

Legal 500

Country Comparative Guides 2025

Egypt

Merger Control

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This country-specific Q&A provides an overview of merger control laws and regulations applicable in Egypt.

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Egypt: Merger Control

1. Overview

Merger control was recently introduced in Egypt through Law No. 175 of 2022, which amended Law No. 3 of 2005 on the Protection of Competition and Prohibition of Monopolistic Practices ("**The Law**"). The Law is further supplemented by the Executive Regulations, enacted by Prime Minister Decree No. 1120 of 2024, amending Decree No. 1316 of 2005 ("**The Executive Regulations**"). These latest amendments to the Law and the Executive Regulations came into full force and took effect on 1 June 2024.

Before the recent amendments to the Law and its Executive Regulations, enforcement was solely the responsibility of the Egyptian Competition Authority ("**The ECA**"). Established under Article 11 of the Law, the ECA is affiliated with the Prime Minister and is the only authority responsible for enforcing the Law's provisions across all sectors and industries, except for the banking sector and public utilities directly managed by the state.

However, the recent amendments to the Law have introduced a dual-system approach to merger control. Under this new system, Economic Concentrations (as defined below) within sectors regulated by the Financial Regulatory Authority (**FRA**) are now exempt from ECA oversight and fall exclusively under the jurisdiction of the FRA. While the FRA is required to consult with the ECA, the ECA's role is limited to providing a non-binding opinion.

According to Article 2 of the Law, the merger control system applies exclusively to Economic Concentrations as defined by the Law. Economic Concentrations are defined as any change of control or material influence over one or more of the undertakings involved, which may result in traditional mergers, acquisitions, or fully functioning joint ventures. In other words, a merger falls within the definition of an economic concentration if it leads to a change in the effective influence over an undertaking's economic decisions or a change in the ability to influence the undertaking's policies, including its strategic decisions and commercial objectives.

In order to be subject to the merger control the transaction shall meet the above definition of an economic concentration and satisfy the financial and jurisdictional thresholds specified in the Law. If a

transaction meets these two requirements, it must be notified to the ECA prior to its consummation and will be subject to the ECA's assessment (a notifiable economic concentration).

2. Is notification compulsory or voluntary?

Economic Concentrations that result in a change of control or a material influence and meet the financial thresholds specified in the Law require notification to the Egyptian Competition Authority (ECA). In such cases, filing is mandatory.

Failure to notify the ECA subjects the concerned parties to severe penalties, ranging from 1 percent to 10 percent of their combined aggregate turnover, assets, or the value of the transaction itself (whichever is higher). If this value cannot be calculated, a fixed fine between 30 million and 500 million Egyptian pounds shall apply.

However, according to Article 19 bis, paragraph 2 of the Law, the ECA reserves the right to review any economic concentration falling below the financial thresholds if the ECA's board approves such intervention and if the transaction is likely to raise competition concerns. In this situation, filing is not mandatory, and the ECA has a one-year deadline from the date of consummation to intervene.

In such instances, the ECA's powers are strictly limited to imposing behavioral remedies; in other words, it cannot block the transaction.

However, parties may always choose to voluntarily notify a non-notifiable transaction (e.g., a transaction below the financial threshold) to avoid potential later intervention by the ECA.

3. Is there a prohibition on completion or closing prior to clearance by the relevant authority? Are there possibilities for derogation or carve out?

The Law imposes a strict standstill obligation on the concerned parties if their transaction qualifies as an Economic Concentration under its legal definition, in other words, the transaction cannot take place before the ECA has given its approval.

Neither the Law nor the Executive Regulations provide for any exceptions that might permit closing prior to clearance. In fact, according to the ECA's guidelines published shortly before the Law and the Executive Regulations took effect ("**The Guidelines**"), closing before clearance is subject to a fine ranging from 1 percent to 10 percent of the total annual turnover, assets, or transaction value of the parties to the concentration, whichever is greater. If this percentage cannot be calculated, the penalty shall be a fine of not less than 30 million pounds and not more than 500 million pounds.

It is important to note that the approach of penalizing the violation of the standstill obligation is controversial, as it is not explicitly supported by the wording of the Law. Article 22 (bis-d) of the Law specifies that penalties apply to individuals who fail to comply with the notification obligation outlined in Article 19 (bis-a). Although Article 19 (bis-a) encompasses both a notification obligation and a standstill obligation, the language used in Article 22 (bis-d) seems to specifically address the failure to notify. The ECA's stance is particularly ambiguous, as it appears to conflict with established constitutional and criminal law principles, particularly the principle of *nullum crimen sine lege* (no crime without law). This ambiguity arises from what could be seen as an extensive interpretation of the criminal legal text.

4. What types of transaction are notifiable or reviewable and what is the test for control?

The merger control system applies exclusively to transactions that legally qualify as Economic Concentrations. According to Article 2 of the Law, a transaction is considered an economic concentration if it results in any change of control or material influence over one or more of the undertakings involved. This may arise from traditional mergers, acquisitions, or fully functioning joint ventures. In other words, a merger falls within the definition of an economic concentration if it leads to a change in the effective influence over an undertaking's economic decisions or the ability to influence its policy, including strategic decisions and commercial objectives.

In addition to the nature of the transaction, it must also satisfy one of the following financial thresholds provided under Article 19 (bis) of the Law:

Domestic Notification Thresholds: The combined aggregate local annual turnover of the parties exceeds 900 million Egyptian pounds, and the annual turnover in Egypt of at least two of the parties concerned exceeds 200 million Egyptian pounds each, separately.

Worldwide Notification Thresholds: The combined aggregate worldwide annual turnover of the parties exceeds 7.5 billion Egyptian pounds, and the annual turnover realized in Egypt by at least one of the concerned parties exceeds 200 million Egyptian pounds.

The legal test the ECA applies to determine whether a change of control has resulted from a transaction is outlined in Article 2 of the Law. It defines control as the ability of the controlling person or persons to exercise effective influence, directly or indirectly, by directing the economic decisions of other entities. This control may be demonstrated through a majority of voting rights, the ability to prevent economic decisions (veto rights), or any other means. It includes any situation, agreement, or ownership of shares or quotas, regardless of their percentage, that leads to actual control over management or decision-making.

A person who holds the majority of voting rights or has veto rights can exert significant influence over an entity's decision-making and management. The Guidelines further clarify that control can also be established through acts that result in the ownership of or right to use and exploit most or all of another entity's assets. It may also involve acquiring rights that enable the controlling person to appoint the majority of the board members, control the board of directors' decisions, or influence general assembly meetings. Additionally, control may exist when more than half of the board members or general assembly members are the same individuals in both the acquiring and the acquired entities.

Finally, according to Article 19 bis, paragraph 2 of the Law, the ECA reserves the right to review any transaction falling below the financial thresholds if the ECA's board approves such intervention and if the transaction is likely to raise competition concerns. In this situation, the ECA has a one-year deadline from the date of consummation to intervene.

5. In which circumstances is an acquisition of a minority interest notifiable or reviewable?

Acquisition of a minority interest is notifiable if it results in a material influence. The Law defines material influence as the ability to directly or indirectly influence the policy of another entity, including its strategic decisions and commercial objectives. The Executive Regulations further refine this definition by providing a list of specific cases where material influence may be identified. For instance, ownership of more than 25 percent of the total voting rights, shares, or equity of another entity can be deemed material influence.

Additionally, ownership of less than 25 percent may also qualify if combined with other elements likely to influence the target entity's policies. These elements may include:

1. The percentage of the acquirer's voting rights compared to others, which enables the acquirer to influence the target's policies and commercial objectives.
2. Provisions in the articles of incorporation or shareholder agreements that grant the acquirer privileged voting or veto rights.
3. The presence of one or more representatives of the acquirer on the board of directors of the target entity.
4. The existence of common shareholders and/or stakeholders between the acquirer and the target entity.

According to the Executive Regulations, if less than 10 percent of the total voting rights, shares, or equity is acquired, there is a presumption that no material influence is acquired, unless the acquirer is classified among the three largest shareholders or stakeholders of the target entity.

In summary, the concept of material influence was introduced to address transactions that do not necessarily result in a change of control through the acquisition of a majority of voting rights or veto rights, but still enable influence over a party's policies and commercial objectives. In such cases, the ECA will assess whether the transaction falls under the definition of effective or material influence. Therefore, a transaction involving the transfer of a minority interest that leads to material influence and satisfies the financial thresholds provided under the Law may also be notifiable and thus subject to the ECA's merger control regime.

6. What are the jurisdictional thresholds (turnover, assets, market share and/or local presence)? Are there different thresholds that apply to particular sectors?

The new Egyptian merger control regime applies to economic concentrations meeting one of the following financial thresholds provided in article 19 (bis) of the Law which considers only the turnover of the undertakings involved:

1. **Domestic Notification Thresholds:** The combined aggregate local annual turnover of the parties exceeds 900 million Egyptian pounds, and the annual turnover in Egypt of at least two of the parties concerned exceeds 200 million Egyptian pounds each, separately.

2. **Worldwide Notification Thresholds:** The combined aggregate worldwide annual turnover of the parties exceeds 7.5 billion Egyptian pounds, and the annual turnover realized in Egypt by at least one of the concerned parties exceeds 200 million Egyptian pounds.

Transactions that meet one of the above thresholds must be notified to the ECA, if they also result in a change of control or material influence as defined by the Law. These thresholds apply uniformly to all economic activities, regardless of the sector or industry involved.

Notwithstanding the above thresholds, the ECA may, following the approval of its board, examine a transaction that does not meet the above thresholds if there is evidence or presumptions of potential anti-competitive effects. This mechanism was introduced particularly to address killer acquisitions. In such cases, the review shall occur within one-year of the effective date of consummation of the transaction and the ECA cannot block the transaction it can only impose behavioral remedies. The Executive Regulations further clarify that the occurrence of any of the following effects is considered to be an indication of a harm to competition:

1. Restriction of technological development and innovation.
2. Control of markets through actions that may lead to an increase or decrease in prices.
3. Reduction of product quality.
4. Creation of barriers to entry or expansion within the relevant market

7. How are turnover, assets and/or market shares valued or determined for the purposes of jurisdictional thresholds?

The Executive Regulations specify that the annual turnover or the aggregate asset value is calculated based on the combined amount from the most recent consolidated financial statements of the parties involved in the transaction, excluding sellers, unless they exit the entity targeted by the Economic Concentration after the transaction's consummation. If the sellers remain part of the related parties of the target entity post-transaction, their turnover and that of their related parties must be included in the turnover calculations of the parties to the economic concentration.

8. Is there a particular exchange rate required to be used for to convert turnover thresholds and

asset values?

The Executive Regulations state that if the annual turnover or aggregate asset value is expressed in a foreign currency, it should be converted into Egyptian pounds using the official foreign exchange rate announced by the Central Bank of Egypt on the last day of the financial year of the parties involved in the Economic Concentration.

9. In which circumstances are joint ventures notifiable or reviewable (both new joint ventures and acquisitions of joint control over an existing business)?

In addition to the nature of the transaction and the financial thresholds, a joint venture shall also meet certain other requirements to qualify as an Economic Concentration, and to be subjected to the pre-merger control, notably it shall be a fully functioning joint venture. According to Article 2 of the Law, the establishment of a joint venture or the acquisition by two or more entities of an existing entity for the purpose of establishing a joint venture may be considered an Economic Concentration, if the joint venture carries out its economic activity independently and permanently. In other words, the merger control law only applies to fully functioning joint ventures.

To assess whether a joint venture is fully functioning and operates on a lasting basis, the Guidelines outline several factors, which closely mirror the European Union's approach to fully functioning joint ventures. Specifically, the joint venture must engage in economic activities beyond merely serving a single function for its controlling entities, have independent resources, and ensure that its sales and purchasing activities are not confined to the controlling entities.

Additionally, some joint ventures that do not meet the financial thresholds may still fall under merger control if they are deemed to have anti-competitive effects in the relevant market. This is in line with the general exception provided in the Law, which allows the ECA to review any transaction that falls below the financial thresholds if the ECA's board approves such intervention and if the transaction is likely to raise competition concerns. In this case, the ECA must intervene within one year from the date of consummation.

Non-fully functioning joint ventures follow a different framework under the law and can be addressed by articles 6 (horizontal agreements), 7 (vertical agreements) and 8 (abuse of dominance) of the Law.

10. Are there any circumstances in which different stages of the same, overall transaction are separately notifiable or reviewable?

According to the ECA's formal communications with stakeholders, particularly during official events, a share or asset swap agreement generally involves two distinct transactions. In such agreements, where two companies exchange shares, each company will acquire control or material influence over the other. Consequently, each company must submit a separate notification form to the ECA.

The ECA requires this because, despite being part of a single agreement, the transactions are considered independent for their potential impact on market competition. Each transaction must be assessed on its own merits, as they are not necessarily interrelated.

In essence, although the share or asset swap constitutes a unified agreement, it encompasses two separate actions in which each company gains control or significant influence over the other. Therefore, the ECA imposes the submission of two separate notification forms: one from each company involved.

11. How do the thresholds apply to "foreign-to-foreign" mergers and transactions involving a target / joint venture with no nexus to the jurisdiction?

As a general principle, the Law specifies that its provisions shall apply to acts committed abroad, if they result in the prevention, restriction or harm of the freedom of competition in Egypt and if they constitute infringements of the provisions of this Law. Under this principle, ECA intervention will not be under the merger rules but mainly under the provisions prohibiting certain forms of horizontal or vertical agreements or abuse of dominance.

However, for mergers or notifiable economic concentrations, a local nexus is required by the Law.

The Law sets out the financial thresholds that trigger the notification obligation. The two scenarios provided in the Law require that a certain turnover is realized by the parties (or at least one of them) in Egypt. Such turnover may be realized whether directly by one of the parties to the transaction, or through its related parties.

As such a foreign-to-foreign merger is only notifiable if at least one of the concerned parties, including its related parties, realizes an annual turnover in Egypt that exceeds

200 million pounds, provided that the combined turnover realized elsewhere by the parties to the transactions exceeds 7.5 billion pounds. Or in case ECA decided to intervene under its jurisdiction of reviewing economic concentration that fail to meet the financial threshold.

12. For voluntary filing regimes (only), are there any factors not related to competition that might influence the decision as to whether or not notify?

Not applicable.

13. What is the substantive test applied by the relevant authority to assess whether or not to clear the merger, or to clear it subject to remedies?

The ECA applies a consistent substantive test to assess Economic Concentrations across all sectors and industries. Under the Law, an Economic Concentration is prohibited if it limits, restricts, or harms competition. The Executive Regulations further clarify the key elements considered to determine the concentration's impact on the relevant market and whether it should be approved:

1. The market structure, including both existing and potential competition within Egypt, and abroad where it affects Egypt.
2. The market position of the involved parties, including their economic standing and financial stability, relative to current and potential investments in the market.
3. The availability of alternatives for suppliers, customers, and consumers, and their access to production resources or relevant markets, as well as supply and consumption patterns for the relevant products.
4. Barriers to entry and expansion in the relevant markets.
5. The potential effects of the economic concentration on consumers and existing or potential investments.
6. The possible impact on innovation or development.
7. Any negative implications for competition.

The ECA will first define the relevant products and geographical markets where the parties operate to determine the scope of competitive constraints that may arise post-concentration. It will then evaluate the potential effects of the concentration to assess whether it would limit, restrain, or harm competition. This analysis includes considering countervailing factors that might

offset any anti-competitive outcomes. A counterfactual analysis will also be conducted, comparing the market situation with and without the concentration.

The Law and Executive Regulations provide three exceptions where otherwise prohibited mergers may be allowed:

1. **Failing Firm Defense:** If not proceeding with the transaction would result in market exit for one of the parties due to financial distress, provided that:
 - The financially distressed party would exit the market along with its assets.
 - No less restrictive alternative exists than proceeding with the concentration.
2. **Economic Efficiency Defense:** If the concentration leads to economic efficiencies that outweigh its anticompetitive effects, provided that:
 - These efficiencies are achievable.
 - The efficiencies can only be achieved through concentration.
 - Consumers benefit from such efficiencies.
3. **National Security Grounds:** If the concentration protects national security.

However, approval based on economic efficiency grounds requires the Council of Ministers' consent, a process that remains highly uncertain.

It is worth noting that, according to the ECA's statistics for the period from June to December 2024, a total of 60 notifications were submitted to the ECA, 28 under the regular procedures and 32 under the simplified procedures. Of these, 55 notifications were closed. Among the closed files, 87% were approved, 11% were deemed outside the ECA's jurisdiction, and 2% were conditionally approved.

The only conditionally approved case was in October 2024. The acquirer operated across various sectors, including healthcare, as did the target group, resulting in a horizontal overlap in the private hospital services market. Due to this overlap, the ECA raised concerns about potential anti-competitive risks, particularly the risk of exchanging sensitive information between competitors, which could reduce market uncertainty and restrict competition. The ECA approved the acquisition conditionally, imposing strict safeguards to prevent anti-competitive risks arising from overlaps in the private healthcare sector. Key conditions include separation of board representation between the acquirer and the target group and prohibition on sharing sensitive commercial information between the two healthcare entities and their associated groups.

14. Are factors unrelated to competition relevant?

Article 19 (bis-b), paragraph 2 of the Law, outlines certain non-competition factors that the ECA may consider when evaluating an Economic Concentration. The Law uses the broad term "the protection of national security" to describe these factors, but the Executive Regulations neither define the concept of national security nor set out the procedures for invoking such grounds. These factors provide the Council of Ministers with grounds to either approve or block a concentration, as the ECA itself cannot grant approval based on national security considerations ex officio.

15. Are ancillary restraints covered by the authority's clearance decision?

The ECA's policy on this matter remains unclear. However, in its formal communications with stakeholders, particularly during official events, the ECA has indicated that ancillary restraints require specific approval from the ECA and are not automatically covered by the clearance decision. Nonetheless, it is safe to argue that ancillary restraints that are strictly related to a legitimate economic concentration will be cleared as part of the transaction itself.

16. For mandatory filing regimes, is there a statutory deadline for notification of the transaction?

The Law does not specify a strict deadline for submitting the notification of an Economic Concentration. The key requirement is that the notification must be made before the concentration is consummated.

17. What is the earliest time or stage in the transaction at which a notification can be made?

The ECA's Guidelines provide that it is preferable to submit the notification file at any of the following phases:

- The conclusion of a memorandum of understanding or letter of intent (preliminary agreement).
- Conducting serious negotiations regarding the Economic Concentration.
- The announcement of the purchase offer.
- Concluding any other agreement that may lead to the acquisition of control or material influence.

That being said, notification can still occur at the

negotiation stage, even before reaching a more formal agreement.

18. Is it usual practice to engage in pre-notification discussions with the authority? If so, how long do these typically take?

Pre-notification discussions with the ECA are not mandatory, and due to the recent enactment of the Law and Executive Regulations, it is difficult to determine if they have become a common practice. However, the ECA does encourage such exchanges, as stated in its Guidelines. Parties involved in an Economic Concentration can consult with ECA specialists prior to officially submitting the notification file if they have questions about whether the transaction falls within the scope of the Law.

If the parties to the transaction wish to engage in pre-notification discussions with the ECA, they must submit a written request, either electronically or physically (paper application). The ECA will respond by scheduling a meeting within a maximum of two days from the receipt of the request.

The timeframe for such discussions is not predetermined and can vary based on the complexity of the transaction, though it is important to note that these discussions will not cover any inquiries related to the substantive assessment of the Economic Concentration or its impact on the market.

19. What is the basic timetable for the authority's review?

In Phase I of the review, the ECA will decide whether or not to clear the concentration within 30 working days from the day following the filing of the notification, subject to an extension of up to 15 working days if the parties have submitted a commitment proposal.

If the concentration was referred to Phase II investigation (i.e., in depth investigation if the transaction raises serious concerns that it may harm competition in the relevant market), the review shall last for 60 working days from the date of the committee's first phase referral decision, subject to an extension of up to 15 additional days if the parties submit a commitment proposal.

20. Under what circumstances may the basic timetable be extended, reset or frozen?

The basic timetable for reviewing an Economic Concentration consists of Phase I, which lasts 30 working days with the possibility of an extension of up to 15 working days. If the file is referred to Phase II for further examination, the total period can extend up to 75 days, resulting in a total of 120 days.

Furthermore, if a transaction is to be approved on the grounds of economic efficiency, the timeline may be further delayed. This is because such approval requires not only the ECA's assessment but also the consent of the Council of Ministers, which may take additional time beyond the 120-day period set by the Law.

It is also important to note that submitting an incomplete notification file will naturally lead to delays, as the review period begins only once the ECA deems the file complete and accepts it. ECA cannot stop the clock unless the notification file is incomplete.

21. Are there any circumstances in which the review timetable can be shortened?

The circumstances under which the review timetable for Economic Concentrations can be shortened fall into two main categories: industry-specific factors and Economic Concentrations subject to simplified procedures, as outlined in the ECA Guidelines.

First, the timeline may be reduced based on the industry involved. During discussions with stakeholders, the ECA expressed its commitment to completing Phase I assessments within 20 working days. For certain industries, such as the medical field, the ECA aims to expedite the process even further, potentially completing the review in as little as one week.

Second, the ECA has introduced simplified procedures (fast-track notifications) for certain types of concentrations that do not alter the structure of the Egyptian market. The review period for these simplified notifications is 20 working days, beginning the next working day after the ECA receives the complete notification file. These files require minimal information compared to traditional notifications and apply exclusively to the following cases as described in the ECA's Guidelines:

1. Where the persons concerned with the economic concentration meet the domestic notification thresholds, if the annual turnover or the value of assets in Egypt of the persons concerned with the economic concentration combined do not exceed two billion Egyptian pounds for the latest year in the last

audited consolidated financial statements.

2. Where the persons concerned with economic concentration meet the worldwide notification thresholds, if the annual turnover in Egypt of the target person does not exceed 500 million pounds for the latest year in the last audited consolidated financial statements.
3. Establishing or acquiring a joint venture that carries out an independent and permanent economic activity outside Egypt.
4. Establishing or acquiring a joint venture that carries out an independent and permanent economic activity in markets that are not horizontally or vertically related or otherwise related to the markets in which the parent companies operate.
5. Conglomerate economic concentrations between persons operating in markets that are not horizontally or vertically related or otherwise related to each other.
6. Acquisition of sole control over one or more persons after the acquiring person or persons exercised joint control over the same person.

22. Which party is responsible for submitting the filing?

Article 55 of the Executive Regulations specifies the entities that are responsible for submitting the notification. In fact, the responsible entity differs depending on the nature of the transaction (i.e., whether it is a merger, acquisition or joint venture). Filing is mandatory for the following legal entities:

1. The acquiring entity/entities where an acquisition leads to control (effective influence) or material influence over one or more other entities.
2. The merging entities in a merger.
3. The acquiring entities where an acquisition of another entity has the purpose of establishing a joint venture.
4. The entities establishing a joint venture.

23. What information is required in the filing form?

For a normal notification file, the ECA provides a form to be completed and submitted by the parties. Article 56 of the Executive Regulations adds that, for the notification file to be considered complete and ready for the review of the ECA, 12 documents and data requirements must be submitted by the parties. For instance, they must provide corporate documents, board and/or shareholders' assembly resolutions ratifying the economic concentration, financial statements, the letter of intention/memorandum of understanding, sale and

purchase agreement or any other document demonstrating the change of control or the material influence and a power of attorney. The power of attorney issued abroad must be notarized at the Egyptian embassy. It must then be legalized by the Egyptian Ministry of Foreign Affairs.

For the simplified procedure (fast-track notifications), the ECA requires significantly less data and information. It mainly requires corporate documents, financial statements and annual reports of the concerned parties, and the concentration documents (agreements, permits or approvals obtained outside or inside Egypt and the resolutions of the concerned parties' respective board or shareholders meeting approving the concentration).

24. Which supporting documents, if any, must be filed with the authority?

The supporting documents to be filed with the notification form for a normal notification are listed in article 56 of the Executive Regulations and include the following:

1. A copy of the personal identification (national ID card or passport) of the person submitting the notification file.
2. A copy of the power of attorney issued to the person submitting the notification file
3. An extract from the commercial registry dated within the last three months for the entities involved in the Economic Concentration.
4. A copy of the articles of incorporation, including all amendments, for the entities involved in the Economic Concentration
5. A copy of the latest approved consolidated financial statements, or if unavailable, the latest approved standalone financial statements for the controlling person(s) of the entities involved in the Economic Concentration, along with the accompanying auditor's report and explanations.
6. A copy of the annual report of the entities involved in the Economic Concentration.
7. A copy of the letter of intent, memorandum of understanding, sale and purchase agreement, purchase offer, due diligence report, shareholders' agreement, or any other agreements granting control or material influence to a person.
8. A copy of the minutes of the board of directors' and general assembly (ordinary and extraordinary) meetings related to the Economic Concentration for the entities involved.
9. A copy of available permits and approvals obtained for the Economic Concentration from other authorities,

whether inside or outside Egypt.

10. A signed declaration by the person submitting the notification file or their legal representative attesting to the accuracy of the submitted data, documents, and papers.
11. A receipt confirming payment of the prescribed fee for reviewing the notification file.
12. A commitment to pay all publication costs in accordance with the regulations issued by the ECA's board.

For a simplified procedure (fast-track notifications), the ECA requires significantly less data and information. It mainly requires corporate documents, financial statements and annual reports of the concerned parties, and the concentration documents (agreements, permits or approvals obtained outside or inside Egypt and the resolutions of the concerned parties' respective board or shareholders meeting approving the concentration).

25. Is there a filing fee?

Filing fees are provided in the Executive Regulations and vary depending on the annual turnover of the concerned parties in Egypt or worldwide, as the case may be. In all cases, the fees shall not exceed 100,000 pounds, and if one transaction falls within more than one category then the highest fee will apply. The fee scheme is as follows:

- a. A fee of 80,000 pounds shall be imposed if the annual turnover or the consolidated assets in Egypt for the parties to the economic concentration collectively range between 900 million pounds and 1 billion pounds.
- b. A fee of 90,000 pounds shall be imposed if the annual turnover or the consolidated assets in Egypt for the parties to the economic concentration collectively range between 1 billion pounds and 1.5 billion pounds.
- c. A fee of 100,000 pounds shall be imposed if the annual turnover or the consolidated assets in Egypt for the parties to the economic concentration exceeds 1.5 billion pounds.
- d. A fee of 100,000 pounds shall be imposed if the annual turnover or the consolidated assets worldwide for the parties to the economic concentration collectively exceed 7.5 billion pounds for the last year in the latest approved consolidated financial statements, provided that the annual turnover in Egypt for at least one of the concerned parties in the last approved consolidated financial statements exceeds 200 million pounds.

26. Is there a public announcement that a notification has been filed?

Under the current regime, publishing the notification by the ECA is mandatory. According to the Executive Regulations, the ECA must publish a summary report of the relevant Economic Concentration in a widely circulated daily newspaper or on its official website upon receiving a complete notification file. This publication aims to inform third parties about the transaction and allows them to submit observations within 15 days of the publication date. Since the entry into force of the Law and the Executive Regulations, the ECA has published notifications for approximately twenty (20) Economic Concentrations.

However, compared to the practice of other competition authorities, it should be noted that the ECA's publication of such notifications is very brief and lacks sufficient details regarding *inter alia* the sectors in which the parties are active, the markets that could potentially be affected by the transaction, and the related parties involved in the transaction. This lack of detail leaves third parties insufficiently informed, making it difficult for them to act or intervene to protect their interests, thereby undermining the very purpose of such publication.

27. Does the authority seek or invite the views of third parties?

According to the Executive Regulations, during Phase I of the assessment, the ECA is required to publish a summary report of the notified Economic Concentration in a widely circulated daily newspaper or on the ECA's official website once the complete notification file is received. This publication is intended to inform third parties about the Economic Concentration and allow them to submit observations on the transaction within 15 days of the publication date.

However, the specifics regarding the involvement of third parties remain vague and unclear. It is uncertain to what extent the ECA will consider third-party comments and observations, whether they will significantly influence the ECA's decisions, or if the process is primarily informative, leaving limited space for third-party intervention.

Moreover, the published information is very brief and lacks sufficient detail regarding *inter alia* the sectors in which the parties are active, the markets that could potentially be harmed, and the related parties involved in the transaction. This lack of detail leaves third parties insufficiently informed, making it difficult for them to act or intervene to protect their interests, thereby

undermining the very purpose of such publication.

28. What information may be published by the authority or made available to third parties?

Neither the Law nor the Executive Regulations specify the scope of information that must be made available to third parties to enable them to intervene and submit observations on a transaction. Based on publicly available information, the ECA typically publishes the identities of the parties to the transaction, a brief overview of the transaction, and whether the parties are active in the Egyptian market. However, it is worth noting that the ECA may choose not to publish the notification file if the board decides that there are public interest considerations at stake.

29. Does the authority cooperate with antitrust authorities in other jurisdictions?

Egypt has not been party to a formal cooperation agreement in the area of competition law enforcement, other than within the framework of The Common Market for Eastern and Southern Africa (COMESA). Only informal cooperation initiatives are in place and are usually not disclosed.

30. What kind of remedies are acceptable to the authority?

Pursuant to Articles 19 bis (c) and 19 bis (d) of the Law, as well as Article 57 of the Executive Regulations, the parties involved in an economic concentration may propose commitments to the ECA during Phase I or Phase II of the assessment if the Authority raises serious concerns regarding the notified transaction. This proposal may include one or more of the following remedies:

- **Structural remedies**, such as the obligation to sell or not to sell specific assets, securities, or shares of capital.
- **Behavioral remedies**, such as committing to undertake or refrain from certain actions, these may include but are not limited to the following:
 - Refraining from taking any action that would lead to the exclusive distribution of a product.
 - Making basic facilities or services available to competing entities.
 - Not to discriminate in the agreements they conclude with suppliers or customers, whether this discrimination concerns prices, product

quality or other trading conditions.

- Not to condition the conclusion of a contract on the acceptance of obligations or the purchase of products that are unrelated to the product subject to the original agreement.

The ECA will then evaluate whether the proposed commitments adequately address potential anti-competitive effects of the Economic Concentration. If deemed sufficient, the ECA will grant conditional approval, specifying the commitments, their duration if applicable, and the mechanisms to monitor compliance by the parties involved.

31. What procedure applies in the event that remedies are required in order to secure clearance?

If the ECA raises concerns about the anti-competitive effects of a transaction during either Phase I or Phase II of its substantive assessment, the parties may submit a commitment proposal that includes one or more structural or behavioral remedies to address those concerns. The ECA will then assess whether the proposed commitments sufficiently mitigate the potential anti-competitive effects of the economic concentration. If the commitments are deemed adequate, the ECA will issue a conditional approval, outlining the specific commitments, their duration if applicable, and the mechanisms to monitor compliance by the parties involved.

If the parties fail to implement the remedies imposed by the ECA, the latter will be entitled to consider their agreement null and void.

32. What are the penalties for failure to notify, late notification and breaches of a prohibition on closing?

According to Article 22 (bis-d) of the Law, failure to notify or a delayed notification of an Economic Concentration is punishable by a fine ranging from 1% to 10% of the total annual turnover, assets, or transaction value, whichever is higher. However, if this percentage cannot be determined, the fine will be set between 30 million Egyptian pounds (EGP) and 500 million EGP.

The consequences for violating the prohibition on closing a transaction before receiving clearance from the ECA (known as "gun jumping") remain unclear. While the Law imposes penalties for breaching the notification and filing obligations, it does not explicitly address penalties for closing a transaction before obtaining the ECA's

approval.

Article 22 (bis-d) specifically states that penalties apply to those who fail to comply with the notification obligation under Article 19 (bis-a). Although Article 19 (bis-a) includes both a notification and a standstill obligation (i.e., not closing before obtaining the approval of the ECA), the wording of Article 22 (bis-d) appears to focus solely on the failure to notify. Nevertheless, in its recent Guidelines, the ECA controversially extends these penalties to gun jumping, interpreting that the same fines would apply.

This interpretation raises legal concerns, as it conflicts with established principles of constitutional and criminal law, particularly the principle of *nullum crimen sine lege*, which could result from an overly broad interpretation of the legal text. This issue will likely only be resolved when the courts have the opportunity to interpret these provisions. If the ECA's interpretation is upheld, gun jumping could result in fines of between 1% and 10% of the total annual turnover, assets, or transaction value, whichever is greater. If that calculation is not feasible, the fine will range from 30 million to 500 million EGP.

33. What are the penalties for incomplete or misleading information in the notification or in response to the authority's questions?

Article 22 (bis) of the Law states that the penalty for knowingly submitting incorrect data, information or documents to the ECA, is sanctioned by a fine of not less than 50,000 pounds and not more than 1 million pounds.

This is complemented by article 22 (bis-d), which provides that anyone who obtains an approval decision of an Economic Concentration from the ECA by knowingly submitting false data, information or documents, may be fined with a penalty that ranges from 1 to 10 percent of the total annual turnover, assets or the transaction value, whichever is higher. However, in the event that the above percentage cannot be calculated, the penalties will range from thirty million Egyptian pounds (30,000,000 EGP) to five hundred million Egyptian pounds (500,000,000 EGP).

The same applies to any entity who obtains the approval of the FRA to implement an Economic Concentration, by knowingly submitting incorrect data, information or documents to this authority.

34. Can the authority's decision be appealed to a court?

Parties involved in an Economic Concentration have the right to appeal ECA decisions within 30 days, as stipulated in Article 19 (bis-d) of the Law. The ECA will then review the appeal and determine whether to uphold or reject it.

Since ECA decisions are administrative in nature, once all appeals within the ECA are exhausted, the parties may further challenge the decision in the competent administrative courts (specifically, the Egyptian State Council) within 60 days of the decision's publication or notification to the parties.

35. What are the recent trends in the approach of the relevant authority to enforcement, procedure and substantive assessment?

Pre-merger control is a newly introduced system under the Egyptian Competition Law. Prior to recent amendments, merger control operated on an ex-post basis. However, since the adoption of the new Law and its modification by the Executive Regulations, there are still limited examples available to illustrate or identify the concrete application of pre-merger control and the ECA's enforcement tendencies.

36. Are there any future developments or planned reforms of the merger control regime in your jurisdiction?

As the pre-merger control system in Egypt is still relatively new, there are currently no planned reforms or amendments at this time.

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