

# Dual listing on the Egyptian and Dubai Stock Exchanges

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June – July 2015

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This enhances trading activity and boosts the shares' liquidity.

Dual listing also offers greater access to capital; the ability to tap into different markets at different times; and an opportunity to boost public profile even further than listing shares on a single market.

Over the past months there has been a significant increase in the economic activity between the UAE and Egypt. In March 2015 Orascom Construction Limited, a leading global engineering and construction contractor, listed its shares first on NASDAQ Dubai ("NASDAQ") and then a day later on the Egyptian Stock Exchange ("EGX"). The shares trade on the EGX in Egyptian Pounds and on NASDAQ in USD.

Whilst there can be benefits to dual listing, companies need to be aware that they will be subjecting themselves to further regulations. Common concerns are:

- what on-going disclosure/reporting obligations they will have under the regulations of each of the exchanges;
- whether these obligations overlap so that one set of information prepared for disclosure in one market can be used for the other; and
- how does a company fulfil its obligation to disclose to both markets if one market is closed?

Below we have set out some key on-going reporting obligations under the EGX and NASDAQ regimes that can serve as a point of reference for companies which are considering a dual listing on EGX and NASDAQ.

## Inside Information

Under the NASDAQ regulations, there is a requirement on the business/reporting i.e. publically-listed entity ("PL Company") to disclose information that is not generally available but which would have a significant impact on price. However, there is no clear requirement to disclose such inside information on the EGX unless it is considered as a material event. EGX further obliges each PL Company to have in place procedures to protect against misuse of insider information.

Despite the lack of an explicit prohibition under the EGX regime that the PL Company disclosed "price-sensitive" information, in practice the overall Egyptian legal framework requires that information that would impact the price of securities be disclosed to the public.

Both regimes are similar in this regard and a PL Company would disclose this information at the same time to both markets.

## Governance

Both the DFSA and the Egyptian Financial Supervisory Authority (“EFSA”) have prescribed a number of governance-related events that give rise to disclosure obligations.

The NASDAQ market disclosure requirements include disclosure of:

- the best corporate governance practices adopted and if not, why not (in the annual report of the PL Company);
- in case of a change to the board of directors (“Board”) composition or duties of the Board/Directors, the effective date of the change and the nature of the position;
- an event that (a) requires shareholder approval, (e.g. changes in the constitutional documents), or (b) changes the issued share capital over 20%, acquisition/disposal of assets equal or greater than 50% net assets value of the PL Company;
- voluntary liquidation; and
- in case of a Board resolution being passed outside the ordinary business of the PL Company, disclosure of the resolution.

The EFSA market disclosure requirements prescribe public disclosure of the following events concerning the governance of the PL Company:

- Any changes that occur to the disclosed information of the PL Company or any of its data incorporated in the pertinent prospectus, and any amendments to:
  - PL Company’s Articles of Association;
  - Change of auditor during the fiscal year;
  - Change of address of headquarters or contact details thereof; and
  - Any change to the principal managers;
- Any change to the Board of the PL Company;
- Resolutions of the Board of the PL Company;
- Resolutions of the general assembly meeting of the PL Company;
- Approval of the Board on the annual and quarterly (periodic) financial statements;
- Publishing a summary on the board of directors’ report, annual financial statements, auditor’s report together with the comment and remarks of the EFSA;
- The shareholding structure for all shareholders owning 5% or more; and
- A statement setting out the investments made by the PL Company in other companies exceeding 10% of their relevant share capital.

The governance-related reporting obligations of a PL Company largely overlap between NASDAQ and EGX. Therefore, a disclosure statement prepared for one market, e.g. Board composition changes, maybe used for the other market (for NASDAQ in English and the EGX in Arabic). To the extent possible, in practice a PL Company would adopt the more extensive reporting obligations when reporting to both markets.

## **Business**

In case of NASDAQ, transactions which potentially result in:

- any significant investment (i.e. any investments equal to or greater than 5% of the value of the net assets of the PL Company as per its most recent financial reports, or material change to such a reports) or material change to such a course of business of the PL Company; or
- the incurring of any significant debt (being a debt with an amount equal to or greater than 5% of the value of the net assets of the PL Company as per its most recent financial reports) outside the usual and ordinary course of business of the PL Company, and

- would trigger disclosure requirements.

Under the EFSA regime, however, disclosure is required if the following circumstances concerning the business of the PL Company arise:

- any arrangements of a value exceeding 5% of the revenues of the preceding fiscal year;
- and change in the PL Company's financing structure that would exceed 5% of the equity;
- initiation of any lawsuits against the PL Company in relation to its business, Board members or managers as well as judgments rendered in this respect;
- any legal judgments issued against the PL Company that may impact its financial position or the rights of the shareholders or has an impact on the trading price of the stocks or the investment decisions of the persons dealing on the stock;
- sale or purchase of assets, share of other companies or real estate that exceeds 10% of the equity of the PL Company and shall prepare an independent valuation report thereon;
- issuance of any administrative decrees that affect the business of the PL Company as well as any amendment to such decrees or withdrawal or revocation of same; and
- any arrangements concluded with related parties.

The DFSA have left a lot of discretion to the PL Company allowing it to decide where a disclosure should be made.

The EFSA, however, have been more particular as to what type of events trigger disclosure requirement in terms of the business of the PL Company, e.g. disclosure of any law suits, judgements, decisions that involve the PL Company.

Despite these differences, however, both the DFSA and the EFSA implemented the 5% disclosure triggering threshold that applies if the PL Company makes an investment or incurs a debt.

As stated earlier, in practice the easiest way of ensuring both markets get the same information is to adopt the more stringent requirements in each case and then disclose that information to each market.

## **Securities**

As far as the securities of the PL Company go, the following events give rise to a disclosure obligation on NASDAQ:

- Any decision to declare, recommend or pay any dividend or to make any other distribution on the securities; or not to declare, recommend or pay any dividend which would otherwise have been expected to have been declared, recommended or paid in the normal course of events, if the decision of such nature has been taken by the PL Company, when the decision shall be disclosed including the rate and amount of and record date for the dividend or other distribution or the grounds for the decision in relation to non-payment;
- Any decision on admission to listing or trading of the same class of securities of the PL Company on another stock exchange; and
- Any other disclosure required to be made pursuant to the requirements in the other stock exchange arising from the listing or trading of the same class of securities on that exchange where such disclosure is not made in the DIFC.

Under the EFSA regime, however, disclosure is required if the following securities-related circumstances arise:

- any new issuance of bonds as well as related collaterals and mortgages;
- any decision that might result in the redemption or cancellation of issued and registered securities;
- any proposed change to the capital structure exceeding 5% of the equity;
- any person purchasing more than 25% of the stock (and the future investments plans of any person

- purchasing more than 25% of the stock would also need to be disclosed);
- any capital increase, rights issue or other issuance of other securities or share split;
  - cash dividend distributions or issuance of free shares or any combination thereof;
  - resolutions related to amending the nominal value of the shares;
  - purchase of any treasury stock;
  - voluntary delisting request; and
  - any agreement that may result in the admission of new strategic investors to purchase a stake in the PL Company.

Upon reading of the above, it may seem that only few securities-related events, mainly concerning dividends, require disclosure on NASDAQ whereas on EGX a PL Company needs to disclose far more share-related events.

This is all organisation and apparent difference. A comprehensive reading of the DFSA rulebook indicates there is a significant overlap between disclosure triggering events.

Some of events treated as “securities-related” under the EFSA regime have been classified as PL Company or Business related under the DFSA Rulebook, arriving at the same outcome, regardless of the apparent discrepancy.

## **Interests**

Both NASDAQ and EGX require certain public disclosures to be made when an event affecting interests of the PL Company has taken place.

For instance, the DFSA require that a NASDAQ-listed PL Company file a report of interests held by a Connected Person (as defined under the DFSA regime) and make a market disclosure including details of name/address of the Connected Person, date when the Connected Person acquired interests in the PL Company, the transaction price, amount and class of security. It should also be noted under the DFSA regime that a Director has a material interest in the company if he/she has direct or indirect ownership of investments in the PL Company or any involvement in financial or commercial arrangements of the PL Company.

Under the EFSA regime, the existing shareholders and their Related Parties (as defined in the EGX Listing Rules) of the PL Company shall disclose the purchase of any shares exceeding 5% or any multiple thereof of the PL Company’s share capital and/or the subscription rights. Any existing shareholder who exceeds 25% must disclose its investment plans. The Board members and employees and their Related Parties (as defined in the EGX Listing Rules) of the PL Company shall disclose a purchase of any shares exceeding 3% or any multiple thereof of the PL Company’s share capital and/or the subscription rights. Related party transactions must be pre-approved by the general assembly in advance and disclosed.

In relation to the DFSA requirements, it is important to note that, whilst the obligation to file a Connected Person relates to a person who owns 5% or more of the PL Company, a person who is a director of PL Company is per se, a Connected Person. What this also means that a person who is a director must file a Connected Person Report if they acquire or cease to hold investments in the PL Company. In this case, the 5% threshold does not apply. Likewise, an increase or decrease of 1% of the last level reported will trigger an obligation to lodge a Report. What this means is that a relatively small movement in the holding of a director could trigger an obligation to lodge a report.

## **Financial Information**

In line with international standards, a PL Company is subject to numerous disclosure requirements that concern its financial information.

The DFSA require, amongst others, that a NASDAQ-listed PL Company discloses to the public:

- an annual financial report;
- a semi-annual financial report;
- preliminary financial results (if required by DFSA);
- any change to the accounting reference date; and
- any change of accounting date extending the annual accounting period to more than 14 months.

In Egypt, the disclosure requirements concern the following:

- Audited annual financial balance sheets and financial statements with the audit report (consolidated and standalone);
- Reviewed quarterly financial balance sheets and financial statements with review report (consolidated and standalone); and
- Any change of the financial year of the PL Company.

## **Capital**

Any proposed new issue of securities by the PL Company requires NASDAQ disclosure of the class, number and proposed date of issue and details of the changes to the share capital resulting from the new issue proposed, consideration received.

In Egypt this is the same.

Under the DFSA Rules that an alteration in the share capital of the PL Company will require approval of a majority of shareholders. The DFSA Rules also require that where there is an issue of shares for cash that these shares must be offered to existing shareholders in proportion to their existing holdings, prior to any offer to investors who are not existing shareholders.

## **Insolvency/Winding-Up**

Finally, on NASDAQ, in the case of the presentation of any winding-up petition, the making of any winding-up order or the appointment of an administrator, liquidator or the commencement of any proceedings under any applicable insolvency laws in respect of the PL Company or any member of its group; or the passing of any resolution by the PL Company or any member of its group that it be wound up by way of members' or creditors' voluntary winding-up, or the occurrence of any event or termination of any period of time which would cause a winding-up, the PL Company is required to make market disclosure of:

- the time and date of the presentation, details of the order, appointment, resolution or other event;
- the identity of the petitioner or other person at whose instigation the event occurs;
- the court or tribunal responsible for making any order; and
- the administrator or liquidator appointed, as is relevant.
- In Egypt the PL Company is required to disclose any material decisions, events and the resolutions of the Board and general assemblies, as well as, any law suit filed against it that may have a material impact or judgment issued against it that may have such an impact.

## **Director's dealings**

It is also important to note that under the DFSA Rules during certain periods of the year, directors and senior management of the company are prevented from dealing in the securities of the company. The restricted periods are from the end of the relevant financial year up to and including the announcement or publication of the annual financial report. In the case of semi-annual reports the close period is from the time of the end of the semi-annual financial period and up to the announcement of the semi-annual financials. The rationale is easy to understand, that is directors will have access to details of the financials of the company prior to the details of the financials being disclosed to the market. It is therefore important that they not be able to trade on the basis of this information. In any event, even if the prohibition was not in place, because of the prohibition on insider dealing, a director would be subject to that prohibition.

## **Conclusion**

A dual listing is often a commercially appealing proposition. It can help get global exposure and boost a company's profile.

That said, apart from assessing the potential benefits that having shares listed on NASDAQ and the EGX can bring, companies should carefully consider the challenges that the dual listing may create.

Listing shares on more than one market increases initial and ongoing costs associated with the listing as well as liability of the business given the requirement to comply with more than one set of rules and regulations. This requires significant management commitment and time dedication, amongst other challenges. As suggested, one way of meeting these challenges is, to the extent feasible, to disclose on the basis of the more stringent requirements because the PL Company can be sure that it complies with its obligations in both markets. Investors in both markets should be able to make informed investment decisions based on the same information in each market.

Dual listing, however, can be an excellent means to achieving greater commercial success.

As the above indicates, certain reporting obligations overlap so one and the same public disclosure statement may satisfy both NASDAQ and EGX requirements.