcy may be filed by (1) any creditor, (2) the public prosecution, or (3) the debtor itself or its heirs. However, a fully secured creditor may not file a bankruptcy application unless the value of its collateral is lower than the outstanding debt. According to the Bankruptcy Law, the court shall be entitled to postpone bankruptcy proceedings for a maximum of three months in case a postponement may assist in improving the company's financial standing or in the interest of the national economy. It is worth noting that a debtor may not be declared bankrupt for its failure or inability to pay taxes, social insurance or criminal fines due on such a debtor. If the court declares the debtor bankrupt, it will determine the date from which the debtor stopped paying its debts (the repayment failure date) and appoint a trustee to manage the debtor's assets and financial affairs during the bankruptcy process. Between the repayment failure date and the date the debtor is declared bankrupt, no gifts, prepayments of debts, repayments on terms different from those in the debt agreement or grants of security given by the debtor will be enforceable against the creditors. Once declared bankrupt, the debtor loses capacity to manage its financial affairs or to dispose of any of its assets. However, a bankrupt debtor may, with approval of the court, start a new business using capital that is not subject to the bankruptcy proceedings, in which case any debts arising from the new business will have priority over other claims in relation to the assets of the new business. Following the bankruptcy decision, the unsecured creditors will not be able to initiate proceedings against the debtor, but the secured creditors can initiate or continue claims against the trustee. The bankruptcy decision will also accelerate all future financial obligations of the debtor, whether such obligations are secured or unsecured. The court may, at its initiative or upon a request from any interested party, mediate between the debtor and the creditors to reach a settlement. The settlement will be effective only if approved by all creditors (excluding the secured creditors who have not waived their security). A bankrupt debtor will be automatically discharged from bankruptcy three years after the date of the termination of the bankruptcy proceedings.

SIGNIFICANT TRANSACTIONS, KEY DEVELOPMENTS AND MOST ACTIVE INDUSTRIES

The tourism and industrial sectors have been most affected by the international crises and local challenges.

In 2022, the Egyptian government expressed its intentions to list several government-owned companies on the Egyptian Stock Exchange, and companies are reportedly being restructured in preparation for such a listing, according to the Prime Minister of the Arab Republic of Egypt. For example, the general assembly of EgyptAir Holding Company is expected to approve the project of merging EgyptAir's eight subsidiary companies and reducing them to four companies including three affiliated companies and the fourth company as the holding company.

The first company that will be retained as part of the restructuring is EgyptAir Airlines, which will be the largest, as it will be joined by air

freight companies, domestic and regional airlines, Express, Karnak and In-flight Services. The second company will be EgyptAir Company for Maintenance and Engineering and the third company will be EgyptAir Company for Ground Services. Complementary Industries Company will be divided and its factories and printing press will be distributed between EgyptAir Holding Company and EgyptAir Ground Services Company. Finally, the fourth company, which will be the holding company, will include EgyptAir for Medical Services and EgyptAir Duty Free Shops.

It is also worth noting that Telecom Egypt, Egypt's leading national telecommunications company offered 10 per cent of its shares, whereby it was divided into two tranches having 9.5 per cent offered to qualified investors and 0.5 per cent to the employees of the company as announced by the Ministry of Finance the offering was more than triple oversubscribed. It is worth noting that the offering made to qualified investors closed at 3.75 billion Egyptian pounds (US\$79 million). This offering is part of the Egyptian government's intentions to sell some of its stakes in public companies.

INTERNATIONAL

Egyptian Arbitration Law No. 27 of 1994 (the Arbitration Law) is based on the UNCITRAL Model Law on International Commercial Arbitration. Furthermore, since its establishment in 1979, the Cairo Regional Centre for International Commercial Arbitration (CRCICA) has adopted the UNCITRAL arbitration rules, with various amendments throughout the years up until 2011, with all amendments based on UNCITRAL arbitration rules

According to CRCICA, in 2022 the total number of cases filed before CRCICA was 1618 cases, 6 per cent of which were related to corporate restructuring relates to, JV Constitution, SPA, SLA and SHA. Whereby the parties to the disputes included two non-Egyptian nationalities ranging from, Saudi Arabia, United Arab Emirates, British Virgin Islands and Morocco, United Kingdom, France, India, Malta, Austria.

It is also worth noting that, according to CRCICA, in 2021, four cases involved corporate restructuring agreements. One of these cases involved a settlement agreement for the terms for the termination of an escrow agreement and the closure of an escrow account between an Emirati company and two companies – one in the British Virgin Islands and one in Egypt. Furthermore, two cases related to share purchase agreements – the first case between a Saudi company and a company based in the British Virgin Islands, an Egyptian company and a Maltese company and the second case between a Ukrainian company and several Egyptian individuals. The remaining case involved a shareholders' agreement between Egyptian individuals organising the exit of a number of shareholders from an Egyptian company.

Egypt has ratified several treaties – namely, the New York Convention in 1959, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) in 1972, and a number of bilateral investment treaties.

The enforcement of foreign arbitral awards in Egypt is governed by the New York Convention. Under the New York Convention, the enforcement of the arbitral award occurs after depositing the award with the courts and obtaining a writ of execution. The award is then enforced in the same way as that for a court judgment. Furthermore, under the ICSID Convention, enforcement of arbitral awards may be obtained by the competent court or any other authority as decided by the state that is a party to the treaty. In Egypt, the Ministry of Justice is the designated authority to oversee enforcement of arbitral awards in Egypt in accordance with the ICSID Convention.

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OUTLOOK AND CONCLUSIONS

The Egyptian government is currently in the process of preparing an all-new arbitration law that will be proposed to the Egyptian House of Representatives.

¹ Please refer to this link: <https://www.statista.com/statistics/1241243/doing-business-topics-ranking-in-egypt/>.

Complex Commercial Litigation

Soliman, Hashish & Partners

INTRODUCTION

According to Article 1 of the Egyptian Commercial Law No. 17 of 1999 (the Commercial Law), the Commercial Law is the law which applies on any commercial transaction. Moreover, the rules of the Commercial Law apply on any natural or legal person who is considered as a trader.

Furthermore, the Civil and Commercial Procedural Law No. 13 of 1968 (the Procedural Law) is the law which regulates all the procedures that should be followed before the court in any commercial dispute.

In practice, the Commercial Law is the law which regulates commercial contracts and accordingly the disputes that result from said contracts (the Commercial Disputes). However, the Civil Code No. 131 of 1948 (the Civil Code), is the general law that regulates any matter not stipulated in the Commercial Law.

As a general idea, bringing a commercial contract claim to court requires two steps:

- 1 the first step is to warn the other party and request them to perform their contractual obligations within a reasonable period; and
- 2 if not performed, the party may file a claim by simply submitting a statement of claim to the competent court, which shall have a full description of the claim including the parties' information, the reason for the claim, the claimant's request and finally the legal basis for that request.

Like bringing a commercial claim, defending a claim is relatively similar; it requires submitting a defence memo to the competent court in the hearing. Furthermore, drafting a defence memo is very similar to drafting a statement of claim. It starts with describing all the facts, specifying the applicable rules, applying said rules on the facts, and finally stating the applicable request.

YEAR IN REVIEW

There have been no significant cases and developments in the past year.

CONTRACT FORMATION

The general elements of a contract as regulated by the Civil Code are namely the consent, the consideration and the legality. The object refers to the legal matter that each of the contractual parties shall perform according to the contract, while the legality means that the contract was formed for a legal reason.

The consent, being the most important element of the contract, refers to the offer and acceptance, which under the Civil Code are like the required conditions in other jurisdictions. The offer shall be clear, specified and communicated to the other party; the acceptance shall be also clear and identical to the offer. If the acceptance is not identical to the offer it is deemed as a counteroffer. Since the contract is the consent of the contractual parties, it may be amended also by the consent of the

contracting parties, except if the parties have agreed that the contract may not be modified.

Contracts might be unilaterally concluded by one party towards a non-contractual party, bilateral between two contracting parties or multi-lateral between more than two parties. Moreover, contracts might be with an immediate effect once the contract is formed or conditioned on the fulfilment of one or more conditions or acts.

Furthermore, while a promise is generally non-binding among its parties, the Civil Code regulates the promise to contract, which is the case when an offer and acceptance are identical to create a contract in the future. In this case, and as long as the parties have agreed upon the fundamental matters of the contract, the promising party or parties are liable to conclude the contract in the future once the conditions have been met.

As a rule of proof, and according to Article 1 of the Civil and Commercial Proof Law No. 25 of 1968 (the Proof Law), the obligation's burden of proof is on the creditor, and once proved by the creditor, the debtor shall prove their fulfilment of said obligation.

Moreover, except for certain types of contracts of which the law stipulated they shall be written like the Technology Transfer Contracts, the Civil Code and the Commercial Law did not require a written contract. Article 60 of the Proof Law as well as Article 69 of the Commercial Law have stated that commercial obligations maybe be proved by any means of proof regardless of its value. Furthermore, a written proof may be challenged by any other unwritten means. Moreover, commercial registers may be used as a proof, provided that the registers are in accordance with the regulations of the applicable laws.

CONTRACT INTERPRETATION

According to the general rules, the applicable law shall be the law of the country where both contracting parties are holding its nationality. However, Article 19 of the Civil Code has entitled the contracting parties to choose the law which applies on their civil transactions.

Under the Egyptian law, interpretation of contracts is regulated by Article 150 of the Civil Code, which states two main principles:

- 1 the first is that if the clauses of the contract are clear, no interpretation shall be performed; and
- 2 in addition, in case of any ambiguity in the contract, the interpretation of the contract shall be performed by the court based on the mutual intention of the contracting parties.

However, the court's discretionary power is limited to the phrases of the contract and may not exceed it to what the contract does not include, as stated in judgment No. 4394 of judicial year 87, rendered by the Court of Cassation.

DISPUTE RESOLUTION

According to Egyptian law, commercial disputes of all amounts may be presented before commercial courts, whether preliminary courts or courts of appeal, depending on the value of the dispute. The preliminary court's jurisdiction is to resolve cases with a maximum amount of 100,000 Egyptian pounds as well as other specific cases, while the court of appeal's jurisdiction is to resolve cases with a value that exceeds 100,000 Egyptian pounds as well as to resolve the appeals of judgments rendered by the preliminary courts if the value of said judgment exceeds 15,000 Egyptian pounds. The value of a contractual dispute is generally the contract's consideration.

Although Egypt have had specialised courts such as family courts for a long time, and as of 14 years ago economic courts too, there are no specialised courts for commercial disputes yet. However, there are commercial tribunals specialised in preliminary courts and courts of appeal for commercial disputes, with specialised judges who mainly resolve on commercial disputes.

The parties can agree on the place of the court that shall resolve their commercial disputes. Nevertheless, the parties may not agree on the type of court, as the competency of preliminary courts and courts of appeal is related to public order.

BREACH OF CONTRACT CLAIMS

Generally, any claim related to the non-performance of contractual obligations may not be presented to court except after a notification served by the non-breaching party to the breaching party notifying them of the breach and requesting the performance of the contractual obligations as per the contract. However, this rule is not applicable, and the notification is not required in some specific cases including the case of the impossible performance of contractual obligations.

Furthermore, because the burden of proof is on the creditor, the creditor may prove the breach of contract by the creditor by any means. On the other hand, the debtor is also entitled to prove the performance of their contractual obligations by any means.

Once the breach is proved, the court is entitled to either oblige the breaching party to perform their obligations, if available, or to decide the performance of said obligation in a form of compensation. The compensation is generally calculated in accordance with the value of direct losses that the debtor would have expected at the time they concluded the contract. In cases of fraud or gross negligence, the compensation shall be in accordance with the losses suffered by the creditor and profits of which they have been deprived.

DEFENCES TO ENFORCEMENT

In practice, contracts are usually challenged by the breaching party under many defences. The most common of these defences is the licence that the Civil Code has given in bilateral contracts to the contracting party to abstain from performing correlative obligations if the other party did not perform their due obligations. Recently, the hardship principle is broadly used based on the international and local exceptional events, as the court is entitled to balance the contracting parties' obligations in case the performance of such obligations is exposing any of them to severe loss.

FRAUD, MISREPRESENTATION AND OTHER CLAIMS

Although the breach of contracts according to the general rules of the Civil Code exposes the breaching party to contractual liability, it may also expose the breaching party to criminal liability as well. The Egyptian Penal Code No. 58 of 1937 (the Penal Code) has criminalised the act

of intentional breaching of some specific contracts if concluded with public entities or joint-stock companies in case the breach is based on fraud or gross negligence. The Penal Code also criminalised the act of using or supplying defaulted supplies in the aforementioned contracts. Furthermore, the Penal Code has specified a very harsh penalty for said acts starting from the imprisonment for not more than three years to permanent imprisonment in case the breach is committed in war time and affects the country's economic position. Moreover, subcontractors and agents are also exposed to the same penalties if the breach is related to their acts or omissions.

REMEDIES

The Civil Code has recognised two types of remedies for breaching contracts:

- 1 the first is obliging the debtor to perform their contractual obligations if said performance is possible, or by compensation if the performance is not possible; and
- 2 the second type is to compensate the non-breaching party, which also applies in case of delay performance.

Compensation under the Civil Code is for two types of damages: physical damages and moral damages. Physical damages cover losses suffered by the creditor and profits of which the creditor has been deprived, while moral damages are related to the grief that the creditor felt. The compensation for contractual liability shall not exceed the losses that the breaching party has usually expected at the time the contract is concluded, except if fraud or gross negligence is proved.

Limitation of liability is also regulated in the Civil Code. The contractual liability may be limited by the parties to a predetermined compensation. However, such determination shall not be applicable in cases where fraud or gross negligence is proved on the breaching party.

Outlook and conclusions

Commercial litigation in Egypt is currently focusing on the hardship principle. This principle will be used to face the effects of several international crises such as the effects of the covid-19 pandemic, the war in Ukraine and the expected energy crisis, which may decrease production, as well as local circumstances (i.e., the rapid decrease in the local currency due to the latest decisions of the Central Bank of Egypt in October 2022).

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Issuance of New Law on Incentives for Green Hydrogen Projects

Frederic Soliman

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On January 28th, 2024, Law No. 2 of 2024 concerning Incentives of the Green Hydrogen and its Derivatives Production Projects (the "Green Hydrogen Incentives Law") has been entered into force, as an exception of the Economic Zones with Special Nature Law No. 83 of 2002 and the Investment Law No. 72 2017 (the "Investment Law").

SCOPE OF APPLICABILITY

The Green Hydrogen Incentives Law provisions' scope of applicability shall be on all green hydrogen production agreements concluded within five (5) years from the date of entry into force of the Green Hydrogen Incentives Law. Green hydrogen production agreements shall include the following exhaustive list of projects on the production of green hydrogen and its derivatives (the "Green Hydrogen Projects"):

- 1 Factories for the production of green hydrogen and its derivatives;
- 2 Desalinated water production plants that allocate at least 95% of their production for use in the production of green hydrogen and its derivatives;
- 3 Plants producing electrical energy from renewable energy sources, which shall allocate no less than 95% of their production to fuel the factories producing green hydrogen and its derivatives and desalinated water production plants;
- 4 Projects whose activity is limited to the transport, storage or distribution of green hydrogen and its derivatives produced within the Arab Republic of Egypt;
- 5 Projects whose activity is directly limited to the manufacture of production requirements or inputs necessary for the factories producing green hydrogen and its derivatives.

INCENTIVES

In accordance with the Green Hydrogen Incentives Law, the Green Hydrogen Projects and/or their expansions shall be granted the following incentives:

- 1 A monetary investment incentive of not less than 33% and not exceeding 55% of the value of the tax paid with the tax declaration on the income achieved from the commencement of the activity in the project or its expansions, to be disbursed within forty-five (45) days from the end of the deadline specified for submitting the tax return (the "Green Hydrogen Incentive");
- 2 Equipment, tools, machinery, devices, raw materials, and means of transport necessary for the exercise of the licensed activity

- for Green Hydrogen Projects shall be exempt from VAT, with the exception of passenger cars;
- 3 Exports of Green Hydrogen Projects are subject to VAT at a zero rate.
- 4 Green Hydrogen Projects may also be exempted from real estate tax due on real estate used in the said projects, from the stamp tax, documentation and registration fees due on contracts of incorporation of companies and establishments, credit facilities and mortgage contracts associated with them, land registration contracts necessary for the establishment of projects, and from customs tax due on all imports necessary for the establishment of Green Hydrogen Projects with exception to passenger cars;
- 5 The Green Hydrogen Projects' company shall obtain one approval in accordance with the Investment Law provisions, whereas the single approval is for the establishment, operation and management of the Green Hydrogen Projects, including building permits, and the allocation of the necessary real estate for it, and this approval shall be automatically entered into force without the need to take any further action;
- 6 The Green Hydrogen Projects' companies shall have the right to import or export, by themselves or through third parties, its establishment, expansion or operation requirements of raw materials, production requirements, machinery, spare parts and means of transport appropriate to the nature of its activity, without the need to register them in the importers register or the exporters register;
- 7 The Green Hydrogen Projects' companies shall have the right to hire foreign employees within the limits of 30% of the total number of its employees, during the first ten (10) years from the date of signing the Green Hydrogen Projects' agreements;
- 8 Allowing the establishment of special customs departments for the Green Hydrogen Projects' exports or imports in agreement with the Minister of Finance;
- 9 The Green Hydrogen Projects' companies shall be granted a reduction of 30% of the value of fees and categories for the use of seaports and maritime transport, for the services performed for ships in the Egyptian seaports;
- 10 The Green Hydrogen Projects' companies shall be granted a reduction of 25% of the value of the usufruct of industrial lands allocated for the establishment of a plant for the production of green hydrogen and its derivatives, and 20% of the usufruct of the lands of storage warehouses in ports;
- 11 Granting a grace period to pay for the usufruct of the industrial and storage lands of the project and its expansions allocated by

the authorities with jurisdiction over the land, so that the payment begins from the date of commercial operation of the project, without calculating any interest or fines;

- 12 The periods of licenses required for the implementation of the Green Hydrogen Projects for the shall be the same as the terms of the usufruct of the project lands.

CONDITIONS

In order to grant Green Hydrogen Projects the aforementioned incentives as per the Green Hydrogen Incentives Law, the following conditions shall be cumulatively satisfied:

- 1 The commercial operation of the Green Hydrogen Projects shall commence within five (5) years from the date of concluding the Green Hydrogen Projects' agreements.
- 2 The Green Hydrogen Projects or their expansions shall rely in their funding on foreign exchange financed from abroad at a rate of not less than 70% of its investment cost.
- 3 The Green Hydrogen Projects shall commit to using the locally made components necessary for its implementation whenever they are available in the local market and with a minimum of 20% of the components of the Green Hydrogen Projects.
- 4 The Green Hydrogen Projects should contribute to the transfer and localization of modern and advanced technology and techniques to Egypt, with a commitment to develop and implement training programs for Egyptian employees.
- 5 The Green Hydrogen Projects' companies shall be committed to developing a plan for the development of the local areas in which it operates through the implementation of the rules of social responsibility in accordance with the provisions of the aforementioned Investment Law.

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Jurisdictional Summaries

Mohamed Hashish, Farida Rezk and Nadine Diaa

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What is the nature of the review?	National security, anti-competition and licensing.
Is it mandatory to file/wait for approval before closing? Are there sanctions for non-compliance?	<p>Pre-merger control system for any transaction, whereby the Egyptian Competition Authority (ECA) shall supervise and approve proposed mergers and acquisitions prior to entering into the transaction. Such pre-approval is required for any transaction that constitutes an 'economic concentration'.</p> <p>A fine of not less than 1 per cent and not exceeding 10 per cent of the total annual turnover, assets or value of the operation of the persons subject to economic concentration, whichever is higher, according to the last consolidated budget, and in the event that such percentage cannot be calculated, the penalty shall be a fine of not less than 30 million Egyptian pounds and not exceeding 500 million Egyptian pounds.</p>
What are the review periods?	<p>The ECA shall examine the economic concentration within 30 working days commencing from the working day following the date of filing the notification, and this period may be extended 15 working days in the event of submitting an offer of obligations and controls.</p> <p>All competent authorities receiving requests from investors for licences, approvals or permits necessary to establish or start investment project activities must respond to these requests within 20 working days of submission.</p>
Are there thresholds for notification/reviewability?	<p>The aforementioned economic concentration shall be assessed by the ECA, on a case-by-case basis, if the combined annual turnover of the concerned parties in Egypt exceeds:</p> <ul style="list-style-type: none"> • 900 million Egyptian pounds for the last year for the most recent year in the last approved consolidated financial statements, provided that the annual turnover of each of at least two of the concerned parties separately exceeds 200 million Egyptian pounds for the most recent year in the last approved consolidated financial statements; or • 7.5 billion Egyptian pounds for the most recent year in the last approved consolidated financial statements, provided that the annual turnover in Egypt of at least one party is more than 200 million Egyptian pounds for the most recent year in the last approved consolidated financial statements. <p>Foreign investment is subject to screening based on investor's nationality and company's activities, as activities carried out by non-Egyptian investors may be restricted.</p> <p>Foreign ownership restrictions:</p> <ul style="list-style-type: none"> • conducting importation activities for trading purposes is generally restricted for companies with foreign ownership exceeding 49 per cent of the company's total shares; however, in October 2023, a recent exception has been issued for these companies permitting engaging in importation activity for a period of 10 years, subject to the registration in the relevant authority and the appointment of an Egyptian manager of importation; • conducting business in commercial agencies or intermediary companies; and • carrying out business in the Sinai Peninsula. <p>Security clearance must be obtained for foreigners to work or do business in Egypt.</p> <p>Furthermore, all companies incorporated in Egypt that are entirely or partially owned by non-Egyptian investors must regularly submit their foreign direct investment (FDI) data, which includes information on, inter alia, foreign shareholders, corporate and financial information, and the ultimate beneficial owners to the General Authority for Investments.</p>
Undertakings/commitments and other mitigation measures available to address concerns	Egypt has BITs and DDTs in place to facilitate and protect FDI. The terms and conditions of each treaty in relation to FDI in Egypt should be taken into consideration.
Any other important considerations?	N/A



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Professional Experience: With more than 20 years of experience, Hashish has successfully handled complex and diverse transactions and projects in the areas of practice above.

Hashish received 17 international awards from Legal 500, IFLR 100, Chambers and Thomson Reuters as a recognized and awarded leading lawyer in Egypt. Hashish is also a member of both the Entrepreneurs' Organization and the Forbes Business Council, where he shares his insights and network with other influential business leaders.

Hashish has also served in several prestigious leadership positions, such as (i) Vice Chair of the International Finance & Securities Committee of the International Law Section at the American Bar Association, (ii) Vice Chair of the Cyber Security, Data Privacy and Technology Committee of the International Association of Defense Counsels; and (iii) Board member and Secretary-General of the United Nations Global Compact in Egypt.

Hashish has been acting as Beachhead Advisor for Egypt at the New Zealand Trade and Enterprise to support New Zealand companies in expanding their presence and opportunities in Egypt.

Practice Areas: Banking & Finance: Banking, International Finance

Capital Market: Factoring, Leasing, Microfinance, Mortgage Finance

Corporate: General Corporate, Liquidation, Mergers & Acquisitions, Antitrust, Structuring & Restructuring, Consumer Protection

Dispute Resolution: Litigation, Arbitration, Special Investment Dispute Settlement Schemes

Intellectual Property Rights: Copyright, Industrial Designs, Patent, Plant Varieties, Trade Secrets, Trademarks

Public Procurement: General Public Procurement, Public Business Procurement

Telecom, Media & Technology: Data Protection, Fintech, Information Technology, Media, Telecoms

Trade: Anti-dumping, International Trade, Local Trading

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Position: Managing Partner

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Professional Experience: Frédéric Soliman is a highly accomplished dual-national French and Egyptian lawyer, fluent in French, English and Arabic.

With over 20 years of legal experience, Soliman brings a unique cross-jurisdictional expertise to his practice. Throughout his career, he advised more than 100 clients across diverse sectors and various areas of practice, including Corporate, M&A, Restructuring, Labour, Tax and Dispute Resolution.

Soliman was recognized by Legal 500 as Recommended lawyer (Commercial, Corporate and M&A), and as a Notable practitioner (Capital markets Corporate and M&A Restructuring) by IFLR 1000.

Beyond his client-focused work, Soliman contributes to global legal development initiatives like the World Bank and IFC on the preparation of "Doing Business" and "Agricultural Cooperation and Contracts" reports.

Practice Areas:

Capital Market: Capital Market, Funds, Insurance

Corporate: General Corporate, Liquidation, Mergers & Acquisitions, Corporate Governance

Dispute Resolution: Litigation, Arbitration, Special Investment Dispute Settlement Schemes

Employment: Corporate Immigration, General Employment

Tax: Capital Gain, Income, Stamp, VAT, Withholding

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Soliman, Hashish & Partners (“SH&P”) is a full-service corporate law firm recognized as a leading financial and corporate law firm in Egypt by IFLR 1000, Chambers and Partners, and Legal 500.

Over the past decade, SH&P has worked exclusively with well-structured multinational clients across various practice areas, including Corporate, Mergers & Acquisitions, Banking & Finance, Telecom, Media & Technology, Energy & Electricity, Construction, Public Procurement, Dispute Resolution, Intellectual Property Rights, and Employment.

SH&P serves as local legal counsel to private and public sector entities, including governments, NGOs, and leading multinational companies operating in sectors such as Agriculture, Banking & Finance, Cement, Consultancy, Diplomatic Services, Energy & Electricity, Food, Healthcare, Information Technology, Media, Oil & Gas, Pharmaceutical, Steel, Telecoms, Tourism, Transport, and Water Treatment.

Our dedicated team provides exceptional legal services with a creative, high-quality, and business-aware approach to every assignment. We maintain close relationships with leading law firms worldwide to deliver innovative and pragmatic solutions to complex legal issues. With over 700 multinational clients represented, our lawyers have built strong relationships with decision-makers in both the public and private sectors, ensuring effective representation and protection of our clients’ interests.

Our Areas of Practice

1. Banking & Finance: Banking, International Finance
2. Capital Market: Capital Market, Funds, Insurance, Factoring, Leasing, Microfinance, Mortgage Finance
3. Corporate: General Corporate, Liquidation, Mergers & Acquisitions, Antitrust, Structuring & Restructuring, Consumer Protection, Corporate Governance
4. Dispute Resolution: Litigation, Arbitration, Special Investment Dispute Settlement Schemes
5. Employment: Corporate Immigration, General Employment
6. Intellectual Property Rights (IPRs): Copyright, Industrial Designs, Patents, Plant Varieties, Trade Secrets, Trademarks
7. Public Procurement: General Public Procurement, Public Business Procurement
8. Tax: Capital Gains, Income Tax, Stamp Duty, VAT, Withholding Tax
9. Telecoms, Media & Technology (TMT): Data Protection, Fintech, Information Technology, Media, Telecoms
10. Trade: Anti-dumping, International Trade, Local Trading

