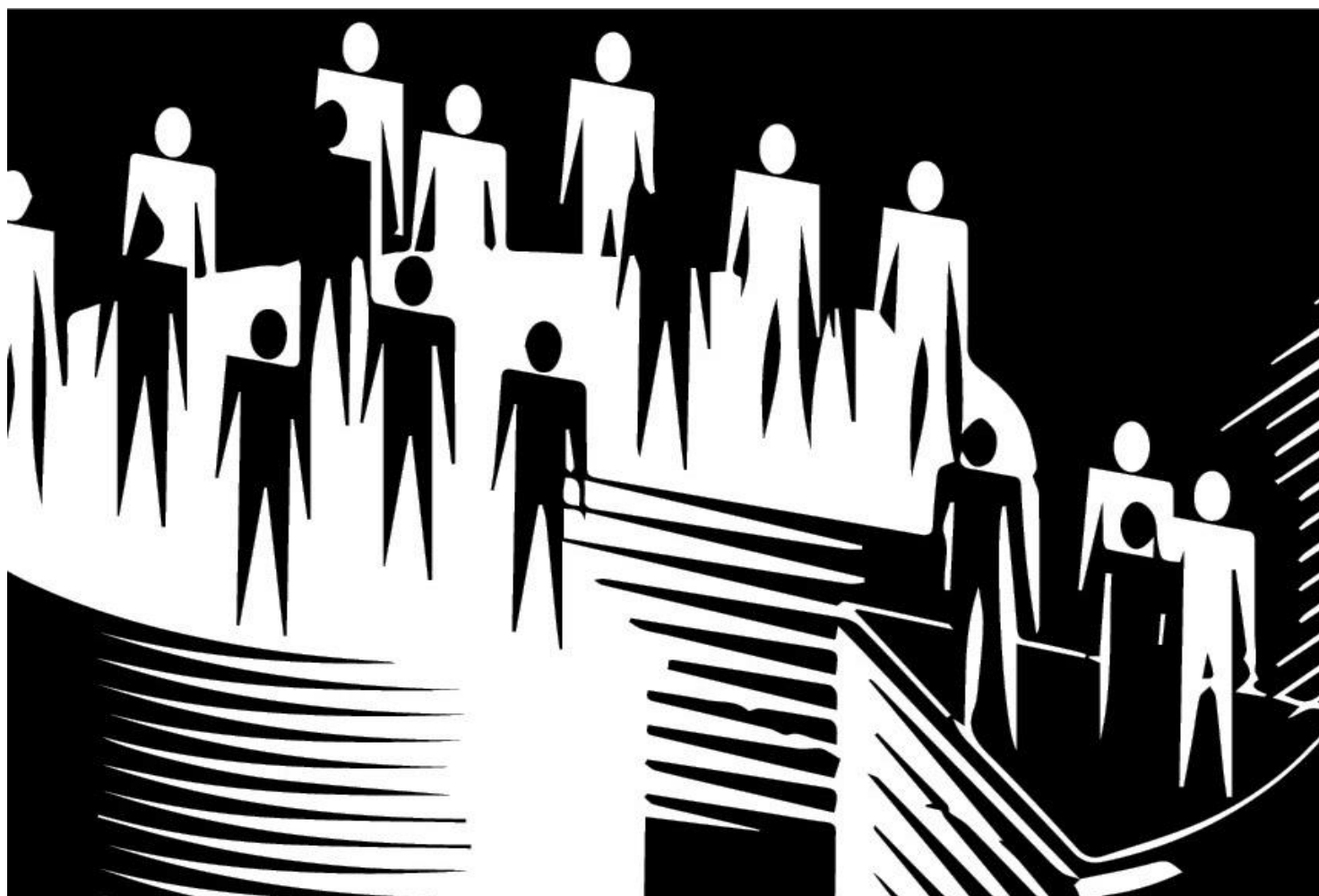


# The Legislative and Regulatory Framework for the Protection of the Rights of Minority Shareholders in Egypt





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# The Legislative and Regulatory Framework for the Protection of the Rights of Minority Shareholders in Egypt

## Introduction

Minority rights are one of the most important guarantees supporting economic stability and enhancing development.

There is no doubt that heightening the sense of security among small investors encourages them to invest in projects, while resting assured that their rights are protected and will not go in vain at any stage throughout the life of the investment project.

The Egyptian law accords such guarantee in order to support the stability of economic conditions and provide companies with stable management that would offer as much safety to the rights of the minority shareholders as to those of the majority investors.<sup>1</sup>

Said guarantee is in line with the international practices in this regard; the Doing Business report published by the World Bank Group (“WB”) confirmed that Egypt has made several reforms to support the rights of minorities in companies, which subsequently boosted Egypt 8 ranks this year.<sup>2</sup>

The principal goals of the protection of minority rights in companies can be summarized as follows: (i) disclosing essential information to ensure justice and transparency; (ii) electing independent experts as members of the Board of Directors (“**BoD**”) in order to enhance self-monitoring in the company; (iii) regulating the manner in which a general meeting is called and the process of holding such meetings; (iv) monitoring and inspecting the business carried out by the BoD members and the auditors; and (v) providing mechanisms that would settle such disputes arising between investors regardless of their shares in the capital and the legal structure of the company.

## The Concept of Minority in Corporations

Linguistically, a minority means persons who numerically represent the least number of the total of shareholders or shares.

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<sup>1</sup> The Organisation for Economic Co-operation and Development (“OECD”) gives importance to the protection of the rights of minority shareholders in its four principles of companies governance, which include: providing a foundation for an effective corporate governance framework, shareholders rights, equal treatment of shareholders, the role of stakeholders in corporate governance, disclosure and transparency, and the responsibilities of the board of directors.

<sup>2</sup> Refer to WB Doing Business 2018.



Legally, a minority in the context of companies and capital thereof means the group of shareholders who own less than half of the capital.

**The following three (3) chapters outline the main principles governing the protection of minorities in companies as follows:**

Chapter One: Guarantees and Rights of Minorities in the Egyptian Companies

Chapter Two: The Administrative Body Role in the Protection of Minority Rights

Chapter Three: Investors Disputes Settlement

## Chapter One: Guarantees and Rights of Minorities in Egyptian Companies

### I. Incorporation

1. The articles of incorporation may not encompass any conditions exempting all or some of the founders from any liability arising from the company's incorporation, or any other conditions stipulated to govern the company after its incorporation thereof, unless such conditions have been stipulated in the articles of incorporation.<sup>3</sup>

The Law<sup>4</sup> obligates the company's founder(s) to:

- Exert due diligence;
  - Be jointly liable with other founders for any damages that may affect the company or third parties as a result of violating the provisions of the Law; and
  - Refund any money or profits realized in the name of the company.
2. Any disposition made between the company undergoing the incorporation process and the founders thereof shall have no effect vis-a-vis the company after the incorporation, unless such disposition was approved (i) by the company BoD, only in the event that all BoD members had no relation to the founder who performed the disposition or had no interest in such disposition; (ii) by all partners; or (iii) by a resolution passed in a meeting convened by the company's general meeting in which the interested founders had no countable votes.<sup>5</sup>
  3. The Law stipulates that in the event that the company has not been incorporated due to founders' fault, each subscriber shall have the right to<sup>6</sup>:
    - Request from the summary court judge that an individual be appointed to refund the paid money and distribute it among the subscribers;
    - Claim compensation from the founders, collectively, when necessary; and
    - Redeem the subscription value paid by the subscriber in the capital of the company undergoing the incorporation process, in the event that one year from the date of subscription has elapsed without any incorporation procedures being taken.

### II. General meetings:

#### 1. General meetings attendance and access to documents:

- a. A shareholder in joint stock companies has the right to attend the general meeting either

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<sup>3</sup> Refer to Article (9) of the Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single Member Companies.

<sup>4</sup> Refer to Article (11) of the Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single Member Companies.

<sup>5</sup> Refer to Article (12) of the Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single Member Companies.

<sup>6</sup> Refer to Article (14) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single Member Companies.

- in person or by proxy. A shareholder, other than the members of the BoD, may not delegate one of the members of the BoD to attend the general meeting.<sup>7</sup>
- b. The Law stipulates that the shareholder may not during the company's general meeting be represented by way of proxy more than ten percent (10%) of the total nominal shares of the joint stock company, nor may such shareholder be represented by way of proxy more than twenty percent (20%) of the shares represented in the meeting.<sup>8</sup>
  - c. The shareholders owning five percent (5%) of the company's capital have the right to include certain matters, deemed fit thereby and may affect their interest, in the agenda of the ordinary general meeting.<sup>9</sup>
  - d. The Law authorizes shareholders to access all documents and files that would be discussed in the general meeting agenda. It also stipulates that it is necessary that the shareholders be represented in the general meeting, and be notified, sufficiently in advance, of the prescribed date of such meeting.<sup>10</sup> Any person concerned may request access, at the Appropriate Administrative Body ("GAFI"), to the documents, records, minutes and reports in connection with the company, and obtain data therefrom certified by such Appropriate Administrative Body.<sup>11</sup>
  - e. Shareholders' liabilities may not be increased, and any resolution passed at a general meeting in a way that would affect the shareholder's basic rights conferred by virtue of such shareholder's capacity as a partner is null and void.<sup>12</sup>
  - f. Every shareholder attending the general meeting has the right to discuss any matters on the agenda, and question the BoD members and auditors in respect of such matters. Such shareholder may ask any questions before holding the general meeting. Any provision depriving the shareholder from the foregoing right is null and void.<sup>13</sup>
  - g. Shareholders or partners owning at least ten percent (10%) of the shares or stocks of the company have the right to obtain information and copies of documents as relating to the commutative contracts or the dealings engaged by the company with the affiliates thereof. Should the company refuse to do so, the shareholders or partners may file an application to that effect to GAFI, whose decision in this regard will be binding on and enforceable as against the company.<sup>14</sup>

## 2. Calling a general meeting:

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<sup>7</sup> Refer to Article (59) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single Member Companies.

<sup>8</sup> Refer to Article (8) of the Executive Regulations of Capital Market Law No. 95 of 1992.

<sup>9</sup> Refer to Article (63) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single Member Companies, and Articles (179) and (181) of the Executive Regulations thereof.

<sup>10</sup> Refer to Article (65) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single Member Companies, and Article (203) of the Executive Regulations thereof.

<sup>11</sup> Refer to Article (70) of Capital Market Law No. 95 of 1992.

<sup>12</sup> Refer to Article (68) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single Member Companies.

<sup>13</sup> Refer to Article (72) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single Member Companies.

<sup>14</sup> Refer to Articles (157) *bis* and (163) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single Member Companies, and Circular Letter No. 13 of 2018.

- a. The Law stipulates that all shareholders must be notified, sufficiently in advance, of the prescribed date of the general meeting, in such a way as to ensure that the foregoing comes to the knowledge of all shareholders.<sup>15</sup>
- b. The BoD must call an ordinary general meeting if so requested by the auditor or by a number of shareholders representing at least five percent (5%) of the company's capital, provided that they elaborate on the reasons for this request, and deposit their shares at the company's head office or a certified bank. Such shares may not be withdrawn unless after the general meeting is adjourned.<sup>16</sup>
- c. The shareholders owning ten percent (10%) of the company's capital may call an extraordinary general meeting, as long as there are compelling reasons for that.<sup>17</sup>

### 3. Rights and guarantees of the shareholders during the general meeting:

- a. BoD members may not take part in voting on general meeting resolutions with regard to fixing their salaries and remuneration, or the discharge of their liability for the management.<sup>18</sup>
- b. A general meeting may, at any time, dismiss the BoD or any member of such BoD even if this was not included on the agenda.<sup>19</sup>
- c. Any resolution passed at a general meeting may not entail barring of a civil liability action against BoD members because of errors made by such members while performing their duties. If the act giving rise to liability was proposed at a general meeting in a report made by the BoD or the auditor, the said civil liability actions is barred by the elapse of one (1) year from the date on which the resolution of the general meeting approving the said report of the BoD was passed.<sup>20</sup>
- d. Any condition in the company's articles of association that purports to provide a waiver of the civil liability action, or to subject the initiation of such action to a prior permission of the general meeting or to any other measure is null and void.<sup>21</sup>

### 4. Cumulative voting:

The cumulative voting system was introduced in order to enable the minority to focus their votes and give them to one of the candidates, thus ensuring the presence of their representative within the BoD.

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<sup>15</sup> Refer to Article (203) of the Executive Regulations of Law No. 159 of 1981.

<sup>16</sup> Refer to third paragraph of Article (61) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single Member Companies.

<sup>17</sup> Refer to Article (70) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single Member Companies.

<sup>18</sup> Article (74) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single Member Companies.

<sup>19</sup> Article (77) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single Member Companies.

<sup>20</sup> Paragraphs (1 and 2) of Article (102) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single Member Companies.

<sup>21</sup> Paragraph (3) of Article (102) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single Member Companies.

Such system allows the shareholder, with regard to the election of BoD members only, to give the number of votes represented in the shares owned by such shareholder in the company's capital to one candidate or more for the BoD membership.<sup>22</sup>

The number of votes is calculated by giving each shareholder a number of votes equal to the number of shares such shareholder owns. The percentage of shares allocated by the shareholder to each candidate may vary, provided that the percentage of the allocated shares does not exceed the shareholder's total shares in all cases.

### III. BoD liabilities before the shareholders:

1. The legislator specified the time limit required to elect or re-elect the BoD members, in accordance with the following restrictions:<sup>23</sup>
  - a. The term of the BoD is three (3) years.
  - b. BoD membership term is calculated from the date on which the company is registered with the Commercial Register.
  - c. The term of the BoD will terminate upon the end of the acts of management of the first general meeting that is held to consider the financial statements of the fiscal year in which the BoD membership term elapses.
  - d. BoD membership term renewal will be in the form of a new appointment to which all terms and conditions applicable to the first appointment apply.
  - e. The BoD, whose term expired, is considered as a board that conducts the regular day-to-day operations of the company, until the it is re-elected by the general meeting or a new BoD is elected. Such board is not entitled to take effective or substantial resolutions, that might either relate to the increase of the company's capital or cause damage to the interests of all or some of the shareholders.
2. The articles of association of the company may provide for the representation of a minimum capital percentage in the membership of the BoD, provided that such percentage does not exceed one seat per each ten percent (10%) of the company's shares.<sup>24</sup>
3. GAFI BoD may, upon compelling reasons given by a number of shareholders who own no less than five percent (5%) of the company shares, and upon verification of such reasons, suspend the resolutions of the general meeting of the company that are issued in favor of a specific group of shareholders, that cause harm to them, or bring about a benefit to the BoD members or others. Those concerned must bring an action for annulment of the resolutions of the general meeting before the arbitration committee within fifteen (15) days

<sup>22</sup> Refer to Paragraph (2) of Article (73) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single Member Companies, which was added by Law No. 4 of 2018, and refer to Article (240 *bis*1) of the Executive Regulations of Law No. 159 of 1981, and GAFI CEO Circular Letter No. 1 of 2018.

<sup>23</sup> Refer to Article (77) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single Member Companies, and refer to Article (233) of the Executive Regulations thereof, and GAFI CEO Circular Letter No. 5 of 2018.

<sup>24</sup> Refer to Article (77 *bis*) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single Member Companies, which was added by Law No. 4 of 2018, and refer to Article (240 *bis* 1) of the Executive Regulations of Law No. 159 of 1981, and GAFI CEO Circular Letter No. 3 of 2018.



from the date on which the suspension resolution was made. In the event of the elapse of such period, the stay resolution will be void.<sup>25</sup>

4. In the event of emerging danger that may affect the stability of the capital market or the interests of the shareholders in the company or the interest of parties dealing with such company, the Financial Regulatory Authority (FRA) BoD may take any of the following measures:<sup>26</sup>
  - a. Warn the company;
  - b. Prevent the company from engaging into all or some of the activities licensed thereto;
  - c. Request the Company's BoD chairperson to call a BoD meeting to look into the violations claimed to be committed by the company and take the necessary measures to rectify such violations, provided that the BoD meeting, in such case, be attended by one or more FRA representatives;
  - d. Appoint an auditor, for the period specified by the FRA BoD, to the company's BoD, and such auditor will have the right to take part in the BoD discussions and record his opinions in the adopted resolutions;
  - e. Dissolve the BoD and appoint an authorized person to manage the company temporarily, until a new BoD is appointed in accordance with the governing laws in this respect; and
  - f. Order the violating company to increase its deposited insurance subscription.
5. The company may not provide a cash loan of any type whatsoever to any BoD member thereof or act as a guarantor of any loan obtained by such BoD member from third parties.<sup>27</sup>
6. A BoD member or a manager of a joint stock company may not engage in business for his own account or for the account of third parties in any sphere of business being carried on by the company, without having obtained a special authorization from the general meeting of the company. Failing so, the company may claim compensation from such BoD member or manager, or deem the transactions carried out by such BoD member or manager for his own account to have been carried out for the company's own account.<sup>28</sup>

#### IV. Disclosure:

1. Every BoD member of the company and every manager thereof, having an interest conflicting with that of the company in a transaction proposed to the BoD for approval, must inform the BoD of such conflict of interest, and record it in the minutes of the meeting. Such BoD member or manager may not participate in voting on the resolution to be passed on such transaction. The BoD must inform the first general meeting of the referred to transactions.<sup>29</sup>

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<sup>25</sup> Article (10) of the Capital Market Law No. 95 of 1992.

<sup>26</sup> Article (31) of the Capital Market Law No. 95 of 1992.

<sup>27</sup> Refer to Article (96) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single member Companies.

<sup>28</sup> Refer to Article (98) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single member Companies.

<sup>29</sup> Refer to Article (96) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single member Companies.

2. Any founder of the company or a BoD member thereof may not, at any time during the first five (5) years following the incorporation of the company, be involved as a party in a commutative contract proposed before the BoD for approval, unless the general meeting authorizes in advance such entry into contract. Any contract entered concluded to the contrary of the provisions of this Article is deemed null and void.<sup>30</sup>

## V. Shareholders rights throughout voluntary liquidation:

1. Shareholders or partners may, for acceptable reasons, dismiss the liquidator. The dismissal of a liquidator must be in the same manner in which such liquidator was appointed in accordance with the controls set by the legislator in the liquidation phase of the company.
2. The liquidator must complete the liquidation process within the period specified for it in the deed of the appointment of the liquidator. Should such period be not specified in the deed of appointment, each partner or shareholder may apply to the court for fixing a period for the completion of the liquidation process.<sup>31</sup>

## Chapter Two: The Administrative Body Role in the Protection of Minority Rights

### I. GAFI calling a general meeting

The auditor or GAFI may call a general meeting in the following cases:

- The BoD fails to call the general meeting even though it is necessary to do so;
- The number of BoD members is less than the quorum required for the meeting to be valid; or
- The BoD members who would satisfy the said quorum refrain from attending the meeting.<sup>32</sup>

### II. Shareholders right to request that the general meeting be suspended:<sup>33</sup>

GAFI may, at the request of shareholders owning at least five percent (5%) of the shares of the company, whenever such request is demonstrated to be serious, decide to suspend such resolutions adopted by the general meeting to the detriment of such shareholders, or adopted in favor of a certain class of shareholders or to bring a special benefit to BoD members or others.

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<sup>30</sup> Refer to Article (99) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single member Companies.

<sup>31</sup> Refer to Article (150) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single member Companies and GAFI CEO Decree No. 527, dated September 6, 2018.

<sup>32</sup> Refer to Article (62) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single member Companies and GAFI CEO Decree No. 666, dated October 17, 2018.

<sup>33</sup> Refer to Article (76 bis) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single member Companies.

**The foregoing is subject to the following conditions:**

- The application must be submitted by those who own at least (5%) of the company capital.
- An evidence to the effect that the ownership of the shares is renewed must be submitted.
- The application must be submitted within thirty (30) days from the date of passing the decisions requested be suspended.

**III. The shareholder/partner right to request that the company's business be monitored:**

GAFI will examine any complaint submitted by shareholders or other persons concerned in respect of the execution of the provisions of Law No. 159 of 1981.<sup>34</sup>

**■ Conditions warranting that GAFI conducts monitoring:**

- Monitoring is warranted to be conducted by GAFI, if a financial and administrative substantial violation is committed in violation of the aforementioned Law and the Executive Regulations thereof; or
- If the company being monitored is a corporation.

**IV. The shareholder/partner right to request that the company's business be inspected:**

GAFI and partners holding at least (20%) of the capital of a bank, or at least (10%) of the capital of any other joint stock company, are entitled to request that the company be inspected in respect of any substantial violation claimed to be committed by the BoD members or the auditors in course of performing their duties as stipulated under the Law or the articles of association, should there be reasons warranting the committing of such violations.<sup>35</sup>

**1. Conditions warranting that GAFI conducts inspection:**

- Inspection is warranted to be conducted by GAFI, if a financial and administrative substantial violation is committed in violation of Law No. 159 of 1981 and the Executive Regulations thereof; or
- If the company being inspected is a corporation.

**2. The main inspection committee:**

- Examines and assesses the inspection application together with the documents submitted by the parties concerned; discusses the foregoing with the parties concerned; and ascertains that the complaint claimed to warrant the inspection is serious;
- Offer conciliation to the parties concerned; and
- Prepares final reports and gives necessary recommendations.

**3. The conclusion reached by the inspection committee:**

The inspection committee reaches either of the following two conclusions:

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<sup>34</sup> Refer to Article (155) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single Member Companies.

<sup>35</sup> Refer to the first paragraph of Article (158) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single Member Companies.

- Non-existence of violations, in which case the persons concerned are given a report on the conclusion reached by the inspection committee; or
- Existence of violations, in which case Article (160) of Law No. 159 of 1981 shall apply. In the application of the aforementioned Article (160), GAFI will call the general meeting to look into the violations claimed to be committed by the persons against whom the compliant was made, and present the violations to the general meeting for necessary action.

#### 4. The difference between monitoring and inspection:

- On the one hand, the inspection process requires that the applicant own at least (10%) of the company capital or at least (20%) of the capital, if the application is made against a bank. The monitoring process, on the other hand, does not require that the applicant own a specific percentage of shares; rather, it requires the applicant to have a due capacity to make such an application.
- Another difference between the two processes lies in that inspection is conducted over joint stock companies, whereas monitoring applies to all corporations.
- In the event that violations are found, the inspection leads to GAFI calling for a general meeting to look into the report, vote on the removal of the BoD and bring liability action against the BoD. Monitoring, however, ends in all cases by giving the persons concerned a copy of the report only.

#### V. The shareholder/partner right to appeal the administrative resolutions:

The partner/shareholder has the right to appeal before the appeals committee the administrative resolutions passed by GAFI in the application of the provisions of Law No. 72 of 2017 and Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single Member Companies.<sup>36</sup>

The appeals committee will issue its decision within sixty (60) from the appeal submission date. The committee's decision in this regard is final and enforceable vis-a-vis GAFI.

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<sup>36</sup> Refer to Article (160 *bis*) of Law No. 159 of 1981 on Joint Stock Companies, Partnerships Limited by Shares, Limited Liability Companies and Single Member Companies as added by Law No. 4 of 2018.

## Chapter Three: Investors Disputes Settlement

### I. Introduction to the Investors Disputes Settlement Center:

The Investors Disputes Settlement Center (the "Center") was established at GAFI in 2009. The Center adopts the mediation mechanism as one of the most important amicable methods for settling disputes away from litigation.

In the mediation process, a neutral third party called the "mediator" assists the disputing parties to achieve an amicable and speedy settlement for the dispute arising between them, to save time, money and effort, without prejudice to the parties' right to recourse to the judiciary.

Having no authority to adjudicate disputes<sup>37</sup>, the Center attempts to settle amicably such disputes arising between parties, and choose a neutral mediator to assist them throughout the following:

1. Identifying the disputed issues;
2. Exploring and looking at options;
3. Establishing communication between the parties; and
4. Reaching an amicable resolution to all or part of the dispute.

### II. The Center's scope of competence:

The Center has the competence to settle disputes, which might arise among investors - i.e. partners or companies of any legal structure whatsoever - or between shareholders and companies, whenever the disputing parties agree to settle the dispute through the Center. This would in turn ensure access to a speedy, fair, and friendly settlement.

### III. The Center's mechanism for settling disputes:

The mediation process is carried out in accordance with the rules of the Center. While developing such rules, the latest international practices, comparative legislation, and the recommendations of The United Nations Commission on International Trade Law (UNCITRAL) were taken into account.

### IV. The advantages of recourse to the Center to settle disputes:

Referring to the Center to settle disputes arising between parties provides various advantages as follows:

- Assisting the disputing parties in reaching conciliation in such a way as to maintain investment relations and commercial partnerships;
- Saving time, money, and effort;
- Achieving a speedy consensual less expensive settlement;

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<sup>37</sup> Refer to Minister of Investment Decree No. 170 of 2009, and GAFI CEO Circular Letter No. 6 of 2018



- Giving the disputing parties the ability to control the outcome of the settlement, unlike the traditional dispute settlement methods whose results cannot be expected;
- Maintaining confidentiality of information in respect of the dispute, so as not to adversely affect the reputation of the company and its commercial entity; and
- Enabling the parties to experience how to settle their disputes through amicable means derived from their free and independent will and compatible with such view as to preserve the entity of the company.