IN-DEPTH

Corporate Governance

EGYPT

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In-Depth: Corporate Governance (formerly The Corporate Governance Review) is a useful overview of the corporate governance regimes in key jurisdictions worldwide. Through the lens of recent trends and developments, it examines the most consequential rules relating to board composition and practices; director duties; reporting and disclosure requirements; corporate responsibility; shareholder rights and duties; and much more.

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Egypt

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Summary

Introduction

There are several sources of laws and regulations regulating corporate governance procedures.

The Companies Law No.159 of 1981 (the Companies Law) and its executive regulations are the main legislation regulating the forms of legal business entities that can be established by local as well as foreign investors in Egypt. However, additional laws and regulations could be applied based on, for example, the activity and listing status of the relevant company. These laws and regulations include, for example:

1. Investment Law No.72 of 2017 (the Investment Law) and its executive regulations;
2. Capital Market Law No.95 of 1992 and its executive regulations;
3. Governance Rules for Non-Banking Financial Activities No.100 of 2020 (the Governance Rules);
4. the General Authority for Investments and Free Zones (GAFI) circulars and guides;
5. the Financial Regulatory Authority (FRA) circulars and guides; and
6. the Listing and Delisting Rules No.11 of 2014 (the Listing Rules).

GAFI and FRA are mainly empowered to oversee companies and regulate the corporate governance framework. It is important to highlight that FRA, along with the Egyptian Exchange (EGX), primarily enforces and monitors the regime for listed companies.

GAFI has been working hard for years to simplify the corporate governance process, especially after the covid-19 pandemic and the overarching state policy for improving the overall regulatory framework as part of the improvement initiatives for foreign direct investment (FDI) in Egypt. As an example, GAFI allowed corporate bodies' meetings to be held online including, inter alia, ordinary general assembly meetings (OGMs), extraordinary general assembly meetings (EGMs) and board of directors meetings. Furthermore, GAFI started to minimise the number of documents required for the purpose of reviewing and certifying the minutes of the meetings as highlighted below.

It is worth nothing that incorporated companies (i.e., corporations) in Egypt may take the form of joint stock company (JSC), limited liability company (LLC), limited partnership by shares company (LPSC) and sole person company (SPC).

In this chapter, we shed light on the regulation of JSCs, this being the standard process that shall, in general, apply to LLCs, LLCs, LPSCs and SPCs unless otherwise required by law.

Year in review

During the past year, the corporate governance regime witnessed key developments and improvement milestones including, for example, the issuance by GAFI of several decrees reducing the number of documents required by over 62 per cent. This streamlining aims to ease procedures for all investors and business owners.

Corporate leadership

The legal system in Egypt does not recognise the two-tier board of directors structure. Only the one-tier board system is recognised.

A JSC is, as a general rule, required to be managed by a board comprising at least three members to be elected by the General Assembly for a term of three years, as specified in the company's articles of association (AoA). A board meeting is generally considered valid if attended by at least three members, unless the AoA requires a larger quorum.

It is worth noting that there are other rules that apply to certain activities (such as non-banking financial institutions and banks) and publicly listed JSCs. For example, for JSCs engaged in non-banking financial activities, the board must, in general, have a majority of non-executive directors, with at least half of these being independent directors. Additionally, these companies are required to have at least one female director on their board.

Moreover, it is also worth noting that a minimum of two female board directors is required to be represented in listed companies, where at least 25 per cent of the total board membership needs to be women.

The board must appoint a chair from among its members and may also designate a vice chair. The vice chair acts on the chair's behalf in the chair's absence, and the board may also delegate one or more of its members for conducting a specified activity or having a specified duty and exercising some of the designated duties of the board.

Furthermore, the board may, as a general rule, grant the chair the authority of a managing director for JSCs that are not publicly listed. JSCs shall be represented in court by either the chair or the chief executive officer (CEO), in accordance with the company's AoA.

The board is generally required to, inter alia:

1. undertake all the duties arising from the business of the company they manage, and act for its best interest;
2. convene the board meetings and call for the OGMs and EGMs;
3. prepare financial statements and report on the company's activities and financial status; and
4. submit all the mandatory key declarations on behalf of the company and maintain the company's commercial ledgers and mandatory registers.

With regard to the chair's control over the board, it is necessary to note that the chair's role includes, inter alia: (1) representing the company before courts; (2) calling the board meetings to convene; (3) calling the OGM and EGM general assembly meetings to convene; and (4) performing whatever roles are designated to the chair by the AoA. Moreover, the chair is generally empowered to sign and conclude transactions on behalf of the company, and any other authorised members of the board, unless decided otherwise by the general assembly.

The delegation of powers from the chair to the vice chair is addressed in the Companies Law, which states that the vice chair replaces the chair in their absence and notes that appointing a vice chair is not mandatory. The board may also delegate one of its members for conducting a specified activity or more or having specified duty and exercise some of the designated duties of the board.

The separation of roles between the chair and the CEO is determined by the responsibilities and competencies specified in the company's AoA. It is also important to highlight that there are distinct differences between the roles of the chair and the CEO. Specifically, the CEO does not have the authority to call for the board of directors meetings or OGMs.

Moreover, it is prohibited for listed companies and companies undertaking non-financial banking activities to combine the position of the chair and the CEO.

The managing director and members of the board of directors are entitled to remuneration; however, the OGM is, in general, the corporate body that determines lump sum payments, attendance allowances and other benefits prescribed for members of the board of directors.

The board committees are given a definition under the Companies Law as committees formed by the members of the board (the non-executive and independent members) for organisational purposes through distributing certain work between its members. It may also authorise one of its members or a committee to carry out specific job, or to supervise an area of the company’s activity, or to exercise some of the powers or functions assigned to the board. Moreover, the Governance Rules introduced several types of board committees, including, inter alia, the audit committee, the remuneration committee, the nomination committee, the risk management committee and the governance committee. We would like to emphasise that the main responsibility of the committees is limited to submitting recommendations to the board, which is the decision-making authority; the board can amend the recommendations and revoke the committees.

It is important to highlight that, with regard to the non-banking financial activities, related companies are obliged to establish an audit committee and in some cases the companies are obliged to establish a governance committee as well.

With regard to the board role in share issuance, the board may increase the issued capital of the company within the authorised capital by virtue of a resolution of the board’s meeting. This authorised capital is deemed a pre-authorisation by the shareholders to the board to increase the issued capital within a specific limit, which should not exceed 10 times of the issued capital. This pre-authorisation needs to be used within a specific time frame and is considered an exceptional process from the main process that needs to be followed for obtaining the shareholders’ approval.

The AoA may require obtaining the prior approval of the board before the transfer of shares, and in the event the board rejects the transfer of shares, the board may purchase these provided that they do not exceed 10 per cent of the total issued shares of the company. Furthermore, it should be highlighted that within one year of the purchase date the company must: (1) transfer the shares to a third party; (2) distribute the purchased shares to all the shareholders of the company as free shares; or (3) decrease the issued capital of the company by the amount of nominal value of the purchased shares.

The Governance Rules define an independent director as a non-executive director with relevant experience who is not affiliated with the company's board, its senior management or the parent company, and who does not hold an executive post in the company, and is not paid a monthly or annual salary, except compensation as a board member.

In addition, this independent director is not a representative of the shareholders, and has no material transactions with the company, and is not paid any salary, commission or fees, except compensation as a board member. The independent director should neither have a personal interest in the company, nor be a relative by blood or marriage or otherwise up to second degree relationship to any of its shareholders, board directors or executives. This member also should not be a senior officer, adviser or external auditor of the company for three years prior to their appointment. Importantly, their tenure of membership as an independent director should not exceed a maximum of six consecutive years, otherwise they will become a non-independent director.

The general assembly may file a lawsuit against any director for any mistakes that have negatively impacted the company.

Conflicts of interest must be avoided by any board member, whereby any conflict of interest matter must be reported to the board for approval. The relevant board member who has that conflict of interest is prohibited from voting on a decision on that matter.

Corporate disclosure

On 9 August 2023, the FRA issued a decision outlining the corporate governance rules applicable to non-banking financial activities companies.

This decision presents a set of corporate governance rules, of which some regulate the transparency and disclosure requirements of non-banking financial activities companies. These rules stipulate that non-banking financial activities companies are required to:

1. disclose any material event that affects their activities and third parties dealing with the companies;
2. notify and provide the FRA with the key corporate structure information including the shareholding structure for shareholders holding 5 per cent or more of the share’s threshold, recent board structure, key employees structure, without prejudice to notifying the FRA with any amendment or modification to the board structure or the related internal board committees, and any convened OGMs within 10 days as of their convocation, and any amendments made thereto;
3. provide the FRA with annual financial statements, along with the auditor’s report and the board of directors' report for review within 21 days of the convocation date of the general meeting approving these financial statements, and the non-banking financial activities companies should comply with the applicable laws and refer the financial statements to the general meeting for approval within a maximum period of three months as of the end of the fiscal year. In addition, these companies are required to submit quarterly financial statements to the FRA, accompanied by a

limited examination report from the auditor, within 45 days of the end of the period for which the financial statements are submitted.

The decision introduced an exception to the aforementioned disclosure requirements, whereby suspended companies are exempted from submitting the quarterly financial statements throughout the suspension period.

Furthermore, the Listing Rules have also stipulated provisions regarding the corporate disclosure for companies listed on EGX as follows.

1. Each shareholder shall disclose to the EGX when exceeding or decreasing their ownership and associated parties to a ratio of 5 per cent and its multipliers from the number of securities representing the company's capital or voting rights, including shares subscribed to by purchasing the underwriting rights, including disclosure of the shareholder and its parties directly associated with the shares and foreign deposit certificates corresponding to the company's shares as well as their indirect ownership through the ownership of 25 per cent or more of the capital of a company or entity that in turn owns a ratio in the capital of the listed company to which this shareholder contributes.
2. In addition to that, the shareholders referred to in the preceding point (a) are also obliged to disclose the future investment plan and the shareholder's directions regarding the management of the company if the percentage purchased from it and associated parties is 25 per cent or more of the company's capital or voting rights.
3. The provisions of the preceding points (a) and (b) apply to the members of the board of the listed company and its employees and related parties upon completion of the sale or purchase of one of the 3 per cent or multipliers of the company's securities.

It is also worth noting that, as per the amendments introduced by the Investment Law, any company in Egypt that has foreign direct or indirect investment contributions, irrespective of its percentage, must comply with some specific reporting obligations regarding corporate disclosure stipulated by the Executive Regulations of the Investment Law as follows:

1. the company shall submit an FDI report within 30 days of any changes to the company’s board structure, shareholder structure, capital or purpose;
2. the company shall submit the FDI report within 45 days of the end of each quarter (i.e., the end of March, June, September and December); and
3. the FDI report must be submitted within four months of the fiscal year’s end.

In addition to that, according to a regulation issued in 2020 by the Minister of Supply and Internal Trade, all companies must disclose the actual beneficiaries also known as the ultimate beneficiary owners (UBOs) who have a controlling interest or the actual control of the decision-making on the company and other information including the nationality and ID or passport numbers of the UBOs.

According to the Companies Law, the board is required to publish financial statements, a comprehensive summary of its report and the full text of the auditor’s report prior to the general assembly meeting, unless otherwise required by the AoA (such as sending the financial statements directly to the shareholders).

A JSC is required to comply, inter alia, with the following audit requirements:

1. each JSC is required to appoint at least one auditor who shall be qualified to practise accounting and auditing in Egypt, and where there is more than one auditor, the appointed auditors shall be jointly liable towards the JSC; and
2. a JSC is required to allow the appointed auditor or auditors to: (1) access any company ledger, books and documents; and (2) confirm the existence of its inventory as well as providing any required clarifications or data.

Environmental, social and governance

In July 2021, the FRA issued a Decree regulating the disclosure of environmental, social and governance practices on sustainability and the financial impacts of climate change by companies engaged in non-bank financial activities and companies listed on the Egyptian Exchange (EGX), requiring companies listed on the EGX, and companies operating in non-bank financial activities to submit environmental, social and governance disclosure reports related to sustainability. This Decree presents two levels of compliance as follows.

ESG disclosure reports will be required from all companies whose securities are listed on the EGX in addition to companies operating in non-banking financial activities whose issued capital or net ownership rights are not less than 100 million Egyptian pounds.

Companies whose issued capital or net ownership rights are not less than 500 million Egyptian pounds and that are listed on the EGX and that are engaged in non-banking financial activities will be required to complete disclosures concerning the financial effects of climate change in accordance with the Task Force on Climate-Related Financial Disclosures (TCFD), with their annual reports prepared by their board of directors and attached to the annual financial statements.

As per the aforementioned Decrees, the report is submitted after filling out the attached annual report forms to be completed and submitted to the FRA at the date of submission of the financial statements of the past fiscal year.

Shareholders

The Companies Law includes several provisions regarding the rights and powers of shareholders in the participation and contribution of the company's management. Each shareholder has the right either personally or by proxy to attend, participate actively and vote in OGMs or EGMs.

Shareholders typically possess equal rights and obligations, including equal voting rights. However, the AoA may grant specific privileges to certain classes of shares concerning voting, profit distribution and liquidation balances. It is important to note that voting privileges and liquidation balances are not combined. Additionally, shares of the same class must be treated equally in terms of advantages or restrictions.

The shareholder has the right to request the board to convene the OGM where the number of shareholders who want this own at least 5 per cent of the company's capital. The shareholder has the right to discuss the topics on the agenda of the general assembly and to ask questions about them to the members of the board and the auditor. These questions must be answered to the extent that the company's interests are not prejudiced.

Additionally, the general assembly has the power at any time to remove and revoke the board or any of its members even if this is not mentioned in the agenda of the general assembly meeting.

As per the Companies Law, some decisions and actions must be taken by the approval of the shareholders upon the convening of an OGM or an EGM subject to their competencies stipulated by the Law, including, but not limited to:

1. the election and removal of members of the board;
2. approving financial statements;
3. distribution of dividends and the remuneration of the board;
4. liquidation of the company, amending rights, privileges and restrictions for types of shares;
5. extending or shortening the term of the company;
6. resolving the company before its term;
7. changing the proportion of loss that results in the company's compulsory dissolution or incorporation;
8. approving the merger of the company;
9. increasing the company’s issued capital by premium shares;
10. increasing the company’s authorised capital;
11. reducing the capital of the company;
12. amending the AoA; and
13. considering the dissolution or continuation of the company, if the company's losses in one or more financial years amount to half the value of shareholders' equity according to the latest approved annual financial statements of the company.

The Companies Law granted the dissenting shareholders who attended the general assembly meetings, and the shareholders who did not attend the meeting for a valid reason, the right to annul the resolutions issued in favour of specific shareholders. It also grants them the right to annul the resolutions issued that harm them, or that bring special benefit to members of the board or others without regard to the interests of the company. Moreover, any resolutions of the general assembly issued in contravention to the provisions of the AoA will be void, in accordance with the Companies Law.

The OGM is concerned with the approval of the management report prepared by the board for the company’s activities during the ended fiscal year. In addition, the OGM also is tasked with the discharge of the members of the board from all their duties for the ended fiscal year.

With respect to the quorum of attendees at the OGM, as per the Companies Law, the OGM shall be valid only if it is attended by shareholders representing at least one quarter of the capital unless the AoA provides for a higher percentage on condition that it does not exceed half of the capital as a minimum.

Decisions of the general assembly shall be taken, as a general rule, by an absolute majority of the number of votes of the shares of the shareholders represented at the meeting, unless the AoA require a higher percentage.

Shareholders holding at least 5 per cent of capital shares can request the inclusion of specific topics to the agenda as to be discussed in the general assembly, which guarantees that minority shareholders' voices and opinions are heard and taken into consideration.

In addition to that, minority shareholders have access to information since minority shareholders have the right to access the company's financial statements, audit reports and other important documents. This transparency ensures their inclusion in the company's management and helps them to deliver informative opinions. Also, shareholders having at least 10 per cent shares of the capital are eligible to request a financial audit or investigation into suspicious acts of the company's management.

All related-party transactions must be disclosed and pre-approved by the general assembly, in order to be monitored by minority shareholders that will have the right to vote on these transactions to ensure that they are not used to benefit insiders at the expense of the company and other shareholders. This grants them the opportunity to be aware of any restructuring happening within the company group that could affect them.

AoA may include some measures and regulations with respect to the transfer of shares (in acquisitions). AoA may contain specific rules governing share trading, but may not remove the shareholder's right to transfer their shares; share trading may include mandatory prior approval of the companies' management or approval from the board as the case may be.

If the transfer of shares is subject to a right of first refusal, then the following general rules shall apply:

1. request submission: Shareholders wishing to sell their shares need to submit a formal request to the company. This request must include essential information such as the shareholder's name, address, the number and type of shares being sold and the proposed sale price. The request can be sent via registered mail or delivered in person to the company's headquarters, with a receipt needed to confirm the submission date;
2. approval timeline: The company has 60 days to respond to the request. If the company does not respond within this period, the request is automatically considered approved;
3. objection process: If the board or the managing partners object to the sale, they must act within 60 days of notifying the shareholder. They have two options, namely:
    - propose an alternative buyer: The board can suggest another buyer, either from existing shareholders or outside the company, to purchase the shares; and

- buy the shares themselves: The board may choose to buy back the shares, either to reduce its capital or for other legal reasons; and

4. deemed approval: If the board does not take any action within the specified period, the inaction is interpreted as approval of the transfer, allowing the shareholder to proceed with the sale.

This framework is intended to regulate share transfers while protecting the company's interests and ensuring that shareholders can still transfer their shares under specified conditions.

With respect to the mandatory reporting to shareholders, the board of directors shall provide the shareholders with the following information:

1. a detailed description or report, including all the expenses by the board and all relevant privileges; and
2. financial statements and management reports.

It should be noted that shareholders typically receive information about upcoming meetings, including agendas, financial statements and other relevant documents at least 23 days (and at least 30 for provision of the financial statements, management reports and the auditor's report) before the meeting. This time frame can vary depending on the type of data and information disclosed.

Proxy solicitation is commonly practised; shareholders often receive proxy materials, allowing them to vote on matters without attending the meeting in person. This facilitates participation, especially for those unable to attend. Moreover, it is common for shareholders to express their views in advance of conveying the relevant general assembly meetings.

Outlook and conclusions

The legal and regulatory framework governing corporate governance in Egypt has undergone significant reforms aimed at enhancing transparency, accountability and operational efficiency within the corporate sector. The laws and regulations have set forth guidelines intended to align practices with international standards. However, despite these advancements, challenges persist in the implementation phase. Issues such as lack of coordination between the relevant governmental authorities continue to hinder the effective application of the governance frameworks.

Overall, the developments within corporate governance have begun to foster a more favourable investment climate in Egypt such as the issuance of several decrees by GAFI to reduce the number of documents required regarding corporate governance procedures. These decrees are intended to streamline the use of online services for corporate governance procedures including, for example, the incorporation of companies and protecting the minorities of the listed companies from the optional delisting from

EGX by issuing decrees that limit the powers of the majority of shareholders in listed companies.

We expect that the development strategy of the corporate governance rules in Egypt will focus on increasing the use of technology, online services, eliminating routine and paper-based procedures and implementing the global corporate governance standards. This will result in companies complying properly with corporate governance rules, accelerating and facilitating corporate governance procedures and attracting further investments to Egypt.

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