

IN-DEPTH

# Technology Mergers & Acquisitions

EGYPT



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# Technology Mergers & Acquisitions

EDITION 5

Contributing Editors

**Andrew Boyd** and **Gary Brown**

Morrison & Foerster LLP

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In-Depth: Technology Mergers & Acquisitions (formerly The Technology M&A Review) provides an insightful overview of the legal and regulatory frameworks and market climate for technology-driven M&A transactions in major jurisdictions worldwide. With a focus on recent developments, it analyses the intersection of general M&A law and technology in transactions where one or more of the parties is engaged in a technology business.

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**Generated: November 5, 2024**

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# Egypt

Mohamed Hashish, Farida Rezk, Mariam Rabie and Omar Aboul-Ella  
Soliman, Hashish & Partners

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## Introduction

Egypt has witnessed a surge in M&A transactions over the past year and currently stands out as one of the most popular markets in the region for M&A transactions. According to multiple reliable resources, the total volume of M&As reached 139 deals, and the average deal value rose by 383 per cent in comparison to the first half of 2023, recording a total of US\$3.48 billion. This report predicts further growth in M&A transactions across multiple sectors, namely technology, telecoms and fintech.

As a result of the Egyptian government's extensive efforts over the past few years to improve the business climate in the country, Egypt has managed to attract more foreign direct investment (FDI) across multiple sectors, predominantly within the fintech and infrastructure sectors. This achievement is supported by a plethora of international recognition. Egypt was recognised as one of the top five destinations globally for greenfield FDI in 2016, where Cairo was also ranked among the top 10 cities hosting start-ups in 2016. South Africa was replaced by Egypt as the top second-ranked destination by projects in the Middle East and North Africa (MENA) region, experiencing a 60 per cent increase from 85 to 136 projects, as per the FDI Report (2020). Egypt was also placed at the top of all ranked MENA countries by capital investment in 2020 by acquiring 12 per cent capital investment with a total value of US\$13.7 billion, where financial services were among the top five sectors in 2019.

The Egyptian market's credentials (including investment cost, manpower and local and market demands) are highly attractive to all businesses at a range of levels, from start-ups to large multinational entities.

Despite international and local crises faced by the country over the years (including revolutions, covid-19, the Ukraine–Russia war, inflation, and the threat of potential recession), Egypt has maintained strong liquidity and financial status as a result of FDI.

One of the main sectors attracting FDI in Egypt is fintech. During the past few years, fintech has become increasingly dominant within the Egyptian market, as the most popular business models within the Egyptian jurisdiction are payment platforms and financing services. According to several reports, digital payment is expected to be the market's dominant segment by 2025. In addition, over the past five years, investments pumped into the fintech sector, including fintech-enabled start-ups, reached US\$358.8 million. Investments in this sector reached nearly US\$290 million in 2022, compared to just US\$900,000 in 2017, according to reports.

It is worth noting that the Egyptian government has issued various regulations on fintech in the non-banking financial sector in 2023, regulating the licensing framework for such activities, enhancing financial inclusion and propelling the digital transformation of the financial sector within the country.

Furthermore, recent developments have been made with respect to the Anti-Trust Law No. 3 of 2005 (Anti-Trust Law) in April 2024 to the Anti-Trust Law and its Executive Regulations, whereby the condition of pre-approval for any transaction has been newly introduced as opposed to the post-notification regime. This pre-approval is required for any transaction that constitutes an 'economic concentration'; under the recent amendments, economic concentration is defined as any change of control or material influence as a result of a

merger or acquisition or establishment of a joint venture. This recent amendment to the Executive Regulations of the Anti-Trust Law came into force on 1 June 2024, and places an obligation on all transactions that constitute an 'economic concentration' to be notifiable to the Egyptian Competition Authority for pre-approval.

## Year in review

Various deals have taken place over the past year within the technology sector, including, inter alia, the following notable deals:

1. Saudi Telecom's internet services subsidiary Solutions by STC has completed the acquisition of an 88.9 per cent stake in Egypt's Giza Systems, with an enterprise value of US\$158 million, in line with Solutions by STC's strategy to lead Saudi Arabia's digital transformation objectives in October 2022;
2. MNT-Halan, Egypt's leading and fastest growing fintech ecosystem, announced in February 2023 that Chimera Abu Dhabi has invested more than US\$200 million in equity in exchange for over 20 per cent of the company;
3. Nigerian automotive technology company Autochek's acquisition of a majority stake in Egypt's AutoTager was announced in April 2023. The acquisition by Grinta, an e-commerce platform digitising the pharmaceutical supply chain, of the business to business (B2B) e-commerce platform Auto-Cure, aims to boost its business in the country in August 2023;
4. Beltone Financial Holding, a large Cairo-listed investment company, announced that it signed the final agreement to acquire 100 per cent of Cash Microfinance in September 2023;
5. Noventiq, the global digital transformation and cybersecurity solutions and services provider, announced in February 2023 the closing of the acquisition of Egypt-based DigiTech, which is one of the top-performing and fastest-growing Microsoft partners in Egypt;
6. the sale of 9.5 per cent stake in state-controlled Telecom Egypt (ETEL.CA) for 3.75 billion Egyptian pounds in May 2023;
7. Liquid Intelligent technologies acquisition of Cysiv MEA, an enterprise cloud and cybersecurity services company in March 2023; and
8. the transfer of Vodafone Group's 55 per cent stake in Vodafone Egypt to Vodacom – its South African subsidiary – in a €2.37 billion cash and stock transaction in December 2022.

## Legal and regulatory framework

The primary laws and regulations governing M&A activity in Egypt are the:

1. Egyptian Civil Code No. 131 of 1948;

2. Egyptian Companies Law No. 159 of 1981;
3. Capital Market Law No. 95 of 1992;
4. Investment Law No. 72 of 2017;
5. Egyptian Exchange Listing Rules; and
6. decrees issued by regulatory authorities, such as the Egyptian Stock Exchange (EGX), the Financial Regulatory Authority (FRA) and the General Authority for Investment and Free Zones (GAFI).

## Key transactional issues

### Company structures

In general, it is important to highlight that there are two main categories of privately owned companies in Egypt: partnerships and corporations.

#### Partnerships

##### General partnerships

General partnership (GP) capital contributions can be made by at least two active partners who are deemed by law jointly liable in person for all obligations arising from the operation of the GP.

##### Limited partnerships

Limited partnership (LP) capital contributions can be made by at least one active partner deemed by law to be liable in person for all obligations arising from the operation of the LP, in addition to one other limited or salient partner who must neither be personally liable for these obligations nor involved in the management of the LP.

#### Corporations

In general, and as opposed to partnerships, the concept of piercing the corporate veil does not apply to corporations in Egypt, with the exception of active partners in limited partnerships by shares (LPSs); therefore, the liability for operating corporations is only limited to the paid-in capital thereof. However, this general rule is subject to certain exceptions where this liability might be exposed to board members, managers or shareholders and partners (as the case may be).

There are four types of corporations in Egypt:

- 1.

- joint-stock companies (JSCs): the capital of a JSC must, in general, be owned by at least three shareholders who can be individuals and juristic persons of any nationality;
2. limited liability companies (LLCs): LLCs must be owned, in general, by at least two partners who can be individuals and juristic persons of any nationality;
  3. one-person companies (OPCs): OPCs, as indicated by the name, are owned by one partner who can be either an individual or a juristic person of any nationality; and
  4. LPSs: LPSs, the same as LLCs, require at least two partners, one of whom must be an active partner deemed by law to be liable in person for all obligations arising from the operation of the LPS.

The acquisition of share structure may differ based on the aforementioned categories. However, the acquisition of shares in GPs, LPs and LPSs is, in general, not preferable for buyers as it involves unnecessary personal liability exposure.

The acquisition of share capital in LLCs and OPCs is much simpler than in JSCs. However, the acquisition of shares in JSCs may constitute a longer process than the acquisition of shares in LLCs or OPCs.

Founding and in-kind shares in JSCs and LPSs may not both be transferred prior to publishing the financial statements of the first two full fiscal years, following incorporation except in certain cases and provided that the approval of the chair of GAFI is obtained. The acquisition of share capital in LLCs is primarily subject to pre-emption rights (or the right of first refusal) that must be waived in a specific way to complete such acquisition.

The acquisition of share capital in JSCs that are listed on the EGX involves more procedures and filings than those applied to JSCs that are not listed on the EGX.

For the acquisition of businesses, this type of acquisition may be made, primarily, in two different ways: spin-offs (horizontal spin-offs) or split-offs (vertical split-offs) to acquire the target business; and assignment of the contracts that are related to such business by way of subrogation.

Regarding the acquisition of assets, the structure can only be determined based on several elements, including the type and location of such assets, and the legal system governing the company owning such assets.

There are also a number of elements that must be taken into consideration when structuring any acquisition and disposal transaction in Egypt, such as:

1. the special legal systems governing the target company, business or asset (if any);
2. the country from which the target company, business or asset will be acquired;
3. the location of the target company, business or asset; and
4. whether or not the target shares in the JSC are registered with Misr for Central Clearing, Depository and Registry.

## Deal structures

As a general rule, acquisitions involving the transfer of title of shares of JSCs and quotas of LLCs are the most common acquisition structures in Egypt. The transfer of unlisted shares is conducted over the counter (OTC) through an accredited broker registered with the EGX and appointed for such purpose. OTC transactions are not subject to the same level of regulation as public transactions.

### Acquisition agreement terms

In Egypt, all types of considerations are accepted in practice, but cash is far more common than any other form, noting that each seller may be offered different deal terms, including the form of consideration.

Furthermore, pre-closing covenants are usually related to, inter alia, conduct of business, authorisation, breach of representation and warranties, as well as no transfer or encumbrance. Furthermore, closing conditions can be determined on a case-by-case basis.

However, in practice, closing conditions usually include, inter alia, regulatory approvals, payment, top management restructuring and execution of any ancillary documents (if any). Finally, it is worth noting that despite the fact that break-up fees and reverse break-up fees are permissible in Egypt, they are not commonly used.

### Financing

In Egypt, M&As are usually funded by the purchaser's own sources of income. However, acquisition financing is also commonly carried out through banks and international financial institutions.

In practice, assurance is made in the form of undertakings in the pre-contractual documents.

### Tax and accounting

Any profit realised by unlisted corporations or persons through transactions involving the transfer of shares shall be subject to a capital gains tax, at the same corporate income rate of 22.5 per cent on net taxable income. Furthermore, according to the Income Tax Law, profits arising from the company's re-evaluation (including the merger of two or more resident companies, the split of a resident company into two or more resident companies, transforming a partnership into a corporation, transforming a corporation into another form of corporation and transforming a juristic person into a corporation) shall be taxable at the same corporate income rate, namely 22.5 per cent on net taxable income. The capital gains tax shall be borne by the seller in all cases.

Capital gains realised by a corporation through selling their shares in companies listed on the EGX are generally subject to capital gains tax at the rate of 10 per cent, except for in some cases.

According to the Stamp Tax Law, a stamp duty tax shall be enacted on all payable transactions involving the transfers of shares in a company, whether these shares are issued by Egyptian or foreign companies and whether or not such securities are listed on



the EGX, at a rate of 0.05 per cent on the gross transaction value without deducting any costs, to be borne equally between the purchaser and the seller.

However, the general rules above may be affected in the case of any applicable double taxation treaty (if any) to which Egypt is a party.

Furthermore, transactions involving the transfers of shares in a company would not be subject to value-added tax (VAT). However, transfer of assets may be subject to VAT, noting that the current standard rate applied in Egypt is 14 per cent.

Furthermore, the Ministry of Investment and International Cooperation (MoIC) sets the accounting standards that, since 2006, have adopted the Egyptian Accounting Standards (EAS) based on the International Financial Reporting Standards (IFRS). In 2019, the MoIC issued Decree No. 69 of 2019 adopting the EAS based on the 2018 IFRS for all public interest entities, which are listed companies, public subscription companies, securities companies and investment funds established by banks and insurance companies, in addition to specific requirements for SMEs.

Furthermore, the MoIC also sets the auditing standards in Egypt and, accordingly, has issued Decree No. 166 of 2008 to adopt the Egyptian Standards on Auditing Review and Other Assurance Services, in accordance with the International Standards on Auditing.

## Cross-border issues

Foreign investments are subject to screening in Egypt based on specific criteria, including the investor's nationality and the company's activities, as some of the activities carried out by non-Egyptian investors, and the investor's nationality, may be restricted by relevant Egyptian laws and require certain conditions to be met. Therefore, screening must be performed to ensure the satisfaction of such conditions and requirements.

Foreign ownership restrictions are applied to several sectors and locations: (1) conducting importation activities for resale or trading purposes, commercial agencies and intermediary businesses; and (2) carrying out business in the Sinai Peninsula.

Security clearance must be obtained for any foreigner to work or do business in Egypt. In practice, GAFI typically approves changes in shareholding structures without security clearance, **except for** some nationalities that are 'Restricted Nationalities', such as Bangladesh, Belarus, China, Iran, Iraq, Israel, Nigeria, Palestine, Russia, and Ukraine. These Restricted Nationalities require prior security clearance.

Additionally, under Egyptian law, foreign investments are subject to review and screening by GAFI. All companies incorporated in Egypt that are entirely or partially owned by non-Egyptian investors, regardless of the percentage of this ownership and the legal regime that is applied (Non-Egyptian Owned Companies), must regularly report FDI data to GAFI within the following timelines:

1. no later than 30 days after the incorporation date or the date of any change in the Non-Egyptian Owned Company's capital, purpose, shareholding structure or board members (as the case may be);
2. no later than 45 days after the end of each quarter of a calendar year; and
- 3.

no later than four months after the end of the relevant Non-Egyptian Owned Company's financial year.

Furthermore, failing to satisfy the FDI requirements will subject the Non-Egyptian Owned Company to a penalty of 50,000 Egyptian pounds, in accordance with the Investment Law. Foreign ownership within some sectors and activities is restricted and certain requirements must be satisfied for a foreign investor to be able to perform such activities under the relevant Egyptian laws.

As a general rule, according to the Importers Registrar Law, no person, whether natural or juristic, may import any product for trading purposes unless such person is registered with the Importers Registrar, at least 51 per cent of the company's share capital is owned by Egyptian nationals. However, a recent exception has been introduced in light of Law No. 173 of 2023, whereby companies with foreign ownership exceeding 49 per cent are permitted to engage in importation activities for 10 years starting from October 2023, subject to the registration in the Importers' Registrar in the General Organisation for Export and Import Control, given that an Egyptian manager is appointed to maintain responsibility for any importation activities.

Furthermore, in accordance with the Commercial Agencies Law, commercial agencies-related activities may be carried out by companies that are 100 per cent owned by Egyptian nationals. However, foreign investors can still achieve full control over this type of business by following a specific structure.

Non-Egyptian employees' total salaries in any entity that is subject to the Companies Law (such as JSCs, LLCs and OPCs) must not exceed 20 per cent of the total salaries of all employees working for the same entity, in accordance with the Companies Law.

However, according to the Executive Regulations of the Investment Law, an increase of the maximum ratio for foreign employees from 10 per cent to 20 per cent can be authorised for companies established in accordance with the provisions of the Investment Law provided that approval is obtained from the Egyptian Ministry of Manpower and there is no possibility of employing an Egyptian person possessing the necessary qualifications.

## IP protection

There are a number of international treaties and conventions on intellectual property rights (IPRs) to which Egypt is a party, including the:

1. Patent Cooperation Treaty to seek patent protection for an invention simultaneously in a number of countries by filing an international patent application;
2. Paris Convention on the Protection of Industrial Property, adopted in 1883, which applies to industrial property, including patents, trademarks, service marks, trade names, geographical indications and the repression of unfair competition, acceded on 5 March 1951;
3. Berne Convention on 2 March 1977 for the protection of works and the rights of their authors. It grants creators the means to control how their creations are used;

4. International Registration Systems, governed by the Madrid Agreement, which was entered into by Egypt on 1 July 1951, and the Madrid Protocol related thereto, which was entered into by Egypt on 3 September 2009; and
5. Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms acceded on 15 December 1977.

Furthermore, the Intellectual Property Law No. 82 of 2002 (the Intellectual Property Rights Law) and its Executive Regulations is the primary legislation governing IPRs in Egypt. 'Computer software' is defined as any form of instructions and orders expressed by a particular language, symbol or sign that could be used directly or indirectly in a computer to perform a function or achieve a result – whether such instructions and orders are in their original form or any other computer-related form.

In Egypt, the Permanent Office for the Protection of Copyright at the Ministry of Culture oversees copyright-related issues. In addition, the Intellectual Property Rights Protection office at the Information Technology Industry Development Agency is in charge of software-specific issues.

Copyrights under the Intellectual Property Rights Law extend to software and computer programs, like any other work protected under the aforementioned law. Companies shall have the right to transfer all or some of their copyright economic rights by virtue of a written contractual agreement with a detailed indication of each right to be transferred with the extent, purpose, duration and place of exploitation of the transfer, in return for compensation. Furthermore, a licence may be granted by the Ministry of Communications and Information for the copy or translation of protected work under the Intellectual Property Rights Law without consent in certain conditions in return for compensation.

## Employment issues

According to the Egyptian Labour Law No. 12 of 2003 (the Labour Law), employees are automatically transferred in all cases of transfer of business, including mergers, acquisitions and sales. The Labour Law provides additional protection for employees through the provision of joint liability of the new employer and former employer in satisfying employees' rights accrued prior to the transfer of the business.

Furthermore, according to the Egyptian Civil Code, if the work that is assigned to an employee exposes the employee to information regarding the employer's customers and confidential information related thereto, the employer and the employee shall have the right to agree that the employee must neither compete with the employer after the termination of his or her employment contract nor participate in a competitive project.

However, this agreement shall only be valid in the following cases: the employee has the legal capacity to enter into the employment contract; and the non-competition clause shall be limited to a specific period, territory and type of work and to the extent necessary to protect the legitimate interests of the employer.

## Data protection

The Data Protection Law No. 151 of 2020 (Data Protection Law) is the primary legislation regulating the protection of personal data, which has an indirect effect on M&A activity in Egypt, whereby personal data of a juristic or natural person cannot be processed, stored or shared without their prior consent.

Furthermore, public record information in respect of private companies is relatively limited. The following public record information can ordinarily be obtained:

1. commercial registers, which show, inter alia, the company's date of registration, current board members or directors, business activities, places of business, share capital and the signatory powers and authorities granted to the board members or directors; however, commercial registers do not include, for example, information on the shareholding structure;
2. real estate registered titles, which require knowledge of the exact address of the target real estate; and
3. litigation cases checks, which are time-consuming processes as they require conducting separate checks at each individual court.

However, the application of the Data Protection Law is still subject to the issuance of the Executive Regulations of the Data Protection Law and the establishment of the Data Protection Centre, which have not been issued nor established yet.

## Subsidies

According to the Investment Law, the Technological Zones System, which is one of the investment systems, provides the tools and equipment necessary for technological activities to be carried out by a company incorporated under this system. This company shall not be subject to any taxes or customs duties of any kind in accordance with specific requirements and procedures to be determined by the Executive Regulations of the Investment Law.

## Due diligence

As a general rule, under the Civil Code, the seller is not answerable for any defects of which the purchaser was aware at the time of the sale nor any defects that could be discovered by the purchaser upon examining the subject of the sale with the care of a reasonable person, unless the purchaser proves that the seller confirmed the absence of those defects.

There is no typical scope of due diligence in Egypt, as it is at the buyer's discretion to determine the level of due diligence that he or she is willing to conduct; however, conducting a full due diligence is usually recommended to be in line with the aforementioned general rule under the Civil Code. Buyers can rely on due diligence reports produced by the sellers, if the sellers conduct the due diligence with the care of a reasonable person.

## Dispute resolution

Parties usually refer any dispute related to M&A to arbitration.

The Egyptian Arbitration Law No. 27 of 1994 is based on the UNCITRAL Model Law on International Commercial Arbitration. Since its establishment in 1979, the Cairo Regional Centre for International Commercial Arbitration has adopted the UNCITRAL arbitration rules, with various amendments made until 2011, with all amendments being based on UNCITRAL's arbitration rules.

Furthermore, Egypt has ratified several treaties, namely the New York Convention in 1959, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) in 1972 and a number of bilateral investment treaties.

The enforcement of foreign arbitral awards in Egypt is governed by the New York Convention. Under the New York Convention, the enforcement of the arbitral award occurs after depositing the award with the courts and obtaining a writ of execution. The award is then enforced in the same way as that of a court judgment. Furthermore, under the ICSID Convention, the enforcement of arbitral awards may be implemented by the competent court or any other authority, as determined by the state that is a party to the treaty. In Egypt, the Ministry of Justice is the designated authority to oversee the enforcement of arbitral awards, in accordance with the ICSID Convention.

## Outlook and conclusions

It is expected that Egypt will witness a huge surge in M&A activity in the technology sector, especially with regards to the fast growth of the mobile payments industry, with an estimated annual growth rate of 19.3 per cent, which is expected to reach US\$22 million by 2025. Furthermore, the government of Egypt has adopted initiatives for the promotion of investment with regards to fintech. This includes the issuance of the new Fintech Law No. 5 of 2022, granting licences to non-banking financial institutions in the fintech sector. The efforts of the Egyptian government to promote foreign investment and boost post-pandemic growth is reflected in M&A activity, which constitutes an appealing market to foreign investors, especially in the fast-growing technology, media and telecoms and fintech sectors. Subsequently, Egypt has proven to be a popular and key market for investment in the region.

SOLIMAN, HASHISH & PARTNERS  
LAW FIRM

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**Mohamed Hashish**

[m.hashish@shandpartners.com](mailto:m.hashish@shandpartners.com)

**Farida Rezk**

[f.rezk@shandpartners.com](mailto:f.rezk@shandpartners.com)

**Mariam Rabie**

[m.rabie@shandpartners.com](mailto:m.rabie@shandpartners.com)

**Omar Aboul-Ella**

[o.aboulella@shandpartners.com](mailto:o.aboulella@shandpartners.com)

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