



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Egypt: Mergers & Acquisitions

This country-specific Q&A gives an overview of mergers and acquisition law, the transaction environment and process as well as any special situations that may occur in Egypt.

It also covers market sectors, regulatory authorities, due diligence, deal protection, public disclosure, governing law, director duties and key influencing factors influencing M&A activity over the next two years.

This Q&A is part of the global guide to Mergers & Acquisitions. For a full list of jurisdictional Mergers & Acquisitions Q&As visit <http://www.inhouselawyer.co.uk/index.php/practice-areas/mergers-acquisitions/>

Country Author: **Matouk Bassiouny**

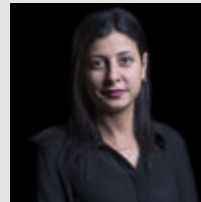
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Omar Bassiouny, Founding Partner and Head of Corporate/M&A

omar.bassiouny@matoukbassiouny.com

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Mariam Auda, Counsel

mariam.auda@matoukbassiouny.com

1. **What are the key rules/laws relevant to M&A and who are the key regulatory authorities?**

M&A transactions are regulated in Egypt by diverse legislations. Key rules pertaining to M&A can be found under the Egyptian Companies Law no.159 of 1981 and its Executive Regulations, as amended (“Companies Law”), the Capital Market Law no. 95 of 1992 and its Executive Regulations, as amended (‘Capital Market Law’) and the Egyptian Exchange (“EGX”) Listing Rules, as amended.

Concerned key regulatory authorities are:

- The EGX;

- The Financial Regulatory Authority (“FRA”); and
- The General Authority for Investment and Free Zones (“GAFI”).

Acquisitions involving transfer of shares of joint stock companies and quotas of limited liability companies are the most common acquisition structures in Egypt.

Transfer of Unlisted Shares

Any transfer of shares of a joint stock company must take place through the EGX, whether the shares are listed or not. A licensed broker should be appointed to effect the shares’ transfer in accordance with the transfer procedures set out by the EGX and the FRA.

Any transaction exceeding EGP 20,000,000 (twenty million Egyptian Pounds) must be pre-approved by the EGX Pricing Committee which convenes on a weekly basis to study and resolve on each envisaged transaction.

In 2016, the EGX has issued a decree regarding transfer of unlisted shares requiring consideration to be deposited with a bank regulated by the Central Bank of Egypt if the value of the transaction exceeds EGP 100,000 or if the transfer involves a foreign party. The competent committee at the EGX may, at its discretion, provide for exceptions in this respect.

Another relevant development relates to capital gains tax which currently applies on transfer of quotas and unlisted shares at a rate of 22.5% on the net realized capital gain. Such net profits are calculated based on the difference between the acquisition price and the disposal price of such shares/quotas (whether through sale, swap or any other form of disposal).

Transfer of listed shares

In respect of listed shares of a joint stock company, the Capital Market Law provides that a person may acquire up to 1/3 of the share capital or voting rights of a listed company through open market transactions.

In case of exceeding the threshold of 1/3 of the share capital, whether through

acquiring listed shares, or shares in a company that has previously offered its shares to public subscription, the acquirer is obliged to submit a mandatory tender offer to acquire 100% of the issued share capital of the target company.

Transfer of Quotas

Quotas of limited liability companies may be transferred through official or unofficial transfer agreements as prescribed under the memorandum of association of the company, with no involvement of the EGX. An official transfer agreement will require notarization with the Notary Public and such notarization will be subject to ad valorem fee. Quota-holders of a limited liability company enjoy a statutory right of first refusal on any quotas subject to transfer.

Moreover, although there is no general merger control regime there are sectorial laws that have adopted M&A control regime such as:

- i) Requiring the prior approval of FRA for: transferring or acquiring any micro-finance portfolio, or merger of a company carrying out mortgage activities with another company of the same activity; or to own by any means 10% or more of any company carrying out insurance and reinsurance activities;
- ii) Requiring the prior approval of the Central Bank of Egypt to own 10% or more of the share capital of any bank in Egypt;
- iii) the written approval of the Ministry of Health and Population is required prior to any type of legal disposal of any private hospital or drug factory; and
- iv) Prior approval of the National Communication Regulatory Authority is required to carry out any transfer of license, merger, and change of shareholders structure to companies carrying out telecommunication activities.

There is also a post-notification requirement imposed by the Egyptian Competition Law where a notification must be served to the Egyptian Competition Authority (ECA) upon acquiring, assets, usufruct rights, shares or joint management of two or more persons. ECA post transaction notification is required in case that the combined annual turnover

of the concerned parties in Egypt exceeds EGP 100,000,000 according to their latest financial statements.

2. What is the current state of the market?

The Egyptian economy is currently seeing major M&A activity mainly fueled by regional, international and local private equity and financial institutions. The general expectation is that such activity is likely to increase during the second part of 2018 after the completion of the upcoming presidential election.

3. Which market sectors have been particularly active recently?

Renewable energy sector and consumer focused sectors such as food and beverage, healthcare and education.

4. What do you believe will be the three most significant factors influencing M&A activity over the next 2 years?

The most significant factors influencing M&A activity over the next 2 years include:

- the resolution of the foreign currency shortage crisis in Egypt and lifting of FX controls as evidenced by the record foreign currency reserves of the Egyptian Central Bank;
- population demographic growth whereby the population of Egypt has recently surpassed 100 million;
- the development of the New Suez Canal Economic Zone and the related establishment of a major logistical and industrial zones therein; and
- regional and international Private Equity interest.



What are the key means of effecting the acquisition of a publicly traded company?

Acquisition of a publicly traded company are effected through the EGX, whether as:

- acquiring up to 1/3 of the share capital or voting rights through open market transactions by applying the normal trading rules applicable at the Egyptian Exchange (EGX);
- protected transactions, which are consummated as block-trades exempted from the normal trading rules applicable at the EGX after obtaining the approval of the Financial Regulatory Authority and the EGX. Protected transactions are customary in the event of group restructuring and are usually coupled with an exemption from the obligation to launch a mandatory tender offer;
- launching mandatory tender offer in case of acquisition of 1/3 or more of the issued share capital or voting rights of the company; or
- launching a voluntary tender offer to acquire any stake less than 1/3 of the issued share capital or voting rights of the company.

6. What information relating to a target company will be publicly available and to what extent is a target company obliged to disclose diligence related information to a potential acquirer?

The commercial register is a publicly accessible document that shows, inter alia, the names of the board members and managers, target company's capital, duration, registration number and headquarters. As for listed companies, the board minutes, general assembly minutes, and financial statements, among other documents, are published by the Egyptian Exchange.

There is no legal obligation on the target to disclose diligence related information.

7. To what level of detail is due diligence customarily undertaken?

There is no specific level of detail for a due diligence exercise as it varies depending on the acquirer, the target company's activity and the company's compliance with the regulations of its industry. While some acquirers may opt for a limited high level due diligence with a focus on key red flags, others may prefer carrying out a full detailed due diligence.

8. What are the key decision-making organs of a target company and what approval rights do shareholders have?

Key decision-making organs are the General Assembly and the board of directors. The board is usually vested with the widest powers to manage and operate the company in accordance with the parameters determined by the shareholders. However, as per applicable laws the board may not resolve any decision or undertake any action that is specifically granted to the General Assembly. Resolutions pertaining to, inter alia, amending the articles of association of the company, its merger or liquidation should be resolved by the Extra- Ordinary General Assembly, while the Ordinary General Assembly is competent to, inter alia, approve the annual accounts, profit distributions and appointment of the company's auditor.

9. What are the duties of the directors and controlling shareholders of a target company?

As a matter of principle, a board member is deemed as an agent of the shareholders. The board owes a "fiduciary duty" to the target company and its shareholders to act in the company's best interest and can be held liable for breach of such fiduciary duty.

As an illustration of the fiduciary duty, the Companies Law has obliged board members to advise the board regarding any transaction in which a member may have interest-with no right to vote. Moreover, a director may not trade in his favor or in favor of a third party in activities similar to the activities of the company.

The main obligations for controlling shareholders is not to prejudice the rights of the other -minority - shareholders. In this respect, the Companies Law has provided that it is not permissible to increase the obligations of the shareholders by the Extra Ordinary General Assembly; and any resolution issued by the General Assembly affecting the core and basic rights of shareholders will be deemed null and void; and decisions issued by the General Assembly in favor of or against a shareholder or a group of shareholders may be annulled.

10. Do employees/other stakeholders have any specific approval, consultation or other rights?

Egyptian law does not grant employees the right to approve any acquisition. Additionally, an employer is not obligated to consult the employees during the acquisition process.

It must be noted however that the possibility of changes to the workforce during the acquisition process is restricted to a certain extent pursuant to applicable laws. Terms and conditions of existing employment agreements must be honored and any redundancies can only be made with the approval of the Ministry of Manpower.

In the context of a transfer of assets, while theoretically the employees are automatically transferred to the acquirer (as the new employer), practically the Labour Office and the Social Insurance Authority do not recognize such automatic transfer. In specific cases, the employees of the target must sign a resignation from their previous employment and accept their employment with the acquirer, which renders the legislative technique of automatic transfer de facto inoperative.

11. To what degree is conditionality an accepted market feature on acquisitions?

Subject to FRA's approval, an offeror can make a mandatory tender offer conditional upon the acquisition of at least 51% (or 75%, in case of acquisition with the ultimate purpose for merger) of the target company's issued share capital, as evidenced by shareholders' acceptance to sell their shares in response to the mandatory tender offer. In such case, if the mandatory tender offer does not result in the acquisition of at least 51% or 75% (as the case may be) of the target company's issued share capital, the offeror may not complete the purchase of the offered shares, without obtaining FRA's prior approval.

12. What steps can an acquirer of a target company take to secure deal exclusivity?

Deal exclusivity can be secured contractually between the parties.

13. What other deal protection and costs coverage mechanisms are most frequently used by acquirers?

Acquirers may elect to contractually agree on exclusivity clause and break fees. However, pursuant to Egyptian law, in the event it was proven that the other party has not suffered any losses, subject to the court's discretion, the agreed upon damages (break fee) should not be due. Further, the judge has discretion to reduce the damages specified by the parties, if such damages are excessive or the original obligation has been partially performed.

14. Which forms of consideration are most commonly used?

For unlisted shares' consideration may be cash and/or in-kind. As for listed shares, consideration for a tender offer may be all -cash, or mixed tender offer of cash or shares.

15. At what ownership levels by an acquirer is public disclosure required (whether acquiring a target company as a whole or a minority stake)?

There are no public disclosure obligations in respect of acquiring unlisted shares and quotas, other than disclosures made to the various regulators under Chapter 13 of the Captain Markets Law (Ultimate Beneficial Ownership) and which are not shares with the public.

For listed shares, required public disclosures include:

- Acquirer must disclose to the target its intention to acquire the shares. The Capital Market Law provides that any person wishing to acquire more than 10% of a public company's share capital must notify the company of the same at least two weeks prior to effecting such acquisition. The company must in turn notify any shareholder holding at least 1% of the company's share capital within at least one week from the date of receipt of such a notice.
- An acquirer acquiring, through an open market transaction, 5% of the share capital or the voting rights of a listed company, or any multiples thereof (i.e. 10%, 15%, etc.) but less than one-third of the share capital, must notify the EGX and FRA within two days of the relevant transaction taking place.
- Board of directors' members and employees of listed companies must notify the EGX and FRA when acquiring 3%, or any multiples thereof, of the share capital or voting rights of the target company.
- If the acquired percentage reaches 25%, the notification to the EGX and FRA should also include details of future investment objectives of the acquirer(s) and future plans with respect of the management of the concerned listed company.

16. At what stage of negotiation is public disclosure required or customary?

The Capital Market Law provides that the target should immediately upon receipt of a written notification from an acquirer expressing the intention to submit a tender offer, notify FRA and EGX of receipt of such notification. The notification obligation also applies in the event of signing a memorandum of understanding, letter of intention or agreement to carry out a due diligence or any other similar agreement.

Further, as per the EGX Listing Rules, events/information that could materially affect the target company (e.g. price of the share) must be disclosed to the EGX.

17. Is there any maximum time period for negotiations or due

diligence?

There is no maximum time period for negotiations or due diligence.

Capital Market Law set outs specific time-frames regarding submission of tender offers, where the acquirer must submit the tender offer within a period not exceeding 60 days from the day of disclosing its/his interest (duration could be extended based on material reasons as per the FRA's discretion).

18. Are there any circumstances where a minimum price may be set for the shares in a target company?

The price submitted by an offeror in respect of a second tender offer regarding the same company should not be less than the highest price made by the offeror in the previous tender offer.

In case of submission of a competitive bid, such bid must be in cash and its price must exceed the price of the original mandatory tender offer (or the last competitive bid, if applicable) by at least 2%.

19. Is it possible for target companies to provide financial assistance?

Financial assistance under Egyptian law restricts companies from providing loans to any of its Board members or guaranteeing the obligations of any its Board members.

20. Which governing law is customarily used on acquisitions?

English law and Egyptian law customarily govern acquisitions documentation. Further, parties usually agree to arbitration as dispute resolution for enforceability purposes

since Egypt is a party to the New York Convention on the Enforcement of Arbitral Awards.

21. **What public-facing documentation must a buyer produce in connection with the acquisition of a listed company?**

An acquirer for the purpose of a tender offer must submit an information memorandum, enclosed to which all documents specified by Financial Regulatory Authority, including:

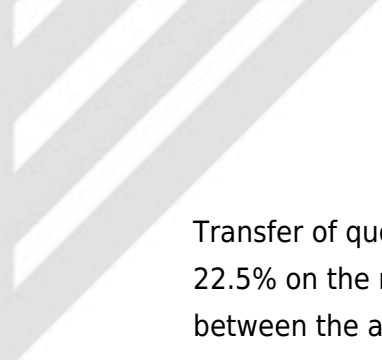
- A bank certificate issued from a registered bank in Egypt confirming that the acquirer has sufficient funds for the purpose of the offer.
- A detailed report in connection with the valuation grounds of the proposed purchase price and the share value.
- Any agreements related to the Offer and the persons with which the acquirer is dealing according to agreements or understanding.

Further, the information memorandum must include information related to duration and main terms of the offer, details of the funding resources, and the envisaged activities and plan during the 12 months following the acquisition and whether the target company will remain listed. The information memorandum should also be certified by the acquirer, financial and legal consultants.

22. **What formalities are required in order to document a transfer of shares, including any local transfer taxes or duties?**

Any transfer of unlisted shares must be effected through the EGX and the transfer of ownership is evidenced by EGX transfer certificates. As for listed shares, account statements are issued by Misr for Central Clearing, Depository and Registry.

Transfer of quotas of limited liability companies is evidenced by registering such transfer in the Quotas Ledger of the company.



Transfer of quotas and unlisted shares is subject to a capital gains tax at a rate of 22.5% on the net realized capital gain, which is calculated based on the difference between the acquisition price and the disposal price of such quotas/shares (whether through sale, swap or any other form of disposal). Further, recently the transfer of listed and unlisted shares has become subject to stamp duty taxes.

23. Are hostile acquisitions a common feature?

Hostile acquisitions are uncommon in Egypt.

24. What protections do directors of a target company have against a hostile approach?

Pursuant to the Capital Market Law, the target's board of directors is obliged to appoint an independent financial advisor registered with FRA to evaluate any tender offer received in respect of the listed shares. The board should also opine on the valuation report issued by the financial advisor.

It must be noted however that pursuant to the Capital Market Law, the board is prohibited from taking any actions during the validity term of the offer that could result in, inter alia, increasing the liabilities the target company.

The adoption of any form of poison pills post-notification of a hostile tender offer is not allowed under Egyptian law.

25. Are there circumstances where a buyer may have to make a mandatory or compulsory offer for a target company?

A mandatory offer must be made to acquire 100% of the share capital of a company, if a person acquired or wishes to acquire – whether directly or through related parties –

1/3 or more of the issued share capital or voting rights of a publicly listed company or a private company that has previously undertaken a public subscription.

26. **If an acquirer does not obtain full control of a target company, what rights do minority shareholders enjoy?**

Rights of minority shareholders are protected under various provisions of the Companies Law and Capital Market Law. Recent amendments to the Companies Law have also included additional protections as set out below.

Companies Law provides that GAFI may, based on reasonable justifications, annul general assembly resolutions upon request of shareholders holding no less than 5% of the company's share capital, during the 30 days following the resolution's date, if it is evidenced that the issued resolutions are issued in favor of a group of shareholders or the board of directors of the company.

Shareholders holding at least 10% of the share capital of the company have the right to request and obtain information and copies of documents relating to the related party agreements or the transactions entered into between the company and its affiliates. In case the company refuses to provide such information and documents, GAFI may, upon the request of the shareholders, oblige the company to provide the shareholders with the requested information and documents.

Shareholders may, at or post incorporation, enter into a shareholders' agreement to regulate their relationship. In order for such agreement to be enforceable vis-a-vis the remaining shareholders, it must be approved by a majority vote of no less than 75% of the company's capital in an extra ordinary general assembly meeting.

Pursuant to Capital Market Law, if 90% or more of the issued share capital of the entity is acquired, minority shareholders holding at least 3% of the remaining issued share capital may request from the Financial Regulatory Authority to notify the majority shareholder to submit a mandatory tender offer to acquire the minority shares within 12 months from the initial acquisition.

27. **Is a mechanism available to compulsorily acquire minority stakes?**

Egyptian law does not recognize squeeze-out mechanisms. As such, no mechanism is available to compulsorily acquire minority stakes.