

# EGYPT



## Law and Practice

### Contributed by:

Michael Boutros and Mehjar Joulli  
**Shahid Law Firm**

## Contents

### 1. Transaction Activity p.4

- 1.1 Private Equity Transactions and M&A Deals in General p.4
- 1.2 Market Activity and Impact of Macro-Economic Factors p.5

### 2. Private Equity Developments p.6

- 2.1 Impact of Legal Developments on Funds and Transactions p.6

### 3. Regulatory Framework p.7

- 3.1 Primary Regulators and Regulatory Issues p.7

### 4. Due Diligence p.8

- 4.1 General Information p.8
- 4.2 Vendor Due Diligence p.9

### 5. Structure of Transactions p.9

- 5.1 Structure of the Acquisition p.9
- 5.2 Structure of the Buyer p.9
- 5.3 Funding Structure of Private Equity Transactions p.9
- 5.4 Multiple Investors p.10

### 6. Terms of Acquisition Documentation p.10

- 6.1 Types of Consideration Mechanisms p.10
- 6.2 Locked-Box Consideration Structures p.11
- 6.3 Dispute Resolution for Consideration Structures p.11
- 6.4 Conditionality in Acquisition Documentation p.11
- 6.5 "Hell or High Water" Undertakings p.12
- 6.6 Break Fees p.12
- 6.7 Termination Rights in Acquisition Documentation p.12
- 6.8 Allocation of Risk p.12
- 6.9 Warranty and Indemnity Protection p.12
- 6.10 Other Protections in Acquisition Documentation p.13
- 6.11 Commonly Litigated Provisions p.13

## **7. Takeovers** p.13

- 7.1 Public-to-Private p.13
- 7.2 Material Shareholding Thresholds and Disclosure in Tender Offers p.13
- 7.3 Mandatory Offer Thresholds p.14
- 7.4 Consideration p.14
- 7.5 Conditions in Takeovers p.14
- 7.6 Acquiring Less Than 100% p.15
- 7.7 Irrevocable Commitments p.15

## **8. Management Incentives** p.15

- 8.1 Equity Incentivisation and Ownership p.15
- 8.2 Management Participation p.15
- 8.3 Vesting/Leaver Provisions p.15
- 8.4 Restrictions on Manager Shareholders p.15
- 8.5 Minority Protection for Manager Shareholders p.16

## **9. Portfolio Company Oversight** p.16

- 9.1 Shareholder Control and Information Rights p.16
- 9.2 Shareholder Liability p.17

## **10. Exits** p.17

- 10.1 Types of Exit p.17
- 10.2 Drag and Tag Rights p.17
- 10.3 IPO p.18

Contributed by: Michael Boutros and Mehjar Joulji, **Shahid Law Firm**

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ing of client needs which, coupled with knowledge of the Egyptian legal system, longstanding experience in transactions, dispute resolution and regulatory matters, as well as close ties to other leading firms in the region and beyond, ensures that clients obtain the best legal service. The firm is amongst the few MENA-based firms that provide services in English, French, Italian, German, Spanish, Portuguese and Arabic. Diversity in terms of nationality, ethnicity, gender, age and religion is the cornerstone of Shahid Law.

## Authors



**Michael Boutros** leads the capital markets and M&A practice group at Shahid Law. He has 18 years of experience in capital markets, general corporate matters, M&A,

employment and liquidations. His transactional work focuses on initial public offerings, private placements and M&A. He regularly acts as the lead lawyer in deals and has experience advising leading multinational companies on large cross-border transactions. Michael has assisted in high-value acquisitions, restructurings and divestitures for companies in the real estate, food and beverage, natural resources, manufacturing, construction, pharmaceutical and tourism industries. Michael holds a PhD from Savoie University and an LLM from the University of Paris I – Panthéon Sorbonne.



**Mehjar Joulji** is a senior associate at Shahid Law. Since joining the firm in 2016, Mehjar has been involved in providing legal opinions, preparing articles of incorporation, by-laws,

commercial contracts, memorandums of understanding, shareholders' and share-purchase agreements, setting up companies and branch offices in Egypt, organising board and shareholders' meetings, drafting minutes, handling corporate secretarial work and conducting legal due diligence and legal research on various matters. Mehjar has assisted various companies in connection with their acquisition of local targets and assisted with transactional documentation for several clients in connection with public offerings and tender offers. Mehjar has also worked extensively on several due diligence exercises for different companies in several fields.

## Shahid Law Firm

20B Adly Street  
Downtown  
Cairo 11511  
Egypt

Tel: +20 2 2393 5557  
Fax: +20 2 2393 5447  
Email: info@shahidlaw.com  
Web: www.shahidlaw.com



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## 1. Transaction Activity

### 1.1 Private Equity Transactions and M&A Deals in General

Despite Egypt's constant legislative reforms, the Egyptian president's visits abroad to attract foreign direct investment, and economic reforms undertaken by the Egyptian cabinet to help boost the number of transactions, foreign investors continue to show reluctance to invest.

Funds are needed to intervene and seize the business opportunities demonstrated by the high demand by SMEs and start-ups for financing. Private equity is now acting as an alternative solution for financing and to fill the gap between the available channels of financing and the increased demand on the part of SMEs and start-ups.

As part of enhancing its economic and investment climate, Egypt is currently deliberating and finalising several significant reforms and amendments to its investment and importation laws, with the aim of encouraging foreign direct investment in Egypt with additional incentives and less restrictions. These reforms and incentives could be manifested by enacting several new laws to support current global investment trends.

### Incentives for Green Hydrogen Production Products

Egypt recently introduced in January 2024, Law No 2 of 2024 providing incentives to produce, transmitting, storing or distributing green hydrogen and its derivatives through establishing relevant projects companies and operational branches. The law also provided for the establishment requirements, wide tax and expenses exemptions, facilitating the hire of foreign employees and most importantly lessen the administrative burdens of importing raw materials and obtaining the golden licence.

### Foreign Investors' Ownership of Desert Lands

Law No 11 of 2024 which was introduced in February 2024, amending some of the restrictions of desert lands ownership, provided an exception to foreigners to own desert lands in partnership with Egyptians whose ownership shall not be less than 51%.

### New Amendment to the Importation Law

In a prominent move, Egypt has enacted Law No 173 of 2023 and got practically enforced in early 2024. This amendment introduces an important exception, allowing companies directly and fully owned by foreigners to register in the Importers' Registry as an exception to the standard regime

requiring an Egyptian ownership of at least 51% of the company applying for a licence. While this exception has limitations regarding the total period of registration which shall not exceed ten years from the date thereof, extendable for one additional ten-year period only, subject to a Cabinet Decree based on the recommendation of the Minister concerned with Foreign Trade Affairs; this amendment can be the start of a more stretched importation and commercial dealings climate, allowing simpler business structures.

## Egypt's Sub-fund for Financial Services and Digital Transformation

In a recent remarkable move, the Board of the Egyptian Sovereign Fund issued Decree No 7 of 2020 promulgating the establishment of a sub-fund, namely, Egypt's Sub-Fund for Financial Services and Digital Transformation (the "Sub-Fund"). The main purpose of the Sub-Fund is to devote investments to non-banking financial services, digital transformation and financial inclusion, including in insurance and insurance brokerage services, real estate financing, financial leasing, factoring, and micro-financing.

This important step has encouraged private equity funds to expand, and to direct more investment into companies operating in, among others, the fintech sector, which underpins the odds of observing further activities in private equity M&A transactions in the Egyptian market in general, and in the fintech sector, in particular.

## Growth Investment Funds

According to the head of the Financial Regulatory Authority (FRA) in his statement in July 2022, the FRA has granted licences to ten newly established funds in Egypt, making the total number of investment funds in Egypt approximately 122 growth investment funds, focusing on medium-

sized enterprises and family businesses. Their main function is to act as agents for growing businesses, and simultaneously foster and monitor expansion to ensure a sustainable future for such businesses.

## 1.2 Market Activity and Impact of Macroeconomic Factors

Certain sectors dominate the private equity M&A transactions scene in Egypt, as the appetite of the real estate, healthcare, education, fintech, and renewable energy sectors for private equity funds is steadily increasing and is of paramount importance.

The main challenges that those industries regularly face and that certainly affect the parameters and considerations of private equity M&A transactions are mainly attributed to the high interest and inflation rates which are making major investment opportunities and the achievement of high returns more challenging. Needless to highlight that the current geopolitical tensions within the region, affected (even if slightly) the investors' appetite into pursuing investments opportunities depending on complex logistical cycles and continuous supply of raw materials for manufacturing purposes.

The significant increases in the interest rates and the ensuing increased cost of borrowing, negatively affect the allocated capital available for investment and subsequently drive investors to reshape their financial structure and considerations to mitigate the high financing costs. Moreover, in the current environment of high interest and inflation rates, investors may need to hold onto their investments for additional longer periods before applying any exit strategies so that they can achieve profitable returns and meet the commercial and business parameters of their investment plans.

## 2. Private Equity Developments

### 2.1 Impact of Legal Developments on Funds and Transactions

#### Legislative Development in the CML

In 2018, a significant legislative development was introduced to the Capital Market Law (CML), when a newly incorporated Egyptian private equity company became obliged to be in the form of a CLS structure (ie, a company limited by shares). This structure ensures a significant advantage for the limited partners, namely, it confines their liability to their contribution to the company's share capital, provided that they do not engage in the company's management. By contrast, the CLS's manager will be the general partner in the company, which triggers the illimitation of its liability towards the limited partners.

#### Financial Regulatory Authority Decrees

Accordingly, in June and September 2018, the FRA issued two executive decrees, whereby a private equity fund must satisfy certain conditions for its establishment and licensing in terms of its required legal structure, capital, partners and their respective ownership percentage and qualification, purpose, management, the fund's investment ratios, and managers (including the general partner of the fund). It is worth highlighting that a private equity fund's activity will be limited to private equity and it must apply for a licence in order to undertake venture capital activity.

#### Prior Approval for the Direct or Indirect Acquisition of a Business

Another significant legislative change was put in place, whereby some laws have been amended to require prior approval in the case of direct or indirect acquisition of a business. Hence, whenever a private equity fund opts to acquire stakes in the target company, whether directly

or indirectly, such acquisition will require the prior approval of the competent local regulator, depending on the activity of the target company.

#### New Decree No 99 of 2021 Regarding Medical Industrial Facilities

Another recent development, in this case with respect to the operation and legal disposal of medical industrial facilities, was the issuing of the New Decree No 99 of 2021, on 2 March 2021 (the "Decree") by the Egyptian Drug Authority (EDA), whereby no medical industrial facility can be established or expanded unless the EDA approves this.

Furthermore, the Decree prohibits any sort of legal disposal (eg, sale and purchase) of medical industrial facilities unless prior notification is served to the EDA via certain forms pre-set by the EDA. To this effect, prior notification will be associated with the necessary undertakings, as determined by the EDA, to ensure the availability of the medicine in the market.

In the context of private equity funds' M&A transactions, one of the conditions precedent that is likely to be envisaged in future transactions relating to medical industrial facility acquisition, is to notify the EDA. However, the implementation of said Decree is to be closely monitored to verify compliance with the new notification requirements.

#### New Amendments to the Egyptian Competition Law

Significant amendments were introduced to the Egyptian Competition Law (ECL) in December 2022, whereby, similar to other jurisdictions, the parties to a transaction shall seek the prior approval of the Egyptian Competition Authority before the consummation of the transaction, subject to the occurrence of minimum turnover

thresholds and other requirements, rendering certain transactions notifiable before the authority. While the ECA announced in early 2023 that the implementation of the new regime is on hold and that the market is considered in a “silent period”, where notification of acquisitions will not be necessarily required, until the issuance of amendments to the executive regulations of the Law (the “ER”). The long-awaited ER was finally issued on 7 April 2024, by the issuance and publication of Prime Minister’s Decree No 1120/2014 whereby the new pre-merger notification regime has finally come to force.

### Golden Licences for Investment Projects

With the aim of simplifying the procedures for investors in relation to their projects, investors shall be entitled, subject to the satisfaction of certain conditions, to obtain a “Golden Licence”, which, although not a waiver from applying and obtaining all required regulatory approvals and licences from various governmental bodies, shall shorten and simplify such procedures in a one-step approval that reduces time and effort. The introduction of this regime is a step towards overcoming bureaucratic challenges and facilitating licensing procedures and accordingly the investors’ appetite for investments, which will positively strengthen and develop the investment climate.

### Digital Bank Licensing Rules

As part of Egypt’s plan for digital transformation, the Central Bank of Egypt has issued a circular in July 2023 regulating the licensing and registration of digital banks, which ultimately provide banking services through digital channels and platforms, by means of financial technology. This circular represents the continuous efforts of the Central Bank of Egypt to achieve the financial technology transformation which will have significant impacts on the country’s banking system.

## 3. Regulatory Framework

### 3.1 Primary Regulators and Regulatory Issues

Generally, the regulatory restrictions in Egypt vary from one industry to another. For example, key restrictions can be highlighted, as follows:

- it is necessary to obtain the prior approval of the FRA on the transfer of ownership of a business (eg, acquisition of 10% of the voting rights or shares of a holding company and companies operating in a non-banking financial activity);
- it is necessary to obtain the prior approval of the General Authority of Investments and Free Zones (GAFI) on the transfer of ownership of companies established in a free zone;
- it is necessary to obtain the prior approval of the Central Bank of Egypt to change ownership of an Egyptian licensed bank;
- it is necessary to obtain the prior approval of the Ministry of Health for the transfer of ownership of hospitals;
- it is necessary to obtain the prior approval of the Ministry of Education for the transfer of ownership of schools;
- foreign ownership restrictions apply in some industries such as a commercial agency, where the agency company must be fully owned by Egyptians, while 51% of the share capital of a company operating in importation activity must be owned by Egyptians;
- it is necessary to obtain the prior approval of the Sinai Development Authority on the transfer of shares of a company owning assets or operating in the Sinai Peninsula; and
- it is necessary under the new amendments introduced to the Egyptian Competition Law, to seek the Egyptian Competition Authority’s approval on reportable transactions, as a pre-closing obligation of the parties to a transac-



tion and to also seek the prior approval of the FRA in relation to transactions affecting FRA activities including the non-banking financial and insurance sector.

The above highlighted key restrictions will have to be considered while determining the following parameters of transactions:

- timelines;
- closing conditions;
- structure and implementation thereof;
- values and considerations;
- transaction documents and ancillary agreements; and
- parties' representations and warranties.

Moreover, the above restrictions are being closely monitored and applied by the relevant governmental authorities, especially in the healthcare, education, fintech and renewable energy sectors. Transactions of these natures can be also evaluated from a national security perspective, though the specific parameters and presumptions can be difficult to quantify. The review of transactions and the parties involved from the national security angle is done on a case-by-case basis with wide spectrum of factors involving the nature of the transaction, the insolvency of the parties involved and the potential national interests or concerns (like competition and abuse of dominance concerns).

## Anti-bribery, Sanctions and ESG Compliance Issues in 2022

The Egyptian legislature has drawn up a package of laws governing the role of bodies and agencies working in the prevention and combating of corruption, as well as a legislative system that criminalises many of the corruption crimes as set out in the UN Convention. Such package of laws is not recent; however, the manner of

its implementation has changed and now shows the seriousness of the president and some officials in combating corruption, through efforts to amend and enact laws, use digitalisation of services provided to the public (eg, payment of utilities may now take place via payment aggregator channels), and use the principles of governance and some matters related to the establishment of some courts to shorten the litigation period.

As for ESG compliance, financial institutions now show an appetite for financing environmentally friendly projects, such as clean and renewable energy projects; in addition to the projects that take into account the social component, such as, not only small, medium and micro-industries projects, but also labour-intensive projects that create more job opportunities and help to reduce poverty and raise the standard of living in the neediest areas.

## 4. Due Diligence

### 4.1 General Information

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

Customary legal due diligence usually covers key areas, inter alia, required licensing, full review of the constitutional documents to assess if any restrictions and third-party consents are required pertaining to the material agreements concluded by the target company, an assessment of the employees' rights, and the general compliance of the target company with Egyptian



laws. However, the buyer may require additional/specific due diligence to be exercised by its advisers (eg, technical, tax, financial, commercial, environmental and human resources due diligence exercises). Legal due diligence may be conducted via a virtual data room or in the physical presence of the buyer's advisers at the target's premises, but virtual data room due diligence seems to be preferred.

## 4.2 Vendor Due Diligence

Vendor due diligence is not commonly conducted in Egypt. However, while buyers do not generally opt to rely on such reports (unless in the case of extensive warranties), sellers are generally advised to consider conducting a seller/defensive due diligence in order to ensure an investable vehicle for investors, which should also have an impact on the evaluation process.

Depending on any existing business arrangement between the vendor and buyer and the binding nature thereof, vendors and their legal advisers can generally make available, among other documents, the following reports and information:

- financial statements, including the income and cash flow statements and balance sheet;
- business licences and permits;
- material contracts and agreements with third parties; and
- tax returns.

## 5. Structure of Transactions

### 5.1 Structure of the Acquisition

Generally, there is no major difference between a privately negotiated transaction and an auction sale. However, in an auction sale where there is competition between the bidders to win the

sale, the terms of the acquisition may be strictly negotiated before being accepted by the seller, as the seller is in a better position to demand the most favourable terms and conditions.

### 5.2 Structure of the Buyer

Most transactions involving a private-equity-backed buyer are managed as indirect acquisitions for ownership restructuring purposes. Hence, the private equity fund usually establishes a special-purpose vehicle (SPV) to contract with the seller, depending on the proposed deal structure, and the partnerships of the private equity fund do not directly enter into any transaction documents with the seller, except for the equity commitment letter with the newly established SPV. The SPV is commonly owned by an independent offshore investment arm and/or a BidCo, established for that purpose for structuring and future exits/attraction of investments purposes.

### 5.3 Funding Structure of Private Equity Transactions

Private equity deals are normally financed through equity commitment provided by the fund to the SPV, or they may be financed by a mixture of both the equity committed to the SPV and the finance provided by the third-party lender (eg, banks). For that purpose, several deals also witness the implementation of a corporate guaranty mechanism, especially if any of the designated investment arms related to any of the parties to the transactions are newly established entities which can raise concerns on the ability thereof to commit to its part of the transaction's current or future financings. In those cases, and for the other party's comfort, this financing party's obligations can be guaranteed by a guarantor (normally its parent company or one of its related companies) whereby the guarantor will agree to assume responsibility for the obliga-

tions of the financing party should the latter fail to fulfil its financing obligations. The corporate guaranty can typically be documented in a written agreement, and the guarantor can either sign the transactional documents or execute a separate guaranty agreement to be treated as one of the transaction's ancillary documents. An approach which became more commonly used, is to implement and establish offshore structure and investment arms allowing investors to tap into wider pool of investment opportunities and attract different financing to ultimately secure more funding to the SPV while benefiting from more stretched taxation and governance regimes. In all cases, the SPV should have sufficient funding to finance the deal, which is usually made available by the private equity fund to the SPV at the time of executing the sales purchase agreement (SPA). Most deals witnessed in the past three years indicate a tendency on the part of key private equity funds in the Egyptian market to acquire a minority rather than a majority stake.

## 5.4 Multiple Investors

While a private equity consortium is observed in a few transactions in the market, this is not yet common in Egypt. Indeed, the private equity fund holds majority equity on the offshore SPV level. Meanwhile, a minimal ratio (minority) of around 10% will be held by the management in most cases. However, a significant part of equity funding is often secured via a preferred equity instrument, which has a preferred return under the fund management agreement, as common equity will not suffice to secure the equity funding of the transaction, due to its minimal ratio to the total equity funding.

In the past, the market witnessed the investors' increased interest in forming consortiums comprising of private equity funds and corporate

investors in transactions, especially in the sector of oil and gas and renewable energies or in transactions involving state-owned entities.

## Co-investment Right

While the co-investment right can be a right granted to the investor under the management agreement, the investor may not show an interest in co-investing alongside the private equity fund, especially at the very beginning of the transaction up to its closing, based on cost-efficiency and the uncertainty of the transaction. However, investors may opt to use their co-investment right at a later stage following the closing, on a higher-level structure of the SPV and management team. These are the passive stakes/investments managed by the private equity manager, which ultimately aims to increase the financial interest of its investors in such investment.

Having said that, in acquiring a larger stake, the co-investors may engage together with the private equity fund at the same level as the management team, in which case, minority protection will be given to the co-investor (eg, the right to access information).

## 6. Terms of Acquisition Documentation

### 6.1 Types of Consideration Mechanisms The Locked-Box Mechanism

While the completion accounts mechanism is used in a few cases in the market, the locked-box mechanism remains the dominant form of consideration structure in Egypt, as it is particularly suited to transactions where the parties require economic certainty in case of, for example, private equity exits. Hence, the price payable for the target is based on a balance sheet prepared at an agreed date prior to completion

providing for a fixed equity price. Generally, the most common locked-box date used is the target's last financial year-end.

In this respect, and although the locked-box is protected by restrictions on "leakage" and "permitted leakage" under the SPA, the buyer, for certainty purposes, may require the audited financial position of the target company for a specific period preceding the completion. The buyer may also require the management accounts covering the gap between the audited financials and completion, especially when the completion date falls sometime after the locked-box date.

### The Earn-Out Mechanism

Unlike the foregoing, the earn-out mechanism can be observed in transactions where a private equity fund is not involved. Furthermore, the involvement of a private equity fund will definitely affect the transaction's structure, but not the type of consideration mechanism, as the same consideration mechanism tends to be used in most transactions involving a private equity buyer.

The SPA usually provides a level of protection, which is commonly given by the seller not the buyer (eg, restrictions on "leakage" and "permitted leakage" and business warranties in relation to accounting and the financial position of the target). Said level of protection usually remains the same, irrespective of the nature of the seller, whether a private equity seller or corporate seller.

## 6.2 Locked-Box Consideration Structures

While the parties agree to a specific indemnity for the leakage, which, for example, can be on an Egyptian pound-for-pound basis, the interest charge on leakage is rarely adopted in the

market. However, the buyer has recourse to the general rules of interest charged under Egyptian law.

## 6.3 Dispute Resolution for Consideration Structures

Allocating a specific dispute resolution mechanism for the consideration structure is not common in Egypt. The parties usually agree to a dispute resolution mechanism for the entire share purchase agreement and, in particular, the parties usually agree to specific indemnity (eg, Egyptian pound-for-pound indemnity for leakage in the case of a locked-box mechanism), which, in most cases, is identified and settled before completion of the transaction. It is not common in Egypt to have a dedicated expert to play the role of mediator between the parties in case of a dispute, however, as part of the dispute resolution mechanism (which is, as highlighted, agreed for the entire share purchase agreement), parties may try and resolve their dispute amicably within an agreed maximum timeframe before resorting to the agreed dispute resolution mechanism.

## 6.4 Conditionality in Acquisition Documentation

The level of conditionality depends on the outcome of the due diligence exercise, which is likely to identify certain mandatory and suspensory regulatory conditions (eg, FRA approval, GAFI approval and recently the consent of the Egyptian Competition Authority), along with other conditions, such as third-party consents or shareholder approval. The material adverse change/effect is one of the key elements of the SPA and is heavily negotiated between the parties, which may trigger the termination right of the buyer. Indeed, one of the most common conditions observed in the SPA is third-party consent, if it is provided under a material contract to which the target is a party.

## 6.5 “Hell or High Water” Undertakings

In Egypt, the buyers are usually conservative, so they are not willing to accept “hell or high water” undertakings, especially where this approach conflicts with the fiduciary obligation of the private equity fund towards its investors. Furthermore, the hell or high water approach triggers several implications affecting the consummation of the transaction, as well as contingent liability that will likely be incurred by the fund. Hence, the hell or high water approach is not usually adopted by private equity funds in the Egyptian market and accordingly, the new EU FSR regime would not be typically featured in such types of undertakings.

## 6.6 Break Fees

Although break fees and reverse break fees are not mandated or regulated under Egyptian law, in private M&A break fees are commonly incorporated under the SPA, in favour of the buyer not the seller, since the likelihood of incurring significant expenses is to the buy-side not the sell-side. Although break-up fees for public transactions are not prohibited by law, they are not common or customary.

## 6.7 Termination Rights in Acquisition Documentation

As with any other acquisition transaction, termination rights are vested in both parties on the occurrence of certain events specified under the acquisition documentation. Material adverse change/effect and non-satisfaction of conditions precedent (eg, not obtaining the prior approval of the regulator or third-party consents) are key events that can trigger termination of the transaction, unless waived by the aggravated party. Long-stop dates vary depending on the contractual agreement of the parties and the expected timeframe during which each party will need to fulfil its pre-closing obligations especially obliga-

tions related to securing governmental approvals and consents.

## 6.8 Allocation of Risk

Generally, private equity sellers will attempt to limit their liability arising from the sale of the portfolio company, in order to return the proceeds to the investors in a timely manner, and maximise their return on investment, knowing that any unreasonable extension of the return time will affect the fund’s performance. Therefore, private equity sellers tend to assume minimal liability under the SPA of the transaction.

Where liability is assumed by a private equity seller, the private equity seller needs to make sure that warranties given under the SPA will not give rise to any liability. Thus, typical warranties given by the private equity seller under the SPA will be limited to the fundamental obligations and warranties (ie, to transfer the shares free of encumbrance, the fund’s ownership of the shares, the power and authority to enter into the SPA, permission of leakage, and running the portfolio company in the ordinary course of business until completion).

Furthermore, the private equity seller will opt to negotiate the shortest possible perception period of the warranties given under the SPA, which in most cases ranges between six and 24 months. In the event that the private equity fund is a buyer, the fund expects to receive a list of warranties (ie, business and core warranties), subject to the outcome of the due diligence.

## 6.9 Warranty and Indemnity Protection

Private equity sellers typically provide fundamental business and core warranties (eg, legal title to the shares, the power and authority to enter into the SPA, accounting, litigation, solvency, insurance, etc).

In Egypt, the management team does not usually participate in shareholding at the target level. Furthermore, in most transaction documentation, whether or not the management team is involved in the board of the target, the customary business warranties will be provided by the seller (eg, accounting, tax, employment, insurance, litigation, compliance with law, accuracy of the disclosed document/information, etc).

Warranties are typically capped under the SPA in terms of limitation of time and quantity as the time limitation of most warranties ranges from six to 24 months, except for the tax warranty, which is typically tied to the lapse of the statute limitation (ie, five years). As for the quantity, core warranties (eg, title of the shares and power and authority) are typically capped at 100% of the transaction consideration, while business warranties (eg, employment, litigation, compliance, etc) are capped at 25% of the transaction consideration.

## 6.10 Other Protections in Acquisition Documentation

Warranty and indemnity insurance is not common in Egypt. The private equity seller does not provide any further protections, other than the ordinary core and business warranties. Nonetheless, the parties may agree to cover certain risks post-closing through financial adjustments.

For example, operational licences and tax-related risks are a common concern among businesses in Egypt. Thus, one common approach to safeguard the purchaser is to retain a portion of the consideration for an agreed period to cover any potential tax exposure. Purchasers tend to make deferred payments, pricing adjustments and escrow arrangements rather than resort to indemnity claims covering potential liabilities.

## 6.11 Commonly Litigated Provisions

Litigation is not common in M&A transactions or private equity transactions in Egypt, as the parties usually agree to institutional arbitration as a way to solve disputes. The most commonly disputed clauses may be, for instance, a MAC, breach of warranties (ie, core warranties and business warranties), and price adjustment. However, the potential rise in disputes when a private equity fund is involved is minimal, as private equity funds usually tend to undertake comprehensive due diligence on the target company before execution of the transaction documents, so that they can eliminate the possibility of post-closing disputes as much as possible.

## 7. Takeovers

### 7.1 Public-to-Private

Public-to-private transactions are not common in private equity transactions in Egypt.

### 7.2 Material Shareholding Thresholds and Disclosure in Tender Offers

Any corporate entity established in Egypt and any investment project carried out in Egypt involving a minimum of (10%) foreign shareholding for non-listed companies or (2.5%) for listed companies (excluding any company operating locally by virtue of a concession agreement) are now required to submit disclosure/reporting forms to GAFI on a quarterly and annual basis, or in the event that certain articles of a company's statutes are amended. Furthermore, according to the FRA's listing rules, shareholders are obliged to notify the FRA if their shareholding, voting rights, subscription percentage (directly or indirectly) reaches or falls below 5% and multiples of 5%. This also applies to employees, board members and their related parties, whose respective shareholding, voting rights, subscrip-

tion percentage (directly or indirectly) reaches or falls below 3% and multiples of 3%.

### 7.3 Mandatory Offer Thresholds

A recent amendment has been introduced to the CML with respect to the thresholds requiring submission of a mandatory offer to the minority. The new amendment introduced certain thresholds that can be summarised, as follows:

- a buyer acquiring one third (whether directly, indirectly or through related parties) of the share capital or voting rights in a listed company;
- a buyer owning one third (whether directly, indirectly or through related parties) of the share capital or voting rights in a listed company and increasing their existing equity/voting rights to 50%, or acquiring more than 5% within 12 consecutive months;
- a buyer owning 50% (whether directly, indirectly or through related parties) of the share capital or voting rights in a listed company, and increasing their existing equity/voting rights to two thirds, or acquiring more than 5% within 12 consecutive months; or
- a buyer owning two thirds (whether directly, indirectly or through related parties) of the share capital or voting rights in a listed company and increasing their equity/voting rights to three quarters, or acquiring more than 5% within 12 consecutive months.

### 7.4 Consideration

Consideration is dependent on the target's shares. For unlisted shares, the consideration may be in cash and/or in kind, while for listed shares, the consideration for a mandatory tender offer may be all in cash, or a mixture of cash and shares.

### 7.5 Conditions in Takeovers

The CML requires a mandatory tender offer to be final and not subject to conditions. In exceptional cases, and subject to the FRA's approval, an offeror can make a mandatory tender offer conditional on the acquisition of a minimum stake in the voting rights or the capital of the target company. Offers can be conditional on acquiring at least 51% with the purpose of controlling the company, or 75% if the acquisition is for the purpose of a merger.

If, however, the shares offered for sale do not meet the specified minimum stake – 51% or 75% (as the case may be) – the offeror may not acquire the offered lower stake without obtaining the FRA's prior approval. Furthermore, if the tender offer is through a swap of shares that will be issued through a capital increase, the offer must be conditional on the company's approval of the issuance of the shares.

### Financing as a Condition

With regard to financing as a condition, the offer proposal submitted to the FRA must include a confirmation from a licensed bank in Egypt evidencing the availability of the financial resources to fund and cover the offer. Accordingly, unless there is confirmation of financial solvency, the FRA should not accept the offer proposal.

### Break-Up Fees

Neither break-up fees nor reverse break-up fees are mandated or regulated by Egyptian law. In private M&A, it is common that parties agree on break-up fees. Although break-up fees for public transactions are not prohibited by law, they are not common or customary.

Furthermore, the FRA is entitled, during the offer's validity period and up to five days before the lapse of this period, to accept a competitive



offer, hence the impracticability of break-up fees in tender offer transactions.

Generally, and despite the parties' agreement on break-up fees or liquidated damages, or both, Egyptian law allows a party to claim reduction of agreed damages, to the extent that the agreed amount is deemed excessive compared to the actual damages occurring from the break-up.

## 7.6 Acquiring Less Than 100%

If a private equity bidder acquires less than 100%, the bidder can enter into a shareholders' agreement, where additional governance rights can be granted to the bidder under said agreement, but this would trigger a disclosure obligation. In fact, the squeeze-out mechanism is not recognised under Egyptian law, thus, there is no mechanism available to compel minority shareholders to sell their stakes. However, the CML has allowed minority shareholders to request and oblige majority shareholders to acquire their stake.

## 7.7 Irrevocable Commitments

While conceptually, irrevocable commitments can be agreed in the case of an unlisted target company, irrevocable commitments are rare in the case of listed target companies to minimise the level of disclosure, especially since the FRA is entitled during the offer's validity period and up to five days before the lapse of this period to accept a competitive offer, which illustrates the impracticability of irrevocable commitments in tender offer transactions.

# 8. Management Incentives

## 8.1 Equity Incentivisation and Ownership

Equity incentivisation is a cornerstone feature of the private equity market in Egypt. However,

as stated previously, the level of equity is minimal and it is usually dependent on the adopted structure and the agreement between the relevant parties. It is generally about 10%.

## 8.2 Management Participation

The institutional strip structure dominates the private equity transactions scene in the Egyptian market. In fact, most private equity transactions are indirect, being carried out by an offshore investable arm SPV of the private equity fund.

## 8.3 Vesting/Leaver Provisions

Typically, managers can be incentivised under management incentive schemes, where incentive shares can be acquired by managers concurrently with the private equity fund at the time of closing the transaction. The main purpose of vesting provisions is to incentivise managers to maintain their high performance with the private equity fund and to retain the "right" deal executives until the end of the private equity fund's investment period. Normally, the vesting provisions, including the respective calculation, may be identified under the constitutional documents of the offshore SPV, which typically categorise "good leavers" and "bad leavers".

## 8.4 Restrictions on Manager Shareholders

The principal management agreement entered into by the general partner and the limited partners usually provides for certain restrictions on the limited partners in relation to specific matters (eg, the operation and management of the private equity fund), which is emphasised by Egyptian law as well as under the CLS structure. As a result, it is common that the supplementary agreement entered into with the managers of the private equity fund provides for certain restrictive covenants (eg, non-compete, non-solicitation). However, such covenants should



not be excessive in terms of the length of the restrictive period.

## 8.5 Minority Protection for Manager Shareholders

### Management and Voting Rights

As a general concept, minority shareholders are protected by the applicable law, and manager shareholders owe a fiduciary duty to the other shareholders (ie, the limited partners). As a further protection for limited partners under the CLS structure, the general partner(s) is/are not allowed to dispose of its allotment unless the extraordinary general assembly approves this. Moreover, in the CLS structure, limited partners' liability is confined to their contribution, as they provide capital but cannot make managerial decisions and are not responsible for any debts beyond their initial investment. On the other hand, the liability of the general partner(s) for the debt of the private equity fund is unlimited, since the general partner(s) is/are responsible for the daily management of the limited partnership and is/are therefore liable for the private equity fund's financial obligations, including debts and litigation.

Anti-dilution protection is generally granted to shareholders (including manager shareholders) under the law, but it is always subject to exercising a subscription right in the event of any capital increase of the fund. However, in the case of a joint-stock company structure, exercising a subscription right remains optional, and this can be further protected contractually between the manager shareholder and other shareholders. However, in a CLS structure, the general partner's allotment is always half a per cent of the other limited partners' share in the fund, which is an obligatory requirement for a private equity fund to retain its licence.

### Business and Holding Structures

While the law specifies provisions with respect to management and voting rights under the CLS structure, the management agreement may entail further technical details with respect to management of certain matters involving the business and holding structure (eg, multi-vehicle adjustments and related investment vehicles of a private equity fund).

Under the CLS structure, the law grants the entire management to the general partner (including managers), and hence, the right to control exit from the private equity fund. However, the management agreement usually organises the exit right to entitle the partners (general and limited) to vote for the exit.

## 9. Portfolio Company Oversight

### 9.1 Shareholder Control and Information Rights

From a governance standpoint, it is typical for a private equity fund shareholder to have control over the target's business. This is usually achieved under the shareholders' agreement, where the private equity shareholder is entitled to a certain number of board seats, in addition to certain reserved matters, requiring the approval of the private equity shareholder to pass, for example:

- capital increase;
- issuance of any shares or equity-linked securities;
- reduction in capital;
- redemption of shares;
- granting of options including the performance incentives programme;
- changes to class rights or rights issue, approval of the annual financial statements,

- balance sheet, profit and loss statement and cash flow statement of the target;
- permitting any material change in the accounting policies and principles adopted by the target company;
- approval of the target's business plan and annual budget and any material deviation from this;
- approval of the target's related-party transactions;
- declaration, distribution and/or payment of dividends by the target company to its shareholders or their direct parent companies; and
- investment or participation by the target in any entity.

## 9.2 Shareholder Liability

In principle, the liability of shareholders is fundamentally organised under Egyptian companies' law. In this respect, the shareholders of capital corporate entities (ie, limited liability companies and joint-stock companies) are only liable for the acts of the company to the extent of their contribution to said company's capital, unless such act implies criminal liability or grants a favourable advantage to specific shareholder(s) without regard for the interests of other shareholder(s) or the company. Therefore, one of the key priorities of private equity funds is to apply a proper governance regime in their portfolio companies to minimise the level of exposure, which is perfectly accomplished by imposing a compliance policy in said portfolio companies.

## 10. Exits

### 10.1 Types of Exit

The holding period for private equity transactions is usually tied to two main elements, namely, the life cycle of the principal fund and the achievement of the business plan to ensure

greater return on investment (ROI) on the portfolio companies. This would normally take up to five years. Commonly, private equity funds choose the IPO as a strategic means of exit. However, this is still subject to several factors and market conditions.

While private equity funds can consider other exit strategies, the "dual track" and "triple track" are not common in the market. Reinvestment upon exit is unusual in private equity practice, however, the fund remains fixable to reinvest, depending on its investment strategy.

### 10.2 Drag and Tag Rights

Drag rights are typically provided under transaction documents. Although the drag right is commonly granted to the majority shareholder, a private equity minority shareholder can stipulate this right under the shareholders' agreement to force the majority of shareholders to co-sell their shares to a third-party buyer on the same terms and conditions. The drag right is commonly exercised on the entire shares of the majority shareholders of the target company.

As private equity funds adopt the institutional strip approach, the "institutional co-investor" scenario does not occur in practice at the shareholding level of the target company. Based on the institutional strip model, private equity investors (ie, the manager shareholder and private equity fund) are aligned under one vehicle (ie, the offshore SPV). The tag rights are therefore granted to the offshore SPV under the shareholders' agreement entered into with the other shareholders of the target company, according to which, the offshore SPV can exercise the said right, at its sole discretion, and co-sell the minority shares to a third-party buyer on the same terms and conditions.

## 10.3 IPO

Other than a statutory lock-up period for a main shareholder in the case of an IPO (ie, two fiscal years), the lock-up period between the private equity seller and the other shareholders is generally agreed for three years. The IPO arrangement can be conducted gradually in several phases, which may have a positive impact on the value of the remaining equity held by a private equity seller until the full exit. Meanwhile, relationship agreements may be put in place between the private equity seller and the target company, subject to disclosure requirements and corporate approvals.

Private-equity-led IPOs generally take into account some key considerations, for example:

- the timing and duration of investments and the exit strategies thereof;
- the valuation of the company affecting the pricing of the IPO and the amount of capital injected;
- the strategy of using the IPO proceeds for the company's plans; and
- the type and size of the investors the IPO is aiming to attract.