

Egypt Continues Reform of the Securities Offering Regime Ahead of Contemplated SOE Listings

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The legal framework of securities offering in Egypt continues to witness significant reforms ahead of the announced government privatization program to offer shares in at least 23 state-owned companies to the public, which is also intended to drive new listings by private issuers and increase liquidity on the Egyptian Exchange (the “**EGX**”).

In November 2019, the EGX issued executive regulations for the execution of primary and secondary offerings of securities on the EGX, which implements the regulations issued by the Financial Regulatory Authority (the “**FRA**”) in April 2019 to regulate public offerings and private placements of securities in Egypt (the “**Securities Offering Regulations**”). The FRA’s initiatives to increase liquidity on the EGX also included the issuance of executive regulations in February 2019 setting out a framework for short selling of securities on the EGX for the first time (the “**Short Selling Regulations**”).

The Securities Offering Regulations and the Short Selling Regulations follow a legislative reform that last year represented the most comprehensive amendments to the Egyptian capital markets law since its enactment¹. The Egyptian government’s strategy to increase listings and liquidity on the EGX includes proposed tax breaks for companies listed on the EGX, which have not yet been enacted.

The Securities Offering Regulations focus in particular on the bookbuilding process in securities offerings in an effort to prevent the reoccurrence of the irregularities that affected the IPO of Sarwa Capital in 2018. This memorandum provides a summary of key provisions of the Securities Offering Regulations, including their effect on securities offerings in Egypt, and specific considerations for SOEs.

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¹ For details on the legislative reform of the Egyptian capital markets law in 2018, please refer to our prior memorandum “*Egyptian Parliament Approves Amendments to Capital Markets Law, Opens the Door for Sukuk Issuance*” (March 7, 2018) [here](#).



I. Public and Private Offerings

The Securities Offering Regulations include a framework for public offerings (whether such offerings take the form of initial public offerings, rights issues or secondary public offerings), and a distinct regime for private placements, which can be marketed only to qualified institutional buyers and professional high net worth individuals as defined in the Securities Offering Regulations. While public offerings of shares can comprise of new or existing securities, private placements must relate to existing securities.

The public offering must be made on the basis of an FRA-approved Public Subscription Notice (“PSN”). A public offering of securities that includes an international tranche typically involves the preparation of an English-language international offering circular (the “IOC”) meeting international standards in terms of disclosure. Under the Securities Offering Regulations, investors placing orders in the institutional offering may not participate in the retail offering.

The PSN follows a prescribed form and does not typically include detailed disclosure of the risk factors associated with the offering or a qualitative discussion of the issuer’s financial performance, which international investors would expect to see in an IOC. On the other hand, a PSN may include statutorily prescribed disclosure that would not typically be included in an IOC. For example, the Securities Offering Regulations continue to require issuers conducting initial public offerings to include in the PSN a valuation report prepared by an independent financial advisor regarding the fair value of the offered shares (the “**Valuation Report**”), which report would not typically be included in the IOC. This will raise issues of inconsistent disclosure in Egyptian offerings that include retail and international components.

The subscription period must not be less than five business days for a public offering or three days for a private placement.² If the public offering is not fully subscribed, the issuer may (a) downsize the offering

² While the Securities Offering Regulations refer to five *business days* as the minimum subscription period for public offerings, they refer to three *days* as the minimum subscription period for private placements.

provided that the minimum requirements of free float are satisfied, (b) request the FRA to extend the subscription period by a period of not less than three business days and not more than ten business days, or (c) postpone the offering by no more than three months, provided that the PSN is updated prior to the resumption of the offering.

II. Determination of the Offering Price

The Securities Offering Regulations provide for two methods to determine the offering price: a fixed price, which is agreed between the issuer and the bookrunner based on the Valuation Report, and the more customary bookbuilding process, pursuant to which the offering price is determined based on the level of investor demand.

The offering price in an offering that includes an institutional tranche will be determined pursuant to the bookbuilding process unless the bookrunner decides to follow an alternative method and the PSN includes an explanation and justification for using that alternative method.

The Securities Offering Regulations also require the bookrunner to keep the subscription ratio of the offering confidential throughout the subscription period, but permits the bookrunner to announce the subscription ratio when the offering is fully subscribed. The final subscription ratio may only be announced after notification to the FRA.

III. Statutory Lock-ups

The Securities Offering Regulations impose a statutory lock-up restriction of six months on the issuer’s pre-IPO shareholders. The statutory lock-up does not restrict such shareholders from selling their shares as part of a secondary offering.

The statutory lock-up is consistent with the 180-day contractual lock-up typically agreed between the selling shareholders and the underwriters in international offerings.

IV. Stabilization

The Egyptian market has not yet developed a stabilisation mechanism that is based on overallotment of shares by the underwriters and backed by stock lending from the selling shareholders to the underwriters in a standard “greenshoe” structure. The unavailability of such

stabilization mechanism in Egypt could be attributed to the previous lack of legal framework for short selling prior to the issuance of the Short Selling Regulations, which were only implemented on the EGX in December 2019.

The Securities Offering Regulations provide for an alternative stabilization mechanism designed to protect retail investors against fluctuations in the offering price shortly after listing. If the issuer opts for a stabilization mechanism as part of the public offering, the Securities Offering Regulations require the selling shareholders to fund an account managed by the bookrunner and dedicated to the stabilization transactions. During a period of one month starting from the first day of trading, the bookrunner places an open order with the EGX to purchase the offered securities from retail investors at the offering price (up to the amount of the stabilization account, which is typically 10% of the offering's gross proceeds). Securities acquired as part of the stabilization transactions will be transferred by the bookrunner to the selling shareholders. This stabilization mechanism is effectively similar to the "brownshoe" or "reverse greenshoe" structure followed in a number of jurisdictions.

V. Short Selling

The Short Selling Regulations were issued in February 2019 in an effort to boost liquidity in the market, and were implemented on the EGX in December 2019 when the first short selling transaction took place. Under the Short Selling Regulations, securities subject to short selling transactions must not exceed 25% of the relevant company's issued securities, a single shareholder may not lend more than 5% of the relevant company's issued securities, and no person may borrow more than 0.5% of the issued securities of the relevant company.

VI. Special Considerations for SOEs

SOEs that are at least 30% controlled by the State may consider a premium listing of their shares or GDRs on the London Stock Exchange either on a stand-alone basis, or as a dual-listing together with the EGX listing. The recent addition by the UK Financial Conduct Authority of a premium listing category dedicated to sovereign-controlled companies may make such premium listing attractive to SOEs. The accommodations under the new premium listing category include the exemption of premium-listed SOEs from the requirement to enter into a relationship agreement with the sovereign controlling shareholder, easing the requirements of entering into a related party transaction with a sovereign controlling shareholder, and allowing a premium listing for GDRs for the first time.³

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³ For details on the new premium listing category for sovereign-controlled companies, please refer to our prior memorandum "*FCA Creates a New Premium Listing Category for Sovereign Controlled Companies*" (July 2, 2018) [here](#).