

# Doing Business in Egypt

2016



BAKER & MCKENZIE



# Doing Business in Egypt



## Table of Contents

1.	Introduction.....	1
2.	Corporate Structures .....	6
3.	Investment Law Incentives and Guarantees .....	15
4.	Ownership of Real Estate in Egypt.....	21
5.	The Banking Sector .....	23
6.	Currency & Exchange Control .....	24
7.	The Capital Market Law .....	26
8.	Egyptian Labor Law 12 of 2003 .....	30
9.	Public Enterprise Law and PPPs.....	34
10.	Public Tender Law.....	36
11.	Sale of Goods.....	38
12.	Consumer Protection.....	39
13.	Anti-Dumping & Competition Law.....	42
14.	Intellectual Property Law.....	45
15.	Industrial Sectors .....	49
16.	Taxation in Egypt.....	58
17.	Environmental Law.....	61
18.	Dispute Settlement.....	64
19.	Conclusion.....	67

## **PREFACE**

This “Doing Business In Egypt” report has been prepared with the aim of providing a guide of the Egyptian laws as they currently stand and as are relevant to conducting business operations in the Egyptian market. In this guide, we have set forth a brief explanation of the laws pertaining to various aspects of business in Egypt to serve as a general overview of the legal framework within which investors and companies operate. This guide is not intended to be exhaustive or to provide specific legal advice with respect to particular facts and circumstances on which we would urge the reader to seek legal assistance.

### **Prepared by:**

Mohamad Talaat, Soliman Abdel Dayem, Hady Gouda, Aya Fasih and Mohab Hassan.

## List of Acronyms

CAPMAS	Central Agency for Public Mobilization and Statistics
CBE	Central Bank of Egypt
COMESA	Common Market for Eastern and Southern Africa
CPA	Consumer Protection Agency
EEAA	Egyptian Environmental Affairs Agency
EFSA	Egyptian Financial Supervisory Authority
EGP	Egyptian Pounds
EGPC	Egyptian General Petroleum Corporation
EMEA	European Medicines Evaluation Agency
FDA	US Food and Drug Administration
GAFI	General Authority for Investments and Free Zones
ICC	International Chamber of Commerce
ICH	International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use
IMF	International Monetary Fund
MHLW	Japanese Ministry of Health, Labor and Welfare
MOHP	Ministry of Health and Population
NTRA	National Telecommunication Regulatory Authority
PPP	Public Private Partnership
SEZ	Special Economic Zone
TGA	Australian Therapeutic Goods Administration
TIFA	Trade and Investment Framework Agreement
UNCITRAL	United Nations Commission on International Trade Law
WIPO	World Intellectual Property Organization
WTO	World Trade Organization



# 1. Introduction

## 1.1 Geography and Climate

Egypt occupies 1,001,450 square kilometers of Northern Africa, bordering the Mediterranean and the Red Seas, Libya, the Gaza Strip, Israel and Sudan. The terrain is mostly vast desert plateau interrupted by the Nile valley and delta. Three percent of the land is arable, and about 3.2% of the total land area is under irrigation. Agricultural land is currently being lost due to urbanization and windblown sands, although some land is being reclaimed through irrigation. There are limited fresh water resources other than the Nile, which is the only perennial water resource in Egypt.

Egypt controls the Sinai Peninsula, which is the only land bridge between Africa and Asia. Additionally, it controls the Suez Canal, which is a sea canal linking the Indian Ocean with the Mediterranean Sea.

Egypt's natural resources include petroleum, natural gas, coal, iron ore, phosphates, manganese, limestone, gypsum, talc, lead and zinc.

The climate is hot and dry, with the temperature in Cairo during the mid-winter months ranging from 8°C to 18°C, rising to an average maximum temperature of 36°C in July, the hottest month. Even in the wettest months, particularly December, only an average of five millimeters of rainfall is recorded.

## 1.2 Population and Language

Egypt is the most populous country in the Arab world, with a total population of 90 million according to the latest estimates in 2015 by the Central Agency for Public Mobilization and Statistics (CAPMAS).

Major cities include Cairo, the capital, Alexandria, Aswan, Asyut, Port Said, Suez and Ismailia. The overwhelming majority of Egypt's population lives in Cairo and Alexandria, and along the Nile Banks, Nile Delta and the Suez Canal. There are small communities through desert regions of Egypt, which are clustered around oases and historic trade and transportation routes. The population of those living in the rural areas of Egypt continues to decrease as people move to the cities in search of employment and higher living standards.

Arabic is the official and dominant language in Egypt, however, English and French are widely spoken and understood by the educated classes.

## 1.3 Religion

Ninety percent of the Egyptian population are Sunni Muslims, and the remaining are principally Christians (mostly Coptic Christians).

## 1.4 Infrastructure

Egypt's transportation system is relatively developed, with over 65,050 kilometers of primary and secondary roadways. Over the past years, the numbers of licensed automobiles has increased tremendously, leading to a highly congested road system, especially in urban areas.

The railway network (5,500 kilometers) is the oldest railway network in Africa and the Middle East, and is essentially focused on the Nile Delta and Valley with lines fanning out from Cairo and stretching out from the south of the country to the north.

Cairo's new underground metro system, established in 1987, is one of the busiest in the world, and is run by the National Authority for Tunnels.

The country has 3,500 kilometers of waterways, including the Nile River, Lake Nasser, the Alexandria-Cairo waterway and numerous other smaller canals in the Nile Delta. In addition, the Suez Canal (193.5 kilometers), the major waterway of international commerce and navigation, linking the Mediterranean Sea with the Gulf of Suez and the Red Sea, is navigable by oceangoing vessels drawing up to 17.68 meters (as of 2010).

The principal ports in Egypt are Alexandria and Port Said, however, other important ports are Damietta, El Dekheila, and Sidi Kurayr, Ayn Sukhnah and Suez on the Gulf of Suez.

In 2010, Egypt had a total of 86 airports, 73 of which had paved runways, the largest being the Cairo International Airport.

Electricity is supplied almost all over the country. 84% of Egypt electric generating capacity is thermal (natural gas), while about 16% of the total energy generated in Egypt is hydroelectric energy, mostly generated from the Aswan High Dam. However, due to the annual population growth rate of 2.1%, there is an ever increasing demand for energy resources. Plans to build power plants and to undergo limited privatization of the electric power sector are currently being considered.

While water supply infrastructure has substantially improved since 1990, whereby piped water supply has increased from 89% to 99% in urban areas and from 39% to 82% in rural areas, however, only one third of the population is connected to sanitary sewers. Issues of water scarcity and quality pose urgent problems to modern and future water resource management in Egypt.

Telecommunication services in Egypt have been extensively upgraded and are considered relatively modern. Main lines telephone services are provided by the government-controlled Telecom Egypt, with an estimate of 10.313 million lines in 2009. There are three main mobile cellular service providers, Mobinil, Vodafone Egypt and Etisalat Egypt, with an estimated total number of 55.352 million users in 2009.

## 1.5 Legal System

Egypt's legal system is based on Islamic law (Shar'ah) and Napoleonic codes, including the French Code Civil, upon which the Egyptian civil code is largely based. Under President Mubarak's successive governments, the courts have demonstrated increasing independence, and the principals of due process and judicial review have gained greater respect. Marriage and family law are primarily based on the religious law of the individual concerned, which for most Egyptians is Islamic law. Islamic law is not forced upon non-Muslims, and non-Muslims have their own courts to settle marriage and family matters. While there have been moves to consolidate the influence of the Shari'ah, commercial law remains based on modern commercial practice.

Egypt's Arbitration Law 27 of 1994, as amended, serves as a framework for arbitration of domestic and international commercial disputes, as well as disputes between public enterprises and the private sector. Egypt acceded to the International Convention for the Settlement of Investment disputes in 1971, and is a member of the International Center for the Settlement of Investment Disputes. Egypt adheres to the 1958 New York Convention of Enforcement of Arbitration Awards; the 1965 Washington Convention on the settlement of Investment Disputes between States and the nationals of other states; and the 1974 Convention on the Settlement of Investment Disputes between Arab States and nationals of other states.

## 1.6 Political System

In July 1952, Egypt was declared an official republic when a group of army officers, known as the “free officers”, led by Colonel Gamal Abdel Nasser, toppled the monarchy in a coup. Prior to the 1952 revolution, Egypt was a constitutional monarchy. The 1923 constitution, which followed the declaration of the end of the British protectorate, stated that Egypt was an independent sovereign Islamic state with Arabic as its language and provided for a representative parliament. This constitution was abolished and political parties were dissolved in 1953, and a new constitution was proclaimed in 1956. The 1956 constitution granted the president large executive and legislative powers. In 1958, the constitution of the United Arab Republic was enacted, following the union between Egypt and Syria. In many respects, it was similar to the 1956 constitution and provided for the formation of two executive councils, one in Egypt and the other one in Syria.

In 1964, a new constitution was enacted. It emphasized the socialist nature of the government, proclaiming Egypt an Arab Democratic State with a socialist economy.

In September 1971, the current constitution was approved by referendum (the “1971 Constitution”) under the rule of President Anwar El Sadat, proclaiming Egypt a “democratic socialist state”. It recognized three types of ownership: public, cooperative and private. The 1971 Constitution guaranteed the equality of all citizens before the law, affirmed the rights to peaceful assembly, education, health and social security, and the right to organize into associations or unions. It also made suffrage universal and compulsory at the age of 18. Further, the 1971 Constitution provides for three branches of government: the legislative, executive and the judicial branch. It is worthy to mention that the 1971 Constitution granted vast powers to the president, who is the head of the state. Although the president and the Council of Ministers comprise the executive branch, in practice the power rested almost solely with the president.

In 1981, Egypt came under the rule of President Mohamed Hosni Mubarak. After a long history of one-party rule, Egypt’s political system under Mubarak was based on a multi-party system, however, the ruling National Democratic Party, led by Mubarak, dominated the political scene. Since 1981, the country has been brought under emergency rule, extending the power of the police and suspending constitutional rights. In 2005, the 1971 Constitution was amended, paving the way for multi-candidate presidential elections, and in 2007, 34 articles of the 1971 Constitution were amended, increasing the powers of the elected parliament, expunging much of the socialist language and paving the way for an antiterrorism law to replace the emergency rule in the future, expanding the limitations of personal and human rights.

On January 25, 2011, widespread demonstrations and civil unrests began against Mubarak’s regime, leading to the resignation of Mubarak on February 11, 2011. The country was then governed by a military junta for an interim period of six months until the presidential elections scheduled in September 2011. A committee was formed to draft amendments to the 1971 Constitution that would allow for a peaceful transition of power and fair and transparent presidential elections in September.

The first Presidential elections were held in March–June 2012, with a final run-off between former Prime Minister Ahmed Shafik and Muslim Brotherhood parliamentarian Mohamed Morsi. On 24 June 2012, Egypt’s election commission announced Mohamed Morsi as the first freely elected President for Egypt. Shortly after, an Islamist-based constitution was prepared and took effect in December 2012 after being approved by 63,8% of people’s votes.

Only one year later, on 30 June 2013, millions of Egyptians took to the streets protesting against Morsi’s regime. Protesters surrounded the Presidential Palace in the Heliopolis suburb, as well as in 18 other locations across Egypt. The protests were calling for anticipated Presidential elections - a request that was disregarded by Morsi. On 3 July 2013 the Military intervened and ousted Morsi. Formerly Army Chief, Abdel-Fatah Al-Sisi formed a new interim government and appointed Adly Mansour (President of the Constitutional Court) as interim President of Egypt, suspending thereby the

Islamist-based constitution. On 18 January 2014, a new constitution took effect after being approved by 98% of people's votes. New Presidential elections were held in May 2014, with a final run-off between politician Hamdeen Sabahi and Field Marshal Abdel-Fatah Al-Sisi, in June 2014, Egypt's election commission announced that Field Marshal Al-Sisi had won the run-off with 96,91% of the votes. In December 2015, Egyptians elected their first Parliament since the ouster of the Islamist President Mohamed Morsi, accomplishing thereby the third and last step of the political road map and completing the establishment of the State formal institutions.

## 1.7 Local Government and Administration

Until 1960, the government administration was highly centralized. However, in 1979, a local government administration system was established to promote decentralization and greater citizen participation in the local government.

The Local Administration Law 124 of 1960, which was repealed and is currently replaced with the Local Administration Law 43 of 1979, provides for three levels of local administration: governorates (*muhafazat*), districts or counties (*marakaz*) and the villages (*qariya*). There are two councils at each administrative level: a mostly elected council and an appointed executive council. These councils exercise board legislative powers but are controlled by the central government.

Egypt is divided into 27 governorates. Local councils perform a wide variety of functions in education, health, public utilities, housing, agriculture and communication. These local councils obtain their funds from national revenue, taxes on buildings and lands within the governorates, miscellaneous local taxes and fees, profits from public utilities and commercial enterprises, and national subsidies, grants and loans.

## 1.8 Relationships with Neighboring Countries and FTAs

Egypt maintains diplomatic relations with substantially all of the countries which are members of the United Nations, and its international participations include: the African Development Bank; the Arab League; the Arab Monetary Fund; the Council of Arab Economic Unity; the European Bank for Reconstruction and Development; the International Monetary Fund ("IMF") and related organization of African Unity; the United Nations and related organizations; the Non-Aligned Movement; the Organization of Arab Petroleum Exporting Countries; the Organization of African Unity; the United Nations and related organizations; and the WTO.

In June 1998, Egypt joined the Common Market for Eastern and Southern Africa ("COMESA") and reduced tariffs with other COMESA countries by 90%, and established a customs union in 2004, with a view to establishing a monetary union by 2025.

In July 1999, Egypt and the United States signed a trade and investment framework agreement ("TIFA"). TIFA's objective is to enhance the trade co-operation between the two countries, by facilitating greater reciprocal access to the respective markets of both countries through the removal of non-tariff barriers and other impediments to trade and investment flows.

In 2011, Egypt negotiated and initialed a partnership agreement with the European Union and anticipates formally entering into the agreement prior to year end. The agreement will permit Egypt to join the proposed European-Mediterranean free-trade zone, which was established in 2010. The agreement provides for a 12-year transitional period during which tariffs and non-tariff barriers will be phased out.

Egypt plays a prominent diplomatic role in the Middle East. Egypt was readmitted to the Arab League headquarters were returned to Cairo from Tunis. Egypt is concerned with enhancing regional stability, and continues to work to strengthen the Arab League's relationship with Turkey and Iran, and to lift United Nations sanctions on Iraq as a prerequisite for Iraq's regional reintegration. In January 1998,

Egypt began implementing an agreement reached with the Arab League members in connection with the Arab Common Market Treaty, which calls for phasing out existing tariffs over a 10-year period. Egypt is also a member of the Islamic Group of Eight, which encourages trade and economic cooperation among the following members: Egypt, Turkey, Iran, Indonesia, Nigeria, Bangladesh, Malaysia and Pakistan. Egypt, Tunisia and Jordan have agreed to gradually abolish customs duties to encourage the development of a free-trade zone among Arab countries.

Egypt also has various investment agreements with the following countries: Germany, the United Kingdom, Sweden, Switzerland, Japan, the Netherlands, Belgium, Luxembourg, France, Thailand, Malaysia, Singapore, China, Indonesia, Italy, Greece, Finland, Romania, Sudan and Morocco.

## 2. Corporate Structures

The main types of entities that can be established or acquired by foreign investors in Egypt are:

- Representative offices;
- Branch offices;
- Joint stock companies; and
- Limited liability companies.

All of above legal entities are subject to the Companies law 159 of 1981 (the “**Companies Law**”), which is the general law of application. The Companies Law prescribes all corporate governance rules and regulations, regulates management and control issues and fiduciary duty and fiscal policies, together with operation of the company’s corporate requirements such as board of director’s meetings, ordinary general meetings and extraordinary general meetings.

However, as will be illustrated later, depending on the types of activities, companies may be formed either under the Investment Incentives and Guarantees Law 8 of 1997 (the “**Original Investment Law**”), amended by Law 17 of 2015 and its Executive Regulations 1820 of 2015 (the “**New Investment Law**”) (these laws are hereinafter referred to collectively as the “**Investment Law**”), or the Capital Market Law 92 of 1995 (the “**Capital Market Law**”). Representative offices may also be required to be formed under the Commercial Agency Law 120 of 1982 (the “**Commercial Agency Law**”).

The main features of the above entities are as follows:

### 2.1 Representative Offices

Foreign companies are permitted to establish representative or liaison offices, scientific or technical offices and other offices for the purpose of carrying out market surveys or studying the feasibility of production without entering into any commercial operations or commercial agency activities. A representative office, which does not comply with the said purpose, does not abide by the laws or provides false information of whatsoever kind, may be struck of the register.

#### Registration

A foreign company may register the establishment of a representative office either under the Companies Law or the Commercial Agencies Law which shall in both cases require submitting an application to the Companies Department of the General Authority for Investment and Free Zones (“**GAFI**”).

Such application must specify the name, nationality, company objectives, capital and head office abroad, whether it has a branch office in Egypt, the nature of the office to be established, its activities, capital and address in Egypt, together with certain information relating to the manager. The applicant should attach the parent company’s constitutive documents and a resolution of the parent company’s board of directors authorizing establishment of the representative office, which should be notarized and legalized up to the level of the Egyptian Consulate in the country of issuance, all of which must be accompanied by a certified Arabic translation.

In certain instances determined by the Government, a foreign company must establish a service facility for its products in Egypt. In such case, the foreign company should appoint a commercial agent and register its representative office under the Commercial Agencies Law rather than the Companies Law. Such registration will terminate immediately if the company ceases to have a commercial agent.

## Management

The representative office shall be managed by a manager(s) who does not need to be an Egyptian national(s).

## Compliance with Egyptian Laws

The representative offices of foreign companies must comply with Egyptian laws, including those governing companies, taxation, labor, social insurance and foreign exchange control, whilst particularly taking the following into account:

It should be noted that representative offices may not engage in taxable commercial activities, such as invoicing the services rendered or trading in the company's products.

Employees of a representative office shall be subject to Egyptian salary tax and the representative office must make the necessary monthly tax withholdings. Social Insurance contributions are required for Egyptian employees from both the employers and employees. Foreign employees working for a representative office must have obtained work and residence permits prior to commencing work in Egypt.

## Filing & Accounting

A representative office must submit annual filings with the Companies Department setting out the following information in respect of its employees: names, positions, nationalities, salary and total payroll earned by its Egyptian employees. Certain additional details regarding the representative office's activities during the year may also be requested.

## 2.2 Branch Offices

A foreign company may register a branch office in Egypt if the company has a contract with an Egyptian private or public sector party to perform work in Egypt. Unlike a representative office, a branch office may engage in commercial, financial, industrial and contractual activities within the scope of the contract entered into.

## Registration

Establishing a branch office requires the approval of GAFI and the branch office must be registered with the Commercial Registration Department and in the centralized Register of Foreign Companies maintained with the Companies Department of GAFI, with such registration being valid for five years.

## Management

The branch office may be managed by a branch manager(s) who does not need to be an Egyptian national(s).

## Compliance with Egyptian Laws

The branch offices of foreign companies must comply with Egyptian laws, including those governing companies, taxation, labor, social insurance and foreign exchange control, whilst particularly noting the following:

- (i) The branch office must have an Egyptian auditor; and

- (ii) The following information and documents must be submitted annually (during the first quarter of the financial year) to the Companies Department:
- A copy of the branch office's financial statements and an audit report by an Egyptian auditor.
  - Names and nationalities of its manager(s).
  - Details of its profits and the proportion distributed to employees.
  - Details of all its personnel and the salaries of its Egyptian employees.

### **Staffing**

A branch office may not employ more than 10% of its work force as foreigners or pay such foreign employees more than 20% of the total payroll with the exception of those foreigners employed as managers. Foreign employees working for a branch office must have obtained work and residence permits prior to commencing work in Egypt.

### **Taxes & Social Insurance**

A branch office is subject to corporate income tax at the rate of 22.5% of its net profits. Employees of a branch office shall be subject to Egyptian salary tax and the branch office must make the necessary monthly tax withholdings. For Egyptian employees, Social Insurance contributions are required from both the employers and employees.

### **Profits**

The branch office must distribute at least 10% of its net profits to employees, up to a maximum of its total annual payroll.

### **Books & Records**

The branch office must maintain financial books and submit annual audited tax returns.

## **2.3 Joint Stock Companies**

Joint stock companies are among the most commonly used legal vehicles in Egypt and are usually used in those cases where there is a manufacturing project to be established in Egypt that requires major investments. The main reason for this is that joint stock companies have a more organized management structure and more stringent corporate governance requirements. Also, in cases of big investments, there are no requirements to pay the full capital upon establishment, which can be paid over a number of years based on the development of the project.

### **Constitutive Documents**

Egypt has a streamlined procedure for forming joint stock companies. The company's founders need only notify the Companies Department of the pending formation of a company and attach:

- The constitutive documents of the company to be formed (i.e. the articles of association and statutes). Model articles of association and statutes have been issued by a Ministerial Decree, any variations of which require the approval of the competent authority, otherwise the registration may be rejected;
- A certificate from an authorized bank to the effect that the required capital (25% of the issued capital) has been deposited in a blocked account which shall then be released upon the company's formation;

- A receipt covering the payment of incorporation fees; and
- A certificate declaring the deposit of the company's financial securities to a central depository company. (In practice, the enforcement of this provision still faces practical problems and it is expected to be amended or repealed).

Upon submission of the aforementioned documents and notification to the Companies Department, a certificate shall be issued to the founders confirming receipt of the completed documentation. This certificate must be registered at the Commercial Registration Department and the company will receive its legal status upon the lapse of 15 days from such registration date. The Companies Department may object within 10 days from the date of the company's registration with the Commercial Registration Department if:

- The articles of association or statutes deviate from the models with respect to mandatory requirements or violate any law;
- The objectives of the company violate any law or public order; or
- One of the founders is not qualified to be a founder pursuant to the law.

The reasons for such objection shall be provided and shall include the necessary measures that should be taken to rectify the situation. The company is required, within 15 days of receipt of the notification of objection, to either rectify the grounds for the Companies Department's objection or appeal against the said objection to the Minister of Economy. Otherwise, the newly registered company will be struck off the Commercial Register.

The objection is deemed to have been waived if:

- The company does not receive the decision of the Minister of Economy within 15 days of the filing of the appeal; or
- The company does not receive any objections from the Companies Department within 15 days of its receipt of the notification from the founders of the steps taken by them to rectify the grounds for objection.

The company's articles of association and statutes must be published in the relevant Companies Gazette.

## Capital

A joint stock company may have an authorized capital and must have an issued capital (actual and paid in). The issued capital may not be less than LE 250,000 for closed companies and LE 1,000,000 if the company intends to offer its shares to the public (according to the Capital Market Law ). At least 10% of the share capital must be paid in at incorporation and subsequently increased to 25% within three months following the incorporation. Full payment of the issued share capital must be effected within a period of five years after the incorporation date.

The authorized share capital may not exceed ten times the issued share capital. Payment of the initial issued capital must be established by a bank certificate issued by a bank registered in Egypt and authorized to receive subscriptions. An increase of the issued share capital within the cap of the authorized capital may be effected by a board resolution. However, any increase in the authorized share capital would require an extraordinary general meeting resolution.

## Value of Shares

The issued capital of a joint stock company comprises of shares, the nominal value of which must not be less than one Egyptian pound (EGP 1) or more than one thousand Egyptian pounds (EGP 1,000).

Also, the company may issue preferred shares that can give certain voting rights or dividend distribution rights.

Shares can only be issued after receiving the approval of the Egyptian Financial Supervisory Authority (“EFSA”). These shares may be also registered with the Stock Exchange, subject to certain requirements.

### Public Subscription

A joint stock company is permitted to offer its shares to the public. For those companies formed by public subscription, at least 49% of the shares must be offered to the Egyptian public for a period of one month, unless such percentage of shares is already paid up by the Egyptian founding shareholders prior to the public offering.

### Number of Shareholders

The joint stock company must have a minimum of three shareholders at all times, whether natural persons or legal entities. There is no maximum limit for the number of shareholders. However, if the number of shareholders reaches 100, the company would be considered as having been offered to the public and the rules applicable to public companies would then apply.

### Objectives

Subject to obtaining the necessary permit and license for certain types of activities, such as industrial projects which require the approval of the Industrial Development Authority (the “IDA”), banking projects which require the approval of the Central Bank of Egypt (the “CBE”), hotel management projects which require the approval of the Ministry of Tourism (the “MoT”), aviation projects which require the approval of the Ministry of Civil Aviation (the “MCA”), and capital market activities that require the approval of EFSA, there are no restrictions on a joint stock company’s intended commercial objectives provided they do not conflict with public policy or morality. However, to benefit from the incentives and guarantees granted under the Investment Law as referred to in the Investment Law section of this Report, joint stock companies established thereunder must list in their objectives at least one of the objectives stipulated under the Investment Law.

### Name

The name of the joint stock company should indicate the activity or objectives of the company but may not include the name of any shareholder unless such name is a registered trade name.

### Bonds

A joint stock company may issue bonds. Such bonds must be of an equal value and have equal rights with respect to each security of the same series. Bonds that are convertible into shares may also be issued. Existing shareholders have a priority right to subscribe to these bonds. Bonds may also be issued to the public. In all cases, the approval of EFSA must be obtained before issuing any bonds.

### Transfer of Shares

Founding shares and shares issued in return for in-kind (i.e. non-cash) contributions may not be transferred (except to other founders) until the financial statements of two full fiscal years are published. The Chairman of GAFI or his/her nominee can waive the above restrictions in relation to joint stock companies established under the Investment Law.

Apart from the above, there are no restrictions on transferring shares unless otherwise specified in the statutes of the joint stock company or by law, such as in banking activities, activities in the Sinai Peninsula or other projects adjacent to Egypt’s borders.

## Management

Joint stock companies are managed by a board of directors which is entrusted with the day-to-day operations of the company, and in this respect has full authority to represent the company vis-à-vis third parties. Its authority, however, excludes those matters explicitly reserved by law or the company's constitutive documents for the general assembly. The board of directors shall be headed by a chairman who shall be appointed by and from amongst its directors.

The board of directors must have a minimum of three members at all times. There are no nationality requirements for board members.

There must be a means of employee participation in management, either through board membership, share ownership or the establishment of an administrative committee from among the employees. In practice, this can raise some issues in labor intensive companies.

## Profits

A joint stock company's after-tax earnings for each fiscal year, as increased or reduced by any profit or loss that is carried forward from previous years, shall be available for distribution in accordance with the requirements of Egyptian law and the joint stock company's statutes, as follows:

1. A joint stock company is required to establish, and must always maintain, a legal reserve equal to at least 5% of its issued capital funding until it reaches 50% of capital.
2. After funding its legal reserve (if required) the balance of its after-tax earnings is considered the joint stock company's distributable profits and may be distributed pursuant to a resolution of the general assembly.
3. A joint stock company is required to allocate employee bonuses equivalent to a minimum of 10% of its distributable profits (if any) with a maximum equivalent to the aggregate annual payroll. Allocation of such amounts shall be determined by a board of directors' resolution.
4. Distributable profits shall be distributed in order of priority, as follows:
  - An initial amount equivalent to a minimum of 5% of the distributable profits shall be distributed to shareholders as dividends and to the employees as bonuses.
  - An amount of up to 10% of the distributable profits may be paid to members of the board of directors as remuneration. However, the shareholders can decide not to distribute any dividends to the board of directors.
  - The balance of the distributable profits may be paid to the shareholders as additional dividends and to the employees as additional bonuses. It may also be carried forward to the following year as retained earnings or allocated to fund a special reserve to be used as determined by the general assembly upon a recommendation of the board of directors.

In order that shareholders receive their dividends, they should deposit their shares with the Central Depository (if the shares are in dematerialized form) or surrender the coupons attached to the share certificates (if the shares are in documentary form and the company issued the final share certificates). Dividends approved for distribution which are not claimed within five years from the date they are payable shall be subject to the statute of limitations and be paid to the State Treasury. Shareholders may decide at an ordinary general assembly to distribute all or part of the dividends as per the audited financial statements of the company so long as such distribution will not impact on the company financial obligation vis-a-vis third parties or impact on its business.

## Stock Exchange Registration

Registration on the Stock Exchange is obligatory within one year of formation in the case of a company offering its shares to the public, otherwise the company may register its shares after the third year's published profitable accounts.

## Staffing

Joint stock companies may not employ more than 10% of its work force as foreigners or pay them more than 20% of the total payroll, with the exception of foreigners serving on the board of directors. Foreign employees working for a joint stock company must have obtained work and residence permits prior to commencing work in Egypt.

## Taxation & Social Insurance

A joint stock company is subject to corporate income tax at the rate of 22.5% of its net profits. Employees shall be subject to Egyptian salary tax and the company must make the necessary monthly tax withholdings. Social Insurance contributions are required for Egyptian employees from both the employers and employees.

## Books & Records

Joint stock companies must maintain financial books and records and submit annual audited tax returns.

## Compliance with Egyptian Laws

Joint stock companies must comply with Egyptian laws, including those governing companies, taxation, labor and social insurance, while particularly noting the following:

- (i) The joint stock company must have an Egyptian auditor;
- (ii) The following must be submitted annually to the Companies Department:
  - a copy of the balance sheet, the profit and loss account and the auditor's report;
  - the names, positions and nationalities of the board members;
  - details of all personnel and the salaries paid to the Egyptian employees; and
  - details of profits and the proportion of those profits distributed over the employees.

## 2.4 Limited Liability Companies

This type of company is usually formed for small projects that do not require major financing such as companies involved in internal trade and services activities.

### Constitutive Documents

A limited liability company's constitutive documents are its statutes. Model statutes have been issued by a Ministerial decree and any variations therefrom must be approved by the competent authority otherwise the registration may be rejected.

### Share Capital

According to the Ministry of Investment Decree No. 90 of 2009, no minimum or authorized capital is required for establishing a limited liability company. However, the capital must be fully paid at the time of incorporation. Cash contributions are placed in a blocked bank account, which are then

released upon formation of the limited liability company. Any increase in the capital necessitates an extraordinary general meeting resolution.

### Share Values (Quotas)

Quotas, commonly referred to as shares, must all be of an equal value. Although the law does not prescribe a minimum value for such quotas, in practice they are commonly valued at EGP 100. Quotas cannot be registered with the Stock Exchange. No share certificates are issued for limited liability companies.

### Number of Shareholders

Limited liability companies must have a minimum of two shareholders at all times and up to a maximum of 50 shareholders. Shareholders may be natural persons or legal entities.

### Public Subscription

Shares in limited liability companies may not be offered to the public.

### Objectives

Limited liability companies may not engage in insurance, banking, savings, deposit taking, investment funds, securities brokerage or portfolio management activities but may undertake in any other activity provided it does not conflict with public policy or morality.

### Name

The name of a limited liability company should refer to its activities and may include one or more of its shareholders' names.

### Bonds

Limited liability companies may not issue bonds.

### Transfer of Shares

Quotas can only be transferred after first being tendered to existing shareholders which shall be effected by either an official or non-official agreement as prescribed in the statutes. Existing Shareholders shall have one month within which to purchase such shares on a pro rata basis. The statutes of a limited liability company may prohibit any transfer of shares unless the approval of the other shareholders has been obtained.

### Management

Limited liability companies may be managed by one or more managers, one of whom must be an Egyptian national. A limited liability company that has over 10 shareholders must establish a supervisory committee from amongst its shareholders. Employee participation in management is not required.

### Profits

The rules governing distribution of profits are the same as those that apply to joint stock companies, except that profits are required to be distributed to the employees only as and when the capital reaches LE 250,000.

### Staffing

A limited liability company may not employ more than 10% of its work force as foreigners or pay them more than 20% of the total payroll with the exception of foreigners employed as managers.

Foreign employees working for a limited liability company must have obtained work and residence permits prior to commencing work in Egypt.

### **Taxation & Social Insurance**

A limited liability company shall be subject to corporate income tax at the rate of 22.5% of its net profits. Employees shall be subject to Egyptian salary tax and the company must make the necessary monthly tax withholdings. Social Insurance contributions are required for Egyptian employees from both the employers and employees.

### **Books & Records**

The limited liability company must keep financial books and records and submit annual audited tax returns.

### **Compliance with Egyptian Laws**

A limited liability company must comply with Egyptian laws, including those laws governing companies, taxation, labor and social insurance, while particularly noting the following:

- (i) The limited liability company must have an Egyptian auditor;
- (ii) The following must be submitted annually to the Companies Department:
  - A copy of the balance sheet, the profit and loss account and the auditor's report;
  - The names and nationalities of the manager(s);
  - Details of all personnel and the salaries paid to the Egyptian employees; and
  - Details of profits and the proportion of those profits distributed over the employees.

## 3. Investment Law Incentives and Guarantees

### 3.1 General

As part of a wide package of economic reform, substantial amendments were introduced to the Original Investment Law, creating thereby the New Investment Law 17 of 2015, on 12 March 2015. The New Investment Law aims at attracting new investments to Egypt by providing additional incentives and guarantees, removing the existing impediments for foreign and domestic investment, protecting investors from bureaucracy and corruption, and streamlining the procedure for establishing projects and obtaining licenses. It consists of a set of amendments to the existing law as well as the introduction of new chapters.

The Investment Law grants privileges to companies that carry out any of the following activities: land reclamation and the cultivation of barren land; animal, poultry or fish production; manufacturing and mining; tourism projects (including tourist transportation, hotels and hotel-related facilities); agricultural projects; aviation and transportation services; overseas maritime transportation; oil exploration services; housing and infrastructure projects (including installation, operation and management of cable and wireless communication systems); medical facilities that offer 10% of their capacity free of charge; lease financing; underwriting securities; venture capital projects; information technology; projects funded by the Social Fund for Development and other activities as may be added by the Council of Ministers. Furthermore, the Executive Regulations have added other fields of activity that may also benefit from the Investment Law's incentives and guarantees, such as: construction and operation of the underground transportation systems and tunnels; new towns and industrial zones; software development; establishing technology and incubator zones; market and credit analysis; financial planning; factoring and securitization activities; river transport; utilities for industrial projects; and waste treatment.

Egyptian, Arab and foreign investors are entitled to benefit from guarantees and incentives with respect to activities falling under any fields of investment outlined under the Investment Law, unless if the concerned investment was based on fraud or corruption. There are no minimum Egyptian capital requirements.

### 3.2 Additional Guarantees & Incentives available under the New Investment Law

The most significant incentives and guarantees currently provided under the New Investment Law may be addressed as follows:

#### Tax and Customs incentives

- Articles of association, mortgages and loan agreements are exempt from stamp duties and notarization fees for five years from the date of registering the company with the Commercial Registration Department. Also, it shall be exempt from any notarization or registration fees on the lands used for company business.
- Sales tax on equipment and machinery necessary for production has been trimmed from 10% to 5% .
- Custom duties on imported equipment and machinery used in production have been decreased to 2% instead of 5%. Disposition of the machinery and equipment benefiting from such reduced customs and import duties must be approved by GAFI. Procedures for such approval are set out in the Executive Regulations of the Investment Law.

- The Executive Regulations of the New Investment Law sets out the conditions, rules and procedures to benefit from such incentives automatically, with no administrative approval being required.

## Non-Tax Incentives

In a major development, non-tax incentives may be granted, upon permission from the Council of Ministers, for certain business activities such as labor-intensive projects, and for certain sectors such as logistics, internal trade development, energy, agriculture, transportation projects, and investment in remote areas.

These incentives include, in particular:

- Permission to establish special custom outlets for exports and imports for the project, upon agreement with the Finance Minister.
- Free or low cost land granted to investors as will be illustrated below.
- Reduced prices or other facilities for energy needed for the project.
- Refund of expenses paid to extend infrastructure facilities to the project's land, further to the commencement of the project.
- Subsidized training programs and social insurance for the employees.

The Executive Regulations of the New Investment Law sets out the procedures to obtain such incentives.

## One-stop-shop System

This "Single Window System" is considered to be the key feature of the New Investment Law as it unifies and simplifies the procedure and protects investors from bureaucracy and corruption. GAFI shall operate as the one and only regulatory authority responsible for the entire procedure and for ultimately issuing licenses. In this sense, investors will no longer have to deal with multiple parties. Instead, investors shall submit their application directly to GAFI which, in its turn, shall examine the papers and coordinate with the concerned government agencies in order to issue the requested license, as illustrated below.

## Licensing Procedure

Once the investor application is submitted, GAFI shall coordinate with the relevant government authorities which have a maximum of 45 days from the date of receiving the required documents to issue licenses and approvals. The said authorities cannot refuse the application, unless one or more of the conditions stated in the guide book of each activity, or the technical conditions determined by the competent authorities are not satisfied. The Chairman of GAFI shall then issue the final license within 15 days from receiving all the required licenses or approvals. If no such license was issued before the lapse of the 15 days, the Chairman of GAFI shall transfer the whole application along with reasons for not issuing the final license, within a week, to a Grievance Board which shall provide its final decision in a maximum of 15 days.

## Allocation of Land

The New Investment Law introduced a new chapter that governs the allocation of State land, thereby, excluding the application of Bids and Tenders Law 82 of 1998. Accordingly, allocation of land shall be conducted on a transparency basis and may take several forms including sale, lease, lease to own, usufruct or in-kind participation in the project. An investor wishing to acquire/lease a land shall submit a request to GAFI including the following information:

- The activity/objective of the project
- The space of the land
- The location of the land

GAFI shall then display the available lands that are relevant for the nature of the concerned activity and shall illustrate the requirements and conditions related thereto.

For a period of five years starting from 2015, the Council of Minister may approve the allocation of State land in certain areas free of charge for investors who satisfy the financial and technical requirements (such requirements shall be determined by the Council of Ministers), provided that the investor provides a monetary security that shall be refunded after five years from the effective operation of the activity.

### Criminal Prosecution

Companies' Executives are no longer liable for criminal offenses committed in the name and for the account of the company unless it has been proved that they have been aware of the criminal violation and have committed it for their own interest and for the interest of other persons. Otherwise, the legal person (the company) shall be liable for such violation and penalties such as fines (not less than four times the fine originally provided by law for such violation and not exceeding 10 times of the said fine) or suspension of activity (not exceeding one year) shall be imposed thereon. In case of re-offense, the license of the company may be cancelled or the company itself may be liquidated.

### Dispute Resolution

Since the 2011 revolution, Egypt has been facing several investment disputes, mainly Investor-State arbitrations, and the number of ICSID (International Centre for Settlement of Investment Disputes) claims against Egypt hitherto has reached more than 14 cases. Thus, aiming at restoring the investor confidence in the Egyptian legal system as well as protecting Egypt from future arbitration disputes, the New Investment Law has provided for an extended Dispute Resolution system that mainly focuses on amicable means for dispute settlement rather than arbitration. In this respect, the longstanding reference to bilateral investment treaties and to the ICSID convention, which was repeatedly considered as a unilateral consent to international arbitration, has been removed and has been replaced by the sole reference to the parties' mutual consent. In the same sense, the New Investment Law has introduced new alternative dispute resolution methods provided for in 3 separate sections as follows:

#### (i) Grievance/Complaint Committee:

The Grievance Committee is created by the Ministry of Investment to consider investor complaints against administrative decisions rendered by GAFI. The investor has 15 days, from the date of being aware of the contested decision, to file its complaint. The committee shall issue its decision within 60 days from the date of receipt of the complaint. If no such decision has been issued within the said period, the complaint would be considered as declined. The Committee decision shall be final and binding only on GAFI. The investor shall have nevertheless the option to resort to domestic courts or arbitration as the case may be.

#### (ii) Ministerial Committee for Resolution of Investment Disputes:

The Ministerial Committee for Resolution of Investment Disputes is created within the Council of Ministers and shall have the authority to consider requests, complaints or disputes that may arise between investors and government bodies in relation with the implementation of the Investment Law. The said Committee shall render a reasoned decision within 30 days from the finalizing of the hearings. Such decision shall be final and binding without prejudice to the investor's right to resort to State Courts or to arbitration.

(iii) Ministerial Committee for Settlement of Investment Contract Disputes:

The Ministerial Committee for Settlement of Investment Contract Disputes is created within the Council of Ministers and shall address all disputes arising from the implementation of investment contracts, provided that a governmental body, whether public or private, is an effective party to the disputed contract. The Committee shall have the authority, upon agreement between the parties, to settle the dispute by restoring balance to the disrupted contract. The Committee may therefore extend deadlines or periods, provide for debt restructuring or rectify the procedures set out prior to the conclusion of the contract. Such settlement shall be final and binding.

### Facilitated Exit Procedures

An investor wishing to liquidate his business in Egypt may now exit the market without restrictions. Once the liquidation received, the concerned authority shall inform the investor, within 120 business days, of any remaining liabilities such as liabilities vis-à-vis GAFI, or the Tax authority. If no such notification has been issued within the said period, the investor shall be automatically released of any liabilities.

### 3.3 Guarantees & Incentives available under the Original Investment Law

- Investors are granted guarantees against expropriation and nationalization. Companies and their assets cannot be attached, seized or expropriated by way of an administrative order. The Investment Law further provides that no administrative body may interfere in setting prices or profit margins, or revoke or suspend a license for the use of property except where the license terms are violated.
- The Investment Law grants various exemptions from certain labor requirements under the Companies Law and the Labor Law. For example, companies established under the Investment Law are exempt from the requirement that certain types of employees such as drivers and messengers be hired in the order of their registration at the employment office.
- Companies shall have the right to own buildings, lands, and to develop real estate as required for implementing and expanding their activities, irrespective of the nationality or place of residence of partners and shareholders or the percentage of their participation. This is with the exception of lands in Sinai Peninsula and other border lands as will be illustrated later.
- Companies can nominate their capital and run their accounts in foreign currency, if most of the company activities relate to export.

### 3.4 Free Zones

Egyptian, Arab and foreign investors may undertake projects in the Egyptian free zones regulated by the Investment Law. Most goods and materials imported into a free zone are not subject to import duties or regulations. The New Investment Law provides for public free zones only, thereby, excluding the establishment of private free zones which was formerly granted under the Original Investment Law. It is worth noting that such exclusion has triggered a controversial debate among all governmental, private and economic sectors, and a legislative review thereof in the near future may be expected.

Public free zones are established in specific locations by GAFI, including Alexandria, Suez, Port Said, Damietta, Ismailia and Cairo.. The types of activities permitted in the free zones are mixing, blending, repackaging, manufacturing, assembling, processing and repair operations. Public free zones are usually located adjacent to sea ports and airports, in order to facilitate import/export procedures.

Free zone companies can either undertake industrial or service activities. Free zone companies are not subject to income tax and are incorporated for the purpose of exporting the products or services manufactured or provided in the free zone abroad.

Activities that involve intensive energy consumption, such as fertilizers production, steel production, oil production and natural gas production, liquidation and transportation, are not allowed to be operated under free zones. However, Law 133 of 2010 enables oil refinery companies to be established and operate in a free zone according to the provisions of the Investment Law.

The board of directors of the public free zone is responsible for issuing preliminary approvals for establishing companies within the public free zone. Such preliminary approval shall be subsequently submitted to GAFI, which is responsible for issuing the final approval and authorizing establishment of the relevant entity. The chairman of the board of directors of the public free zone shall, after receiving the final approval from the GAFI, issue a license permitting the company to undertake its respective activity.

The authorities take the following issues into account when issuing the final approval with respect to establishing a potential project under the free zone system:

- the amount of capital proposed to be invested;
- the number of prospective employees to be employed; and
- the anticipated volume of exports (including export of services).

Commodities exported by projects existing under the free zone system or those imported for the purpose of being able to perform the project's designated objective shall not be subject to import and export regulations or the usual customs procedures, in addition to being exempt from customs tax, general sales tax and other taxes and fees. However, in the event that the products or services resulting from the project are not exported and are subsequently sold domestically, they shall become subject to those regulations pertaining to products and services imported from abroad. Products that are imported from projects established under the free zone system that are comprised of a domestic and foreign component, shall only be charged customs tax on the foreign component on the condition that such amount does not exceed the total tax imposed on the same product if it was imported from abroad.

Under the free zone system, qualifying companies are granted customs duties and tax exemptions. Both types of free zone companies are exempt from local taxes and customs. However, free zone projects are subject to an annual duty of 1% of the value of goods entering the free zone for storage with respect to warehousing projects and 1% of the value of goods exiting the free zone with respect to manufacturing and assembly projects. Projects whose activities do not require the entry or exit of goods shall be subject to an annual duty equal to 1% of their total revenue, based on audited accounts.

### 3.5 Special Economic Zones (SEZs)

Under Law 83 of 2002 on Special Economic Zones (SEZs), economic zones were established to provide for entities of considerable economic independence, no bureaucratic procedures, lower taxation rates with an average of 10% on all activities, and flexible administration and labor regulations. Such SEZ are self-governed through independent authorities for each SEZ, which gives more power to each zone's board of directors. Production in SEZs is mainly focused on areas such as fertilizers, iron and steel, pharmaceuticals, building materials and petrochemicals.

In 2015, the Suez Canal has been declared as a SEZ by virtue of the Presidential Decree 330 of 2015, in a major attempt of the Egyptian government to exploit the enormous potential of the Suez Canal to become a global economic hub and an international logistical and industrial region that would especially serve European and Asian markets.

## 4. Ownership of Real Estate in Egypt

### Special Requirements and Restrictions related to Foreign Ownership in Egypt

#### 1. Law 230/1996

Pursuant to Law 230 of 1996 Regulating the Ownership of Built Real Estate and Vacant Land by Non-Egyptians (“**Law 230/1996**”), a foreigner who acquires ownership of vacant land is obliged to commence construction within five years from notarization of the land purchase agreement. In the event that the five-year period lapses without commencing construction works, the prohibition to dispose of the said vacant land shall be extended to a similar period as that of the delay in construction.

Moreover, the said Law stipulates that foreigners who acquire ownership of a building in accordance with Law 230/1996 may not dispose of such building before the lapse of five years from the date of acquiring the relevant building. However, permission to dispose of a building before the lapse of such period may be granted by way of a Prime Ministerial decree.

Law 230/1996 further states that a foreigner may not own more than two real estate units in Egypt for residency purposes (for himself and his immediate family), each of which may not exceed 4,000 square meters. However, the Prime Minister may at his own discretion exempt non-Egyptians from the above two requirements.

#### 2. Law 94/2005

Law 94 of 2005 Amending some Provisions of the Companies Law 159 of 1981 and the Investment Law 8 of 1997 (“**Law 94/2005**”) stipulates some regulations for the foreign ownership of real estate in Egypt. Law 94/2005 provides that companies and entities shall have the right to own land and property required to conduct and expand their activities, irrespective of the nationality of the partners, shareholders, their residency or the percentage of their shareholdings and partnerships, with the exception of land and property in areas designated by the Council of Ministers in determining the rules according to which such real estate is transferred. See Decree No. 350/2007 below.

#### 3. Prime Ministerial Decree No. 548/2005

Prime Ministerial Decree No. 548/2005 states that foreigners must be treated in the same manner as Egyptians with respect to units they own for the purpose of residency in certain tourism and new development areas. These areas include Sidi Abd El Rahman, Ras El Hekma, Hurghada and the Red Sea, with the exception of Sharm El Sheikh, provided that the foreigners acquire the approval of the concerned authorities, (the “**Concerned Authorities**”) i.e. the Ministry of Defense, the Ministry of Interior and the National Security Authority, which must provide their opinion within 15 days from the date of application for approval.

Decree 548/2005 stipulates that the foreigners shall have the right to leasehold, which is also called a “**Usufruct Right**”, units in Sharm El Sheikh for residency purposes for a maximum period of 99 years provided that the approvals of the Concerned Authorities are obtained.

Decree 548/2005 finally states that the notary public offices shall register real estate disposals within ten days from the date of receiving the complete set of documents required for registration. In addition, the Decree provides that foreigners may dispose of their acquired units whether through ownership or usufruct right from the date of acquiring the right of ownership or usufruct.

#### 4. Prime Ministerial Decree No. 350/2007

This Decree states that all companies and entities shall have the right to own the land and property necessary for conducting their business or expand their activities, irrespective of the nationality of the

partners or shareholders, their residency and the percentage of their partnerships and shareholdings. This is applied with the exception of land in strategic areas, such as those adjacent to the Western, Eastern and Southern borders of Egypt, islands located in the Red and Mediterranean seas, the Suez Canal area and Sinai Peninsula.

## **5. Law 95/2015**

This new Law prohibits foreign companies and entities from owning any land or property in the Sinai Peninsula, including land falling within the administrative scope of Ismailia, Suez and Port Said Governorates.

Moreover, the said Law stipulates that all companies and entities may only have, upon agreement of the Ministries of defense and Interior and the General Intelligence Agency, a Usufruct Right to use land and property located on the Sinai Peninsula for residency purpose, if the following conditions are met:

- (i) A Usufruct contract must be concluded with the entity owning the land for a period up to 30 years, renewable for additional periods not exceeding thereby an aggregate of 50 years.
- (ii) The necessary approvals must be obtained from the Concerned Authorities in addition to the concerned Governorate.
- (iii) All buildings, facilities and premises constructed on the land granted by virtue of the Usufruct Right must be returned to the original owning entity at the end of the Usufruct period.

## 5. The Banking Sector

### The Banking Law

Law 88 of 2003 regulating the Central Bank, the Banking and Monetary Sectors and its Executive Regulations (the “**Banking Law**”) replaced and superseded, among others, the old Banking Law 163 of 1957, the Central Bank Law 120 of 1975, the Banking Secrecy Law 205 of 1990, and the Foreign Currency Control Law 38 of 1994. Supervision of the banking sector is vested with the Central Bank of Egypt (“**CBE**”). Under the Banking Law, only banks licensed by the CBE to practice banking activities are authorized to carry out banking activities in Egypt. Banking activities as defined by the Banking Law include customary and primary solicitation and acceptance of deposits, obtaining financing and investment of such funds in providing finance and credit facilities, participation in the share capital of companies and all activities deemed as banking activities in accordance with customary banking practices. Licensed banks are also entitled as a general rule to carry out certain activities regulated by the Capital Market Law and the Custody and Depository Law, provided they obtain the approval of the CBE and the Egyptian Financial Supervisory Authority, formerly known as the Capital Market Authority, including the underwriting of securities and custodian activities.

The Banking Law stipulates a minimum issued and paid-in capital of EGP 500 million for banks to be established in Egypt under an Egyptian joint stock company. It further provides a minimum capital of US\$ 50 million or its equivalent in foreign currencies for branches of foreign banks. The CBE retains significant powers to undertake remedial measures and impose penalties when the provisions of the above Law are violated. For example, the CBE retains the right to cancel the registration of a bank by virtue of a resolution issued by the CBE’s Board of Directors in case of violating the provisions of the said Law, its executive regulations, any of its executive decrees, and not remedy such violation within the period and according to the conditions fixed by the CBE.

The Banking Law allows branches of foreign banks to deal in Egyptian currency and guarantees them the same treatment as national banks. The Banking Law embodies the principle of a market-determined foreign-exchange rate and defines the governmental and CBE roles in monetary policy. It also mandates a number of prudential measures to protect the banking sector, including substantial increases in minimum capital requirements and tighter rules on lending to special-interest clients.

The Banking Law permits foreigners to own up to 100% of an Egyptian bank’s shares. However, no individual is permitted to own more than 10% of the shares of an Egyptian bank without the prior approval of the CBE. Further, private sector companies may acquire shares in state-owned banks.

According to the Banking Law, banks must keep a reserve with the CBE *pro rata* their deposits in such bank, the percentage of which shall be determined by the board of directors of the CBE.

Egypt’s foreign currency exchange regulations are now governed by the Banking Law as stipulated in the Currency Regulations Section. There is currently no significant currency control in force and hence individuals are free to transfer foreign currency outside Egypt, provided such transfers are effected through banks licensed in Egypt.

In accordance with the Banking Law, all accounts, deposits and safes in banks as well as related transactions shall be confidential. Viewing or providing information in connection therewith, either directly or indirectly, is also prohibited without the written permission of the owners of such accounts, deposits or safes, or through their heirs, legal representatives or authorized attorneys, or by a judicial judgment or an arbitral award.

## 6. Currency & Exchange Control

### Currency Regulations

The Banking Law replaced, among others, the Foreign Exchange Law 38 of 1994, and currently regulates all foreign exchange operations as well as other aspects of banking in Egypt. The Banking Law grants all natural persons and legal entities the absolute freedom to maintain foreign currency and conclude transactions in foreign currency, including the transfer of such currencies from and into Egypt, provided that such transactions are executed through banks or other entities authorized to deal in foreign currency, as listed under the Executive Regulations of the Banking Law. The Central Bank of Egypt has issued a recent circular on January 6, 2014, pursuant to which a limit of USD 100,000 or its equivalent per annum is imposed on any bank transfers outside Egypt conducted by the bank's customers.

Transacting in the sale and purchase of goods and services inside Egypt shall be in Egyptian Pounds ("EGP"), unless the contrary is permitted by virtue of an international convention or other laws, provided that such transactions in EGP do not contradict with:

1. any contracting, supply or service contracts entered into with a foreign party provided that dealing in foreign currency takes place through an authorized bank;
2. any such contract entered into with an Egyptian party regarding the foreign component required for executing the said contract;
3. any insurance contract stipulating the payment of installments or insurance proceeds in foreign currency;
4. the nature of transactions concluded in tourism-related establishments or the activities concluded by natural persons, legal entities or other commercial stores, provided that said entity or person shall obtain the license of the CBE after the approval of the competent authority.
5. dealings in free zones or economic zones with a special nature which must be in the agreed upon currency.
6. the nature of the goods and services and does not include securities or other financial investments and their applicable interest.

Entities authorized to deal in foreign exchange include banks licensed to operate in Egypt, which are permitted to buy foreign currency for their own account and on behalf of third parties.

The price of foreign currency against the EGP shall be determined by the forces of supply and demand, in accordance with the regulations set by the Prime Minister based on the recommendation of the CBE.

Furthermore, the Banking Law permits the establishment of foreign exchange dealers that are authorized under the Banking Law to buy and sell foreign currency for their own account.

A foreign exchange dealer must form an Egyptian joint stock company, fully owned by Egyptians, with a minimum paid-up capital of EGP 5 Million. The activities of foreign exchange dealers shall be limited to:

1. the purchase and sale of foreign currency for their own account; and
2. the purchase, sale and/or collection of bank cheques issued by local or foreign banks for their own account.

It is worth noting that under the banking law (No.88 of 2003), any person or corporate entity is entitled to maintain foreign currency and to purchase or sell foreign currency through licensed currency dealers or banks. Any person is also entitled to transfer foreign currency inside or outside Egypt, provided that such transfers are effected through licensed banks in Egypt. Hence, repatriation of capital and dividends by foreign investors is permitted under Egyptian Law, to the extent foreign currency is available.

However, following the 2011 Egyptian revolution and political events, the Central Bank of Egypt, in order to curb demand on foreign currency, has set limits on Egyptian individuals transfer (\$100,000 per annum).

### **Maintaining Foreign Currency**

Both individuals and legal entities are free to retain any amount of foreign currency, which may be held with any approved bank in Egypt or maintained abroad at the owner's discretion for use in Egypt or remittance overseas.

### **Buying Foreign Currency**

Unlimited amounts of foreign currency may be purchased from any of the authorized banks or dealers which may sell foreign currency either in cash or by means of wire transfers to individuals or private or public sector companies. Furthermore, banks and dealers may sell foreign currency to allow for repatriation of dividends earned on Egyptian stocks and interest from Egyptian bonds. Branches of foreign banks are permitted to deal in both local and foreign currency.

Banks, as well as money transfer companies licensed by virtue of a license issued by the Central of Bank of Egypt, are the only entities allowed to transfer money abroad. A money transfer company shall take the form of an Egyptian joint stock company, list money transfer as its sole objective and have a paid-up capital of not be less than EGP 5 million.

## 7. The Capital Market Law

Since the early nineties, the Egyptian financial system with its three main sectors: the capital market, banking and insurance, has been undergoing ambitious legislative reforms to enhance performance and encourage competition especially from within the private sector. Since 1993, the government has stopped intervening directly in the financial sector, and instead has been using indirect measures to control monetary aggregates such as bond issuance. The government is currently focusing on reactivating the bond market, creating new financial institutions and building strategic links with international financial institutions.

Serious efforts are also being made to divest state ownership of joint venture and public banks and insurance companies, and increase private sector involvement in the financial sector.

Full private sector ownership, including foreign ownership, has been allowed in the banking and insurance sector. Thereby, several financial intermediaries representing large international financial institutions in the area of commercial and investment banking, mutual funds, insurance and securities trading are now operating in Egypt.

### 7.1 Capital Market Legislation & Areas covered

The Capital Market Law 95 of 1992 (the “**Capital Market Law**”) regulates the operations of the capital market in Egypt. Under the Capital Market Law, any company intending to issue securities must notify the Egyptian Financial Supervisory Authority (“**EFSA**”).

For a public issuance of securities, a company must prepare a prospectus approved by EFSA and provide EFSA with periodic reports and information relating thereto.

The Capital Market Law also allows the issuing company to set a return on securities that exceeds the limit established in other laws. (i.e. the 7% ceiling set in the Civil Code).

The Capital Market Law provides that trading of securities may only be undertaken by companies licensed by EFSA.

The Capital Market Law regulates both companies that offer their shares to public and those that deal in securities. In particular, it regulates the actions of companies engaging in the following types of securities related activities:

- Promoting and underwriting investments in securities;
- Participation in the formation of companies that issue securities or in the increase of their capital (the Egyptian equivalent to a holding company);
- Venture capital;
- Securities clearing and settlement activities;
- The creation of securities portfolios and investment funds and portfolio and investment fund management;
- Securities and brokerage activities;
- Other securities specified by a decree of the competent Minister following the approval of EFSA; and

- Any other activities in the field of securities may be added to this list by virtue of a ministerial decree after obtaining the approval of EFSA.

## 7.2 Egyptian Financial Supervisory Authority (“EFSA”)

EFSA is an integrated authority established pursuant to Law 10 of 2009 Regulating the Supervision on Market and Non-Banking Instruments (“**Law 10**”) to serve as a single regulator for non-banking financial markets such as capital markets, insurance, mortgage finance and financial leasing as well as any future non-banking financial institutes. Law 10 first came into force on July 1, 2009 to unify the all former regulators of this sector i.e. the Capital Market Authority, the Egyptian Insurance Supervisory Authority and the Mortgage Finance Authority into one single regulator. It did not introduce any substantial changes to the statutory roles of the mentioned authorities. The Law mandates a number of functions to EFSA such as licensing of non-banking financial activities and inspection thereof. It also calls for the establishment of an arbitration centre for financial disputes to create swift settlements. The Egyptian legislature assigned EFSA to render services required for the proper achievement of the abovementioned objectives, particularly the services of licensing and inspecting all entities practicing non-banking financial activities, supervising the dissemination of information related to non-banking financial markets, and setting competition and transparency rules that properly protect the right of non-banking market participants. EFSA was also assigned to raise the efficiency level of non-banking market participants and contribute to spreading financial literacy and raising public awareness of non-banking finance. EFSA is run by a board of directors appointed by the Prime Minister for period of 4 years. In line with the above reforms, the General Authority for Investment and Free Zones (the Companies Registrar, known as “**GAFI**”) continues its effort to expand its licensing authorities in order to be able to provide all investors’ needs throughout several governorates in Egypt. Among the most important changes that have taken place are: Decree No. 71 of 2009 and the Minister of Investment Decree No. 1 of 2010, and EFSA Decree No. 35 of 2014. The latter provides that any Company wishing to issue bonds must not be rated less than BBB- at the time of purchase. This rating shall be obtained from credit rating agencies authorized by EFSA or other agencies designated by Decree No. 71 issued in 2009. Such rules have also simplified procedures for corporations to issue bonds as it now suffices to present a summary of future cash flows, liquidity and profitability ratios reviewed by the company auditor.

## 7.3 Issuance of Securities

The capital of joint stock companies and the shares of dormant partners in companies with a limited number of shares are divided into nominal shares of equal values. However, companies may issue bearer shares with specific limits and according to certain terms and conditions.

The company’s articles of association shall determine the values of the nominal shares, which may not be less than EGP 0.10 and shall not be more than EGP 1,000.

A share must be indivisible. New shares may be issued, upon increasing the capital of the company with different values from those shares from previous issuances.

For issuing shares against an in-kind contribution or on the occasion of a merger, the value of these shares should conform to the value of the in-kind contribution or the merged rights, as determined by the concerned evaluation committee. However, the party submitting the in-kind contribution may pay the difference in cash.

Under the Capital Market Law, any company intending to issue securities must notify EFSA, which then has three weeks in which to review the proposed securities issuance. No stocks/securities of any company, including public business sector companies and public sector companies may be floated for public subscription, except by virtue of a subscription prospectus approved by EFSA to be published in two widely read daily newspapers, at least one of which must be published in Arabic.

## 7.4 Tender Offers

In February 2007, the Minister of Investment issued a decree adding a new chapter 12 to the Executive Regulations of the Capital Market Law (“**Chapter 12**”) to create a more efficient and regulated environment for the Egyptian M&A market. The new chapter regulates tender offers and obligatory tender offers by prohibiting acquisitions of securities through open market purchases of one-third or more of the capital or voting rights of the target company. Chapter 12 encompasses the highest business standards and international best practices in the field of mergers and acquisitions, and introduces new refined concepts to the Egyptian market including (*and not limited to*): disclosure of “potential offers”, mandatory offers, extensive role of investment banks and financial advisors, freedom in setting the offer price, post notification of acquisition of substantial shares.

## 7.5 Listing

Joint stock companies may be listed on the Egyptian Stock Exchange provided that, among other conditions, the public issuance of the securities in the cases of listed companies represent at least 10% of the joint stock company’s nominal shares, which have been subscribed into by no less than 300 persons. Pursuant to the decision No. 170 of 2014 (The Egyptian Exchange -la Bourse-)

As a side note, in order to secure the rights of investors and the users of financial statements, listed companies must provide information about their financial and business results represented as the following:

1. The balance sheet and other financial returns and statements of the Company shall be prepared according to the accounting criteria and auditing standards to be determined or referred to in the executive regulations of the Capital Market Law.
2. All listed companies should submit to EFSA a copy of their financial statements, reports of the Board of Directors, and the auditors’ report, one month prior to the date scheduled for convening the general assembly meeting.
3. All listed companies shall publish an adequate summary of the semi-annual reports and annual financial statements, in two leading daily newspapers one of which to be in Arabic.

## 7.6 Central Depository

The Central Depository Law, Law 93 of 2000, provides for the creation of a licensed Central Depository to issue deeds for use instead of material shares. For the first time, the Central Depository Law introduces the concept of beneficial ownership of shares. Banks and other licensed securities companies are required to enter into agreements with the Central Depository that include mandatory provisions such as the requirement of participation in a special fund that will guarantee settlement of securities transactions.

## 7.7 Investment Funds & ESOP’s

The Capital Market Law stipulates that an investment fund must take the legal form of a joint stock company. EFSA has the authority to review and object to the members of an investment fund company’s board of director’s as well as the fund managers. An investment fund must be managed by a specialized investment management company.

The Capital Market Law provides that an investment fund must maintain a certain ratio between its paid-in capital and its financial resources. Only banks that have been authorized by the Minister of Foreign Trade may deal in the subscription of investment fund shares.

Bankers and insurance companies may establish an investment fund without having to create a separate joint stock company if they have received authorization to do so from EFSA. In the case of banks, to the approval of the Central Bank of Egypt is also required.

The Capital Market Law also introduces the concept of Employee Share Option Plans (“**ESOP’s**”) whereby employees of a joint stock company may form an association that owns shares in the joint stock company’s capital on behalf of employees.

## 7.8 Broker’s Obligations & Restrictions

The Executive Regulations of the Law, as issued by virtue of Decree No. 19 of 1998, set out the obligations of and restrictions on brokerage companies.

Brokerage companies are bound by fiduciary duties of honesty and integrity and must therefore disclose the existence of any conflict of interest. Furthermore, they are bound not to disclose any information regarding their clients. Insider trading rules have been established which stipulate that brokerage companies, their directors and employees are expressly prohibited from engaging in insider trading by using non-public information in accordance with, among other things, the following rules:

- Brokerage companies may not execute transactions on behalf of their clients without sufficient evidence justifying their advice and the resulting transactions.
- Brokerage companies are prohibited from “churning” (i.e. entering into transactions for clients participating in excessive trading, with the aim of increasing commissions, expenses or other fees).
- Brokerage companies may only deal on behalf of their clients in transactions for which they have been granted specific instructions. These instructions should be recorded by the brokers.
- Clients must be informed of the completion of a transaction within 24 hours.
- Transactions on behalf of the brokerage companies’ directors, employees or relatives are permitted only upon the explicit written consent of the board of directors of the brokerage company.

## 8. Egyptian Labor Law 12 of 2003

In line with its obligations under the World Labor Organization and the Arab Labor Organization, of which Egypt is a member, the Egyptian Parliament enacted Labor Law 12 of 2003 (the “**Labor Law**”), superseding the former Labor Law 137 of 1981. Despite its progressive approach, the Labor Law remains to a large extent (much like its predecessor) an employee-biased law, designed to protect the employee.

### 8.1 Employment Contracts

#### Contract Form

According to Article 32 of the Labor Law, employment contracts must be issued in triplicate with an original copy being passed to the employer, employee and Social Insurance Office. It shall be executed in at least the Arabic language (with a dual English-Arabic contract also being permissible) and include certain specific information as set forth under the Labor Law.

#### Probation & Term

An employment contract may be drawn up for a definite or indefinite term. The Labor Law provides that a definite term contract may be renewed upon the express mutual agreement of the parties for consecutive definite term(s) without being construed as an indefinite term contract. Nevertheless, if the parties omit to expressly renew the definite term contract but continue to perform same, it shall then be construed as an indefinite term contract.

If an employee is hired on probation, the employment contract should expressly indicate the probationary period, provided it shall not exceed three months.

#### Working Hours & Overtime

Normal working hours may not exceed eight hours a day or forty-eight hours per week (excluding a one-hour break entitlement per day). Most private sector employees work five days a week, usually Sunday to Thursday. The number of working hours may be increased under certain circumstances. In any event, and in accordance with Article 82 of the Labor Law, working hours and breaks must be organized so that the total working hours do not exceed ten hours per day, including the break if it is taken at the workplace.

Pursuant to Article 85 of the Labor Law, if the employee works more than eight hours per day, he/she is entitled to receive the equivalent of 35% for each extra hour worked during daylight hours and 70% for each extra hour worked at night which is defined under Article 1(g) of the Labor Law as being the “*period between dusk and dawn*”. In other words, the employee shall receive overtime for each extra hour worked during the day at 135% of his/her regular hourly wage; and at 170% thereof for hours worked during the night. Pursuant to Article 52 of the Labor Law, those employee required to work on weekends are entitled to double their salary and another day in lieu of their rest day during the following week and those working on their holiday then will also be entitled to receive double salary for the day(s) worked over and above their salary.

#### Annual Leave

Employees are entitled to a minimum annual paid leave of twenty-one working days after completing one full year of service. However, employees may take a paid leave on a pro-rata basis after completing six months of employment. The annual leave shall be increased to one month after the employee has worked for ten consecutive years or reaches 50 years old. All employees are entitled to full pay for national holidays.

## 8.2 Dismissal, Termination & Settlement

The Labor Law has introduced a number of new provisions, including those governing termination of employment (without including termination due to redundancy). Pursuant to Article 69, an employee may only be terminated if he/she commits a grave fault or due to non-performance, such as:

1. presenting false identification or certification;
2. being guilty of an act that causes serious material damage to the employer, provided that the employer notifies the competent authorities of such incident within 24 hours following the employer's knowledge of its occurrence;
3. failing to observe safety regulations after being notified in writing, provided that such safety regulations were clearly posted;
4. being absent without an acceptable cause for more than twenty (20) intermittent days in one year or more than ten (10) consecutive days, provided that the termination is preceded by a written notice served by registered mail following the ten absent days in the first event and five absent days in the second;
5. divulging work secrets causing serious damage to the establishment; competing with the employer in the same field of activity; or being found intoxicated or under the influence of drugs during working hours;
6. is evidenced to have assaulted the employer or general manager, or to have brutally assaulted his supervisors during work or as a result thereof; or
7. does not abide by the provisions of law governing strikes.

Termination for committing a grave fault requires the employer to first petition the competent Labor Court. Termination outside the scope of the above events is deemed unjust and would require compensating the employee. Pursuant to Article 122 of the Labor Law, compensation for unjust termination may not be less than the equivalent of two months salary for each year of service, in addition to any other legal entitlements.

Salary in this respect would extend to include all related acquired rights (such as allowances, bonuses and the like). Furthermore, Article 111 of the Labor Law requires the employer to serve a two month prior termination notice to the employee in question and three months if the employee has served more than ten years.

With respect to termination of an employment contract due to an employee's non-performance, pursuant to Article 64 of the Labor Law the employee must be given notice of the alleged non-performance and granted the opportunity to make a statement in his defense in an investigatory meeting which shall take place within a maximum of seven days from the date the violation is known. Specifically, in order to be able to terminate an employee's employment on grounds of non-performance, the employer must compile evidence of such non-performance in the employee's employment file, including at least (as a matter of practice) evaluations and assessments of his performance and three warning letters. Based on such documentation, the employer must submit a request to the Labor Court requesting termination of the employee's employment contract on the basis of non-performance.

Unjustified termination would entitle the terminated employee to claim damages against the employer and if the court rules in favor of the employee the awarded damages for unjustified termination would not be less than (2) months full salary for each year of service, in addition to any other legal entitlements. Furthermore, pursuant to recently issued Law 180 of 2008, amending certain provisions of the Labor Law, the employee is entitled to request the court to issue an urgent order to the

employer for payment of twelve-months' salary, pending a judgment on the merits in a case for unjustified termination.

Amicable termination settlements seek to put a termination package in place with the employee which would ordinarily include a final resignation and release form. However, it should be noted that pursuant to Article 119 of the Labor Law, the employee has the right to withdraw his resignation within one (1) week of its acceptance by the employer and in such case, the resignation would be considered null and void. This rule aims to give the employee the chance to reconsider the impact of such resignation in an attempt to protect his or her best interests. Accordingly, the employer should take into consideration that the resignation is effective upon the lapse of such one (1) week period.

### **8.3 Closure of Business or Downsizing**

The Labor Law confirms the right of the employer to completely or partially close or to downsize his business for economic reasons, necessitating the termination of some of the employees. However, the employer must first obtain the prior approval of a special committee with respect to such closure or downsizing.

Alternatively, the employer is also granted the option, upon obtaining the approval of the committee and, instead of using the right of termination, to temporarily adjust the terms of the employment and/or assign employees different positions in order not to decrease their remuneration below the minimum wage. This provision is an exception to the rule that “the contract makes the law of the parties” and the “acquired right theory” which is generally applicable in Egypt.

However, if the employee refuses to adjust the terms of his employment, he/she shall have the right to terminate the contract, with such termination being deemed as a justified termination exercised by the employer, despite being elected by the employee.

If the employer terminates any of the employees for economic reasons in compliance with the above rules, the employer must pay remuneration equivalent to one month's salary per year for the first five years of employment and one and a half month's salary for each year of employment thereafter.

### **8.4 Health Care & Pension Payments**

All private sector companies in Egypt are required to provide free healthcare coverage for their Egyptian employees either through the Medical Insurance Plan of the Ministry of Social Insurance or privately. They must also contribute to the Pension Insurance Fund of the Ministry of Social Insurance.

### **8.5 Work and Disciplinary Rules & Regulations**

Article 58 of the Labor Law requires employers to put in place work and disciplinary regulations, which must be endorsed by the relevant Labor Office. In this regard, an employer may follow the standard work regulations provided for by the Ministry of Manpower and Immigration or instigate its own work/disciplinary regulations for approval by the relevant authority.

### **8.6 Labor Unions**

Labor Unions are established in accordance with Labor Unions Law 35 of 1976. The said Law has established a General Association of Labor Unions, general labor unions and labor committees. The general labor unions are established based on the nature of the activity of its members and ordinarily labor committees are established for each industry. In principal, a labor committee looks after the interests of the employees, including salaries and wages and terms of employment. The extent and

involvement of the labor union would differ from one case to the other, depending on the strength and the ability of the relevant committee.

## 8.7 Foreign Employees

The Ministry of Manpower and Immigration has issued the Decree No. 305 of 2015 (the “Decree”) regarding the conditions for issuing work permits for foreign employees. The said Decree sets out the new rules/procedures that allow the issuance of work permits for foreign employees intending to work in Egypt as well as the authorities competent for issuing such permits. It also specifies the maximum percentage of foreigners that may be employed by local corporate entities and the fees applicable in this regard. To this end, foreign labor may not exceed 10% of the total labor force of an Egyptian company. Nevertheless, exceptions can be made in light of the aforementioned. In fact, the said percentage may differ by virtue of a special committee (Committee of Exceptions) and upon the approval of the competent Minister. Furthermore, the Decree authorizes the renewal of work permits and sets out the procedures and fees applicable in this respect. Certain criteria constitute an important factor in determining whether to issue work permits, among which :

- (i) The foreigner’s qualifications and expertise must be adequate for the prospective position;
- (ii) Any other required approvals that must be obtained by the foreigner to work in Egypt;
- (iii) The foreigner may not compete with local manpower;
- (iv) The real need of establishment for the foreigner’s expertise;
- (v) The country’s economic status;
- (vi) The commitment of the establishment hiring the foreign experts or technical personnel must hire at least 2 local assistants with qualifications similar to those of the experts or technical personnel and prepare annual reports of their progress;
- (vii) Foreigner who is born and residing in Egypt shall be given preference.

Additionally, the said Decree identifies the categories of employees that are exempted from the stated requirements and the activities that cannot be undertaken in Egypt by foreigners. Finally, it sets out the obligations imposed on corporate entities employing foreign employees along with the events in which the work permit may be rescinded. It is worth mentioning that Decree No. 305 of 2015 has annulled the previous Decree No. 136 of 2003.

Having stated the above, it should be noted that Egyptian courts have taken the stance that members of the board of directors of joint stock companies are not deemed as employees of the company, and accordingly are not subject to the Labor Law. Accordingly, it has been the practice of the authorities to exclude directors of joint stock companies from the 10% foreign labor ceiling set by the Labor Law when granting work permits.

## 9. Public Enterprise Law and PPPs

### The Public Enterprise Law

The Public Enterprise Law 203 of 1991 (the “**Public Enterprise Law**”) and its Executive Regulations represent the first step towards the privatization of public-sector organizations in Egypt. The Public Enterprise Law paved the way for transforming public-sector organizations and the companies they controlled, into holding companies and subsidiaries (or affiliate companies).

Under the Public Enterprise Law, private companies and individuals may subscribe to or purchase shares in public subsidiary companies. The proportion of private ownership in such companies shall be determined by the Government on a case-by-case basis. If the Government relinquishes its majority ownership in a particular company (51%) then the company will no longer be subject to the provisions of the Public Enterprise Law but shall fall under the provisions of the Companies Law.

By virtue of the Public Enterprise Law, shares of public subsidiary companies may be traded on the stock exchange – a measure that is viewed by many as substantially facilitating Egypt’s privatization program. Reforms in Egypt’s privatization laws have greatly increased local and foreign private investment in the public sector. In broad terms, the following forms of privatization are available:

- Sale of all or part of the share capital of a company (through private or public bidding);
- Sale of part of the shares on a stock exchange;
- Sale of all or part of a company’s assets (through private or public bidding); and
- Full or partial utilization of the existing facilities by way of subcontracting, leasing or management contracts.

The evaluating authority shall always give consideration to modernizing production facilities, training personnel and transferring technology.

Build, Own, Operate and Transfer (“**BOOT**”) projects have also been successful in the telecommunications sector and with other infrastructure projects. The BOOT concept was first introduced to the power sector by amendments to the Law 100 of 1996, amending Law 12 of 1976 establishing the Egyptian Electrical Authority which allowed local and foreign private investors to build power-generation plants and sell the electricity generated directly to electricity distribution companies.

Furthermore, recent amendments provide that local and foreign investors are permitted to own and operate power plants for a concession period up to a maximum of 99 years. New legislations have facilitated extending the BOOT concept to building public highways, airports, water and sewage plants and other infrastructure projects.

Developments in the telecom sector also began with the implementation of Law 19 of 1998 that divided the telecommunication services making them more efficient and mandated that ARENTO (the Egyptian National Telecommunications Authority), which was both the operating and regulatory body of Egypt’s telecommunications sector, be transformed into a joint stock company under the name of Telecom Egypt with the establishment of a new independent regulatory body by virtue of a Presidential Decree No. 101 of April 1998 which left ARENTO as the operator of the basic telecommunications services but renamed it as the National Telecommunication Regulatory Authority (the “**NTRA**”).

Under the same law, shares in Telecom Egypt may be traded provided that the majority of the share capital remains with the Government and a percentage of the shares are offered for sale to the employees. Value-added services such as the cellular and payphone services are now fully owned and

managed by private sector companies. Based on that Law, 20% of Telecom Egypt was sold in the market in what was perceived at that time as the biggest and most successful offering in the Middle East.

### Public Private Partnership

In line with the Government's strategy to promote and increase the private sector involvement in the country's economic and social development plan, the Government has taken the initiative to introduce the concept of Public Private Partnership ("**PPP**") through the promulgation of the Public Private Partnership Law 67 of 2010 (the "**PPP Law**").

In essence, this form of partnership is a way of public-service provision whereby the Government contracts with a reliable private-sector company to finance, build and operate an infrastructure project for its own use, whereby, at the end of the contract, title for such project passes on to the Government, thus increasing the stock of public assets.

In broader terms, a PPP contract is defined as an arrangement between public and private entities for delivering infrastructure services and is depicted as a source for additional budget funding, where an "administrative entity" includes ministries, public institutions and other administrative entities as determined by a ministerial decree. On the other hand, "private sector" means private companies or juristic personalities, Egyptian and otherwise.

A typical PPP agreement, besides requiring both private and public entities as its parties, should also satisfy the following conditions:

- the objective of incorporating the private entity should be to perform the service subject of the agreement;
- the term of such agreements shall not be less than five years and not exceeding thirty years; and
- the value of the agreement must exceed one hundred (100) million Egyptian pounds.

## 10. Public Tender Law

The Tenders and Bids Law 89 of 1998 (the “**Tenders & Bid Law**”) governs all the Governmental procurement of goods, services and construction from the private or public sectors subject to all the procedures and regulations therein.

The following regulations must be adhered to by the Governmental entities:

- Procurement must be concluded through a public tender or public negotiations;
- In the following cases, the Governmental Entity may recourse to a limited tender or limited negotiations, irrespective if the contractor is located in Egypt or abroad, if:
  - (i) the nature of the contract requires specific types of suppliers, contractors, consultants, technicians or other experts;
  - (ii) the items manufactured are only available from certain contractors or production locations; or
  - (iii) National security dictates confidentiality.
- Local tenders may be used where all contracts up to a value of EGP 200,000 are confined to local suppliers or contractors; or
- Direct contracting (in extraordinary cases).

There is no standard Government contract with each Ministry or Government Agency using its own form of contract pursuant to the provisions of the Law. Public tenders and negotiations must be advertised in a widely-read daily newspaper locally or abroad depending on the nature of the contract to ensure equal opportunity and free competition.

Although a government contract must be awarded on the basis of the most qualified and lowest bid, Egyptian domestic contractors shall be accorded priority if their bids do not exceed the lowest foreign bid by more than 15%.

Similarly, in a very recent legislation, the Law of Preference of Egyptian Products in Governmental Contracts (Law 5 of 2015) provides that all Governmental and Administrative Entities (including Public Companies and Public Law Enterprises) must set as a standard specification in their tenders that the Egyptian component must represent no less than 40% of the project’s estimated value. This condition applies to all Governmental procurements of goods, services and construction, except in the following cases:

- If the products meeting the Egyptian component condition do not meet the certified standard specifications;
- If the products meeting the Egyptian component condition are not available;
- If the price of the product meeting the Egyptian component condition exceeds the price of its competitive product by 15% or more; or
- If the public interest dictates otherwise and upon the issuance of a Ministerial Decree.

As aforementioned, the Egyptian component condition applies to governmental procurement agreements except the following:

- Agreements concluded by the Ministries of Defense, Interior, Military Production and General Intelligence Agencies;
- Agreements that are confidential for national security considerations (a Ministerial Decree is required); and
- Agreements of Private-Public Partnerships.

Each tender must be accompanied by the payment of a bid bond of up to 2%, which shall be refunded to unsuccessful tenderers. A final deposit of up to 5% must be paid by the winning bid within 10 days of their tender being accepted and will be released after execution of the contract and the lapse of the guarantee period.

If the final deposit is not paid, the Governmental Entity shall be entitled to cancel the contract or use the next bidder whilst recovering any losses directly incurred.

A maximum fine of up to 10% of the value of construction contracts and up to 3% of the value of supply or consultant contracts may be levied on contractors for late performance or late delivery.

The Public Tender Law permits Government entities to terminate contracts where the bidder has acted fraudulently, declared bankruptcy or induced Government officials to act contrary to the provisions of the Public Tender Law.

Tenders may be rejected upon receipt due to:

- non compliance with the technical specifications;
- If only one tender was submitted; or
- If the lowest tendered price exceeds the estimated value of the contract.

A contract may be terminated by the Government entity at any time if the contracting party defaults (e.g. material breach) any losses incurred may be recovered.

In cases of late or non performance the concept of force majeure is recognized in accordance with principles of the Egyptian Civil Code under which certain types of hindrances must be clearly stated in the contract if they are to be considered force majeure, e.g. the unavailability of materials, strikes and shipping delays.

## 11. Sale of Goods

### 11.1 The Vienna Convention

Egypt, along with many trading nations, is party to the United Nations Convention on Contracts for the International Sale of Goods, commonly known as the Vienna Convention. The Vienna Convention is based on elements of both common and civil law, and regulates contractual terms for international transactions for the sale of goods between nationals or residents of member States.

The Vienna Convention rules governing contracts and contract interpretation differ from local rules. Importers and exporters from member States that are party to the Vienna Convention must review their sales contracts carefully to ensure that the Convention's rules do not conflict with the intentions of the party. If they do, the parties can opt out of the application of the Vienna Convention by an express provision in their agreement.

### 11.2 Implied Terms In Contracts for the Sale of Goods

The Egyptian Civil Code implies a number of terms related to the quality of goods into contracts for the sale of goods, such as the following:

- A seller is under the obligation to deliver the product in the same condition it was in at the time of purchase (Article 431).
- Where the contract is silent on the terms and conditions and the Law does not envisage the parties' situation, then customs and trade practices will be binding upon the parties.
- A seller is liable to the purchaser if at the time of delivery, the product does not possess the qualities that the seller guaranteed or if it has a defect that diminishes its value or usefulness for the purpose intended or as indicated in the parties' contract or from the nature or from the destined use of the product (Article 447).

A seller is required to reveal and warrant any hidden defects in its product (Article 458).

### 11.3 Import Regulations

Import regulations stipulate that goods may be freely imported and exported. Several amendments have been made to the import regulations over recent years, especially with respect to regulatory issues, like the modification of the rate of some imported items and services provided by the General Authority of Import and Export Supervision and the labeling of imported goods. Significantly, in an effort to reduce imports by \$20 billion during 2016 and to boost local production, Presidential Decree No. 25 of 2016 raised tariffs, by up to forty percent (40%), on hundreds of imported goods.

The Import Registration Law 121 of 1982 requires that an importer must be registered in the Register of Importers and hold Egyptian nationality, in addition to a number of other conditions such as the requirement of a minimum capital and past commercial experience. However, it should be noted that companies with foreign participation may only conduct export activities and not importation.

## 12. Consumer Protection

For the first time in 2006, Law No. 67 of 2006 (“**Consumer Protection Law**”) and its Executive Regulations issued by Ministerial Decree No. 886 of 2006 (the “**Executive Regulations**”) were promulgated to establish the legal framework for consumer protection in Egypt, extending a protection against fraud and ensuring transparency in selling goods while observing quality. The Consumer Protection Law establishes the Consumer Protection Agency (the “**CPA**”), which is mandated with ensuring the implementation of consumer protection in accordance with the provisions of the Consumer Protection Law.

### Rights of the Consumer

- (a) The Consumer Protection Law guarantees in Article 2 the freedom to all in exercising economic activities, and prohibits any person from concluding any agreement or engaging in any activity which may prejudice the basic rights of the consumer, especially the following, among others:
- (b) the right to health and safety upon the normal use of the products;
- (c) the right to obtain correct information and data about the products that are bought, or used by, or offered to the consumer;
- (d) the right to free selection of products complying with the quality conditions in accordance with the standards;
- (e) the right to bring legal actions for any matter related to the violation of a consumer’s rights, or prejudice or restriction to such rights, with expeditious and easy procedures at no cost; and
- (f) the right to obtain a fair compensation for the prejudice caused to the consumer or the consumer’s money as a result of purchasing or using the products or receipt of the services.

The Consumer Protection Law further guarantees the consumer’s right to obtain correct information and data concerning the products. Suppliers and advertisers are obliged to provide the consumer with correct information regarding the nature and characteristics of the products offered to the consumer, and avoid any misleading information that could lead to the confusion of the consumer. Information is deemed to be misleading, specifically when such information is related to, among others, the nature and composition of goods, source, weight, size, production date and expiry dates of the product, the producer of the goods or the provider of the service, certification marks, trademarks, statements and logos.

Suppliers of used goods are also obliged to provide sufficient information on the status of such products and how far they may need repair before usage in a manner that does not lead to the creation of a false or deceptive impression, or confusion or mistake on the part of the consumer, and that meets health and safety requirements.

Moreover, the Consumer Protection Law entitles the consumer without prejudice to any guarantees, legal or contractual conditions that are more favorable to the consumer, for a 14-day period from the date of purchase, to exchange the purchased product or claim refund in case the product is defective, does not conform to its specifications or is incompatible with the specific purpose for which it was purchased.

Furthermore, the Consumer Protection Law provides that any condition set forth in a contract or document shall be void if such condition is for the purpose of exempting the supplier or service provider from any of its obligations as prescribed in the Consumer Protection Law. These obligations shall include, without limitation, the warranty obligation under the Consumer Protection Law.

## Obligations of the Producer, Importer and Service Provider

The Consumer Protection Law prescribes that the producer or the importer, as the case may be, shall label the commodities indicating the specifications required under Egyptian standards, any other law, or the Executive Regulations. The applicable standard specifications are:

1. name of the good;
2. country of origin;
3. name of the producer, or the importer in addition to his/her trade name, address, and trademark, if any;
4. production and expiry dates;
5. conditions of distribution, storage and use; and
6. kinds, features, dimensions, weighs and ingredients.

Such label shall be written in the Arabic language, in a legible and clear form and in a manner that achieves the purpose of placing such label, and in a manner in accordance with the nature of the commodity, the way it is advertised, exhibited or offered for sale. Such data must be written in a way that would be hard to remove, whether on the good itself, or if not applicable, on labels attached to the good or the container.

In the cases where the use of the product may harm the consumer's health and safety, the producer shall attach a guideline indicating the appropriate way of using the product, avoiding and treating –if any- any potential harms.

As for service providers, they shall clearly indicate information about the services being offered, including its price, specifications and characteristics.

## Obligations of the Supplier and Advertiser

Under the Consumer Protection Law, suppliers are obliged to state all the data identifying their character on all correspondence, documents and other written instruments that the supplier issues in the course of dealing or contracting with the consumer, including all electronic documents, especially the supplier's name, surname, address, chosen domicile in Egypt (if foreign), phone numbers, commercial registration and trademarks, if any.

Further, the supplier is obliged to provide the consumer, upon his/her request, with an invoice indicating the transaction made with the consumer concerning the product, including in particular:

- (a) name of the supplier and his/her commercial store;
- (b) date of the contract concerning the product;
- (c) product price;
- (d) product kind, nature and substantial features;
- (e) product conditions, if the product is used;
- (f) product quantity (unit number and weight);
- (g) delivery date; and
- (h) signature and seal of the supplier or his/her legal representative.

In case the supplier discovers or becomes aware of the existence of a defect in a product that may endanger the health and safety of the consumer, the supplier shall inform the CPA of this defect and the potential damages that it may cause within seven (7) days from the date he discover. Such notification shall be made by the supplier or his/her representative through a proxy on the form prepared for that purpose, particularly including the following:

- (a) The notifier's name, capacity, surname, nationality, address and chosen domicile in Egypt, or the name, surname, address of the representative thereof if he/she is the one who made the notification together with attaching the authorization document;
- (b) The product subject of the notification;
- (c) The producer's name and address;
- (d) The importer's name and address if the product is imported;
- (e) The date when the notifier discovers or becomes aware of the defect, subject of the notification;
- (f) The accurate technical identification of the defect;
- (g) The potential damages that may occur as a result of the defect subject of the notification, whilst stating how to avoid the damage or address the effects resulting therefrom;
- (h) The procedures and means provided by the supplier to enable consumers, upon request, to replace, repair or return the product and reclaiming their money, all without any further expenses.
- (i) Any other data the supplier believes necessary to be included in the notification.

The notification shall be registered in a special register. The notifier shall be given a receipt including the number, date and time of recording the notification.

The supplier shall suspend the production of or the dealing in such product in all its forms, and take all necessary actions to suspend its circulation and marketing, and to warn the consumer not to use the product, either by publication in daily newspapers or by directly contacting the consumers if the nature of the product circulation so allows. In such cases, and upon the consumer's request, the supplier shall replace the product, repair the defect or accept returning of the product and pay back its price at no additional cost.

## Violations

Without prejudice to any more severe sanctions provided for under any other law and without prejudice to the consumer's right to compensation, the Consumer Protection Law provides that violations of the abovementioned obligations shall be penalized with a fee not less than five thousand and not more than one hundred thousand Egyptian pounds. The value of such fine shall be doubled if the violation is repeated.

In case the court determines that the person in charge of the actual management of the violating entity was in fact aware of such violations, or that the breach of the duties required by the management contributed to such criminal offence, the person in charge shall be subject to the same penalty. The legal entity shall be jointly liable to pay the financial penalties and the compensation if the violation has been committed by one of its workers in the name or in the interest of such entity.

Under Law No. 120 of 2008, which established the Economic Courts, cases involving violations of the Consumer Protection Law fall within the exclusive jurisdiction of the Economic Courts?

## 13. Anti-Dumping & Competition Law

### 13.1 Antidumping

In line with its obligations under the World Trade Organization (WTO) of which Egypt is member, in 1998 Egypt introduced Law 161 of 1998 Concerning the Protection of the National Economy from the Injurious Effects of Unfair Trade Practices in International Trade (the “**Anti-Dumping Law**”). The Anti-Dumping Law granted the Ministry of Trade and Industry the powers to protect Egypt’s national economy from the consequences of detrimental international trade practices, namely: subsidies, dumping and unjustified increases in the importation of goods. Its responsibilities include providing studies, investigations and collection of all other necessary data required to evidence the abovementioned types of incidents. The Anti-Dumping Law has already led to a series of decisions by the Ministry of Trade and Industry by which anti-dumping measures have been imposed and penalties collected.

The Ministry of Trade and Industry is also charged with providing technical aid to local producers facing charges of dumping from WTO member countries and has the authority to issue decisions for countervailing measures to confront such incidents.

Applicants and those public authorities such as The Ministry of Trade and Industry, which are responsible for investigating a complaint, must maintain the confidentiality of the information provided to them by the parties as evidence. Violation of the confidentiality obligation may result in a fine of 10,000-50,000 Egyptian Pounds.

It is a condition precedent to initiating investigations, that complaints may only be submitted by local producers whose total production represents at least 25% of the total local production of the product concerned and supported by domestic producers whose total production represents more than 50% of the total production of the concerned product.

As an exception to the above mentioned, the investigating authority may, after submitting the complaint to an advisory committee and obtaining the approval of Minister of Trade and Industry, initiate the investigation procedures without receiving a written request from the local industry, provided that the investigation authority possesses available evidence of the existence of dumping, subsidization or an unjustified increase of imports, as well as the occurrence of damages as a consequence thereof, in addition to the establishment of a causal relationship between the detrimental behavior and the damages incurred by the local industry.

### 13.2 Law on the Protection of Competition & the Prohibition of Monopolistic Practices

During the course of the trend towards adopting a liberal market economy policy focusing on free and efficient markets, Egypt has introduced Law 3 of 2005 Concerning the Protection of Competition and Prohibition of Monopolistic Practices and the Executive Regulations (the “**Competition Law**”) with the purpose of regulating the trade practices among the different players in the Egyptian market.

The Competition Law established and regulated a competent specialized authority “The Egyptian Competition Authority for the Protection of Competition and Prohibition of Monopolistic Practices” (“**ECA**”), which has the authority to receive notifications, inspect, investigate and collect the necessary evidence with respect to any complaint or notification of any anti-competitive behavior. Law 56 of 2014 amended the Competition Law and increased the powers of the ECA in two substantial ways. First, post-amendment, the ECA has the power, on its own initiative or upon the request of ministries or authorities, to opine on any legislation, policies or decrees related to anti-competitive behavior and imposes an obligation upon relevant authorities to seek the opinion of the ECA on draft laws and regulations related to competition. Second, the 2014 amendments vested the

power of deciding on the initiation of criminal proceedings against violators of the Competition Law in the Chairperson of the Board of Directors of the ECA but subject to the approval of the majority of the member of the Board of Directors—this power was previously vested in the Prime Minister or someone delegated by him. Additionally, the Chairperson of the ECA, with majority consent, may amicably settle violations of the Competition Law.

The Competition Law defines the term “market” by reference to either, the relevant products or the geographical scope. Relevant Products are defined as those goods, which can be used interchangeably, and which may be determined as follows:

1. The similarity of products in their usage;
2. The possibility that purchasers may interchange one product with another as a result of price changes or any other competitive factors;
3. Whether sellers make their commercial decisions on the basis of the purchasers transfer from one product to another as a result of price change in any other competitive factors;
4. Facilities by which the persons can enter the product market; and
5. The availability of alternative products to the consumer.

#### **Abuse of Dominance:**

Under the Competition Law, a party dominates the market if three conditions are satisfied: (i) the party’s share in the relevant market exceeds twenty-five percent, (ii) the party has the ability to influence market prices or the volume of products available for sale, and (iii) that the party’s competitors lack the ability to limit the former’s influence on the market.

The Competition Law prohibits whoever dominates the market from committing acts such as those which lead to the complete or partial stopping of the production or distribution process of a product for a certain period or period of time, or limit competitors’ ability to stay in the market or new competitors from entering the market, or making the signing of agreements related to products conditional upon the acceptance of certain obligations, selling products at prices less than their production costs, or prohibiting those in different stages of the production chain from dealing with competitors.

#### **Prohibition of Horizontal Agreements:**

The Competition Law prohibits competitors in any market from concluding agreements or entering into contracts (i.e. horizontal arrangements) to control prices of products, divide the market, limit the process of producing, distributing or marketing products, and other anti-competitive acts. In its initial form, the Competition Law considered all such horizontal agreements as violation. Law No. 56 of 2014 (“The 2014 Law”) gave the ECA the power, when request by a concerned party, to exempt some such agreements from this pre-determined prohibition if such agreements aim at achieving economic efficiency and are proven to benefit consumers in a manner that overshadows the agreements’ anti-competition impact. The criteria upon which the ECA may exempt some agreements from prohibition are yet to be determined in the Executive Regulations of the Law.

#### **Introducing Leniency into the Law:**

The original Egyptian Competition Law, as enacted in 2005, did not contain any provisions providing for leniency for cooperation in competition investigations. Law No. 193 of 2008 amended the Competition Law by adding Article 26 to the law and introducing a partial immunity regime whereby a court may exempt violators, of Articles 6 and/or 7, of up to 50% of the sanctions, if they take the initiative to report to the ECA violations of the Competition Law, and who submit supporting

evidence, or to such whistle-blowers whom the court finds to have contributed to the disclosing and establishing of the elements of the offence at any of its stages. Yet, the 2008 amendment was short-lived and Article 26, providing for leniency, was re-amended in 2014. The Competition Law in its current form, as amended by Law No. 56 of 2014, provides for complete immunity (i.e. 100%) for the first whistle-blower who discloses to the ECA any anti-competitive behavior violating Article 6 of the Law (prohibiting horizontal agreements); such immunity is conditional upon the submission of sufficient evidence to prove the relevant violation of Article 6. The remaining violators may be exempt from up to 50% of the fine if the court deems that they have provided information or were of aid in the process of revealing the violation during the investigations or at the time of trial. The scope of the immunity regime has been limited to violations of Article 6 alone.

#### **Fines for Breaching the Competition Law:**

Following its amendment by Law No. 56 of 2014, the Competition Law devises a fining regime based on the type of violation in question. For violations related to horizontal agreements (cartel agreements), a fine of two to twelve percent of the revenue of the products throughout the period of the relevant violation is imposed; in the event that such an amount cannot be calculated, the fine imposed shall not be less than half a million and shall not exceed five-hundred million Egyptian Pounds. For violations related to vertical agreements (those agreements between a competitor in the market and their suppliers or clientele) and violations committed by the party dominating a certain market, the fine shall not be less than one percent and shall not exceed ten percent of the revenue of the relevant products throughout the period of violation; where such a sum cannot be ascertained, the fine shall be a minimum of one-hundred thousand and three-hundred million Egyptian Pounds.

## 14. Intellectual Property Law

In 2002, the new Intellectual Property Rights Law 82 of 2002 (the “**IP Law**”) was promulgated in addition to its Executive Regulations issued by Prime Ministerial Decrees No. 1366 of 2003 and No. 497 of 2005 (the “**Regulations**”), bringing the Egyptian IP regime into compliance with global intellectual property standards as set out by the Agreement on Trade-Related Aspects of Intellectual Property Rights (the “**TRIPS Agreement**”). The IP Law is divided into four books. Book one covers patents, utility models, layout-designs for integrated circuits and undisclosed information; Book two deals with trademarks, trade names, geographical indicators and industrial designs; Book three covers copyrights and related rights; and Book four deals with plant varieties. In the following, we present a brief overview of the rules governing the protection of patents, undisclosed information, industrial designs, trademarks and copyrights under the IP Law along with the main International Conventions relating to intellectual property to which Egypt is a signatory.

### 14.1 Patents & Undisclosed Information

Under the IP Law, patents are granted to any industrially applicable invention that is new and innovative. Notwithstanding the international conventions in force in Egypt, any natural person or legal entity, whether Egyptian or foreign, belonging to, domiciled or active in a country or entity that is a member of the WTO or that applies reciprocity to Egypt, shall have the right to apply for a patent at the Egyptian Patent Office. The application to the Egyptian Patent Office requires full disclosure of the invention, including a description of the best possible method of execution by a person of expertise, which shall remain confidential during the period of the patent.

On filing a patent application, a fee shall be paid, in addition to paying an annual fee from the second year until expiry of the patent protection period.

Owners of foreign patents may apply for Egyptian patent registration within one year from the date of submitting the patent application in the country of origin, otherwise they shall be deemed to have waived their right in patent protection in Egypt. Egypt is also a signatory to the Patent Cooperation Treaty (“**PCT**”), which allows filing international patent applications in order to protect an invention simultaneously in a large number of countries signatories to PCT.

Inventors may obtain patent protection for twenty (20) years from the date of filing the application with the Egyptian Patent Office. The patent protection covers new industrial products, new industrial processes or a new application of a known industrial process. The patent-holder has the exclusive right to exploit the invention and ownership of a patent may be transferred, fully or partially, with or without compensation. The patent may also be pledged or assigned after recording such transfer, pledge, assignment or license in the patent register with the Egyptian Patent Office.

Granting patents excludes, among others, any invention, which is contrary to public order or morality or harms the environment, human, animal or plant life and health. Patents shall also not be granted to discoveries, scientific theories, mathematical methods or programs and schemes.

The patent-holder must exploit the patent or shall be subject to compulsory licensing for failure to do so in accordance with the provisions of the IP Law. However, after twenty (20) years and applicable protection renewal period will be invalid and, the patent-holder’s exclusive rights end and the invention shall enter into the public domain.

The IP Law provides protection for undisclosed information which is confidential and derives commercial value from such confidentiality, and which depends on effective measures taken by the natural person or legal entity in control of it to keep it confidential.

## 14.2 Industrial Designs

The IP Law further provides protection for industrial designs, which are identified as any composition of lines or any three-dimensional form whether or not associated with colors. The composition or form of the industrial design must exhibit a special appearance of novelty and must be industrially applicable.

As with patents, any natural person or legal entity, whether Egyptian or foreign, belonging to, domiciled or active in a country or an entity that is a member of the World Trade Organization (the “WTO”) or that applies reciprocity to Egypt shall have the right to file an application and register an industrial design in Egypt. Filing applications and registration shall be maintained with the Egyptian Trade Registry Department, in accordance with the procedures set out in the Regulations.

Industrial designs are granted protection for ten (10) years from the date of filing the registration application, renewable in the manner prescribed by the Regulations for a period of five (5) years.

The registration of an industrial design confers the right to prohibit third parties from the use, manufacture, sale or importation of products bearing the registered industrial design. This exclusive right shall terminate once the owner of the design markets such products in any state or licenses third parties to do so. The ownership of an industrial design may also be transferred, pledged or assigned, after recording such transfer, pledge or assignment in the Industrial Design Register with the Egyptian Trade Registry Department.

## 14.3 Trademarks

A Trademark is defined under the IP Law as being any sign recognizable by sight that is used to distinguish products or services, which particularly include names represented in a distinctive manner, signatures, words, letters, numerals, designs, symbols, stamps, seals, drawings or the like, or the combination of any of these elements.

The Commercial Registration Department is the competent authority for the registration of trademarks in accordance with the provisions of the IP Law and the procedures set out in the Regulations.

Trademark registration owners enjoy protection for ten (10) years from the date of application, renewable for an identical period upon the request of its owner. The person who has registered a trademark and has made use of it for a period of five (5) years from the date of its registration, shall be deemed the owner of the trademark unless a prior user of the mark challenges the validity of its registration within the said five (5) years, and proves precedence of use.

Every natural or legal person, whether Egyptian or foreigner, connected with or having his actual and effective place of business in a member country or entity of the WTO, or treating Egypt on the basis of reciprocity, shall have the right to apply for registration of a trademark before the Commercial Registration Department. Owners of well-known trademarks, worldwide and in Egypt, shall have the right to enjoy protection conferred by the IP Law even if such mark is not registered in Egypt.

It is worthy of mention that Egypt is a signatory of the Madrid Agreement Concerning the International Registration of Marks since 1952 and the thereto related Madrid Protocol since September 2009, which allows trademarks in multiple countries to be registered through one central application with the International Office of WIPO, provided that every country is a party to the Madrid Agreement or Protocol and provided that Egypt is listed on the international registration certificate by the trademark owner as one of the contracting states in which protection is desired.

The ownership of a mark may be transferred, pledged or placed under attachment independently from the commercial enterprise related thereto, subject to the provisions of the Regulations, and provided this transfer, pledge or disposal is registered in the trademark registry with the Commercial

Registration Department. The trademark owner may further license one or more natural persons or legal entities to use his mark on all or some of the products for which it is registered in accordance with the provisions of the IP Law and its Regulations.

### Counterfeit Trademark Infringements

The IP Law provides for civil and criminal sanctions against infringers of protected trademarks, whereby Article 113 imposes a penalty on any person who intentionally uses a forged or imitated trademark and/or places a trademark owned by others on his products. That penalty consists of imprisonment for a period not less than 2 (two) months and not more than 3 (three) years and/or a fine of not less than LE 5,000 and not exceeding LE 20,000.

In addition to those penalties referred to above, the court may also issue a ruling ordering confiscation of all “infringing” products and/or closure of the infringer’s establishment which was used in committing the said infringement for a period not exceeding 6 (six) months.

Also, the IP Law allows the competent court, upon the request of the interested party, to issue an order to apply any precautionary measures such as evidencing infringements of the protected right, carrying out a detailed survey and description of machines and equipment that are used or have been used in committing the crime, and the products and goods or names of stores, packaging, invoices, correspondences, advertisements, etc. on which the infringing trademark, reference or geographic symbol was placed, as well as imported goods upon their arrival, and the attachments of such items.

Additionally, trademark infringements are penalized under Article 66 of the Egyptian Commercial Code No. 17 of 1999 (the “**Commercial Code**”) as acts of unfair competition. The Commercial Code stipulates that all actions in violation of the customs and norms of commercial dealings shall be deemed unfair competition. Acts of unfair competition particularly include, among others, acts of infringement of trade marks, commercial names and patents. The Commercial Code obliges committers of unfair competition to compensate any harm resulting from such acts. In this event, the court is entitled to issue a decision for compensation, in addition to ordering the removal of such harm.

## 14.4 Copyrights

Copyright protection includes, among other things, architectural designs, speeches, theatrical productions, musical works, software, photographic and cinematography works, maps, and works broadcasted on television or radio.

Protection of copyright, in the case of books, extends for fifty (50) years from the death of an author. Authors are entitled to transfer their rights through a detailed written notice. In the case of a legal entity, the protection period begins on the date of first publication. In certain circumstances in the field of photographic and cinematography works, the protection ends fifteen (15) years from the date of first publication.

## 14.5 International Conventions

Egypt is a signatory to, among others, the following international conventions in relation to IP:

1. Paris Convention;
2. Patent Co-operation Treaty;
3. Madrid Convention of 1954;
4. Berne Convention of 1886 (with a reservation to Article 33 concerning the jurisdiction of the International Court of Justice); and

5. 1971 Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms.

## 15. Industrial Sectors

### 15.1 Oil & Gas Sector

The Egyptian Constitution states that all minerals, including liquid, gaseous, and solid resources are owned by the state; hereby, any rights related to the exploitation of such resources may be granted only in the form of concession agreements from the state. Oil and gas concessions are granted pursuant to Law 66 of 1953 Concerning Mines and Quarries as amended on the basis of production sharing arrangements between the Egyptian Government and the Egyptian General Petroleum Corporation (“EGPC”), the state-owned oil and gas authority formed by Law 20 of 1976 Establishing the Egyptian General Petroleum Company as amended and an oil exploration company (usually referred to as the contractor). Each concession agreement is enacted by a special law. Under the concession agreements, the contractor undertakes to bear all exploration costs.

#### Exploration

Concession agreements ordinarily grant the contractor an initial exploration period ranging from two to four years, which can be extended at the contractor’s option for up to two shorter periods. The initial exploration period and the extension periods are each referred to as phases. The concession agreement automatically terminates at the end of the exploration period unless there has been a commercial discovery of oil or gas as defined in the concession agreement. The concession agreement may also be extended for a maximum of six months beyond the termination date at the contractor’s request to enable the contractor to complete drilling or testing a well that had been started during the exploration period.

#### Minimum Work & Finance Obligations

A minimum of one exploration well must be drilled in each phase. Wells drilled in excess of the minimum work obligation in one phase can be applied to the minimum work obligations for the next phase. Usually concession agreements specify the number of wells to be drilled in each phase.

The contractor must provide all necessary financing during the exploration stage in freely convertible currency. The contractor may buy Egyptian pounds at the official rate of exchange. The contractor will be required to spend such amounts during each phase of the exploration period. If the contractor fails to spend such minimum amount, it has to pay the shortfall to EGPC upon the end of the concession.

Usually the contractor is required to post a bank guarantee in favor of EGPC to ensure payment of any shortfall in its minimum exploration expenditures, which is reduced by the amounts expended by the contractor. Amounts spent by the contractor are recoverable in the event of a commercial discovery from cost recovery crude oil. If no discovery is made, the contractor cannot claim any spent amounts from EGPC. Minimum financial obligations differ from one concession to another and from one phase to another.

#### Area Relinquishment

Concession agreements provide for both voluntary and mandatory relinquishment in parts of the area covered by the concession agreement in which there has been no commercial discovery. At the end of the initial phase of the exploration period, the contractor is required to relinquish a part of the area that has not been converted into a development lease by reason of a commercial discovery. The relinquishment percentages in a concession agreement will be based on the proposal made by the contractor in its bid. If the exploration period has been extended, a further relinquishment takes place at the end of the second phase and the balance of the area is relinquished at the end of the third phase. The contractor may voluntarily relinquish all or any part of the area at any time, provided that it has complied with its expenditure obligations during the exploration period.

## Commercial Operations

Once a commercial discovery is made, the contractor shall be awarded a development lease between 20 and 30 years from the date of the commercial discovery. Development leases are usually for 20 years with a 5-year extension. The approval of the Minister of Petroleum is sufficient to convert an area in which a commercial discovery was made into a development lease without the need for any additional legal instrument.

An operating company must be established with a minimal share capital which is owned in equally by EGPC and the contractor. The operating company must be liquidated upon the termination or expiry of the concession agreement.

The statutes of the operating company will be contained in an appendix to the concession agreement. Concession agreements provide that the operating company shall automatically come into effect 30 days from the date of the commercial discovery pursuant to the terms of the attached statutes, without the need for any further legal procedures. The operating company is completely exempt from the provisions of the Companies Law and therefore it is governed primarily by the provisions of its statutes, the bylaws adopted by shareholders and the provisions of the concession agreement. Despite the EGPC shareholding, operating companies are considered private sector entities. The contractor is responsible for financing the activities of the operating company which must furnish the contractor each month with a written estimate of its cash requirements in US dollars.

## Costs & Production Recovery

The contractor will recover all exploration costs out of a certain percentage of the oil recovered from the concession area, referred to as “**Cost Recovery Crude Oil**” which will form part of the contractor’s bid. The contractor will take and dispose of all Cost Recovery Crude Oil. If the value of this oil exceeds actual recoverable expenditures, the contractor will be deemed to have purchased such excess oil and shall pay EGPC for its value at the prevailing market price for crude oil. The market price for oil applicable for each six month period is established under concession agreements to be based on the weighted average price for comparable quantities of oil on credit terms in freely convertible currency, FOB point of export, as sold to third parties on an arm’s length basis by EGPC or the contractor, whichever price is higher. Cost Recovery Crude Oil can equal up to 40% of the crude oil produced. The principles relating to cost recovery of oil apply to gas but with the difference that all costs and expenses relating to the exploration and development of gas are recoverable out of 50% of all gas, gas condensate, gas products and/or gas derivatives produced and saved from all development leases (excluding the gas used in petroleum operations). This percentage can be increased to 60% for one or more years if the exploration costs warrant it, provided that the total cost recovery gas during the first 12 years does not exceed 50% of the total production for that period. The price of gas is determined based on a formula contained in the concession agreement.

Crude oil, other than Cost Recovery Crude Oil is to be divided between EGPC and the contractor according to the terms of the concession agreement. Concession agreements usually provide EGPC with between 80% and 88% of such oil and the contractor with the remaining 12% to 20%. The allocation for gas ranges between 70% to 75% for EGPC and 25% to 30% for the contractor.

## Royalties

Some 10% of the total quantity of petroleum produced is paid to the Egyptian Government in kind or in cash by EGPC (not the contractor) from EGPC’s share of petroleum under the concession agreement.

## Taxation

The contractor is subject to corporate income tax, which for petroleum production companies is 40.55% pursuant to Tax Law 91 of 2005. The contractor is required to keep books and records and file the required tax returns. The concession agreement provides that EGPC’s share of the oil includes

a quantity of crude equal to the contractor's tax liability. EGPC pays the contractor's taxes out of the proceeds of this quantity. All taxes paid by EGPC on behalf of the contractor are considered income to the contractor. The contractor's personnel are subject to personal income tax on their salaries.

Taxation for activities related to the refining of crude oil and the selling or distribution of natural gas products is set at 22.5 % as per Law No. 96 of 2015 which amended some provisions of the Tax Law No. 91 of 2005.

### Custom Duties

Wide-ranging customs exemptions are granted to parties to a concession agreement and to foreign employees working for the contractor or the operating company. Equipment (other than passenger vehicles) required by the contractor and its subcontractors for their operations under the concession agreement shall be exempt from custom duties but must be re-exported after the completion or termination of the concession agreement. If they are not then re-exported custom duties will have to be paid.

### Title to Assets

All assets acquired and owned by a contractor in connection with its or the operating company's operations under a concession agreement become the property of EGPC upon or before expiry or termination of the concession agreement.

## 15.2 Mineral Resources Law

Law No. 198 of 2014 ("**The Mining Resources Law**"), promulgated by a Presidential Decree, replaces Law No. 86 of 1956 Concerning Mining and Quarrying. The Law, which does not apply to petroleum or natural gas, applies to mines, quarries, salt beds, and ores recovered through mining. The Mining Resources Law endows The Egyptian Mineral Resources Authority (EMRA) with the supervisory and regulatory powers, including technical supervision over the processes of mineral-extraction, related to the exploration and exploitation of mines. EMRA shall, also, exercise its regulatory and supervisory roles in coordination with the governorates within which the relevant mines and salt beds exist. EMRA may also undertake exploration and exploitation activities.

Subject to the approval of the competent minister or governor and in accordance with the conditions set in the Executive Regulations of the Mineral Resources Law, the law vests in EMRA or the competent governorate, the power to issue licenses in connection with mining activities. Two main types of licenses are provided for under the Mining Resources Law: (i) licenses related to exploration activities and (ii) licenses related to production activities. Such exploration and production licenses do not include those relating to areas exceeding 16 km<sup>2</sup> nor precious stones and minerals—special laws shall organize such activities. Licenses or the exploration of mines shall be for two years and may be renewed once for a similar period. The term of production licenses for mines and quarries is now set at a maximum of 15 years. The law does not allow for the transfer of exploration or production licenses to third parties without the prior approval of the competent approvals. In the event that the Mineral Resources Law or the terms of the license are breached by the licensee, the licenses may be revoked.

While the Executive Regulations of the Law shall set the rent rates to be paid by licensees, the Law stipulates that a royalty of a minimum of 5% of annual production proceeds is to be paid to EMRA and 1% of the annual production value shall be given to the relevant governorate for development purposes.

## 15.3 Telecommunication Sector

The Egyptian Telecommunications Law 10 of 2003 (the “**Telecommunication Law**”) regulates all types of telecommunications in Egypt. The term telecommunications is defined to include any means for sending or receiving codes, signals, messages, writings, photos or voices irrespective of their nature or whether the telecommunication is facilitated by wire or wireless means. The Telecommunication Law has established the National Telecommunication Regulatory Authority (NTRA) which replaced the Wire and Wireless Communications Authority (previously established by virtue of Presidential Decree No. 101 of 1998).

### National Telecommunication Regulatory Authority (NTRA)

NTRA is the competent authority to license the operation of any means of telecommunication. Furthermore, the NTRA is the competent authority for drawing the guidelines for the operators and providers of telecommunication services in Egypt. Pursuant to Decree No. 3295 of 2009 issued by the Ministry of Justice, certain personnel of the NTRA are given criminal prosecution authority in respect of criminal violations of the Telecommunications Law.

### Licenses & Permits

The provision of telecommunication services and the operations of telecommunication networks require licensing. The licenses are obtained following the submission of the relevant application forms which are currently submitted before the NTRA. These forms evaluate the technical, economic and legal aspects of providing the proposed service. The NTRA shall give its approval within a period not exceeding 90 days from the date of submitting any additional documents that may be required by the NTRA. The license shall determine the obligations of the licensee. It is worth mentioning that the licensee may not assign his license to a third party unless prior written consent is obtained from the NTRA.

Decree No. 258 of 2003 issued by the Ministry of Telecommunications and Information (currently the Ministry of Telecommunications and Information Technology) grants the sole authority of issuing frequencies and wireless equipment to the NTRA and sets forth the regulations for the issuing of such licenses.

Moreover, the importation, manufacturing, assembling, possession or usage of certain telecommunication equipment may also require the prior receipt of a special license from the NTRA, the issuance of which is conditional upon the consent of the Armed Forces, the National Security Authority and the Ministry of Interior.

Pursuant to Decree No. 34 of 2009 issued by the Ministry of Defense and Military Production, systems, devices and equipment used for determining direction (GPRS) are excluded from the restriction on importation, manufacturing assembly, possession or usage of communication equipment.

### National Security

All operators and providers are requested to grant regular access to their licensed telecommunication networks to the Egyptian enforcement bodies and provide all technical potentials including equipment, systems, software and communication, which enable the Armed Forces and the National Security entities to exercise their powers under the law. Furthermore, the competent authorities shall have the power to subject all telecommunication services and networks of any operator or service provider to their administration in case of natural or environmental disasters or declaration of a national mobilization pursuant to the Public Mobilization Law 87 of 1960.

Decree No. 2259 of 2014, issued by the Prime Minister, established the High Council for Cyber Security (“**The Council**”). The Council is mandated with the setting, implementation, and development of a national strategy for countering cyber threats. The Council is to be headed by the

Minister of Telecommunications and Information Technology and it shall be constituted by members of a number of ministries including the Ministries of Defense, Foreign Affairs, Interior, as well as the Egyptian Intelligence Services, the Central Bank of Egypt, and three experts to be appointed by the Prime Minister upon the Council's recommendation.

## Penalties & Dispute Resolution

The Telecommunication Law criminalizes certain activities with regards to telecommunications; Article 72 imposes a penalty of imprisonment and fines for certain acts carried out without previously acquiring a license from the NTRA, including transferring international phone calls by any means. Decree No. 464 of 2015, issued by the Ministry of Telecommunications and Information Technology, issued NTRA's List of Penalties for those Licensed or Permitted to Work in the Field of Telecommunications.

The Decree of the Ministry of Telecommunications and Information Technology No. 128 of 2006 grants authority to and sets the regulations for the NTRA to adjudicate disputes arising from interconnection agreements executed between licensees authorized to build telecommunications networks or provide telecommunications services. The NTRA is also authorized to settle disputes between licensees authorized to build telecommunications networks or provide telecommunications services and other licensees wishing to use such networks or their components thereof.

## 15.4 Insurance Sector

### General Overview

Insurance and reinsurance activities are regulated by the Insurance Law 10 of 1981 and its Executive Regulations (the "**Insurance Law**"). The Egyptian Financial Supervisory Authority ("**EFSA**"), the successor of the Egyptian Insurance Supervisory Authority is authorized to supervise and monitor the insurance activities established and undertaken in Egypt.

Without prejudice to certain exceptions that require the approval of EFSA, it is prohibited for natural and legal persons to directly insure their properties or liabilities located in Egypt unless with an insurance company governed by the Insurance Law. This does not apply to life insurance.

Egyptian insurance companies may only perform one of the two types of insurance as specified under the Insurance Law. i.e. personal insurance and liability & property insurance, as follows:

- **Personal Insurance:**
  - Life insurance;
  - Capital formation insurance; and
  - Personal accidents and long-term health insurance.
- **Liability & Property Insurance:**
  - Fire and related liabilities;
  - Land, river, air and maritime transportation and related liabilities;
  - Vessel hulls, equipment and machinery and related liabilities;
  - Aircraft hull, equipment and spare parts and related liabilities;
  - Car insurance and related liabilities;

- Engineering and related liabilities;
- Petroleum;
- All risk insurance; and
- Any other type of insurance determined by EFSA from time-to-time.

Law No. 98 of 2015 amended Article 24 of the Insurance Law dealing with governmental insurance funds. The Article provides that governmental insurance funds are the funds which deal with insurance over dangers which insurance companies do not usually accept or those which the government undertakes to cover. Such funds are to be established by the Prime Minister and the competent minister is to issue a decree determining the conditions and prices of such insurance processes.

### Establishment of Insurance & Re-insurance Companies:

Insurance or reinsurance companies operating in Egypt shall be established in the form of joint stock companies. The minimum capital requirement is an issued capital of at least EGP 60,000,000 (sixty million Egyptian Pounds), half (50%) of which must be paid up upon establishment, provided that it is fully paid within a period not exceeding five (5) years from the date of the company's registration with EFSA. The conditions set forth for the establishment of companies in accordance with the Companies' Law and the Capital Market Law shall apply to insurance companies to the extent that does not violate the provisions of the Insurance Law.

The applicable ownership restriction relating to insurance companies provides that any natural person or legal entity (foreign or Egyptian) may not own 10% or more of the insurance company's issued capital except upon the prior approval of the Prime Minister after consulting with the Minister of Investment.

The Company shall, directly after establishment, submit an application to EFSA for obtaining its operating license after submitting the required documents and information.

### Reinsurance

Insurance companies have been obliged to reinsure part of their operations in Egypt with the Egyptian Company for Reinsurance. However, since the Egyptian Company for Reinsurance merged with Misr Insurance we understand from EFSA that such obligation has been suspended.

According to EFSA, any Egyptian insurance company may reinsure all or part of its insurance operations conducted in Egypt with a national or foreign reinsurance company subject to registration of such reinsurance companies at EFSA.

### Insurance Brokerage Companies (i.e. Insurance Intermediaries):

In accordance with the Insurance Law, insurance brokers are natural or juristic persons that intermediate in concluding an insurance or reinsurance policy in favor of an insurance or reinsurance company, in return for a salary, bonus or commission. Decree No. 23 of 2014, issued by EFSA, established the regulations governing insurance brokerage activities within Egypt ("**Brokerage Regulations**"). The Brokerage Regulations outline the licensing and registration requirements for insurance brokers, the scope of work which insurance brokers are permitted and prohibited from carrying out, among other matters.

Insurance and reinsurance brokerage companies are prohibited from undertaking their intermediary activities unless they are registered with EFSA and after obtaining a license from the latter.

Decree No. 40 of 2013, of EFSA, allows insurance brokers to apply for their re-registration in the Register of Insurance Brokers. In the event that an insurance broker has been removed from the Register due to information indicating that the broker has committed a grave error or due to a breach of the regulations governing the conduction of business, or due to the Company's breach of the Law, its Executive Regulations, EFSA's regulations, or a licensing condition, six months must pass from the date of the broker's removal off the Register before a Broker may be re-registered. Re-registration of a Broker is prohibited where removal was due to issues related to the trustworthiness/honesty or honor of the broker.

Decree No. 66 of 2015, issued by EFSA, regulates the dealings of insurance and reinsurance companies with foreign insurance brokers. Foreign insurance and reinsurance brokerage companies are not entitled to undertake their activities in Egypt with respect to property and liability insurance operations.

In 2013, EFSA has issued a Decree to establish the Insurance Federation of Egypt . The said federation is a consortium of insurance companies, reinsurance and insurance associations licensed to operate in the Arab Republic of Egypt. It aims to raise the level of the insurance industry and insurance professions associated with them and the organization of competition and to foster scientific and cultural ties and social relations between companies and its member associations and the General Authority for financial control and other government agencies and NGOs on active insurance at home and abroad, as well as examine the technical basis of price and compensation. The Federation membership mandatory for all insurance companies, reinsurance and insurance associations under the Insurance Law.

#### Insurance & Reinsurance Representative Offices:

In accordance with the Insurance Law, foreign agencies and companies may establish insurance representative offices in Egypt which shall only be permitted to undertake activities relating to studying the insurance market, public relations and acting as a communications link/liaison office with their principle office abroad.

Furthermore, the representative offices may participate in solving problems, clearing obstacles and providing facilities to companies operating in the local market.

Insurance and reinsurance offices must submit a request to obtain an initial approval from EFSA to undertake their activities in Egypt.

## 15.5 Pharmaceutical Sector

The pharmaceutical sector in Egypt is one of the oldest strategic sectors in the country, which is mainly regulated by the Egyptian Ministry of Health and Population (**MOHP**). The principal regulatory body within MOHP is the Egyptian Drug Authority (**EDA**), which encompasses the three key government bodies governing the drug regulatory regime: the Central Administration of Pharmaceutical Affairs (**CAPA**), the Drug Planning and Policy Center (**DPPC**) and the National Organization for Drug Control and Research (**NODCAR**) to manage the registration, licensing and pricing of pharmaceutical products in Egypt. While CAPA and DPPC follow-up on the administrative functions of the EDA, NODCAR undertakes the laboratory and bioavailability analyses and testing.

#### Pharmaceutical Activities & the Sale of Drugs

According to Law 127 of 1955 Regulating the Practice Pharmaceutical Profession in Egypt ("**Pharmaceuticals Law**"), it is prohibited for anyone to practice any pharmaceutical activity in any capacity whatsoever, unless he is Egyptian or a citizen of another country, which offers reciprocal treatment to Egyptians. In addition, the person or entity that shall practice the pharmaceutical activity must be registered with MOHP and the Pharmaceuticals Syndicate. It is important to emphasize that the Pharmaceuticals Law does not provide a definition of what constitutes pharmaceutical activity.

The Pharmaceutical Law sets forth the rules and conditions for practicing pharmaceutical activities, including but not limited to manufacturing, establishing public and private pharmacies and their management and the storage of drugs, in addition to regulating the registration of drugs from a technical aspect.

According to the Pharmaceutical Law, public and private pharmacies, pharmaceutical factories, drugs warehouses and the drug/medical intermediaries or agents are considered as pharmaceutical institutions subject to the Pharmaceutical Laws.

The Pharmaceutical Law distinguishes between two kinds of private pharmacies: (i) the pharmacies of hospitals, polyclinics, dispensaries and the physicians' clinics authorized to dispense medicines and drugs to their patients; and (ii) the pharmacies annexed to cooperative societies.

It is prohibited to keep, sell, offer to sell or trade in medical material or pharmaceuticals except by places of business authorized to do so by virtue of the Pharmaceutical Law. It is further prohibited to trade in such items except by authorized persons as well as that they may not be purchased except from the said places of business and those persons.

By virtue of Article 75 of the Pharmaceutical Law, it is prohibited for drug warehouses, pharmaceutical factories or drug/medical agents to sell offer to sell or give any medicine, drug, chemical component or pharmaceutical item to the public for free.

The Pharmaceutical Law stipulates that whoever practices any pharmaceutical activity without a license shall be imprisoned for a maximum period of two years and/or pay a fine that does not exceed LE 200. Furthermore, the law prescribes that whoever establishes, sets up or manages a pharmaceutical institution without a license shall be imprisoned for a period of not less than one year and/or a minimum fine of EGP 5,000 and maximum of EGP 10,000 in addition to the said institution being closed administratively and confiscation of all the drugs/medicines subject of the violation as well as the tools used in committing the violation.

## Drug Pricing

Pricing of pharmaceutical drugs is currently regulated by the Ministry of Health Decree 373 of 2009 on the Pricing of Pharmaceuticals ("**Decree 499**") issued by the Minister of Health on 3 July 2012. Decree 499 differentiates between four different types of drugs, "Innovator" drugs, "Imported Generic" drugs, "Local Generic" drugs, and "Bulk" drugs..

According to Decree 499, an Innovator drug is a pharmaceutical drug composed of a new active ingredient or a new innovation. Article 3 of Decree 499 determines the price of an "Innovator drug" as follows: The price the drug is to be sold at to the public is to be determined in accordance with the lowest price at which it is being sold in other states selling the same drug; where the drug is being sold in less than five other states, a "comparative study" between the different states shall reveal the lowest price and this shall, accordingly, be the price at which the drug is to be sold at within Egypt..

Decree 499 defines "Generic" drug (whether imported or locally-produced) as a therapeutically equivalent drug to a brand-name drug, and distinguishes three categories for the prices of generics, which are set lower than the prices of the equivalent brand-name drug at the following rates:

1. 35% for the first five generic drugs in accordance with the pricing request submission date.;
2. 40% for the rest of the generic pharmaceuticals.

The prices of the pharmaceutical drugs set in accordance with Decree 499 shall be subject to review or in the event of an upward or downward change in exchange rate on an average of 15% within one year, based on the exchange rate announced by the CBE, or if the company submits a request

regarding the revision of its registered drugs price; such a request shall not exceed 5% of the total number of products of that company per annum.

## 16. Taxation in Egypt

### 16.1 Corporate Income Tax

#### Scope

Under Income Tax Law 91 of 2005, as amended, corporate income tax (“**Corporate Income Tax**”) is imposed annually on the net profits of juristic persons. The Corporate Income Tax is applicable to juristic persons that are located in Egypt with respect to their income generated from Egypt or abroad. It also applies to juristic persons not located in Egypt whereby their profits are generated from a permanent establishment in Egypt. Juristic persons include entities such as joint stock companies, limited liability companies, companies limited by shares, personal companies, cooperatives save for cooperatives exempt by law, public authorities save for those public authorities which are exempt by law, foreign banks, companies and establishments even if their headquarters are located abroad with branches in Egypt.

#### Tax Rate

The general applicable tax rate on all corporations is 22.5% except for (i) certain governmental authorities and (ii) oil and gas exploration and production companies for which the rate is 40.55%.

In 2015, a new law was issued regarding an additional corporate income tax, at a rate of 5%, which shall be imposed on natural and juristic person’s net profit that exceeds EGP one million per annum. The application of the said additional tax is temporary and shall automatically rescind by the lapse of three years from the issuance date of this law.

#### Tax Basis

The tax is paid on the net profit of the entity in question, established by duly audited financial statements.

#### Exemptions

Profits from the following activities are exempt from Corporate Income Tax:

- Ministries and governmental authorities;
- Non-governmental organizations and institutions established under the Non-Governmental Organizations Law 84 of 2002;
- Non-profit organizations with objectives falling under social, scientific, cultural or sporting activities;
- Profits realized from private insurance funds established under Law 54 of 1975 Regarding the Issuance of Private Insurance Funds;
- International organizations exempted by means of international treaties;
- Profits realized from investment funds established under the Capital Market Law 95 of 1992;
- Dividends on bonds registered in the official registers of the Egyptian Stock Exchange;
- Dividends realized by resident juristic persons from their investments in securities registered with the Egyptian Stock Exchange;
- Dividends realized by juristic persons from securities issued by the Central Bank of Egypt;

- Distributions and dividends realized by resident juristic persons due to their shareholdings in other resident juristic persons;
- Profits realized by land reclamation projects for a period of ten years starting from the commencement of the company's activities or the production, as the case may be; and
- Livestock and fish farming activities for a period of ten years starting from the commencement of the activities of the company.

### Withholding Tax

Payments, including interest, charges for services and royalties, made to non-residents in Egypt by owners of individual establishments, juristic persons that are resident in Egypt and by non-resident entities having a permanent establishment in Egypt shall be subject to a withholding tax at the rate of 20% that can be reduced depending on the existence of a double tax treaty.

As an exception to the above, the interests on loans and credit facilities obtained by the government, local government units or other public juristic persons are exempt from withholding tax. Additionally, public and private sector companies are also exempt from such tax provided that the loan or facility period is more than 3 years.

## 16.2 Tax on Non-commercial Professions' Profits

Non-commercial professions such as lawyers, doctors, accountants and engineers who practice independently and any other individuals not subject to any other specific tax will be subjected to the tax on non-commercial professions. Only income derived from activities in Egypt is taxable. The tax rate is progressive ranging upwards from 10% and up to 20% in accordance with the manner stipulated below in the Taxation of Individuals section. All costs necessary for practicing the profession are deductible in addition to certain others deductions available for calculating the net profit.

## 16.3 Taxation of Individuals

### Salary tax

The salary tax applies to all salaries, wages, benefits and the like paid to persons residing in Egypt, and to persons residing abroad for services rendered in Egypt. The taxable salary will include overtime, bonuses, any fringe benefits and other allowances at the following rates:

- Amounts of LE 6,500 and below → tax exempt,
- Amounts above LE 6,500 to 30,000 → would be subject to a 10% salary tax,
- Amounts above LE 30,000 to 45,000 → would be subject to a 15% salary tax,
- Amounts above LE 45,000 to 200,000 → would be subject to a 20% salary tax, and
- Amounts above LE 200,000 → would be subject to a 22.55% salary tax.

As an exception to the above, a tax shall also apply to the amounts obtained by non-residents irrespective of the entity employing them as well as those amounts acquired by residents from sources other than their original work (employer) at a flat rate of 10% without any cost reduction or any other deductions of any kind. Therefore, non-resident employees will be required to pay a 10% flat rate on their earnings.

## 16.4 Tax Treaties

Egypt has concluded various double taxation treaties with several countries including but not limited to Albania, Algeria, Austria, Bahrain, Belarus, Belgium, Bulgaria, Canada, Czech Republic, Cyprus, Denmark, Finland, France, Germany, Greece, Hungary, India, Indonesia, Iraq, Italy, Japan, Kuwait, Lebanon, Libya, Malaysia, Malta, North Korea, Norway, Oman, Pakistan, People's Republic of China, Poland, Romania, Russia, Singapore, South Africa, Sudan, Sweden, Switzerland, Syria, Tunisia, Turkey, the Ukraine, the United Arab Emirates, the United Kingdom, the United States and Yemen.

## 16.5 Indirect Taxation

### Stamp duty

The Stamp Duty Law 111 of 1980, as amended, provides for two types of stamp duty, a fixed duty and proportional duty. The fixed duty is paid on a variety of documents including minutes of board meetings and shareholders meetings, certain court documents and maritime commercial documents. The duty is evidenced by affixing fiscal stamps on each page of relevant document .

The proportional duty varies considerably depending on the nature of the transaction. A significant proportional stamp duty is imposed on loans, credit facilities and any other means of finance provided by banks. The Law imposes an annual stamp duty of (0.004%) on the relevant balance account, which is paid on a quarterly basis, the burden of which shall be shared equally between the bank and client. According to the Investment Law, as amended, companies formed in Egypt shall be exempt from such stamp duty for the first five years of establishment.

### Sales Tax

Law 11 of 1991 (the “**Sales Tax Law**”) provides for the imposition of sales tax on imported goods as well as those produced locally. The Sales Tax Law also imposes sales tax on the provision of services.

The general tax rate is 10%. However, the Sales Tax Law provides for various exceptions to the general rate according to the type of goods or services rendered. The first exception is Schedule 1, which includes goods such as tea, sugar, tobacco and alcohol, the tax rate for which varies depending on their type. Schedule 2 includes the tax rates for rendering various services, the tax rate of which varies from 5% to 10%. The Sales Tax Law also incorporates other annexes that provide different tax rates for other products, such as electronics, vehicles and cosmetics.

## 17. Environmental Law

There has been a heightened level of concern by the Egyptian public and government with respect to environmental issues over the past years. This trend is due to an awareness of the value of natural resources and a desire to provide for the general welfare of the Egyptian people, which has manifested itself in adopting the Environmental Law 4 of 1994 (the “**Environmental Law**”) and increasing environmental commitments.

### 17.1 The Environmental Law

The Environmental Law radically transformed the area of Egyptian environmental legislation through both the consolidation of enforcement authorities into the Egyptian Environmental Affairs Agency (“**EEAA**”) and the introduction of comprehensive regulations superseding earlier environmental legislation.

The EEAA has been charged with enforcing the Environmental Law and provided with an independent budget to ensure its autonomy. The EEAA formulates general policy and prepares the necessary plans for the protection and promotion of the environment, together with following up on their implementation. The Environmental Law provides for a mandatory environmental review to be undertaken by the competent administrative authority according to EEAA’s instructions, as part of the approval process for all proposed projects. The Environmental Law has created legal bodies governing hazardous waste disposal and air, water and land pollution.

### 17.2 Protection of land

The Environmental Law regulates under Chapter I the protection of land. In order to obtain a license to build an establishment or implement a project, investors, whether natural or legal persons, private or public, engaging in all new developments are now required to prepare an Environmental Impact Assessment (“**EIA**”). The Environmental Law places a duty on developers to monitor their compliance with the relevant laws. Owners of existing facilities must also prepare an EIA for all new developments.

Annex 2 of the Executive Regulation of the Environmental Law lists the types of facilities subject to the requirement of submitting an EIA Report. Thus, four different criteria have been established:

1. The type of activity pursued by the establishment:

Some activities, if pursued by the establishment, shall be subject to EIA. These activities include industrial activities, oil extraction, refinement, storage and transportation activities, activities of, touristic establishments, electricity production and generation activities, mines and quarries, infrastructural or any other establishment activity that could have an impact on the environment.

2. The location of the establishment:

Establishments situated on the Nile basin, its branches or the seashores, in overpopulated areas, on touristic and archaeological sites or natural reserves zones are subject to EIA.

3. The depletion of the natural resources:

Activities that may cause the scraping of agricultural land, desertification, or any water contamination are subject to EIA.

#### 4. The type of energy used by the establishment:

Establishments operated by nuclear energy or thermal fuel which emissions exceed the limits authorized by law are subject to EIA.

### 17.3 Hazardous Waste & Materials

The Environmental Law provides for detailed restrictions on the use, transportation, handling and disposal of hazardous wastes and materials, as defined thereunder. Additionally, it forbids the handling of hazardous substances and waste or the construction of any establishment for treating such substances without a license from the competent administrative authority. It is also forbidden to import hazardous waste or allow its entrance into or passage through Egyptian territories. It is mandatory for all those who produce or handle dangerous materials to take precautions to prevent environmental damage. According to the Executive Regulations of the Environmental Law, the governing of the disposal of hazardous waste is mandated to entities operating in the medical field.

### 17.4 Air Pollution

The regulation of air pollution in Egypt is governed by the Environmental Law under Chapter II.

According to the Environmental Law, the site on which a project is established must be suitable for the project's activity to ensure that the permissible levels of air pollutants are not overstepped, and that the total pollution emitted by all the establishments in one area is within the permissible levels. The Executive Regulation of the Environmental Law determines the establishments subject to the restrictions on emissions (Annex 2), the authority competent to approve the project site and the permissible levels of air pollutants and noise in the area where the establishment is constructed.

Moreover, Egypt's air pollution control efforts under the Environmental Law include emission control standards, zoning restrictions, controls on the use of pesticides, noise limits and standards for the maintenance of acceptable levels of radiation. Furthermore, limits are prescribed for the amount of heat, humidity and the quality of ventilation in the workplace. All establishments (industrial and others) are required to ensure that while practicing their activities, leaked or emitted air pollutants such as those resulting from the burning of fuel, etc. shall not exceed the maximum permissible levels. Recent regulations and amendments to the Environmental Law have been issued controlling the release of radioactive material into the air.

Furthermore, the Environmental Law prohibits the use of machines, engines or vehicles whose exhausted emissions exceed the limits set out by the Executive Regulations of the Environmental Law.

### 17.5 Water Contamination

Water contamination issues are regulated under Chapter III of the Environmental Law. In this regard, the Environmental Law cites two different types of water contamination: pollution caused by ships and pollution caused from land-based sources.

#### (i) Pollution Caused by Ships:

The legislator regulated the pollution caused by discharges of oil and hazardous materials in the water. National and foreign companies licensed to explore, extract or exploit off-shore oil fields and other marine natural resources, are forbidden to discharge any polluting substances resulting from drilling, exploration, testing of wells or production in the territorial sea or the exclusive economic zone of Egypt. They are held to use safe measures not liable to harm the water environment and to treat any discharged waste or polluting substance according to the available technical methods and in accordance with the regulations of international conventions.

Foreign oil tankers Egyptian ports must comply with all the requirements of Rule 13 of Annex 1 of The International Convention for the Prevention of Marine Pollution from Ships (1973-1978), as amended.

(ii) Pollution Caused From Land-Based Sources:

All facilities are forbidden to discharge any polluting substances into the territorial sea of Egypt. According to Article 70 of the Environmental Law, building permits shall not be granted to facilities on or near the sea shore, which would result in the discharge of polluting substances in violation of the provisions of the Environmental Law unless the applicant for such permit conducts environmental impact studies and undertakes to provide waste treatment units and to operate them as soon as the establishment commences work.

## 17.6 Marine Environment

The Environmental Law provides for regulations to protect the Nile River and also regulates maritime-based pollution of the marine environment, including discharges of oil and hazardous materials and the disposal of sewage and rubbish. The force of these provisions extends both to Egypt's territorial waters and its exclusive economic zones. Land-based sources of marine pollution are also dealt with by means of zoning restrictions and granting sweeping enforcement powers to the EEAA to deal with polluters. Companies or agencies authorized to explore or exploit natural marine resources are forbidden to discharge any polluting substances into the territorial sea of Egypt, which may result in harming the marine environment.

## 17.7 Other Elements

The Environmental Law contains incentives for entities that operate in Egypt in an environmentally friendly manner to encourage compliance. It provides for fines and, in extreme cases, prison sentences for violations of its provisions.

## 17.8 International Conventions

Egypt has signed a number of international conventions and treaties on the environment, and ratified 16 thereof, the most prominent of which include:

- The Basel Convention on the disposal of hazardous materials.
- The Convention of London of 1954 as amended, concerning maritime pollution by oil and the Protocol of 1978 attached to the Convention of London of 1973 for the prevention of pollution by ships.

## 18. Dispute Settlement

### 18.1 Arbitration

In recent years the development and growing complexity of international commercial transactions defined the need for speedy and internationally acceptable means of settling disputes. The concept of arbitration was devised for that particular purpose and Egypt was one of the first countries in the region where the concept of arbitration has gradually been gaining popularity for more than three decades now.

At the outset, contracts between Egyptian and foreign parties commonly provide for some form of international arbitration in the event of any disputes. The Egyptian Court of Cassation has, on a number of occasions, confirmed the validity of such arbitration clauses. An Egyptian court will generally respect an arbitration clause and stay proceedings brought before it. Arbitration may be conducted under any set of rules chosen by the parties. One of the most popular set of rules used in contracts between Egyptian and foreign parties is the Rules of Arbitration of the International Chamber of Commerce (ICC). Arbitration proceedings under the ICC Rules may be held in Egypt or abroad.

A regional arbitration body that is often used is the Cairo Regional Center for International Commercial Arbitration (the “**Center**”). The Center applies the rules of the United Nations Commission on International Trade Law (UNCITRAL). With the rare exception of technology transfer contracts where arbitration must be held in Egypt, there is generally no requirement under Egyptian law that arbitration be conducted under the auspices of the Center or in Egypt.

The Arbitration Law 27 of 1994 brings Egypt further into line with the UNCITRAL model law on international commercial arbitration (which it appears to have been largely modeled after) and is a comprehensive statement of the law on Arbitration and therefore facilitates the conduct and enforcement of international arbitration proceedings in Egypt. The Arbitration Law also clarifies certain aspects of Egyptian arbitration law by legislating in areas that have previously been neglected. Under the Arbitration Law and provided certain formalities are satisfied, the Egyptian Government is specifically deemed accountable for arbitration agreements it enters into and may no longer take the position that it is not subject to commercial arbitration clauses. In addition, the procedures surrounding the appointment of experts are outlined in the text of the Arbitration Law.

The Arbitration Law provides for an exhaustive set of grounds for the annulment of arbitration awards. Provided one (or more) of those grounds is satisfied, annulment proceedings against an arbitration award must be initiated within 90 days from notification of the award’s issuance. However, this requirement does not preclude the enforcement of the award except under extreme circumstances (e.g. where there is clear evidence of fraud).

Applications for the enforcement of arbitral awards must be accompanied by the original or a signed copy of the award, a copy of the agreement to arbitrate, an Arabic translation of the award authenticated by the competent authority if the award was not issued in Arabic, and a copy of the minutes evidencing deposit of the award with the competent court in Egypt (usually the Cairo Court of Appeal). The Arbitration Law therefore provides a firm base for arbitration and enforcement of awards in Egypt.

### 18.2 Enforcement of Foreign Arbitration Awards

An award issued pursuant to an arbitration that has taken place outside Egypt may be enforced in Egypt if it is either covered by one of the international conventions to which Egypt is a party or satisfies the conditions set out in the Arbitration Law.

Egypt is a signatory State to:

- the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards;
- the Washington Convention of 1965 on the Settlement of Investment Disputes between States and the nationals of other States (ICSID Convention); and
- the Convention of 1974 on the Settlement of Investment Disputes between the Arab States and the nationals of other States.

These treaties generally provide that arbitration awards issued in one country may be enforced in another if the award is supported by written evidence of the parties' agreement to arbitrate, the dispute in question is able to be arbitrated in the country where the award is to be executed, and the award does not conflict with public policy. Where no international convention applies, then the provisions of the Arbitration Law must be satisfied for a foreign arbitration award to be enforced.

Egypt has also signed a number of investment protection treaties, the majority of which contain arbitration as the agreed mechanism for settlement of disputes. Investment protection treaties have been signed with several States such as: Belgium, Luxembourg, France, Germany, Greece, Iran, Italy, Japan, Lebanon, Morocco, Netherlands, Romania, Sudan, Switzerland, the United Kingdom, the United States and Yugoslavia. The number of the bilateral investment treaties to which Egypt is a signatory is on the rise.

Generally, the Arbitration Law now requires that the following conditions be met to enforce an arbitration award in Egypt:

- it does not contravene any judgment issued by Egyptian courts on the subject matter of the dispute;
- it does not contravene public order or policy in Egypt; and
- it is in respect of an arbitration to which the defendant received due notice.

### 18.3 Enforcement of Foreign Court Judgments

To enforce a foreign judgment in Egypt the party seeking to enforce the judgment must obtain an *exequator*. To apply for an *exequator* the normal procedures for initiating a lawsuit must be followed. In order for an Egyptian court to issue an *exequator* it must be satisfied that the following conditions have been met:

- Reciprocity: the country in which the judgment was rendered is able to enforce judgments from the Egyptian courts;
- Competence of the court rendering the judgment: the foreign court has jurisdiction over the dispute and the Egyptian courts do not have exclusive jurisdiction over the dispute;
- Due process: all parties to the dispute were duly notified and represented (i.e., without contravening the rules of natural justice);
- Final judgment: the judgment is *res judicata*; and
- Conflict of judgments: the judgment does not conflict with any existing judgment by an Egyptian court and such enforcement will not contravene public policy, order or morality in Egypt.

Egypt is a signatory State to the Arab League Convention that allows for the mutual enforcement of court judgments among signatory States.

Also, Egypt is a signatory to bilateral treaty with Italy that allows reciprocity in enforcement of court judgments.

## 19. Conclusion

On the whole, the past few years have witnessed a period of rapid economic growth in Egypt, and the Egyptian government continues its efforts to build up a legal framework inductive to achieving sustained economic reform. Newly introduced Egyptian legislations serve to enhance the investment environment, and reflect the intention of the Egyptian government to tighten regulatory oversight of financial markets and to adopt a modernized approach that aims to cope with the current global financial and economic changes and challenges.

## Baker & McKenzie has been global since inception. Being global is part of our DNA.

Our difference is the way we think, work and behave – we combine an instinctively global perspective with a genuinely multicultural approach, enabled by collaborative relationships and yielding practical, innovative advice. Serving our clients with more than 4,200 lawyers in more than 45 countries, we have a deep understanding of the culture of business the world over and are able to bring the talent and experience needed to navigate complexity across practices and borders with ease.