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# Energy & Infrastructure M&A 2025

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**Egypt: Law and Practice**

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# EGYPT



## Law and Practice

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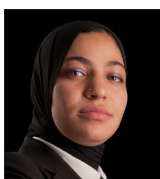
**Matouk Bassiouny & Hennawy** was established in 2005, and is a leading full-service business law firm in Egypt and the MENA region, with offices in Algeria, Sudan, the UAE, and a New York satellite office focused on international dispute resolution. The firm also has country desks for Libya and South Korea. With over 230 lawyers trained in both common and civil law systems, the firm provides services in English, Arabic, French, and Korean. Its Finance

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## 1. Market Trends

### 1.1 Energy and Infrastructure M&A Market

Local factors have had a direct positive impact on foreign currency availability, such as the enactment of Law No 170 of 2025 regulating the state's ownership and participation in companies, pursuant to which a "State Ownership Policy Document" shall be issued by the Prime Minister setting out rules approved by the Cabinet, aimed at establishing a comprehensive policy for governing the state's presence in economic activity in accordance with determined criteria, regulating the mechanisms for divestment from certain sectors, and strengthening the role of the private sector in achieving economic development.

Further contributing factors include the decision of the Central Bank of Egypt (CBE) to devalue the Egyptian pound in March 2024 and the government's heavy investments in energy and infrastructure projects, particularly transport and logistics and sovereign investments, including the transaction concluded with the government of Abu Dhabi's sovereign fund in relation to Ras El Hekma. Prior to these measures, challenges surrounding the conversion and repatriation of profits had adversely affected M&A appetite.

There are also positive sectoral developments, particularly within the power industry. Additional mitigating factors include the government's policy to divest significant power generation assets, coupled with the issuance of P2P regulations by the Egyptian Electric Utility and Consumer Protection Regulatory Agency (EgyptERA), marking the introduction of the first phase of a competitive power market.

### 1.2 Energy and Infrastructure Trends

In line with Egypt's ambition to position itself as a regional energy hub, the Prime Minister affirmed that the renewable energy sector continues to receive significant attention from the Egyptian state due to its vital role in ensuring the availability and accessibility of electric power to meet developmental and consumption needs. A major national priority has been the development of renewable energy projects, particularly solar and wind, in line with Egypt's Integrated Sustainable Energy Strategy (ISES) 2035, which originally set a target of generating 42% of electricity from renewable sources by 2035. In parallel, the government continues to encourage investments in upgrading ports, transportation, and logistics infrastructure to support the country's broader economic and energy objectives.

### 1.3 Access to the Energy and Infrastructure M&A Market

Investors access Egypt's energy and infrastructure M&A market mainly through direct investments and partnerships with financial institutions. Key investors include international energy companies, sovereign wealth funds, private sector developers, and private equity funds. This diversity reflects strong interest in renewable energy and sustainable infrastructure projects.

### 1.4 Energy and Infrastructure Projects

Major projects in the energy sector are ongoing including wind and solar power plants as well as green hydrogen projects. Since the issuance of the Renewable Energy Law No 203 of 2014, the private sector has been encouraged to play a role in the country's

green transformation strategy and produce electricity from renewable energy sources.

Furthermore, the Egyptian government has announced ambitious projects to produce green hydrogen in the Suez Canal Economic Zone, with the objective of utilising renewable resources in the region to generate green hydrogen and export it to global markets. During COP27, held in Sharm El-Sheikh in November 2022, Egypt (acting through the New and Renewable Energy Authority, the Egyptian Electricity Transmission Company, the General Authority for Suez Canal Economic Zone, and the Sovereign Fund of Egypt Infrastructure and Utilities Sub-Fund) signed framework agreements with several national and international investors for the purpose of installing and operating green hydrogen and ammonia plants. Such agreements reflect the country's efforts to attract foreign investments into green hydrogen production.

Regarding conventional power sources, Egypt's first major nuclear power plant at El Dabaa is expected to be a significant addition to the energy sector.

## 2. Establishing and Exiting Early-Stage Companies in the Energy and Infrastructure Industry

### 2.1 Establishing and Financing a New Company

The key considerations when establishing a company in the energy and infrastructure industry are the preferred corporate structure and investment vehicle as well as the required regulatory and licensing framework.

In acquisition scenarios, it is common for investors to form a holding company in an offshore jurisdiction to take advantage of beneficial tax treatment and applicable treaty protections. This holding entity would then either acquire the shares of the Egyptian target or incorporate a local subsidiary to which the assets can be transferred.

For energy and infrastructure projects in Egypt, which are currently quite common, the project company is usually set up as a joint stock company. The incor-

poration process generally takes up to ten business days, provided all required documentation is complete and accurate. Although the statutory minimum capital for establishing a joint stock company is EGP250,000, a higher capital amount may be required depending on the specific sector, whether the company is located in a special economic or free zone, and any capital requirements imposed under applicable bidding or tender procedures. Generally, such type of venture is common in Egypt.

However, start-ups and early-stage companies would generally obtain venture capital financing from a combination of both local and foreign investors, whilst new entities acquiring an existing business can obtain external financing from banks and financial institutions, whether acquisition finance and/or project financing.

### 2.2 Liquidity Events

Depending on the scale and maturity of their operations, companies may consider several types of liquidity events, including: (i) an initial public offering (IPO); (ii) a share sale, whether through a merger or acquisition; or (iii) an asset sale. For energy and infrastructure players, asset sales can be an effective and flexible strategy to unlock capital and reposition investment portfolios, albeit with potential complexity and extended timelines. Below is a brief overview of such liquidity events.

#### IPO

As a general rule, the listing of Egyptian companies is regulated under the Egyptian Capital Market Law No 95 of 1992 and its Executive Regulations (as amended) (Capital Market Law) as well as the Egyptian Exchange (EGX) listing and de-listing rules.

Typically, a mature company is more likely to list its shares on the domestic exchange rather than pursuing a dual listing, in order to avoid additional obligations – such as obtaining approvals from both domestic and foreign authorities – and to mitigate the risks and uncertainties of listing abroad.

#### Private Sale of Shares

Generally, the sale process (whether in the form of primary or secondary transactions) as a liquidation

event is typically undertaken through direct negotiations between the selling shareholder and the potential buyer (and possibly through a bid process). These negotiations typically culminate in a binding offer from the potential buyer, which is then followed by the drafting of the relevant transaction documents/definitive agreements, typically a share purchase/subscription agreement and, where relevant, a shareholders' agreement.

## Asset Sale

An alternative liquidity route involves the sale of a company's assets, including properties, employees, licences, movables and transfer of material contracts and clients, as applicable. In such cases, the purchaser and seller enter into an asset purchase agreement, with the transfer of assets perfected before the relevant authorities upon execution of the required documentation.

Typically, in private and public M&A transactions, the following key considerations should be noted in relation to possible transaction terms:

- **Representations and Warranties:** Representations and customary core and business warranties are contractual protections granted by the relevant seller (and also by the individual founders in some cases, or by the target company in the case of a capital increase) to the buyer under the relevant transaction documents, with a right of recourse being granted to the buyer in case of a breach.
- **Indemnities:** The share and purchase/subscription agreements typically include comprehensive tax indemnities covering any and all potential tax liabilities identified during tax due diligence or otherwise. Business indemnities are also typically included where due diligence has identified a risk that could give rise to a claim against the target company during the period prior to closing. Generally, indemnities shall not be subject to limitations, although the principals may agree otherwise.
- **Representations and Warranties Insurance:** Representations and warranties insurance has been suggested (particularly by the seller) in several recent transactions.
- **Liquidity Event Restrictions:** Change of control/change in the shareholding structure restrictions

may arise in transactions subject to contractual or statutory prior consents or notifications.

## 3. Spin-Offs

### 3.1 Trends: Spin-Offs

In most energy and infrastructure projects, investors are either required by regulation or by the project documentation to establish a dedicated special purpose vehicle (SPV) to undertake the project. Even where this is not mandated, investors frequently adopt an SPV structure in anticipation of external financing and the need to grant security over the project assets. The rationale is to isolate the project's assets and liabilities within a single entity, thereby limiting the scope of any enforcement to the SPV without affecting the investors' broader corporate group. As a result, projects are typically structured through an SPV from inception, and spin-offs/demergers are not common. Nevertheless, the founders may later exit fully or partially by transferring their shares in the SPV, subject to regulatory approvals and any contractual transfer restrictions or lock-up periods mandated thereunder.

### 3.2 Tax Consequences

Generally, spin-offs/demergers are subject to the following tax implications.

#### Capital Gains Tax

To begin with, a spin-off (demerger) is considered a change in the legal form of the company, necessitating the valuation of the company's assets to facilitate the separation of assets. If this valuation results in realised capital gains, the company will be subject to Capital Gains Tax (CGT) at a rate of 22.5% on the realised gains.

In that sense, and according to Article (53) of the Income Tax Law, issued by Law No 91 of 2005, capital gains resulting from the revaluation of assets are subject to taxation when there is a change in the legal form of a legal entity. A spin-off (demerger), where a resident company is divided into two or more resident companies, is considered such a change in legal form.

The law allows for the possibility of deferring the CGT liability under specific conditions:

- **Book-Value Continuity:** Assets and liabilities must be recognised at book values at the change date for tax purposes.
- **Tax Attributes:** Depreciation, provisions and reserves continue under pre-change rules.
- **Lock-Up:** The shares/quotas issued on the reorganisation are not disposed of for three years.

Note that deferred capital gains tax becomes due if there is a subsequent change of legal form, or a dissolution, within the three-year lock-up period (ie, the disposal of the new shares/quotas within that period).

The statute characterises the relief as a deferral and does not expressly impose a charge after the three-year period unless there is another trigger. It is best described as “roll-over/deferral relief subject to claw-back” rather than an exemption.

### Stamp Duty Tax and State Development Fee

Under the Stamp Duty Tax Law, issued by Law No 111 of 1980, several stamp duty taxes apply. For example, any contract is subject to a nominal stamp duty tax at the rate of EGP0.9 for each page of the contract, and such nominal tax is borne by the party that uses its counterpart in Egypt.

With respect to the State Development Fee, according to Article (1) paragraph 9 of law No 147 of 1984, fees of EGP2 are imposed on each and any tax base which is subject to stamp duty tax of an amount equal to EGP0.5 or more.

From an Egyptian tax perspective, a spin-off could potentially avoid direct tax implications in Egypt if it occurs at an offshore mid-layer that does not directly affect the Egyptian entity’s shareholders. However, this should be assessed in light of the tax regulations applicable in the jurisdiction where the spin-off takes place.

### 3.3 Spin-Off Followed by a Business Combination

Undertaking a sale of shares following the completion of a spin-off is possible in Egypt, and such sale may take any form agreed between the parties (eg, share transfer, subscription by a new investor, etc) provided that no statutory or contractual lock-up restrictions

apply. Below is a brief overview of the applicable regulations regulating spin-offs.

- The Companies Law defines a demerger as the separation of an existing company’s assets, activities, liabilities and ownership rights (Parent Company) into two or more companies (Resulting Company), whether vertically or horizontally.
- The Companies Law differentiates between two types of demergers:
  - (a) **Horizontal Demerger:** The Resulting Company should have the same shareholding structure and percentages as the Parent Company.
  - (b) **Vertical Demerger:** The Resulting Company is affiliated to and owned by the Parent Company.
- The Resulting Company may exist in any legal form (except for sole shareholder companies) irrespective of the legal form of the Parent Company.
- The Resulting Company is deemed a legal successor of the Parent Company where it shall legally replace it in all its obligations, liabilities and rights within the limits and in respect of the transferred rights and obligations. The approval of the creditors of the financing instruments issued by the Parent Company shall be obtained prior to proceeding with the demerger process, subject to the regulations under applicable laws.
- Whether the demerger is horizontal or vertical, the split of the assets and any liabilities thereof should be based on the book value, unless GAFI approves any other valuation method. The shareholders’ rights in the capital, reserves, and retained earnings are split pursuant to a resolution adopted by the Parent Company’s extraordinary general assembly, approved by shareholders representing three-quarters of the company’s capital.
- As a result of the demerger, the Parent Company issues new shares corresponding to the net asset value remaining after the demerger, either by amending the number of shares or adjusting their nominal value. The Resulting Company issues new shares reflecting the value of the assets allocated and transferred to it.
- The shares of the Resulting Company may be transferred upon issuance without restriction, subject to any pre-existing limitations.
- The corporate documents of the Resulting Company and the Parent Company should be amended



to reflect changes to each entity resulting from the demerger (eg, capital and shareholders).

### 3.4 Timing and Tax Authority Ruling

Demergers or spin-offs entail three main phases, namely (i) the preparation of the demerger file and its evaluation by the Economic Performance Department (EPD) at the General Authority for Investment and Free Zones (GAFI); (ii) the demerger extraordinary general assembly meeting approving the demerger (along with the execution of the relevant ancillary documents); and (iii) the execution of the demerger.

Typically, the EPD review process takes around one month from the submission of a complete and properly prepared demerger file. In practice, however, it may extend up to six months depending on the EPD's review and any additional document requests. The demerger extraordinary general assembly meeting process usually takes around one month, while the execution of the demerger, including amendments to the parent company and establishment of the resulting company, may require an additional two to three months.

Generally, no prior approvals from the Egyptian Tax Authority are required. However, it is possible to apply for a tax ruling from the Egyptian Tax Authority to clarify the transaction structure and confirm the applicable tax treatment of the spin-off in Egypt. The issuance of such a ruling typically takes around three months, although the timeline may vary on a case-by-case basis.

## 4. Acquisitions of Public (Exchange-Listed) Energy and Infrastructure Companies

### 4.1 Stakebuilding

Acquiring a stake in a public company is legally permissible prior to making an offer, provided that the stake does not trigger the thresholds of mandatory tender offers (MTOs) stipulated under the Executive Regulations of the Capital Market Law (and as further outlined in **4.2 Mandatory Offer**).

If any of the thresholds mentioned in **4.2 Mandatory Offer** are likely to be triggered, the offeror must promptly notify the Financial Regulatory Authority (FRA) and submit an MTO draft (MTO Draft) for the acquisition of 100% of the share capital of the target company (up to 90% if the company is to remain listed), which shall include the purpose and details of the acquisition. The MTO Draft must be submitted within 60 business days from the disclosure to the FRA, which may be extended for another 60 business days at the FRA's discretion. Failure to submit within this timeframe results in a six-month ban on filing another MTO, unless the FRA grants an exemption for serious reasons. Similarly, if the offer is withdrawn, a new offer is prohibited for six months from the withdrawal date.

With regards to disclosure of the buyer's intentions and plans, generally, an acquirer of a 25% of a public company's share capital or voting rights (whether solely or together with its related parties) shall submit an investment plan and their intentions in connection with the company's management to the EGX and FRA.

Generally, the main shareholders of a listed company shall disclose to the FRA: (i) their shareholding stake along with their related parties upon the acquisition of a stake representing 5% or any multiple thereof of the company's shares or voting rights provided that such disclosure shall be made post the execution of the transaction and before the first trading session post-execution; and (ii) their shareholding stake along with their related parties, periodically, at the beginning of January and July of each year.

### 4.2 Mandatory Offer

Pursuant to the Executive Regulations of the Capital Market Law, the thresholds and events triggering the launch of an MTO include the following:

- One trigger is where one-third or more of the issued share capital or the voting rights of the target company is acquired directly or indirectly, whether individually or through related parties.
- A person/entity owning individually or through its related parties more than one-third of the issued share capital or the voting rights of the target company and less than 50% of the issued share

capital or the voting rights must submit an MTO if its shareholding or voting rights increase by more than 5% within 12 consecutive months.

- A person/entity owning individually or through its related parties more than 50% of the issued share capital or the voting rights of the target company and less than two-thirds of the issued share capital or the voting rights must submit an MTO if its shareholding or voting rights increase by more than 5% within 12 consecutive months.
- A person/entity owning individually or through its related parties more than two-thirds of the issued share capital or the voting rights of the target company and less than 75% of the issued share capital or the voting rights must submit an MTO if its shareholding or voting rights increase by more than 5% within 12 consecutive months.
- Another trigger is where the shareholding of a person/entity independently or through its related parties reaches 75% of the share capital or voting rights of the target company.

## 4.3 Transaction Structures

The acquisition of listed shares may take place through any of the following transfer mechanisms:

- **Open Market Mechanism:** Provided that no MTO thresholds are triggered, investors may acquire shares or voting rights – generally free float shares – in the target company through the open market mechanism by placing buy orders via a broker licensed with the FRA.
- **Block Trade Mechanism:** Provided that no MTO thresholds are triggered, investors may acquire privately held shares or voting rights in listed companies through the block trade mechanism. Block trading is intended for large-scale transactions, either exceeding the average daily trading volume of the security and involving at least 1% of the voting rights (minimum EGP1,000,000), or with a value above EGP10,000,000, provided that the counterparty's order value is not less than EGP500,000.
- **Launching an MTO:** if the MTO thresholds are triggered, the offeror must acquire the listed shares via launching an MTO.
- **Mergers of Listed Companies as Regulated Under the Capital Markets Law:** Although they are used as a transaction structure less frequently, it is note-

worthy that the execution of merger transactions is exempted from launching an MTO.

## 4.4 Consideration and Minimum Price

### Tech Industry Transactions

M&A transactions, including technology industry transactions, may combine cash and stock-for-stock elements, specifically with strategic investors, although cash considerations are more common.

### Merger Cash Consideration

Pursuant to the Companies Law, a merger transaction can take place through the merger of two or more companies into an existing company or through the merger of two companies to form a new company. That said, mergers do not include a cash component.

### Public M&A Pricing Requirements

Whilst there are no minimum price requirements for private M&A transactions, public M&As are subject to pricing restrictions, including those outlined below.

#### *Block trade transaction pricing*

The price for block trading transactions should be within the limits of the price movement percentage permitted for the relevant security. Pursuant to the EGX Decree No 681 for the year 2021, the pricing limit for transactions on the main market is 20% of the last closing price.

#### *MTO transaction pricing*

Unless the offer price is based on a fair market value (FMV) of the shares prepared by an independent financial adviser (IFA) registered with the FRA, the FRA may reject the MTO draft or any amendments if the offer price for actively traded shares is lower than the highest of the following:

- the average closing price on the EGX during the three months preceding the announcement of the offeror's intention to submit the MTO or the six months preceding the filing of the MTO Draft; or
- the highest price paid by the offeror or any of its related parties in a previous tender offer during the 12 months preceding the submission of the current offer, unless justified by serious reasons accepted by the FRA.

If the target company's shares are not actively traded on the EGX, the FRA will typically require a fairness opinion from an IFA.

## Price Adjustment Mechanism

In transactions with high valuation uncertainty, buyers may opt to adopt an adjustment mechanism whereby a preliminary purchase price is paid by the buyer at closing and adjusted (upwards or downwards) thereafter according to the agreed-upon adjustment mechanisms. Typically, in the event of upwards adjustments, the seller shall be entitled to additional cash; in the event of a downwards adjustment, the buyer may be granted additional shares.

## 4.5 Common Conditions for a Takeover Offer/Tender Offer

Pursuant to Article 354 of the Executive Regulations of the Capital Markets Law, the submitted MTO shall not be conditional on any requirement.

However, conditions that are inherent to the execution of the transaction, such as obtaining regulatory, corporate or contractual approvals, are considered part of the standard MTO process and are necessary for the FRA's approval of the offer.

Exceptionally, the MTO may, subject to the FRA's approval, be made conditional by the offeror on its acquisition of at least:

- 51% of the issued share capital of the target company for the purpose of gaining control over the target company; and
- 75% of the issued share capital of the target company for the purpose of a merger.

## 4.6 Deal Documentation

Takeover offers and business combinations are usually documented by the relevant transaction documents/definitive agreements (eg, share purchase agreements or subscription agreements, as the case may be).

The target company's obligations are determined on a case-by-case basis, depending on the transaction, its structure and the due diligence findings. Such obligations may include obligations to procure the fulfilment of certain pre-completion actions, a completion obli-

gation (eg, in the event of a subscription whereby the company is required to issue shares), etc.

It is worth noting that it is not typical to include representations and warranties in public M&A transactions, although the parties may elect otherwise.

## 4.7 Minimum Acceptance Conditions

Please see 4.5 Common Conditions for a Takeover Offer/Tender Offer.

## 4.8 Squeeze-Out Mechanisms

Minority squeeze-outs are generally not recognised under Egyptian law.

Instead, Article 357 of the Executive Regulations of the Capital Markets Law provides a minority buy-out right. Specifically, where a shareholder acquires 90% or more of the share capital and voting rights of a listed company, minority shareholders holding at least 3%, or alternatively a group of 100 shareholders representing at least 2% of the free float, may apply to the FRA to require the majority shareholder to submit an offer for their shares.

## 4.9 Requirement to Have Certain Funds/Financing to Launch a Takeover Offer

The MTO Draft and the information memorandum draft submitted to the FRA by the offeror (or its representatives) shall include a commitment letter from a licensed bank confirming that the funding of the MTO is available, whether the payment of the purchase price is based in any way on the financial resources of the target company and the consequences of said financing structure on the target company's assets and activities.

Under the Capital Markets Law, an MTO may not be conditional on obtaining financing, and the FRA is unlikely to approve the MTO Draft unless the offeror provides evidence of sufficient funds to execute the offer.

## 4.10 Types of Deal Protection Measures

Customarily, the protection measures that a target company may grant include break-up fees, non-solicitation provisions, matching or topping rights, information rights and exclusivity periods, which are all left to

the agreement of the parties and are determined on a case-by-case basis.

#### 4.11 Additional Governance Rights

The statutory governance rights a bidder can obtain would generally depend on the percentage acquired in the company's share capital (control over the board, ordinary and extraordinary general assembly meetings, etc, and consequently, controlling the decision-making arm of the company).

Notwithstanding the foregoing, contractual rights also depend on the commercial agreement of the relevant parties. For minority acquisitions, reserved matters requiring the bidder's prior consent or granting the same a veto right are common, along with other customary minority protections such as a tag-along right and other priority rights in future exits. Bidders acquiring a majority stake may be granted control over the board of directors, accompanied by other contractual protections, such as a drag-along right.

#### 4.12 Irrevocable Commitments

It is common to obtain irrevocable commitments from principal shareholders of the target company to tender or support the transaction. Such undertakings are contractual in nature and may trigger the principal shareholder's liability if they tendered their shares for a better offer submitted by another offeror.

However, the undertaking/commitment is merely contractual, and the principal shareholder may still opt to back out of the transaction, regardless of the contractual liability.

#### 4.13 Securities Regulator's or Stock Exchange Process

##### FRA Review of the MTO Draft

Within two business days of the submission of the MTO Draft, the FRA must issue its decision on the MTO Draft to either (i) approve the MTO Draft; (ii) reject the MTO Draft; or (iii) request submission of further information, documents, or amendments of the MTO Draft (Requested Information). Upon submission of the Requested Information by the Offeror, the FRA shall issue its decision on the MTO Draft no later than two business days as of the said submission.

##### Approval of the Offer Price by the FRA

The offer price is submitted to the FRA as part of the MTO Draft. Please refer to the pricing conditions in 4.4 Consideration of the Minimum Price.

##### MTO Duration

The validity duration of the MTO (MTO Duration) shall commence on the business day immediately following the publication of the MTO.

The MTO Duration shall not exceed 30 business days (except for the case of competing tenders) and shall not be less than ten business days. However, in the event the target company is obliged to appoint an IFA, the MTO Duration shall not be less than 20 business days from the commencement date.

#### 4.14 Timing of the Takeover Offer

##### MTO Duration

Please refer to 4.13 Securities Regulator's or Stock Exchange Process for details on the extension of the MTO Duration.

##### Timeline for Obtaining Regulatory Approvals

If any of the thresholds in 4.2 Mandatory Offer are likely to be triggered, the offeror must promptly notify the FRA and the EGX that an MTO is likely to be triggered. In such case, since applicable regulatory approvals are obtained prior to launching the MTO, the notification to the FRA and the EGX should be made in case of the submission of requests by the offeror to the relevant authorities to obtain their preliminary regulatory approvals on the envisioned acquisition.

#### 4.15 Privately Held Companies

Privately held companies in Egypt may be acquired either through a share purchase (including by way of merger or acquisition) or an asset purchase. Such transactions may require the relevant corporate approvals from the target company, as well as all applicable regulatory and/or contractual approvals, which vary depending on the sector, in addition to any antitrust approvals in accordance with 5.5 Anti-trust Regulations.

For joint stock companies, the share transfer must be executed before the EGX via a licensed Egyptian broker following completion of all required account open-



ing documents and the submission of executed buy and sell orders. The transfer of shares is evidenced by virtue of an updated shareholders' statement issued by Misr for Central Clearing, Depository and Registry S.A.E. As for limited liability companies, the transfer of quotas is executed by virtue of an extraordinary general assembly meeting (provided that the applicable attendance and voting quorum is met) and the annotation of the transfer in the quota ledger.

Asset acquisitions are less common, as they typically involve longer procedures, with each asset potentially requiring approval from multiple authorities and compliance with distinct regulatory requirements.

These acquisitions are generally accompanied by standard transaction documents, including a share purchase agreement, asset purchase agreement, and/or a shareholders' agreement. As part of the acquisition process, both legal, financial and tax due diligence are generally undertaken.

## 5. Overview of Regulatory Requirements

### 5.1 Regulations Applicable to Energy and Infrastructure Companies

Incorporating a new company in the energy and infrastructure industry is generally subject to the general regulations applicable to the establishment of companies. The licensing requirements, process and timeline necessary prior to the commencement of operations would vary depending on the nature of the project.

Typically, for companies undertaking industrial activities, an industrial operational licence from the Industrial Development Authority (IDA), along with registration in the IDA's industrial register, is required.

In addition to the above, an environmental approval from the Egyptian Environmental Affairs Agency is generally necessary. For energy projects, the generation, distribution, and/or sale of electricity requires a licence from the Egyptian Electric Utility and Consumer Protection Regulatory Agency.

### 5.2 Primary Securities Market Regulators

The primary securities market regulator in Egypt is the EGX.

### 5.3 Restrictions on Foreign Investments Restrictions on Foreign Investment

Generally, foreigners can participate in the ownership of Egyptian companies, pursuant to the applicable Egyptian laws. There are, however, specific activities that trigger foreign ownership restrictions, including but not limited to the following:

- Companies undertaking commercial agency activities should be fully owned and managed by Egyptians up to the ultimate beneficial owner.
- Projects operating in specific areas inside the Sinai Peninsula require at least 55% of their shareholding to be held by Egyptian nationals.
- Companies undertaking activities of private security and guarding services and transport of funds (ie, physical transport and safeguarding) must be fully owned by Egyptian nationals or by companies that are fully owned by Egyptian nationals.

### Foreign Direct Investment Filing

All Egyptian companies with foreign shareholders or board members are required to submit a form to GAFI including information on, inter alia, foreign shareholders and financial information no later than 45 days before the end of each quarter (and no later than 30 days in the event of any changes to the company). Failure to submit the required information to GAFI is punishable by a fine not exceeding EGP50,000, as per Article 91 bis of the Investment Law. It is worth noting that such penalty has not yet been implemented in practice.

### 5.4 National Security Review/Export Control National Security Review

Foreign shareholders and foreign director or non-director delegates (individuals or entities) must obtain security clearance from the security authorities for such person/entity to become a shareholder or director in any Egyptian company. The security clearance process is conducted through GAFI by submitting a designated form along with notarised and legalised corporate documents. GAFI then contacts the security authorities to obtain their clearance. In most

cases, the appointment can proceed prior to clearance (which usually takes a considerable time), but the individual/entity will be replaced if the result of the security clearance is negative.

## Export Control Regulations

Exportation is primarily governed by Law No 118 of 1975 regulating importation and exportation. Companies undertaking exportation activities are bound by certain obligations, including the obligation to register with the Exporters' Register held by the General Organization for Export and Import Control (GOEIC), the competent authority at the Ministry of Trade and Industry. It should be noted, however, that, without prejudice to the laws, regulations, and decrees regulating the importation and exportation, Article 7 of the Investment Law allows investment projects to export products, whether directly or through an intermediary, without a licence and without the need to be registered with the Exporters' Register at GOEIC.

## 5.5 Antitrust Regulations

### The Egyptian Competition Authority

Pursuant to the Egyptian Competition Law No 3 of 2005, as amended from time to time (ECL), and its executive regulations, as amended from time to time (ECL ER), any transaction must be filed with the Egyptian Competition Authority (ECA) and approved prior to its closing if the following requirements are satisfied.

#### *The transaction involves an "economic concentration"*

The ECL and ECL ER define "Economic Concentration" as any change in the control or material influence of a person or several persons resulting from: (i) a merger; (ii) direct or indirect acquisition of the capacity to control a person(s) by virtue of an agreement or through the purchase of financial securities, assets, shares or any other means; or (iii) the establishment of a joint venture that would exercise its economic activities independently from the entities that established it, on a permanent basis.

Control refers to the ability to effectively direct the economic decisions of another entity, either through majority voting rights, veto rights, or any arrangement that enables decisive influence over management or

operations. Material influence is a broader concept and includes the ability of a person to affect, directly or indirectly, the policies of another person, including, but not limited to, its strategic decisions or commercial objective. It may arise, for example, if a person acquires 25% or more of voting rights, or even a smaller percentage if accompanied by other factors such as board representation, special rights under the articles of association or a shareholders' agreement, or relative voting strength in comparison with other shareholders.

### Financial thresholds

#### *Threshold 1 (local threshold)*

This threshold consists of two sub-thresholds, both of which must be satisfied:

- Local Threshold in Relation to All the Concerned Parties: The achieved combined annual turnover or the combined assets in Egypt pertaining to the concerned parties of the last year as reflected in their audited consolidated financial statements pertaining to such year exceed EGP900 million.
- Local Threshold in Relation to Each of at Least Two of the Concerned Parties: The aggregate turnover of each of at least two of the concerned parties achieved in Egypt, as reflected in their latest audited consolidated financial statements, exceeds EGP200 million.

#### *Threshold 2 (worldwide threshold)*

This threshold consists of two sub-thresholds, both of which must be satisfied:

- Worldwide Threshold: The worldwide combined annual turnover or combined assets pertaining to the concerned parties of the last year, as reflected in their audited consolidated financial statements pertaining to the said year, exceed EGP7.5 billion.
- Local Threshold: The aggregate turnover of at least one of the concerned parties achieved in Egypt, as reflected in its latest audited consolidated financial statements, exceeds EGP200 million. Although the Executive Regulations refer to "at least one of the concerned parties", the Guidelines issued by the ECA state that the said local threshold is applicable to the turnover of the target group, and not the acquirer group.

As per Article 49 of the ECL ER, “concerned parties” are defined to include the persons involved in the economic concentration (eg, the acquirer and the target in case of a stock acquisition) and their related parties (Concerned Parties). Persons shall be considered related parties when they are direct and indirect parents, subsidiaries, or sister companies of each other as per one of the criteria set forth under Article (5) of the ECL ER (Related Parties) based on ownership stake or control of management and/or decision-making.

According to the provisions of the ECL, transactions (eg, acquisitions, mergers and joint ventures) that involve target companies that carry out activities subject to the supervision and control of the FRA are not subject to the prior approval of the ECA. However, the parties of the economic concentration are obliged to notify the FRA of the economic concentration, and the FRA must consult the ECA for its opinion before approving the implementation of the economic concentration. The envisioned transaction must satisfy the above requirements in order to be subject to the competition approval of the FRA. If the target has subsidiaries that carry out activities that are not licensed or are not subject to the supervision and control of the FRA, the indirect acquisition of such subsidiaries might require a separate ECA filing, subject to the satisfaction of the ECA filing requirements detailed above.

Transactions that involve target companies that are licensed by the CBE and carry out activities subject to the supervision and control of the CBE are not subject to the prior approval of the ECA and do not fall under the jurisdiction of the ECA. However, if the target has subsidiaries that carry out activities that are not subject to the provision of the CBE, the indirect acquisition of such subsidiaries might require a separate ECA filing, subject to the satisfaction of the ECA filing requirements detailed above.

If the parties fail to notify the ECA or obtain its clearance, they will face a fine of not less than 1% and not more than 10% of the total annual turnover, the asset value of the Concerned Parties, or the transaction value, whichever is higher. If the percentage cannot be calculated, the penalty shall be a fine of not less than

EGP30 million and not exceeding EGP500 million. In addition, the transaction documentation shall be deemed null and void and the parties will be required to reverse the transaction.

To the extent an envisioned transaction meets the ECA filing requirements, the issuance of the ECA's unconditional approval is to be included as a condition precedent in the relevant transaction documents, as the ECA pre-merger regime is suspensory.

## **The Common Market for Eastern and Southern Africa (COMESA) Competition Commission**

Subject to the fulfilment of certain thresholds and triggering events under applicable COMESA regulations, the transaction might trigger the requirement for COMESA's prior approval.

In this respect, the COMESA Competition Regulation of December 2004 and its amendments (the COMESA Regulations) and the COMESA merger assessment guidelines of October 2014 (the Guidelines) provide that any direct or indirect acquisition or establishment of a Controlling Interest (as defined in the COMESA Regulations, Rules and Guidelines) by one or more persons in the whole or part of the business of a competitor, supplier, customer or other person as a result of the purchase of shares, assets or amalgamation must be notified to the COMESA Competition Commission (CCC) if the following filing requirements are satisfied:

- both the Acquirer Group (defined below) and the Target Group (defined below) – or at least one of them – operate in two or more COMESA member states; and
- the below financial thresholds are met:
  - (a) the combined annual turnover or the combined value of assets, whichever is higher, of the parties (defined below) in the COMESA market (meaning the Acquirer Group and the Target Group) equals or exceeds USD50 million; or
  - (b) the annual turnover or value of assets, whichever is higher, in the COMESA market of each of at least two parties to the merger equals or exceeds USD10 million, unless each of the parties to a merger/acquisition achieves at least two-thirds of its aggregate turnover or assets in

the COMESA market within one and the same member state.

COMESA member states are Burundi, Comoros, the Democratic Republic of Congo, Djibouti, Egypt, Eritrea, Eswatini, Ethiopia, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Somalia, Sudan, Tunisia, Uganda, Zambia and Zimbabwe.

For the purpose of assessing the satisfaction of the above financial thresholds, the acquirer group refers to the acquirer and its Related Parties (ie, direct and indirect parents, subsidiaries, and sister companies) (Acquirer Group) and the target group refers to the target, along with its Related Parties (ie, direct and indirect parents, subsidiaries, and sister companies), excluding the seller(s) that will no longer have sole/joint control of the Target post-completion of the Transaction and the Related Parties of these seller(s) (Target Group). The Acquirer Group and the Target Group are collectively referred to as Parties.

The notification to the CCC must be given as soon as it is practicable but in no event later than 30 days of the Parties' decision to effect the transaction (ie, from the date of signing the binding transaction documents).

Any notifiable merger/acquisition that has been carried out without notifying the CCC within 30 days of the Parties' decision to merge/acquire shall have no legal effect and impose no rights or obligations on the participating Parties, and the CCC may impose financial penalties that shall not exceed 10% of either or both of the merging Parties' annual turnover in the COMESA market as reflected in the accounts of any party concerned for the preceding FY.

### *Filing fees*

The notification of a merger/acquisition must be accompanied by a fee calculated at 0.1% of the combined annual turnover or combined value of assets in the COMESA member states of each of the Acquirer Group and the Target Group, whichever is higher, provided that the fee shall not exceed USD200,000. If the filing fees are paid to COMESA, they shall not be refundable if the envisioned transaction is not completed.

## **5.6 Labour Law Regulations**

A new Egyptian Labour Law No 14 of 2025 (New Labour Law) has recently been issued, replacing the previous Labour Law No 12 of 2003 (Former Labour Law), with the aim of, inter alia, modernising labour regulations in response to shifting economic dynamics and evolving labour market needs.

Under the New Labour Law, acquirers must consider various labour-related matters when conducting due diligence on a potential target.

By way of example, companies are required to maintain comprehensive employee records whilst ensuring that no employee's salary falls below the statutory minimum wage, as adjusted. Upon exceeding a certain number of employees, companies are required to hire individuals with disabilities at a rate equivalent to a percentage of their total workforce. If foreign nationals are employed, they must hold valid work permits. Under the New Labour Law, employers are now permitted to maintain electronic records of their employees, including personnel files, leave records, and employee requests.

Similarly, all employees and board members must be registered under the social insurance scheme, and the company is obligated to submit annual evidence of such registration to the National Organization for Social Insurance.

In relation to the statutory employment funds, and specifically the occupational training fund, employers who hire more than 30 employees are required to contribute 0.25% of the minimum social insurance wage per employee on an annual basis. This contribution is subject to a minimum of EGP10 and a maximum of EGP30 for each employee per year. This represents a change from the Former Labor Law, which mandated a 1% annual net profit contribution to a training fund for employers with over ten employees.

Further, the New Labour Law adopts a stricter approach by increasing nearly all existing penalties and introducing additional sanctions compared to the previous law.



## 5.7 Currency Control/Central Bank Approval

There are currently no foreign exchange controls applicable in Egypt in relation to the M&A transaction itself. However, restrictions may apply for the transfer or repatriation of funds related to the deal.

Conducting due diligence on banks requires the prior approval of the CBE's board of directors.

The Egyptian Banking Law and the relevant regulations issued by the CBE require any person, legal entity or related parties thereof that intend to acquire more than 10% of the issued share capital or the voting rights of a bank (or any merger of a bank) to obtain the pre-approval of the CBE's board. The appointment of key officials – eg, the chairman and board members, requires the pre-approval of the CBE governor.

## 6. Recent Legal Developments

### 6.1 Significant Court Decisions or Legal Developments

Power purchase agreements and project and finance documents would generally be subject to arbitration and not local courts. For energy projects where the government is the offtaker, new approvals have been put in place to agree on international arbitration. In terms of policy, EgyptERA's recently issued regulations have introduced Egypt's first P2P schemes, thereby opening the market as envisaged under Law No 87 of 2015. Although these P2P regulations have not yet been sufficiently tested in practice, they are expected to serve as a significant catalyst for further development within the power market.

### 6.2 Key Developments in Renewable Energy and Cutting Emissions

Egypt enacted Law No 2 of 2024, which outlines the incentives provided to green hydrogen production projects and their derivatives, subject to compliance with specific conditions set out under the law.

Regarding carbon emissions, as part of its decarbonisation efforts, Egypt officially launched its voluntary carbon credit market through Prime Ministerial Decree No 4664 of 2022, which amended the executive regulation of the Capital Markets Law. Pursuant to such

decree, a market for voluntary trading of carbon credit certificates is established within the EGX, where such certificates are recognised as tradable financial instruments. All governmental bodies, public and private sector entities, and project developers must notify the FRA and the Ministry of Environment of all projects in respect of which carbon credit certificates will be issued.

To facilitate implementation, the FRA's board of directors has issued several decrees including (i) Decree No 31 of 2024 regulating the registration and cancellation conditions of the carbon credit certificates within the EGX; (ii) Decree No 1732 of 2024 listing the requirements that must be satisfied by securities brokerage companies to obtain the FRA's approval to trade carbon credit certificates; and (iii) Decree No 163 of 2023 in relation to the criteria for registering the entities responsible for verifying carbon credit projects with the FRA.

## 7. Due Diligence/Data Privacy

### 7.1 Energy and Infrastructure Company Due Diligence

Potential investors may generally conduct due diligence on a listed company based on publicly available information, including board meeting summaries, general assembly minutes, board and shareholder structures, and financial statements. Under applicable regulations, any further due diligence involving non-public information requires the target company to notify the EGX of the contemplated transaction and hold a board meeting to approve the disclosure of such information to the potential investor and its advisers.

### 7.2 Restrictions

There are no explicit legal or regulatory restrictions that would limit conducting due diligence of an energy and infrastructure company.

## 8. Disclosure

### 8.1 Making a Bid Public

Tender offers shall be disclosed to the EGX and the FRA by the offeror, the target company and the main shareholders holding more than one-third of the target's share capital (the "Main Shareholders"), as follows.

#### Offeror's Notification

The offeror must notify the FRA and the EGX when an MTO may be triggered. This disclosure requirements shall be triggered, inter alia, under the following circumstances:

- the offeror announces its intent to acquire shares and informs the target;
- conditions triggering the MTO are fulfilled, as outlined in **4.2 Mandatory Offer**;
- the offeror seeks preliminary approval requests to authorities for the acquisition; and/or
- market rumours or unusual share movements suggest a potential tender offer.

#### Target's Notification Obligation

The target company must also notify the FRA if, for instance:

- it receives notice of the offeror's intent to launch an MTO;
- any binding or non-binding MOU, LOI, or similar agreement is signed;
- an agreement to conduct due diligence is signed; or
- serious negotiations on a potential MTO are taking place.

#### Main Shareholders Notification Obligation

Any shareholder holding more than one-third of the target's capital must notify the FRA if, inter alia:

- any of the target company's disclosure triggers above occur; and/or
- such shareholder enters into a binding or non-binding agreement(s) with the offeror, which has not been disclosed to the target company.

### 8.2 Prospectus Requirements

A prospectus is required only when a company carries out an IPO. Stock-for-stock takeover offers and business combinations do not require a prospectus. There are no legal obligations requiring the buyer to list its shares in either the home or foreign markets.

### 8.3 Producing Financial Statements

There are no legal obligations requiring bidders to provide financial statements. However, Egyptian companies are required to prepare their financial statements in accordance with Egyptian Accounting Standards and have them audited by a registered auditor in accordance with the applicable statutory timelines set out under the Companies Law.

### 8.4 Disclosure of Transaction Documents

Parties are not required to file copies of the transaction documents per se. However, certain authorities may require or request a copy or summary of the transaction documents (eg, the Egyptian Competition Authority).

## 9. Duties of Directors

### 9.1 Principal Directors' Duties

No specific directors' duties apply solely in relation to business combinations. The general duties imposed on directors under the Companies Law apply throughout their tenure. Directors are responsible for managing the company and performing all necessary acts to achieve its objectives, while observing the following duties, among others:

- duty of care:
  - (a) exercise due care and diligence in performing their duties;
  - (b) avoid conflicts between personal interests and the company's interests, and disclose any such conflicts to the board, ensuring they are recorded in the meeting minutes;
  - (c) devote adequate time and attention to the company's affairs and avoid assuming permanent executive roles in other joint stock companies without general assembly approval;
  - (d) attend and actively participate in board meetings; and

- (e) make informed decisions based on sufficient information and sound judgement.
- compliance and company representation:
  - (a) comply with all applicable laws, regulations, and the company's articles of association;
  - (b) ensure that their authorities and signatory powers are exercised within the limits set out in the articles of association and the commercial register; and
  - (c) the chairman or CEO represents the company before courts and administrative authorities only within their legally defined powers.
- financial oversight:
  - (a) ensure the accuracy and integrity of the financial statements;
  - (b) confirm that financial statements are prepared according to approved accounting standards; and
  - (c) oversee the preparation of the company's annual financial report for presentation to the ordinary general assembly.
- supervisory responsibility:
  - (a) monitor the company's overall performance;
  - (b) oversee management to ensure proper governance and operational soundness; and
  - (c) bear responsibility for resolutions that breach the law or the company's constitutional documents;

## 9.2 Special or Ad Hoc Committees

In Egypt, non-listed companies are generally not legally required to establish board committees. The establishment of such committees is typically a matter of internal discretion or may stem from obligations contained in specific transaction documents as requested by certain investors (particularly, financial investors).

For listed companies and companies undertaking non-banking financial activities regulated by the FRA, the establishment of certain committees is mandatory, as outlined below.

### Listed Companies

Under the EGX listing and delisting rules, listed companies must establish an audit committee composed of an odd number of non-executive board members (at least three), the majority of whom must be independent, including the committee's chairman. The

audit committee is responsible, inter alia, for reviewing internal policies and auditors' reports.

### Non-Banking Financial Activities Companies

According to FRA decrees, companies undertaking non-banking financial activities are required to establish:

- an audit committee as described above;
- a risk committee composed of at least three board members, the majority being non-executive and independent, responsible for overseeing non-strategic risk management;
- a governance committee composed of at least three independent and non-executive board members, responsible for evaluating the company's governance framework and developing internal policies, with certain duties delegated to the audit committee; and
- additional committees such as remuneration, compliance, or IT committees, which may be formed at the board's discretion and may include executive members or external experts.

## 9.3 Role of the Board

Other than the general duties outlined in **9.1 Principal Directors' Duties**, there are no specific requirements for board members to participate directly in transaction negotiations or to restrict their role to merely recommending a transaction. The level of their involvement is generally determined by the selling shareholder, where such shareholder is a board member, or by a designated representative appointed by that shareholder to conduct the negotiations.

Challenges to board recommendations in connection with share disposals are generally rare. This is because any transfer of shares is a matter reserved to the shareholders, and the board has no authority to effect or mandate such a disposal without shareholder approval. Accordingly, litigation in this context is limited.

## 9.4 Independent Outside Advice

In M&A transactions, directors typically engage financial and legal advisers to assist with both preparatory matters and the execution of the transaction.

Fairness opinions are legally required in certain cases, including the following, without limitation:

- For a capital increase in listed companies, insurance companies and holding companies, an FMV report must be prepared by an IFA accredited by the FRA, to determine the FMV of the shares.
- The FRA may require a listed company to submit an FMV as prepared by an IFA in the event that there is a price change in one direction amounting to more than 50% within a period of time not more than three months or more than 75% within a period of time not more than six months, where such movement is inconsistent with market or sector indicators relevant to the issuing company and/or its business results, and where no material information is available to justify such change.
- If a listed company wishes to sell any of its real estate or other fixed assets or shares it owns in unlisted companies, and their estimated value represents 10% or more of the equity rights of the listed company according to its latest financial statements, such company must provide an FMV report prepared by an IFA accredited by the FRA and issued to the EGX, to determine the FMV of the assets or shares subject to the sale.
- For a capital increase in unlisted companies, the FMV can be determined by an IFA, as outlined above, or be based on a study conducted by the company for this purpose under its own responsibility. This study must be accompanied by an auditor's report prepared in accordance with Egyptian auditing standards.



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