

# Egypt

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## Statutes and regulations

- 1 What are the relevant statutes and regulations governing securities offerings? Which regulatory authority is primarily responsible for the administration of those rules?

Securities offerings are primarily governed by the Egyptian Capital Market Law No. 95 of 1992 (CML) and its executive regulation (CMLER). Also Egyptian Companies Law No. 159 of 1981 (Companies Law) defines different legal parameters of public offerings for Egyptian securities.

Law No. 10 of 2009 concerning the supervision of non-banking financial services established the Egyptian Financial Supervisory Authority (EFSA) to replace the Egyptian Capital Market Authority (CMA) as the primary regulator charged with the administration and supervision of Egyptian securities offerings, including approval of Public Subscription Notices (ie, Egyptian prospectuses).

The listing authority responsible for the admission of securities to listing and trading on the Egyptian regulated market is the Egyptian Exchange (EGX), while for non-listed securities, they are traded 'over the counter'.

Nile Exchange is the EGX market for small companies. Its admission and ongoing requirements for member companies are less stringent than those of the EGX main lists, enabling companies to raise funds at an earlier stage in their development.

The CML together with the EGX Listing Rules constitute the legal framework governing the offering of listed securities admitted to trading on the Egyptian and non-Egyptian securities lists of the EGX.

## Public offerings

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

According to article 3 of the CML any issuer must notify and obtain the approval of the EFSA prior to any offering of new securities. Moreover, article 4 of the CML and article 40 of the CMLER require any issuer, whether Egyptian or non-Egyptian, public or private, wishing to make a public offering for securities (equity or debt) in Egypt must submit a prospectus to be approved by the EFSA.

The prospectus must be prepared according to the EFSA's standard forms which subsequently shall be published in two widely circulated daily newspapers, at least one of which shall be published in Arabic.

According to the Companies Law, a public offering of securities is defined as any offering of shares targeting the public (non-identified) investors. There is neither a minimum number of investors whom may be targeted, nor a minimum value required in a public offering.

The filings to be made with the EGX by an issuer applying for admission of its securities to listing are set out in the EGX Listing

Rules. Such filings include an application for admission of the relevant securities (equity or debt) to the applicable EGX lists, the public or private subscription or placement notice (as the case may be), the issuer's ownership structure specifying shareholders with more than 5 per cent interest in the company, its holding company and affiliates, a detailed litigation report issued by the issuer's legal adviser certifying pending disputes and claims involving the issuer's liability.

As regards information to be disclosed in prospectuses, article 5 of the CML and articles 42-44 of the CMLER deal with the level of information to be disclosed to the public depending on the type of securities to be offered. Generally, the prospectus must include all information necessary for investors to make proper investment decision based on a sufficient level of knowledge for the issuer.

In a primary offering of securities offered in whole or part to the public, the prospectus must include details of the relevant corporate action approving offering of such securities, the value of the newly offered securities, any pre-emption rights to existing shareholders, and the applicable subscription period.

In a secondary offering, if it wholly or partially targets retail investors (ie, public investors), filing requirements with the EFSA will be triggered, including details of the issuer, subscription price and any encumbrances on the assets owned by the issuer.

The rules applicable to equity and debt offerings in respect of regulatory filings are identical if they constitute a public offering and accordingly require the publication of a prospectus.

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

The filing of prospectuses relating to public offerings, whether primary or secondary offering must be made by the issuer before an offer to the public. No securities may be offered before the prospectus has received the approval of the EFSA. The filing of the prospectus with the EFSA is governed by the CML and the CMLER as well as any applicable instructions from the EFSA.

The EFSA reviews the contents of the draft prospectus to ensure its compliance with the applicable regulations, despite the fact that the regulatory review period is not regulated under the CML. However, as a practical matter the issuer typically submits the draft prospectus to the EFSA at least 20 days before the intended publication date of the prospectus. Accordingly, draft documentation should be given to the EFSA as far in advance of the intended publication date as possible.

During the review period the EFSA may request that additional information be included in the prospectus or any further amendments to be made thereto. In such case the review period will start on the date such additional information is provided to the EFSA.

Once the EFSA is satisfied that all applicable information is contained in the prospectus, the relevant document will be approved by the EFSA, thereby approving its publication to the public. The

prospectus must then be published in two widely circulated daily newspapers at least 15 days before the public offer.

In the case of an initial public offer, the prospectus is approved by the EFSA even though it does not specify a final price or the number of securities offered. The final offer price must be determined as soon as practicable and filed with the EFSA for approval and publishing.

Moreover, if the offered securities are to be listed and traded on the EGX, an application to the EGX is required. The Listing Rules set out the application process and the requirements for listing. The application usually includes information about the issuer and the securities to be listed. The issuer is also required to submit audited financial reports for the last three years.

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

#### Publicity limitations

Pursuant to article 51 of the CMLER a public offering of securities may only be commenced after the approval of the prospectus by the EFSA. Accordingly, no offer of securities in any form of general solicitation or in a public offering in Egypt is allowed without prior approval of the EFSA on the prospectus.

Any dissemination of information by the offering participants to the public in whatever form is prohibited. This includes written, oral or electronic forms of communication whether by means of advertisement, notice, press conference, press release, flyers, brochures, radio, letters, broadcast, internet or web-based communication or any other means.

It is important to note, however, that before the EFSA approves the prospectus (but only after the draft prospectus is submitted to the EFSA), a sort of distribution of information or advertisement through the media or any advertising agency in respect of the contemplated offering might be allowed. The information contained in advertisements and other publications should notably be consistent with the information contained in the prospectus and must include a disclaimer that the prospectus is yet to be approved by the EFSA.

#### Research reports

There are no detailed guidelines on the use or distribution of research reports in Egypt. However, as a practical matter it is common practice that analysts issue research reports during the initial public offering process. The review and dissemination of research reports are typically specified by relevant guidelines prepared by the offering counsel. The aim of such guidelines is to reduce the risk that the issuer and its respective advisers will incur liability as a result of information contained in any research report and to ensure that reports are issued in compliance with applicable law regarding their distribution and in a manner that will not prejudice the availability of any exemptions which may be relied on in connection with the offering.

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

A primary offering is defined as the offering of new shares in a public offering or private placing, or a combination of both (ie, combined offering).

Secondary offering is the offering of shares by existing shareholders, whereby existing shareholders offer (either through a public offering or private placing) their shares – usually at a premium – to investors.

The secondary offerings of securities are subject to the same requirements as primary offerings, given that they fall within the scope of the definition of a public offering.

The Companies Law requires that, on a primary offering of shares or other convertible securities, such securities are to be offered

first to existing shareholders on a pro rata basis, unless pre-emption rights are waived by way of a special resolution of the shareholders in an extraordinary general meeting.

Also, in a secondary offering of shares, existing shareholders have a right of first refusal over the offered shares, thereby selling shareholders are required to offer their shares at the same offered price to existing shareholders on a pro rata basis for a pre-specified period (typically 30 days), upon its lapse the selling shareholders may proceed with selling their shares to a third party.

An offer of securities (whether primary or secondary) for which the pre-emption rights have been waived are either made by way of public offering or private placements (on a limited basis), and are subject to pricing restrictions.

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- 6** What is the typical settlement process for sales of securities in a public offering?

Article 15 of the Central Depository Law No. 93 of 2000 provides that settlement and delivery of securities shall take place on a delivery versus payment basis. The settlement and delivery of securities shall occur on the third trading day (T+3) following the execution of trade.

EGX Listing Rules specify that all securities admitted for listing and trading on the EGX main lists are in uncertified, dematerialised form and no physical document of title may be issued in that respect. Such securities are held with MCDR, the Egyptian clearing and settlement house. Any issue of new securities must be registered with MCDR, and will be credited to the accounts of the financial intermediaries on the settlement date.

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#### Private placings

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

Private placements are not regulated as an offering path in Egypt as opposed to a public offering which requires the filing of a prospectus with the EFSA. Private placements are governed by the CMA's decree No. 31 of 2002. In this respect, no offer or sale of securities in any form of general solicitation, general advertising or in a public offering is allowed.

Offering materials must be distributed to previously identified investors and may only be communicated to qualified (institutional or individual) investors or high net worth investors as defined below.

Pursuant to decree No. 31, Egyptian-qualified investors are those institutional or individual investors having at least five years experience in local or international capital markets and stock exchanges. Moreover, high net worth investors are those:

- individual investors who satisfy any of the following conditions:
  - owning assets having a minimum value of 2 million Egyptian pounds;
  - having a minimum annual income of 500,000 Egyptian pounds;
  - having minimum bank deposits of 500,000 Egyptian pounds; or
  - holding, as of the date of placement, two Egyptian joint-stock companies with a minimum value of 2 million Egyptian pounds; or
- investor institutions who satisfy any of the following conditions:
  - owning assets having a minimum book value of 20 million Egyptian pounds;
  - with a minimum equity book value of 10 million Egyptian pounds;
  - with a minimum investments in securities of 5 million Egyptian pounds as of the date of the placement; or

- is licensed to operate in any of securities industry's activities and is permitted to acquire securities within its object.

- 8** What information must be made available to potential investors in connection with a private placing of securities?

Despite the fact that private placements do not require the filing of a prospectus with the EFSA, an issuer (equity or debt) in a private placing shall provide the EFSA with an offering memorandum including a less stringent level of disclosure than would be required in a prospectus. In private placements, the offering memorandum must disclose that it has not been submitted to the EFSA for approval, rather to authorise the placing of securities.

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

Generally, no restrictions apply to the transferability of securities acquired in a private placement; however, any offering of such securities acquired in a private placement to the public must take place in accordance with public offerings' rules which require the filing of a prospectus with the EFSA.

However, any securities acquired in a private placement may only be transferred to other qualified investors or high net worth investors who would have been initially eligible to acquire such offered securities in the private placement.

As a practical matter, in certain placements there might be a lock-up period (typically from three to six months) following the placing of securities as a means of stabilisation with a view to supporting or maintaining the market price of the securities at a level higher than that which might otherwise have prevailed in the open market.

## Offshore offerings

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

Generally, in an offering of securities in a jurisdiction outside Egypt, the issuer must comply with the securities laws of such jurisdiction.

As a matter of common practice, in certain IPOs the offering may contain, in addition to the Egyptian retail offering, an offering of shares to qualified investors outside Egypt and is made subject to an offering memorandum which must comply with the registration requirements of the offering venue.

As for Egyptian issuers who have depositary receipts (DR) registered in a jurisdiction outside Egypt, the EGX sets out the regulatory framework for the trading of such securities. Typically, a DR offering is conducted concurrently with an offer of rights to the issuer's existing shareholders including the depositary who acts as a registered shareholder on behalf of DR holders.

Regarding restrictions which apply to listing venues outside Egypt, article 12 bis(1) of the Listing Rules (added by virtue of the EFSA decree No. 132 of 2010) restrains the ability of any issuer, whose securities are admitted for trading on the EGX, who wishes to carry out a secondary listing (in form of depositary receipts or shares) on other main foreign exchanges. They must first obtain the approval of the EFSA on such listing.

## Particular financings

- 11** What special considerations apply to offerings of exchangeable or convertible securities, warrants or depositary shares or rights offerings?

The Companies Law requires that, in an offering of shares or other convertible securities, the issuer must consider offering such securities first to existing shareholders on a pro rata basis, unless pre-emption

rights are waived by way of a special resolution of the shareholders in an extraordinary general meeting.

Article 165 of the Companies Law provides that, in an offering of convertible bonds, the bond's face value must not be offered below the par value of the issuer's shares. Also, the amount of convertible securities issued, in addition to the issuer's capital, must not exceed the issuer's authorised capital.

As regards the offering of depositary receipts in Egypt (EDRs), the pre-emption rights will not apply since the shares are allocated by the issuer to the depositary (as a shareholder of record) and then allotted by the latter to the shareholders. If the issuer of EDRs chooses to list on the EGX, further listing requirements must be fulfilled in accordance with the applicable Listing Rules.

In a rights offering by a listed issuer whereby existing shareholders will be granted the right to subscribe to new shares on a pro rata basis, such offering normally falls within the scope of public offering and accordingly there will be a prospectus requirement which must be approved by the EFSA prior to the offering. Article 30 of the CMLER allows the trading of rights separately from underlying shares. However, such trading rarely takes place on the Egyptian securities market.

## Underwriting arrangements

- 12** What types of underwriting arrangements are commonly used?

Underwriting agreements in Egypt usually follow international practices. Typically, the underwriter agrees to procure purchasers or, failing this, to purchase such number of securities themselves at the same offer price.

In practice, the underwriter's commitment will not take place until after completion of the book-building process through potential investors. This will enable the underwriter to reach the suitable offer price and the required level of shares to be underwritten.

- 13** What does the underwriting agreement typically provide with respect to indemnity, force majeure clauses, success fees and over-allotment options?

### Indemnity clause

Typically in securities offerings in Egypt, the underwriting agreements contain an indemnity clause under which the issuer or selling shareholders agree to indemnify the underwriter and not hold him liable against any losses, claims or damages arising out of or in connection with any untrue statement of material fact or material omission contained in the prospectus, or any breach of representations and warranties made under the underwriting agreement.

### Force majeure clause

Underwriting agreements commonly include provisions that allow the parties to terminate the agreement as a result of events that are likely to affect the financial markets, like for example material disruption occurring in commercial banking or securities settlement or clearance services, a general moratorium on commercial banking activities, any event involving a prospective change in national or international monetary conditions or currency exchange rates or foreign exchange controls, or any crisis or escalation of hostilities or act of terrorism involving a declaration of a state of emergency.

### Success fee

In equity offerings, the issuer and selling shareholders normally pay the underwriter, at their full discretion but based on the overall execution of the transaction and not only the aftermarket performance of the shares, a success fee proportional to the gross proceeds of the offering. The amount of the success fee is typically paid after the date of settlement of securities.

### Over-allotment option

As a common practice in equity offerings relating to an IPO, underwriting agreements usually include provisions regarding the allocation of additional shares to the underwriter in case of oversubscriptions for the offered shares. Usually, the issuer grants the underwriter the right to place additional shares to cover over-allocations.

#### 14 What additional regulations apply to underwriting arrangements?

Some underwriting arrangements are regulated under the CMLER. Underwriters must be licensed to locally underwrite securities offered in the Egyptian market. Moreover, the underwriting agreement must be submitted to the EFSA and may request changes to ensure compliance with the applicable rules.

### Ongoing reporting obligations

#### 15 In which instances does an issuer of securities become subject to ongoing reporting obligations?

According to the CML, any company that offered its securities to the public shall be subject to ongoing reporting obligations. Also, publicly held companies shall disclose to the public material events affecting its usual ongoing business.

Issuers whose securities have been admitted to trading on the EGX must comply with ongoing reporting obligations imposed by the Listing Rules. In certain circumstances, public listed companies shall disclose any changes in their ownership structure subject to predetermined thresholds.

#### 16 What information is a reporting company required to make available to the public?

Any issuer whose securities are listed on the EGX is subject to regular ongoing reporting obligations as requested by the Listing Rules.

### Financial reporting

The company must provide the EFSA and EGX with year-end accounts, a copy of the approved financial statements and the relevant resolution of the general meeting of shareholders approving such accounts within 10 days from the date of the meeting.

Also the company shall provide the EFSA and EGX with its consolidated (if applicable) and standalone accounts together with the annual business report of the board of directors and the auditor's report within a maximum of 10 days following the approval of the accounts by the general meeting of shareholders.

The reporting company must publish the annual and semi-annual financial statements, the auditors' report and any remarks raised by the EFSA in two widely circulated daily newspapers, at least one of which is published in Arabic. Publication must take place within a maximum of seven days from the date of holding a general meeting of shareholders approving the year-end accounts. Further, the company is required to publish its financial statements and auditor's report for the first and third quarters within a maximum of 45 days following the end of the relevant financial quarter.

### Insider dealings

The reporting company must notify the EGX of its internal procedures implemented to prevent insider dealings by board members, managers or employees and their related parties on any securities issued by the company within 15 days prior to the issuance and disclosure of any material information and the three days subsequent to such issuance or disclosure (Black-out Period).

However, in the event any of the above-mentioned parties intends to deal during any period (but not within the black-out period), the company and the dealing party must notify the EFSA and the EGX.

Any related party transaction concluded between the issuer and any shareholders holding 5 per cent or more of the company, board members, managers or employees and their related parties and relatives up to the fourth degree must be fully disclosed.

### General disclosures

An issuer must disclose through a press release any material events which are not available to the shareholders and which may affect its usual business or financial position. Such disclosure shall occur immediately and in any event before the opening of the trading session following the occurrence of such material event.

The company must not issue any fraudulent statements or information which would affect its financial soundness or position, particularly the company must refrain from providing financial analysts, financial institutions or any third party with any confidential information until such information is properly disclosed to the market.

### Anti-manipulation rules

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

Section 11 of the CMLER details manipulative practices in the Egyptian securities market. Such practices relate to misleading information, market manipulation, and insider dealing.

### Misleading information

Generally, a disclosing issuer shall maintain a high level of accuracy regarding any dissemination of information. Typically, the company will indemnify any third party who incurred losses resulting from reliance on such false or misleading statement or information.

Pursuant to article 320 of the CMLER, any issuer and its related parties (corporate as well as individuals) shall refrain from publicly disseminating any false or misleading information concerning the business situation of the issuer with the aim of affecting the market price. Any person who is convicted of disseminating false or misleading information may be sentenced to up to five years' imprisonment or a fine of up to 20 million Egyptian pounds.

### Market manipulation

The definition of market or price manipulation has been widely expanded by the CMLER to include, among other manipulative conduct, dissemination of false or misleading information.

Generally, price manipulation occurs when a person (corporate or individual) through abusive conducts affects the demand and supply or creates an impression of an active market for certain securities, or fixing the prices of securities at certain levels or increasing or decreasing such prices.

The CML provides for the same criminal sanctions for the persons acting together with the persons committing manipulative conduct, directly or through financial intermediaries, which falls within the scope of market manipulation under the CMLER.

### Insider trading

Insider information is defined under CMLER as any material information that has not been relayed to the public and can affect the price of securities. Insider trading is defined as attaining direct or indirect benefits by using insider information.

Article 322 of the CMLER prohibits anyone who has access to insider information from using such information to gain direct or indirect benefits or to disclose it to other persons unless otherwise for authorised disclosure. Any person convicted of insider trading may be sentenced to a minimum of two years' imprisonment, a fine of up to 20 million Egyptian pounds, or both.



**Update and trends**

Currently, the only proposed change is for the EFSA to amend section 3/2 of the CMLER concerning the regulations governing mutual investments funds, but such proposal is still early in the legislative process.

**Price stabilisation**

- 18** What measures are permitted in your jurisdiction to support the price of securities in connection with an offering?

A price stabilisation mechanism has been implemented in recent IPOs through the allocation of additional shares to the stabilisation manager (typically the underwriter). Stabilisation mechanisms must be adequately disclosed to the public but only after being approved by the EFSA.

During the stabilisation period, the manager may use stabilisation funds to engage in transactions which may include over-allocation and stabilising transactions with the objective of stabilising the market price of the offered securities.

Usually, stabilising transactions consist of certain bids or purchases for the purpose of preventing or delaying a decline in the market price of the offered securities. Any activities involving stabilising transactions must comply with applicable laws and regulations in the open market or on the 'over the counter' market.

Upon expiry of the stabilisation period, the manager shall publicly disclose information confirming whether any stabilising transactions were undertaken, the date of the first and last such transaction and the relevant price range for each day such transactions were effected.

**Liabilities and enforcement**

- 19** What are the most common bases of liability for a securities transaction?

The most common grounds for liability in securities offering (equity or debt) are those covered in question 17. Additionally, any person responsible for incorrect or incomplete material information

contained in the prospectus may be convicted under article 63/3 for providing misleading information or untrue statements.

The issuer (represented by the managing director) and its auditor are primarily responsible for incorrect or incomplete financial information contained in the prospectus. Usually, the issuer's auditor provides a comfort letter stating that, to the best of its knowledge, the information made available in the prospectus is true and accurate. Also, the issuer's legal counsel must provide a legal notice confirming the litigation status of the issuer to which the legal counsel will be responsible for any misleading or incomplete material information.

Also, the offering manager shall certify that it has been sufficiently provided with all required documentation and has diligently examined the prospectus and found no inaccuracies or omissions of material information that should have been disclosed to investors.

- 20** What are the main mechanisms for seeking remedies and sanctions for improper securities activities?

Remedies and sanctions for improper securities activities may be sought under criminal liability or under general tortious liability in the Egyptian Civil Code. Moreover, administrative proceedings could be implemented by the EFSA under the provisions of the CML.

Generally, anyone committing an offence under the CML is likely to face substantial fines or imprisonment. Criminal proceedings under CML may be triggered upon recommendation of the EFSA represented by its president. Moreover, the EFSA's president has been granted the authority to conclude settlements for any criminal securities activities under CML thereby terminating criminal procedures.

Direct actions may also be brought under general tortious liability in the Egyptian Civil Code by any party who suffers losses arising out of or in connection with any improper securities activities committed by the defendant. Moreover, article 317 of the CML provides for the right to claim damages by any party who suffers losses resulting from price manipulation.

The EFSA may impose a wide range of administrative measures in case of offences committed under the CML. Administrative measures varies from a temporary suspension up to the full cancellation of operating licence.



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