The Mergers & Acquisitions Review

Fifteenth Edition

Editor
Mark Zerdin

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THE MERGERS & ACQUISITIONS REVIEW

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PREFACE

As highlighted by the previous edition of *The Mergers & Acquisitions Review*, the resilience of companies was severely tested in 2020 by the covid-19 pandemic. However, the second half of 2020 saw a rebound in M&A activity, with deal totals 122 per cent higher in value (US$2.5 trillion) and 5 per cent higher in volume (16,700 deals) compared to the first half of the year.[1]

The figures for the first half of 2021 tell a similar, and equally promising, story – deal value has almost tripled from €849.8 billion in the first half of 2020 to €2.4 trillion in the first half of 2021.[2] This strong rebound has taken place in tandem with the broader recovery of the global economy, and the re-surfacing of countries from national lockdowns.

Leading the charge were the North American M&A markets, which saw deal value almost quadruple from €285.6 billion in the first half of 2020 to €1.2 trillion in the first half of 2021.[3] US dealmaking, in particular, has benefited from a substantial injection of capital into the economy by the Biden administration, most notably the US$1.9 trillion coronavirus relief bill approved by Congress in March, as well as a proliferation in the number of special purpose acquisition companies (SPACs) and the unprecedented levels of funds raised thereby. In the Americas more broadly, the leading sectors for the first quarter of 2021 were technology, media and telecoms (548 deals totalling US$206.1 billion), industrial and chemicals (300 deals totalling US$100.8 billion) and financial services (170 deals totalling US$99.5 billion).[4]

The buoyancy of M&A activity in North America has meant that Europe's share of global M&A value has decreased from 28 per cent in 2020 to 21 per cent in the first half of 2021.[5] Notwithstanding this proportionate decline, European dealmaking has also enjoyed a prosperous first half of 2021, with volume up 44 per cent and value rising 89 per cent year-on-year.[6] Private equity was particularly active in this period, with private equity firms investing €193.2 billion in buyouts during the first half of 2021, almost equalling the €194.5 billion of buyout activity recorded across the whole of 2020, and exceeding the

1 Mergermarket, 'Global dealmakers: Cross-border M&A in 2021'.
2 CMS, 'Road to recovery: European M&A Outlook 2022'.
3 ibid.
4 Mergermarket, 'Deal Drivers: Americas Q1 2021'.
5 CMS, 'Road to recovery: European M&A Outlook 2022'.
6 ibid.

€168.8 billion and €174.7 billion recorded in 2019 and 2018, respectively.[7] In the first half of this year, private equity firms substantially reconfigured their portfolios, with 614 exits worth a total of €101.4 billion (in excess of pre-pandemic levels) taking place.[8]

Looking forward to the remainder of 2021 and beyond, there is plenty of cause for optimism. The unique challenges posed by the pandemic appear, at least for now, to be behind us, and the restoration of normality (or at least a new normal), in global M&A and in the broader sense, is taking shape.

I would like to thank the contributors for their support in producing the 15th edition of *The Mergers & Acquisitions Review*. I hope the commentary in the following 36 chapters will provide a richer understanding of the shape of the global markets, and the challenges and opportunities facing market participants.

Mark Zerdin
Slaughter and May
London
November 2021

7 Mergermarket, 'Deal Drivers: EMEA HY 2021'.
8 ibid.

Chapter 14

EGYPT

Omar S Bassiouny and Maha El-Meihy[1]

I OVERVIEW OF M&A ACTIVITY

Despite the global challenges as a result of the universal crisis resulting from the covid-19 pandemic, the performance of international and local markets has been dragged down, which has affected Egypt. However, the impact at the local Egyptian level has been less severe than in other countries with similar circumstances.

Fortunately, Egypt witnessed a strong pickup in M&A activity during the first six months of 2021, becoming one of the most popular countries in the region as the economy continued to rebound from last year's covid shock. Egypt was marked the most popular regional target market for outbound M&A and the second by volume with 18 deals valued at US$1.8 billion during the first half of 2021, with the end of the first quarter of 2021 as the busiest and the highest in value, recording 25 deals with a total of US$2.2 billion.[2] M&A deal value grew as a result of increased interest by investors in the healthcare, pharmaceutical, energy, mining, education and utilities sectors.

However, some of the key sectors remain adversely affected, such as tourism, manufacturing, the Suez Canal and oil and gas extractives. This impact is a result of the restrictions on international travel, the slump in demand, and disruptions to supply chains and trade, both domestically and abroad.[3]

For the past few years, the Egyptian market and international investors have been monitoring the progress of the implementation of the government's economic and social development plan in light of the US$12 billion Egypt–International Monetary Fund (IMF) loan agreement, which was associated with a number of important measures including changes in the deposit and lending interest rate announced by the Central Bank of Egypt (CBE) and, most importantly, the removal of all foreign exchange controls and the free flotation of the Egyptian pound, which was followed by a severe currency devaluation. The severe devaluation of the pound saw Egyptian assets and securities lose more than 50 per cent of their value and, in conjunction with the positive performance of the government insofar as the IMF loan programme is concerned, as publicly noted by the IMF, had a major positive impact on M&A activity in Egypt. With the completion of the IMF loan, there are macroeconomic signals that Egypt has overcome all odds and begun its journey towards a stable economy, especially with regard to financial and monetary policies.

1 Omar S Bassiouny is a partner and Maha El-Meihy is a senior associate at Matouk Bassiouny & Hennawy.
2 https://www.businesstodayegypt.com/Article/1/958/Egypt%E2%80%99s-M-A-transaction-values-increased-by-394-in-H1.
3 https://www.worldbank.org/en/country/egypt/overview#1.

The CBE has modernised its monetary policy framework, focusing on inflation under a flexible exchange rate regime. The CBE intended to put in place a formal inflation target of 9 per cent and set interest rates according to the global economic conditions, and at the same time taking into consideration the recent rates of inflation.[4]

Overall, in the years before the pandemic, Egypt's M&A deal value was announced as accounting for 75.1 per cent of the North African M&A deal value and 58.3 per cent of its volume, up from 48.4 per cent and 39.5 per cent, in 2019 and 2018, respectively. General M&A in Egypt remained robust in 2019, with 14 deals worth US$1.3 billion compared with 15 deals worth US$1.9 billion in 2018, despite the global slowdown in dealmaking.[5] Private equity, investment managers and financial institutions became more active in terms of the number of deals and their value. M&A transactions were closed in several sectors, including:

a media;
b education;
c oil and gas downstream;
d petrochemicals;
e telecommunications;
f renewable and traditional energy;
g manufacturing;
h food processing;
i education;
j fintech; and
k healthcare.[6]

II GENERAL INTRODUCTION TO THE LEGAL FRAMEWORK FOR M&A

The Egyptian legal system is a civil law system, which is influenced mainly by Islamic shariah and the French Civil Code. Hence, it is based on written legislation, rather than depending on judicial precedents as in common law countries. That said, the Egyptian Civil Code[7] plays a prominent role in the legal framework because it governs and regulates all the general principles pertaining to contract law, including but not limited to all types of sale and purchase transactions. In other words, in the case of M&A transactions governed by Egyptian law, the Civil Code is one of the main pillars regulating such transactions.

In addition to the general rules stipulated under the Civil Code, M&A transactions are regulated in Egypt by diverse specific legislation depending on whether a transaction is public or private.

4 http://english.ahram.org.eg/NewsContent/3/12/372065/Business/Economy/Egypts-fiscal,-monetary-policy-is-the-driver-behin.aspx; http://sis.gov.eg/Story/139960/IMF-team-reaches-staff-level-agreement-on-5th-review-for-Egypt's-EFF?lang=en-us.

5 https://events.mergermarket.com/egyptian-ma-dominates-north-african-dealmaking-as-energy-and-telecoms-deals-lead-activity.

6 www.iflr.com/Article/3860935/2019-M-A-Report-Egypt.html?Articleid=3860935.

7 No. 131 of 1948.

Key rules pertaining to M&A can be particularly found under the Egyptian Companies Law[8] and its Executive Regulations, as amended, the Capital Market Law[9] and its Executive Regulations, as amended, and the Egyptian Exchange Listing Rules, as amended.[10]

Furthermore, decisions and decrees issued by the following concerned key regulatory authorities constitute an integral part of the regulatory framework: the Egyptian Stock Exchange (EGX), the Financial Regulatory Authority (FRA) and the General Authority for Investment and Free Zones (GAFI).

Subject to the specific activity of a target company, other regulatory bodies might be involved, such as the CBE and various key ministries.

As a general rule, acquisitions involving transfer of title of shares of joint-stock companies and quotas of limited liability companies 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. Any transaction exceeding 20 million Egyptian pounds must be, inter alia, pre-approved by the EGX Pricing Committee, which convenes on a weekly basis to study and resolve on each envisaged transaction, and the FRA.

III DEVELOPMENTS IN CORPORATE AND TAKEOVER LAW AND THEIR IMPACT

Egypt has witnessed several legislative reforms that affect the M&A market, whether directly or indirectly.

In 2020, a new banking law was issued in addition to the data protection law that has an indirect impact on M&A by encouraging foreign investors to invest in a similar business environment.

Additionally, 2018 witnessed several legislative amendments that have impacted the M&A market, including an increase of the mandatory tender offer trigger in the shareholding of a public company from 2 per cent to 5 per cent. Further, the FRA introduced numerous specific regulations regarding the acquisition of notable stakes in financial services companies.

The legislative amendments that have impacted the M&A market include an amendment of the Companies Law in relation to shareholders' agreements and preferred shares.

i Shareholders' agreements

Legal provisions exist to govern the concept of the shareholders' agreement. Shareholders' agreements are typically concluded between the founders and shareholders of a company so as to organise the relationship between the partners that are not contained in the articles of association that is ratified by GAFI on a designated form. Although there is no legal requirement to conclude agreements between sellers, buyers and target companies for share acquisitions, it is, however, customary in large acquisitions that parties conclude transaction agreements such as share purchase agreements and shareholders' agreements, as long as such shareholders' agreements do not include any contractual restrictions on the free tradability of the listed shares, as otherwise the same would be null and void.

8 No. 159 of 1981.

9 No. 95 of 1992.

10 The Board of Directors of the Financial Regulatory Authority Decree No. 11 of 2014.

Egyptian law does not explicitly regulate or recognise the concept of the drag-along right. There are no publicly available Court of Cassation judgments addressing the validity or enforceability of drag-along or similar rights. In addition, in practice, GAFI does not accept the inclusion of drag-along right provisions in a company's articles of association. Accordingly, drag-along right provisions fall under the scope of application of the general provisions of the Civil Code and the Executive Regulations of the Companies Law, and qualify as a conditional contractual obligation. Hence, the drag-along right is valid under Egyptian law because the fundamental conditions that trigger the drag-along right (i.e., a third-party bona fide purchaser wishing to acquire a majority or all of the capital of a target) do not conflict with the Civil Code. However, its enforceability remains untested.

Note that the same is applicable to put option provisions. Accordingly, put option provisions fall under the scope of application of the general provisions of the Civil Code and the Executive Regulations of the Companies Law and arguably qualify as a promise to contract.

In light of the foregoing, the introduction of a regulated shareholders' agreement will give parties to M&A transactions further comfort, as rights such as drag-along rights and put option rights will be incorporated into this shareholders' agreement.

ii Preferred shares

In the past, a company was not allowed to issue preferred shares unless its by-laws contained a provision allowing this at incorporation. In this respect, the new amendments to the Companies Law allow companies to issue preferred shares, even if this was not provided for in their by-laws at incorporation, so long as an extraordinary general assembly of that company vote representing three-quarters of the company's capital is obtained. At the outset, preferred shares were assumed to be incorporated with no limitations. However, shortly after the issuance of the new amendment of the Companies Law, GAFI issued a circular to limit the voting powers of holders of preferred shares to be capped at two-to-one. Preferred shares are advantageous for parties that wish to enjoy more voting and financial rights and contribute with the same capital, as opposed to ordinary shareholders.

IV FOREIGN INVOLVEMENT IN M&A TRANSACTIONS

Investing in Egypt was subject to a period of instability following the 2011 and 2013 revolutions. Although the devaluation of the Egyptian pound against the United States dollar in 2016 should have increased foreign investment into the country, political instability throughout the Middle East and North Africa have had a greater negative influence. Another problem that slowed down foreign direct investment was the high level of bureaucracy. However, several steps have been taken to enhance public service delivery and the domestic investment environment, and to re-attract significant foreign direct investment inflows.[11]

Egypt's foreign direct investment increased by US$970.5 million in the first quarter of 2020.[12]According to the Central Bank of Egypt, Foreign Direct Investment in Egypt

11 www.mof.gov.eg/MOFGallerySource/English/Strategy.pdf.

12 www.ceicdata.com/en/indicator/egypt/foreign-direct-investment#:~:text=Egypt's%20Foreign%20Direct%20Investment%20(FDI,bn%20in%20the%20previous%20quarter.&text=Its%20Foreign%20Portfolio%20Investment%20fell,USD%20bn%20in%20Mar%202020.

increased by US$3679.30 million in the first quarter of 2021.[13] Additionally, the CEO of the General Authority for Investments and Free Zone highlighted that there is an increase of 85 per cent compared to the first quarter of 2020/2021 fiscal year in respect of foreign direct investment in Egypt.[14] It was stated at the UN Conference on Trade and Development that despite the covid-19 pandemic, Egypt stayed the largest recipient of foreign direct investments in Africa.[15]

Foreign investments mainly come from countries with which Egypt has signed a bilateral treaty, including European Union and Arab countries, and the United States. Notwithstanding this, the United Kingdom remains by far the largest investor in Egypt. Such direct investments mainly target the oil sector, followed by the construction, manufacturing, real estate and financial services sectors.

The countries that have been key players in M&A deals in Egypt include the United Arab Emirates (UAE), which currently enjoys very strong diplomatic and economic ties with Egypt; a large number of UAE public and private companies have been consolidating their presence in the Egyptian market via M&A.

Egypt is a party to more than 100 bilateral investment agreements with, inter alia, the majority of the European Union Member States, the United States, and some African, Middle Eastern and Asian countries. In addition, Egypt signed an agreement with the Mercosur bloc of Latin American nations in 2010.

V SIGNIFICANT TRANSACTIONS, KEY TRENDS AND HOT INDUSTRIES

Regional, international and local private equity and financial institutions are empowering the Egyptian economy. The consumer-focused sectors such as food and drink, healthcare and education have been the most active sectors. In 2021, the following transactions have been witnessed, some of which have not closed yet.

a The acquisition by First Abu Dhabi Bank of Bank Audi SAE, Bank Audi's subsidiary in Egypt.

b The acquisition by Abu Dhabi Developmental Holding Company PJSC (ADQ), of Amoun Pharmaceuticals Company, one of Egypt's leading manufacturers, distributors and exporters of pharmaceutical and animal health products, from Bausch Health Companies. The transaction was completed through a mandatory tender offer by ADQ for the total issued share capital of Amoun, including less than 1 percent held by minority shareholders.

c The purchase of a minority stake by CDC Group Plc in Alfa Medical Group. CDC Group's investment is valued at US$100 million, marking CDC Group's largest impact led equity investment in Egypt to date.

d The acquisition of more than 95 per cent of the shares in Adwia SAE, buying out the stake held by chairman Hossam Taher and his family, as well as shares held by minority shareholders.

e The acquisition by Agthia Group, the leading Abu Dhabi-based food and beverages company listed on the Abu Dhabi Securities Exchange, of its majority stake of Ismailia Investments (Atyab), one of Egypt's esteemed producers of frozen processed

13 https://tradingeconomics.com/egypt/foreign-direct-investment.

14 https://www.egypttoday.com/Article/3/107029/Egypt-s-net-foreign-investment-increased-by-47-in-3.

15 egypttoday.com/Article/3/105268/Egypt-remains-largest-recipient-of-foreign-direct-investments-in-Africa.

chicken and beef products. The transaction will see Agthia acquire a majority stake of 75.02 per cent in Ismailia Investments, furthering Agthia's goal towards becoming the leading fast-moving consumer goods player in the Middle East and North Africa region.

f The initial public offering of Taaleem Management Services Company of up to 49 per cent of its capital shares at a price of 5.75 Egyptian pounds per share and a total value of 2.1 billion Egyptian pounds with a total of 3 billion sold shares.

g The majority stock sale of the Coca Cola Bottling Co of Egypt SAE to Coca-Cola Hellenic Bottling Company. The transaction grants the buyer access to the second largest non-alcoholic ready-to-drink market in Africa, by volume, with Nigeria and Egypt accounting for 25 per cent of the continent's population.

The past year witnessed the following transactions:

a a joint venture to build a private university in West Cairo between Palm Hills Development and Taaleem Management Services;

b the acquisition of Sahara Petroleum Company SAE for approximately US$50 million by National Energy Services Reunited Corp;

c the acquisition by the private equity fund Ezdehar Management of a minority stake in Al-Tayseer Healthcare Group through Ezdehar Egypt Mid-Cap Fund;

d the acquisition of diagnostics network Metamed by Gulf Capital – the buyers were a consortium of parties led by Mediterrania Capital Partners;

e the acquisition by Tana Capital, an Africa-focused investment company, of a minority stake in Alexandria Medical Investment Company, the majority shareholder of Mabaret Al Asafra Hospitals Group in Alexandria. The instruction included due diligence and drafting the transaction documents (share purchase agreement, shareholders' agreement and escrow). The transaction value was US$18 million and the deal closed in May 2020; and

f Acino, a Swiss pharmaceutical company, acquired selected prescription and OTC products from Takeda pharmaceuticals for a total value in excess of US$200 million.

The year 2019 witnessed the acquisition by Mubadala Petroleum of a 10 per cent stake in the Shorouk concession in Egypt's Zohr gas field for US$934 million as well as SOCO International's acquisition of Merlon Petroleum El Fayum Company.

Further notable transactions include:

a EFG Hermes' acquisition of a Cairo-based elementary schools' portfolio from Talaat Moustafa Group Holding, Egypt's largest listed real estate developer, for 1 billion Egyptian pounds;

b Tag El Melouk, a market leader in the production of baking powder, vanilla and salt, among other products, selling 100 per cent of its shares to Dr Oetker; and

c Solvay Alexandria Sodium Carbonate (CCI) selling 100 per cent of its shares in a US$15 million buyout by state-owned companies Egyptian Ethylene and Derivatives Company, Sidi Kerir Petrochemicals Company and the Egyptian petrochemicals holding company ECHEM.[16]

Although in May 2019 Bank Audi announced its acquisition of the National Bank of Greece (NBG) in Egypt, it walked away from this transaction during the first quarter of 2020

16 www.iflr.com/Article/3860935/2019-M-A-Report-Egypt.html?Articleid=3860935.

because of the eruption of the Lebanese banking crisis, prompting it to sell the entirety of its operations in Egypt. NBG's plan to exit from the Egyptian market is in accordance with a wider plan to reduce its overseas presence.

While 2019 was intended to be more focused on initial public offerings by the government, the year witnessed some notable transactions, including:

a the joint venture of the fertiliser and ammonia arm of OCI (comprising Egyptian Fertilizers Company, Egyptian Basic Industries Corporation and ADNOC, a leading state-owned company operating in the fertiliser industry in the UAE), with a value of approximately US$5 billion;

b the sale of a majority stake in Taaleem Group, the owner and operator of Nahda University in Beni Suef, to CI Capital Holding for Financial Investments for a value of 1.2 billion Egyptian pounds; and

c Cleopatra Hospital Group has also acquired the real estate assets of El Katib Hospital, and is currently finalising the business transfer agreement. El Katib Hospital is expected to add around 100 beds to its existing capacity and introduce a new urology centre of excellence.

New challenges have been seen as a result of a more difficult external environment, given the constricted global financial conditions. Egypt has successfully weathered recent capital outflows. Nevertheless, further strengthening of the policy buffers, including by containing inflation, enhancing the exchange rate's flexibility and reducing public debt, will be essential.[17]

According to CBE monthly inflation developments, 'nationwide annual inflation declined to 12.5 per cent in April 2019 as rural annual inflation declined to 11.9 per cent, from 13.8 per cent and 13.4 per cent, in March 2019, respectively'.[18]

According to the IMF review, the continued reinforcement of tourism and construction, and the rising production of natural gas are expected to increase GDP growth to 6 per cent as a result of the ongoing implementation of structural reforms and should translate into stronger private investment. Inflation is expected to reach single digits in 2020. The current account deficit is projected to gradually narrow from 2.4 per cent of GDP in 2017 and 2018 to under 2 per cent of GDP in the medium term, and general government gross debt is expected to continue to decline to 74 per cent of GDP by 2022 or 2023.[19]

In parallel, the significant investment liberation measures that are currently being undertaken by the government – by way of example, the introduction of a new law for the setting up of a natural gas regulatory authority charged with licensing – aim to open up the gas market to competition.

Furthermore, the issuance of the New Industrial Law[20] has made the establishment of manufacturing facilities easier through the introduction of a one-stop shop mechanism as an addition to the current practice of GAFI, under which the same concept is applied

17 IMF, 'Arab Republic of Egypt: Fourth Review Under the Extended Arrangement Under the Extended Fund Facility–Press Release; Staff Report; and Statement by the Executive Director for the Arab Republic of Egypt'.

18 www.cbe.org.eg/en/MonetaryPolicy/MonthlyInflationNoteDL/IN_April%202019_EN.PDF.

19 See footnote 15.

20 No. 15 of 2017.

to establishing companies. These have encouraged local investors to establish companies or manufacturing facilities, or to expand their existing facilities, without being concerned about regularising the status of such facilities.

The free float of the Egyptian pound has affected inbound foreign investments through the contributions of non-residents' purchases of real estate, and the net purchase by non-residents of companies and assets. Although purchases by non-residents have increased foreign direct investment into real estate, the real estate sector is still mainly being affected because of the increase in price of all the raw materials involved, which has affected costs and purchase prices, leading to stagnation.

VI FINANCING OF M&A: MAIN SOURCES AND DEVELOPMENTS

M&A are typically financed through equity or third-party financing, which includes credit financing, or a combination of equity and financing. Buyers tend to provide sellers with a warranty or documentary evidence, or both, confirming the availability of the acquisition financing. Typically, the payment of the purchase price is a condition precedent to a transfer of shares. Hence, if finance is not available, a transaction will never be closed.

There are no typical seller's assistance obligations. However, there are some regulatory restrictions under Egyptian law that could impact the financing structure, including the CBE regulatory instituted limitations and regulatory framework regulating acquisition financing; and financial assistance rules that under Egyptian law restrict a company from lending or guaranteeing the obligations of any of its board members.

Furthermore, in the case of a mandatory tender offer, a proposal submitted to the FRA must include a confirmation from a licensed bank in Egypt evidencing the availability of the financial resources to fund and cover an offer. Accordingly, short of a financial solvency confirmation, the FRA should not accept an offer proposal.

Subject to the parties' commercial agreement, financing may be structured as a condition (among other conditions) in asset-based transactions, where the transaction documents may reflect procurement of financing as a condition as supported by guarantees, warranties and the provision of evidence confirming the availability of financing.

It is, however, not customary to enshrine a seller's obligations to assist in relation to a buyer's financing in the transaction documents.

Private equity, investment managers and financial institutions have recently become more active in terms of the number of deals and their value.

VII EMPLOYMENT LAW

The relationship between employers and employees is governed by the Egyptian Labour Law[21] and decrees of the Ministry of Manpower. Generally, the Employment Law favours and protects employees as supported by several court precedents issued in favour of employees. Although Egyptian law does not oblige employers to obtain approval of or consult employees during an acquisition process, the law has still restricted an employer's ability to make changes to the workforce during this process. In an acquisition, employees' rights (including their acquired rights) remain protected and may not be discretionally limited or changed

21 No. 12 of 2003.

by the employer. Employees' dismissals take place by virtue of court orders and are limited to specific major events. Further, any redundancies during acquisitions must take place in coordination with the Ministry of Manpower and subject to its approval.

The Labour Law obliges buyers to have all the employees of the seller remain with the target company or transfer to the buyer in the case of an asset deal. The application of such transfer varies whether an acquisition is for assets or shares. In a share transfer, employees do not transfer, because they remain with the target company; hence, an acquisition of shares does not involve an employee transfer process.

In an asset sale, pursuant to the Labour Law, in the event an establishment is transferred from one employer to another, employees of the transferred establishment are transferred automatically to the new employer. Both the former and new employers will be jointly liable for the fulfilment of their entire obligations as set out under the employees' employment contracts. Article 9, Paragraph 2 of the Labour Law states the following:

> *merging the establishment with another or transferring it by inheritance, bequeath, donation, or sale – even by public auction – or by assigning or leasing it or other such disposing actions shall not terminate the employment contracts of the existing employees. The successor employer shall be responsible jointly with the former employers for implementing all obligations arising from these contracts.*

Based on Article 9, the Labour Law neither defines an asset sale nor sets out parameters to include a sale of business, whether whole or partial. Hence, some sellers tend not to apply the conservative approach and have employees transferred. Although the Labour Law recognises the concept of employees' automatic transfer in the event of an asset sale, practically, the transfer of employees cannot automatically be implemented before the Social Insurance Authority because of bureaucracy.

That said, in the transfer of assets constituting a business, employees' and tax-related liabilities will remain shared, from a statutory standpoint, by both the purchaser and the seller. A new labour law has been discussed in Parliament since 2017, and the draft of that law has kept a provision to the same effect. Other provisions that are irrelevant to M&A have been either amended or introduced to grant employees more benefits (e.g., four months of maternity leave instead of three months).[22,23]

Further, the Ministry of Planning and Economic Development has issued a decree number 57 of 2021, whereby a minimum wage is set to be 2,400 Egyptian pounds for employees working in the private sector as of 1 January 2022. The decree also set an annual bonus of 3 per cent of the social insurance contribution wage, which shall not be less than 60 Egyptian pounds.

22 Article 91 of the Labour Law.

23 https://drive.google.com/file/d/0B7TbC7kyvm9KVThUU1Jva09NZTA/view?resourcekey=0-FaUmwXoTdfpH4WqjZyhUrQ.

VIII TAX LAW

Taxation in Egypt is governed by a number of pieces of legislation mainly comprising the Income Tax Law[24] and the Value Added Tax Law.[25]

Last year, capital gains realised from the sale of listed Egyptian shares by both resident and non-resident shareholders have been taxable at a rate of 10 per cent.[26] For listed securities, the application of this tax was suspended for two years from 17 May 2015. This suspension was extended for an additional period of three years to 16 May 2020, and has been further extended until 31 December 2021.[27]

On the other hand, the sale of unlisted Egyptian shares by both resident and non-resident shareholders is subject to capital gains tax at a rate of 22.5 per cent on the gain realised.

Another applicable tax on sales of securities, whether listed or unlisted, is the newly introduced amendment to the Stamp Duty Tax Law whereby the purchase and sale of shares representing less than 33 per cent of a company's issued capital (during a consecutive period of two years) was reduced for non-residents to 1.25 per thousand from 1.5 per thousand and reduced for residents to 0.5 per thousand from 1.5 per thousand. This provision shall not apply to residents after the lapse of the extension pertaining to the capital gains tax applicable on listed shares. As per the Stamp Duty Law,[28] stamp duty should be borne equally by the seller and the buyer. If the transferred shares represent 33 per cent or more of a company's issued share capital (as bulk in one transaction), the buyer shall pay stamp duty at a rate of 0.3 per cent and the seller shall also pay 0.3 per cent.

Further, although value added tax may seem irrelevant to M&A activities, its application is crystallised in the acquisition of assets – in the context of asset deals rather than stock deals – as a sale of assets is subject to value added tax at different rates according to the sold assets.

Article 107 of the Income Tax Law stipulates that if the Tax Authority finds that the rights of the public treasury are liable to be lost, the President of the Authority may request the competent summary matters judge to issue a warrant on petition for levying an attachment on the funds or assets deemed adequate for collecting rights that may be lost, whatever the holders of such funds.

Additionally, as per Article 1139 of the Civil Code, sums due to the state treasury for taxes, duties and any other dues are privileged in accordance with the conditions laid down by the laws and regulations issued in this connection. These sums shall be paid out of the proceeds of the sale of a property charged with this privilege, in whosoever's hand they may be, and before all other rights, whether privileged by a lien or secured by a mortgage, except the costs of legal proceedings.

By virtue of the above, the Tax Authority has the right to trace the assets of a target in whosoever's hands they may be to satisfy any sums due on the target to the state treasury, even if those assets have been transferred to, and are now owned by, the target. Although the privileged right of the Tax Authority is deemed to be a general privileged right that shall not entail, as a rule, tracing rights, this specific privileged right of the Tax Authority exceptionally entails the latter's right to trace the assets of the target, in whosoever's hands they may be, as indicated in the above-mentioned provisions.

24 No. 91 of 2005.

25 No. 67 of 2016.

26 Article 46 *bis* 5 of the Income Tax Law.

27 Law No. 199 of 2020.

28 No. 111 of 1980.

Further to the above, the Tax Authority may have another legal basis for claiming the amount of taxes due on any target from any purchaser jointly with the target if a transfer of assets is considered to be a transfer of the target's business.[29]

IX COMPETITION LAW

In 2018, the Egyptian Competition Authority (ECA) began adopting a new approach in its interpretation of the Law on Protection of Competition and Prohibition of Monopolistic Practices No. 3 of 2005 (Competition Law) and its Executive Regulations, which has materially impacted M&A transactions. The ECA, via its novel interpretation of the law, deems that M&A transactions between dominant companies (defined as companies that control over 25 per cent of a specific market) must obtain the prior approval of the ECA prior to concluding a transaction, even if the transaction is concluded offshore. On the legislative front, the ECA is trying to introduce an amendment to the Competition Law in Parliament to give it greater power in controlling mergers, and explicitly legalising this new approach and interpretation.

In that context, the ECA regards the potential merger between Uber and Careem (two of the biggest ride-hailing app transportation companies) to be a horizontal agreement, which as such violates Article 6(a) and (d) of the Competition Law.[30] In this regard, the ECA issued decision No. 26 of 2018 on 23 October 2018. This decision obliges the two companies and their related parties, including the companies participating in their shareholding, to obtain the ECA's pre-approval prior to concluding any agreement related to the merger, establishing joint ventures or the purchase or sale of shares or assets of either company, either directly or indirectly.

Based on the above, if the buyer is a competitor of the seller, whereby both will have a significant share covering almost the whole market, the prior approval of the transaction by the ECA will be required. Otherwise, failure to procure approval will be subject to the penalty stipulated in Article 22 of the Competition Law: each party to the horizontal agreement shall be punished by a fine ranging between 2 per cent and 12 per cent of the total revenue of said party that was generated from trading the product or products that are the subject of the horizontal agreement during the violation period. In the event the competent court is unable to determine the aforementioned revenue, each party shall be punished by a fine amounting to no less than 500,000 Egyptian pounds and no more than 500 million Egyptian pounds. Such fines will be doubled in the case of recurrence.

The ECA submitted a proposal to amend the Competition Law. Two years later, in November 2020, the Cabinet approved the amendments which include provisions on the application of pre-merger (including acquisitions) control regimes, which shall apply to 'Economic Concentrations'. The Cabinet has submitted the amendments to the Egyptian Parliament and there were some revisions to the proposed amendments that were not published and hence, the details remain unclear. Based on the proposal submitted to the Egyptian Parliament, non-controlling minority acquisitions would be excluded from this filing requirement.

29 Article 80(3) of the Income Tax Law.

30 Law No. 3 of 2005.

X OUTLOOK

Under the scenario that the covid-19 vaccine is steadily spread throughout this year and into the next year, 2022, it is expected that Egypt shall slowly start regaining its pre-pandemic growth momentum by the upcoming financial year. A downside scenario for growth over the forecast horizon would happen if the vaccination process becomes more protracted or variants of the disease cause further disruption, with lockdowns repeatedly imposed.[31]

During 2020, Egypt recorded 3.8 per cent GDP growth, prior to the average for both advanced and emerging economies, where both groups recorded a contraction in real GDP. Nonetheless, according to IMF projections, Egypt is expected to exhibit a stronger recovery in 2021, with advanced economies achieving a 4 percent real GDP growth and emerging markets 6 per cent. Although Egypt is still above average in projections for the medium term, longstanding issues in the Egyptian economy remain a concern.[32]

31 https://www.worldbank.org/en/country/egypt/overview#1.

32 https://www.thecairoreview.com/midan/a-visualization-of-egypts-economic-performance-during-covid-19/.

Appendix 1

ABOUT THE AUTHORS

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Omar S Bassiouny is the founding partner of Matouk Bassiouny & Hennawy and head of the corporate and M&A practice group. He is consistently ranked in top tiers and bands by legal periodicals in the areas of corporate law and M&A for his considerable expertise in setting up joint ventures and new projects in Egypt, as well as ensuring compliance with local laws and corporate governance.

Omar is also the founding partner in Matouk Bassiouny's Dubai office, where he heads the corporate and M&A work, along with Malack Habashi and Ahmed Ibrahim in association with Amal Advocates.

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