

Financial Regulatory Authority (“FRA”) Decree introducing the establishment of a new registry of companies or entities wishing to list and offer their securities in the Egyptian Stock Exchange, in addition to the approval on the prospectus by the FRA

Source: FRA Board of Directors Decree No. 121 of 2017, Issue No. 269 of the Official Gazette dated 28 November 2017

The Procedures of listing or listing and offering the securities, have usually been taken and finalized before the Egyptian Stock Exchange (“EGX”). The involved companies or entities (“Entities”), would only receive a “no objection certificate” from FRA, which would issue such certificate after approving the independent financial advisor (“IFA”) report on the fair value of the securities.

This decree however, changes the rules and obliges the entities wishing to list or to list and offer their securities in EGX to be registered first in a registry newly established within the FRA. In addition, this decree requires as well that the prospectus shall be approved by the FRA.

PART I: Conditions and Requirements of the Registration of the Entities.

The decree has listed the conditions to approve such registration as well as the necessary procedures to be taken.

Chapter 1: General conditions

All of the following general conditions shall be met in order to register the entity wishing to list or to list and offer its securities in EGX:

- 1- The listing of the involved securities in MCDR.
- 2- The trading of the securities subject to the operation shall not be restricted in any way.
- 3- The submission of an acknowledgment by the management to proceed with the listing or offering procedures within a month from the approval date. The prospectus or the disclosure report draft, the IFA study and the auditor’s report as well as the suggested timeline of the offering shall be attached to the said acknowledgement.

Chapter 2: Special Conditions

The decree provides conditions related to the companies only as follows:

- 1- The company's capital shall not be less than the minimum capital of 50 Million and shall be paid up in full.
- 2- Fulfilment of the minimum requirements in relation to the net profit or the shareholder right according to the EGX rules of listing and delisting.
- 3- Submission of the financial statements and the relevant auditor's report.
- 4- The companies established under the Capital Market law no. 95 of 1992, shall fulfil the requirements of listing of their securities in EGX.
- 5- Acknowledgement of each main shareholder or each BOD member in relation to any judicial rule issued against it concerning one of the crimes stated in the central bank law, the money laundering law or the capital market law, within the three years prior to the registration request.
- 6- The FRA does not file a case against any of the involved company's main shareholders or one of its BOD members.
- 7- Submission of a report of the involved company's businesses, CV, management structure and the governance policies applicable after the listing and the offering.

Chapter 3 Procedures of the Registration

The entities wishing to list or to list and offer their securities in EGX shall submit a registration request form to the FRA requiring the provision of some of the company's information. After the submission of the required documents and information, the FRA shall review the registration request and shall decide within 15 (fifteen) working days from the request date.

PART II: The Approval on the Prospectus by the FRA

Before the decree, the prospectus was submitted and reviewed by EGX, but with the issuance of this decree, the entities wishing the offer its securities shall submit the prospectus form or the disclosure report first to the FRA.

When submitting the prospectus to the FRA, The entity shall attach to the prospectus form the following:

- 1- The offering plan approved by the entity's legal representative and defining the offering details, timeline and the shareholder structure before and after the offering.
- 2- The IFA study on the fair value of the securities and the auditor's report on such study.
- 3- Forms of acknowledgements to be filled by the IFA, Chairman and main shareholders.

The FRA shall review the prospectus or the disclosure report in accordance with the results of the IFA study and the auditor's report and shall decide within five business days from the submission of the approval request.

According to article 5 of the decree, after the approval is given and the entity is registered, the entity shall proceed with the listing or offering procedures in EGX within one month from the approval of the FRA on the registration. The extension of such period is subject to the FRA approval on a case-by-case basis.

Minster of Investment and International Cooperation Decree establishing Grievance Committees

Source: Minster of Investment and International Cooperation Decree No. 11 of 2018, published in the official Gazette, issue No. 30, dated 6 Feb 2018 (the “Decree”).

As part of the Government’s efforts to reassure investors and eliminate bureaucracy, and pursuant to the provisions of the Investment Law No.72 of 2017, the Minister of Investment and International Cooperation, by virtue of the Decree, established and regulated the Grievance Committees in the General Authority for Investment and Free Zones” **GAFI**”.

According to the Decree the Committee is designated to examine the complaints filed against the resolutions issued in accordance with the provisions of the Investment Law, whether the resolutions issued by GAFI or relevant authorities.

Article 1 provides that the committee shall be chaired by a judge from a judicial body and it shall include a representative of GAFI and a person with relevant experience.

Pursuant to its Article 3, the Committee shall convene twice every month and whenever it is urgent with the attendance of all its members, the complaints shall be submitted to the Committee within 15 days from the date of notice or knowledge of the petitioned decision. Filing of the complaint shall lead to the interruption of the periods of challenge.

The Committee may contact the parties in question and the competent administrative authorities for the request for clarifications, documents and answers to the necessary inquiries, and it may draw on the diverse expertise and specializations available to GAFI and to other administrative authorities.

The Committee shall settle the matters brought thereto by a justified decision within 30 days from the date of closing of hearings and submissions. The Committee’s decision shall be adopted by the majority of its members. In addition, it shall be irrevocable and binding on all the competent authorities, without prejudice to the Investor’s right to resort to the judiciary.

As per Article 8, the Committee shall have a technical secretariat responsible, inter alia, for receiving the complaints and registering it into the register kept for such purpose. In addition to following the implementation of Committee’s decisions and performing any other duties requested by the Committee.

It is worth noting that Article 7 provides that GAFI shall establish an electronic register connected to GAFI’s website in which the investors can check the status of his or her complaint.

Law and Ministerial decree introducing amendments to the Companies Law No. 159/1981 and the Executive Regulations (the “Amendments”).

Source: Law No.4 of 2018 published in the Official Gazette issue No.2 (bis) dated 16 Jan 2018, and the Minister of Investment and International Cooperation Decree No.16 of 2018 published in the Official Gazette issue No. 34 dated 11 Feb 2018.

The Amendments are the most sweeping changes to the Companies Law in 35 years issued with the aim of keeping up the developments in the investment field and improving Egypt’s status in the international reports related to investment. Examples to the new developments that the Amendments introduced include: allowing the formation of sole-proprietorship companies, regulating splitting companies, protecting the minority shareholders rights, giving measures of protection to companies against divulgence of corporate secrets.

Further, as part of the government policy at keeping abreast with technology development the Amendments introduced modern technology in attendance and voting procedures.

Key features of the Amendments include:

1. New Provisions:

A. Sole Proprietorship Company “SPC”

- With the purpose of integrating informal sector into modern economy, the Amendments has brought a fundamental change to the corporate available structure in Egypt, by allowing any natural or legal person to establish a sole proprietorship company with limited liability. Noting that its minimum capital shall be 50,000 EGP paid in full upon establishment.

The SPCs are prohibited from performing the following activities:

1. Establishing subsidiaries that are also sole proprietorships.
2. Initiating Public Subscription of shares.
3. Dividing the SPC’s capital in the form of tradable shares .
4. Raising finance through the issuance of tradable securities.
5. Participating in the Insurance, Banking, saving, depositing, and investing for third parties businesses.

The owner shall only be liable for the SPC’s obligations with in the limit of its capital, except when he commits one of the following acts:

- i) Liquidating the company in bad faith.
- ii) Ceasing its activities before the end of its term or the fulfillment of its purposes.
- iii) If the owner does not separate between his personal finance and the company’s.

- iv) In case, the owner entered into agreements in the name of the SPC under establishment provided that such agreements were not essential for its establishment.

B. Splitting Companies

- The Amendments are allowing dividing any existing company into two or more companies and by giving companies greater flexibility in dividing assets and shares. In addition, the Amendments permit trading in the shares of the new corporation upon its issuance, provided that there is no legal restriction in relation thereto. Further, the above mentioned companies may take any legal form except for the SPC.

C. Other provisions

- The Amendments introduced many provisions enhancing corporate governance regulations, introducing modern technology in attendance and voting procedures, protecting the minority shareholders rights, the main changes are captured as follows:
 - Recognizing the right of shareholders to enter into shareholders agreements, and eliminating the majority shareholders agreement effect on the minority shareholders by setting a minimum voting requirement of at least three-quarters of the company's capital.
 - Giving the shareholders the right - subject to the company's bylaws - to have the accumulated voting power in electing the board member by granting each shareholders number of votes equal to his or her shares. Which means that the votes can be distributed among the numbers of board member candidates.
 - Allowing for electronic attendance, signatures, and voting to replace in-person attendance at the meetings of the board of directors.
 - Mandating the establishment of a single electronic platform connected to the internet to provide key investor services, in the pre and post-establishment phases.
 - Granting the administrative authority the right – Upon request on a reasonable basis by the shareholders owning at least 5 % of listed companies or companies working in the financial non-banking sector - to intervene and suspend the implementation of the Ordinary General Assembly resolutions harming the minority shareholders rights.
 - Permitting the shareholders to include a provision in the company's bylaws guaranteeing a minimum representation at the board of directors, as long as it did not exceed one seat for each 10% of the shares.

- Authorizing the competent minister to reconcile in crimes mentioned in the companies law, in exchange for an amount not less than twice the minimum fine value stated in the companies law.
- Regulating the companies' right to appeal against the administrative decisions issued by the regulatory authority or the competent minister.
- Invalidating related party agreements, which do not take the best interests of shareholders into their account; further, allowing the shareholders to sue the management for any damages incurred by the shareholders in relation thereto.
- Giving boards of directors the right to suspend a member who divulges corporate secrets.

2. Significant Amendments To The Old Provisions of the Companies Law

- Facilitating the issuance of preferential shares and using preferential shares in capital increase after the approval of the extra ordinary general assembly by a three-quarter majority. It shall be noted, in this regard, that as per the Amendments it is not permissible for preferential shares to combine both the privilege of voting and liquidation outcome.
- Facilitating capital increase regulations and granting the administrative authority the right to object in case of fraud or harming shareholders or third parties.
- Limiting share buybacks to 10% of the treasury stocks. Banning companies from holding onto it for over a year, after the lapse of the year, companies must either divest the shares or distribute them to employees as part of a profit-sharing mechanism.
- Introducing new rules governing the in-kind contributions evaluation committee to abide by the Egyptian standards for real estate and financial evaluation.