Egypt: Acquisition of Listed Companies

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The Egyptian Capital Market Law and its regulations (CML) has regulated the acquisition of listed stock and gaining control over listed entities.

The CML has regulated the submission of tender offers, whether mandatory (required by the CML and its relevant regulations) or optional. The regulations were issued to achieve certain goals, including transparency, equality, access to information, market protection, regulating conflict of interest and proper use of insider information.

Mandatory tender offers (which must be offered to all shareholders of the relevant company) is required when a person (along with its related parties): (i) acquires more than one-third of the capital or the voting rights of a target; (ii) if owning more than one-third but not exceeding half of the issued capital and voting rights and undertakes a transaction that results in ownership in excess of half of the issued capital or voting rights, or an increase of two percent in any 12-month period; or, (iii) if owning more than half but not exceeding three-quarters of the issued capital and voting rights and undertakes a transaction that results in ownership in excess of three-quarters of the issued capital or voting rights, or an increase of two percent in any 12-month period.

Mandatory tender offers are generally non-conditional. However, the Egyptian Financial Services Authority (EFSA) may condition offers by success of acquisition of certain thresholds in certain instances.

EFSA may exempt persons (and their related parties) from the mandatory tender offer regulations in certain events, including without limitation: transfer of shares to parents and siblings; inheritance; regulated mergers; sale by banks of pledged shares; and, restructuring of group companies.

Generally, the applicant of a tender offer (either mandatory or optional) must submit the draft tender offer to EFSA, including necessary information on the applicant, shares sought to be acquired, method of acquisition (cash, share swap or otherwise) and the percentage already owned by the relevant applicant and its related parties. The regulations have set a clear definition of related parties and control, which properly regulate the market and grant sufficient protection to minority shareholders.

To further protect the interests of the minority shareholders and market stability, EFSA was granted the right to mandate the relevant target company to provide a fair market value report within 15 trading days from the date of disclosure of the draft tender offer, Such action applies in the following events: (i) the applicant or its related parties own 20% or more of the share capital of the target, is a board member of a member of the top management of the target; (ii) the price offered for shares is a share swap or a mixed offer (cash and shares); (iv) the shares of the target are actively traded shares; and (v) other events where EFSA deems such valuation necessary for the protection of the shareholders and the interest and stability of the market.

EFSA must promptly inform the Egyptian Stock Exchange once it has approved the receipt of the draft tender offer and the latter must post it on its screen. Once the tender offer is approved, it has to be published in in two daily widespread morning newspapers, one of which is in Arabic. The duration of validity of the tender offer will be no less than 10 trading days and may be extended to 20 trading days if the target company is required to submit a valuation report.

To further regulate the tender offer process, certain requirements are set on all relevant and related parties to the applicant and the target. All such parties shall maintain highest level of care on information being disclosed in relation to the offer. Further, the directors and management of the target will not undertake any action or disposition that may lead to a material adverse effect.

An approved tender offer is not immune from competing offers being issued by other third parties. At any time after publication of the first tender offer until five trading days before the lapse of the validity period of such offer, competing tender offers may be submitted. Generally, competing tender offers must offer cash with at least a two percent increase from the former offer. EFSA may resort to receiving sealed bids in the event the process takes more than 60 trading days.

The CML does not grant any squeeze-out rights to majority shareholders. On the contrary, if a person and its related parties have control of 90% or more of the relevant company, shareholders owning three percent or more may, within 12 months from such ownership threshold being reached, request EFSA to oblige the majority shareholder to tender for the minority shares.

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