

**Hernán L. Fuenzalida-Puelma Consulting**

**PRIVATE HEALTH CARE FINANCING IN EGYPT  
COMMENTS AND SUGGESTIONS ON DRAFT LEGISLATION**

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**Submitted to  
USAID/BearingPoint  
Technical Assistance for Policy Reform II**

**July 2006**

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## TERMS OF REFERENCE

The Terms of Reference for the assignment being reported in this document were as follows:

“The Senior Health Insurance and Legal Advisor will complete the following discrete tasks and deliverables:

### TASKS

- ◆ Review the new law on health insurance that was provided to the project by EISA. Discuss the draft law with EISA staff and industry representatives to understand the logic of the law and issues or concerns with the law. Provide the international perspective on laws governing private health insurance and its regulation and supervision taking into account the Egyptian context.
- ◆ Provide briefings, as appropriate, on international experience with legal and regulatory frameworks for private health insurance.
- ◆ Work with the Senior Health Expert, Mr. Ibrahim Shehata to help EISA form a Working Group on Health Insurance comprised of key stakeholders. Facilitate and provide technical assistance to the Working Group particularly in areas such as the draft law, necessary regulations, identifying barriers to the development of private health insurance and strategies for overcoming the barriers and coordinating work on private health insurance with initiative to expand public health coverage by the MOHP.
- ◆ Begin looking at EISA’s capacity to supervise various types of health insurance providers and products, working with the project’s Senior Insurance advisors.

### DELIVERABLES

- ◆ Deliverables for the Insurance Component are detailed in the approved work plan.
- ◆ Periodic meetings with EISA leadership and USAID to review progress and make adjustments to the work plan as required.”

The mission to Cairo took place from 7 to 30 June 2006.

## **I. OVERVIEW OF PRIVATE VOLUNTARY HEALTH CARE FINANCING. INTERNATIONAL PERSPECTIVE.**

**1.1. From Health Insurance to Prepay Health Care Financing.** The purpose of health insurance is to help people cover their health care costs through paying for all or part of the health care billings (doctor visits, prevention, ambulatory procedures, tests and laboratory services, hospitalization, surgery, home care, and other treatments and goods and services). Governments offer social health insurance<sup>1</sup>; and insurance companies offer private health insurance.

Insurance companies use risk pooling and charge a premium based on average cost plus overhead (administrative costs and profits) to offset the financial risk they take. "Risk Pooling" is based on the "law of large numbers": The more numbers in a certain range, the average becomes increasingly stable. The larger the pool the more stable the average cost and less risk. Pooled risks have to be independent; they need to fluctuate at different times and not together. Individual health care risks are generally independent, although contagious diseases or widespread disasters can change that and epidemics, for instance may be excluded. Traditional private health insurance offered by insurance companies is Indemnity Insurance, sometimes also called "Fee-For-Service" insurance: Patients may choose any physician or hospital, and the insurance company will reimburse a certain percentage of costs, usually after the patient pays an annual deductible<sup>2</sup>.

The advent and spread of "managed care" in the United States in the last thirty years was in reaction to the financial un-sustainability of indemnity insurance and its low financial coverage. Managed care is the term for a pre-paid health care financing and delivery mechanism where payments are made in advance for a range of health care treatments and preventative services that takes place under the modalities of HMOs (Health Maintenance Organizations). HMOs offer health care goods and services against pre-paid contributions to which the member is entitled, as opposed to the reimbursable monetary amount guaranteed by an indemnity health insurance policy. Physicians and other health care professionals and institutional providers are paid under different payment modalities such as capitation, negotiated fess, and case-based. The various options offered by HMOs are called *health plans*.

Under the HMO system both financial and services risk are managed. Determining its regulation and supervision becomes an issue because health care pre-payment schemes are not health

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<sup>1</sup> **Social Health Insurance** (also known as national, compulsory or mandatory health insurance): A health care system based on employment and financed by a combination of pay-roll taxes or health contributions on the part of employees and employers, State and local budget transfers to cover for the unemployed, the poor and the elderly, and to finance cash benefits, and other State subsidies or guarantees to maintain the solvency of the system. These financial resources usually are channeled into a social health insurance fund to separate the resources from State budget, allowing for participation of contributors and beneficiaries in the health fund decision-making process, and ensuring transparency in the management of the health fund. The government regulates the organization of a health insurance fund administration, subscription rates, benefits, accounts and control and oversight of the system. Health care benefits are not related to the amount of individual contributions to the health fund (Glossary XX)

<sup>2</sup> Under indemnity insurance, co-payments and deductibles are growing as insurance companies find it increasingly difficult to financially sustain this type of insurance coverage.

insurance proper (as understood in the form of indemnity insurance. In the United States, the HMOs are considered to be an activity where the financial risk is large enough to be considered to be a business of insurance. Consequently, all HMOs are considered a special type of health insurance (different from risk pooling health insurance) and are subject to the supervision and regulation of the Insurance Commissioner or Insurance Supervisors that exist in each state of the Union<sup>3</sup>. Today, this type of health care financing is generically called health insurance. The growth of HMOs in the United States has been exponential. Today more than 75% of health care financing coverage is under this pre-payment system. Indemnity health insurance is very limited, and mostly as rider to large life insurance policies.

In developing countries, pre-payment schemes have also flourished, notably in Latin America. A few countries regulate and supervise pre-payment schemes as a special and specialized form of health care financing (Brazil, Chile, Colombia, Mexico, Peru, Slovenia, South Africa). They are also generically called health insurance although health insurance proper (indemnity health insurance) remains under the general legislation and supervision of insurance. Most developing countries do not regulate and supervise pre-payment schemes (Other countries in Latin America and in some former Soviet Union Countries, Ukraine, Georgia).

The universe of private health insurance includes: (a) Risk pooling, referring to traditional indemnity health insurance offered by insurance companies (life and non-life); (b) Managed care/HMO-type designating the pre-payment financing system prevailing in the United States and the modalities in developing countries that follow closely this model; and (c) Prepay schemes indicating the pre-pay modalities found in developing countries, regulated/supervised as well as unregulated/unsupervised.

The above made distinctions have significant implications for supervision and regulation: (a) The purpose if the eventual regulation and supervision of a variety of organizational forms engaged in unregulated health care financing; (b) insurance principles and insurance rules do apply and need to be taken into account, such as those on minimum capital, prudential norms on solvency to ensure stability and financial strength, and the need for competent staff; and (c) the application of established insurance norms cannot be absolute as it would set up barriers that many of those already engaged in private health care financing would not be able to meet. The requirements have to be commensurable to the stage of development of the unregulated private health care financing market and to the volume of operations of the entities involved. In many cases, this would mean the issuing of specific new legislation on private health insurance/pre-payments.

Further, the entities involved in prepay health care financing could be of many sorts: established companies, a private hospital marketing pre-paid health care goods and services, or group practice of physicians offering pre-paid ambulatory services. How to identify and to regulate the financial activities of these various actors is the main challenge. The trend is for ministries of health to supervise and regulate the clinical and health-care related aspects, and for the supervisory authority to supervise and regulate corporate governance, market conduct and general financial aspects.

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<sup>3</sup> In the United States insurance is a State responsibility and not Federal. Therefore each State has an Insurance Commissioner. There is a national association of insurance commissioners ([www.naic.org](http://www.naic.org)).

Recent studies and papers<sup>4</sup>, notably at the World Bank, explore different avenues of private health insurance as an alternative source of health care financing. Some of these studies and papers are devoted to the construction of frameworks for the analysis of health care financing and of health insurance (social and private) most of them on variations on the same subject. In the European Union there is the seminal work by Mossialos and Thompson regarding the European Union<sup>5</sup>. Voluntary health insurance has been the interest of the Health Project of the Organization for Economic Cooperation and Development (OECD)<sup>6,7</sup>.

**1.2. Prepayment health care financing.** The basic *concept of pre-payment* is that of payments or subscriptions (avoiding the word premiums that is typical of insurance) at regular intervals regardless of utilization of services, for a pre-determined package of health care services by the same provider (or association or network of providers) that receives the pre-payments and control the delivery of the health care services. The pre-payment financier (in fact an insurer) finances the provision of health care goods and services, provides those services directly or under contracts, and controls the actual provision of health care services with administrative/clinical approvals and monitoring

Pre-payment can be formal and informal, depending on if it is, or if it is not, legislated, supervised and regulated.

<p><b>Formal Pre-Pay Financing.</b> It is the case where pre-pay schemes have been legislated, as a form of health care financing that is different from the business of traditional health insurance. The pre-payment insurer collects and manages the pre-paid contributions for a certain type and volume of health care goods and services provided by one or more contracted health care providers (Brazil, Chile, Colombia, South Africa).</p>	<p><b>Informal Pre-Payment Financing.</b> It is the case when Informal pre-pay health care financing is unlicensed, unsupervised, and unregulated. It can take place on a small scale when pre-pay subscription plans are offered by medical group practices or clinics; it is also found in larger scales in the case of pre-pay plans offered by hospitals or conglomerates of hospitals and their networks of primary, secondary and tertiary establishments.</p>
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**1.3. Rationale for Supervising and Regulating Prepay Health care Financing.** The main economic reasons for supervising and regulating private health insurance (including formal pre-payment health care plans) are market failures, financial stability, financial efficiency, and consumer protection.

State interventions to solve market imperfections are also imperfect (“State/government failures”). The influence of interest groups, political considerations and the struggle of conflicting values in decision-making and in implementation processes contribute to obscure the rationality of State interventions.

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<sup>4</sup> See list in Annex “\_”

<sup>5</sup> Mossialos, Elias, and Thompson, Sarah, “Voluntary Health Insurance in the European Union”, European Observatory on Health Systems and Policies/World Health Organization, 2004

<sup>6</sup> The OECD comprises the following countries:

<sup>7</sup> See OECD, Health Project in [www.oecd.org](http://www.oecd.org) for information on the Project and list of working papers and documents.

Usually, the State intervenes with laws and regulations as instruments of policy implementation that authorize, compel and proscribe behaviors. This takes place within the constraints of the institutional framework that the country may have as well as in accordance with the legal, institutional, judicial and regulatory traditions that may be in place. These processes are conducted under the influence of political considerations in both decision-making and implementation. The complexity of these imperfections in State intervention makes regulating health care financing a complex, dynamic, continuous and not necessarily logical process. The expectation is that supervision and regulation, with its advantages and disadvantages, will be conducive to a more efficient situation than if non-existent.

**1.3.1. Market Failures.** From the economics and law perspective, market failures justify regulatory intervention because they require some kind of corrective actions to amend the economic failure of the market and these interventions are usually legal.

<p><b>Asymmetric Information:</b> In health care, perfect consumer information is not just unlikely but most probably impossible (the fallacy of perfect information in health care). On the one hand, consumers regard medical treatment as an endeavor that is complex and mysterious. The effectiveness of the medical science and medical treatment is uncertain in spite of the extraordinary technological progress in diagnoses (particularly laboratory tests) and therapy (pharmaceuticals, surgery, rehabilitation) in the last fifty years. Almost by definition, physicians control information that it is usually not available to the patient. On the other hand, private health insurers control information on coverage, exclusions and other “details” that are not always properly disclosed or if at all. Consumers regard the content of health insurance policy contract as complex, cryptic and difficult to fully understand or even find (the infamous small letter clauses). Systematic consumer information is instrumental to improve educated individual decision-making when purchasing private health care financing.</p>
<p><b>Moral hazard:</b> refers to excess demand of health care goods and services because of changes in the attitudes of consumers as insured patients (and health care providers as well) derived from the fact of becoming insured against the costs and payments of such care. <i>Consumer moral hazard</i> arises because being insured reduces the financial cost of treatment and thus there is less incentive to adopt healthy lifestyles, and because zero or reduced payment at point of service induces a higher rate of service use. <i>Provider moral hazard</i> takes place when health care providers are unaware of the costs of the health care goods and services and when there is supplier-induced demand.</p>
<p><b>Adverse selection.</b> Adverse selection takes place when individuals at greater risk of illness enroll in an insurance program in larger proportions than they are found in the general population. The insurer is not always aware of the knowledge of their health situation or has no idea of their health risk. This asymmetry of information against the insurer is called “<i>adverse selection</i>.” Private insurers counteract with exclusion lists, higher premium to select out high-risk individuals or groups. This is called “<i>selection bias</i>”. The expression “adverse selection”, however, has prevailed encompassing both meanings, but with particular reference to the latter.</p> <p>Adverse selection is critical with private health insurance and prepay financing where certain risks such as chronic diseases, pre-existing medical conditions, and the elderly, are considered uninsurable or undesirably insurable. Unregulated adverse selection result in having the government as the payer of last resort for individuals selected out by private health care financing.</p>
<p><b>Monopolistic Power.</b> When adequate competition fails the result is an increase in the number of larger and fewer firms controlling an industry. This entails, or is very close to entail, a monopoly. Monopolies preclude consumer choice, fix prices, and eliminate</p>

competition with the consequential artificial shortages and higher prices. Economic power brings with it political influence and corruption. Supervision and mostly proper regulation should keep competition alive and healthy (transparent).

**1.3.2. Financial Stability.** Failure of pre-pay health care financing companies could undermine confidence and have contagious effects on the insurance and financial systems as a whole. Thus, the imposition of minimum prudential standards and official regular surveillance are meant to avoid present and future anxieties against the future stability of the private health insurance system.

The cost-effectiveness of supervision is important, and the supervisor has to make continuous assessments of the impact of the supervisory and regulatory requirements.

**1.3.3. Financial Efficiency.** The market approach to financial supervision requires effective competition between providers of private health care financing. Effective competition means cost efficiency and price restraint. Competition enhances efficiency by improving the accessibility, design and pricing of health care financing products. It also limits restrictive practices, and lead to most productive allocation of resources. Also, it facilitates efficiency with the control of market failures and by limiting the barriers to entry in the health pre-pay financing market. Competition encourages innovation and generates strong, profitable and creative insurers

**1.3.4. Consumer protection.** Protecting consumers is one of the main reasons for supervising and regulating private health care financing. This means requiring adequate information disclosure to overcome the asymmetry of information failure and the provision of inadequate and unequal information, that prevent consumers to assess the risks, quality, and relative prices of private health in insurance options.

The interests of consumers can be affected by the superior bargaining power of large financiers to the detriment of consumers. Controlling misrepresentation of products, and misleading information, bad or inadequate advice, undeclared conflicts of interests and fraud, is essential to protect consumers. Market imperfections and incompetent and unethical practices can be substantially reduced with information disclosure requirements and codes of business behavior.

Prudential supervision protects against “institutional risk”, meaning the collapse of the prepay company. Competitive, informed markets operating under fair trading rules on a level playing field improves efficiency and protects consumers and enhances public confidence in institutions and contribute to system stability more generally.

## II. PRIVATE HEALTH CARE FINANCING IN EGYPT

The financing and delivery of health care goods and services in Egypt has experienced a significant change in the last two decades. Once an exclusive public sector effort, health care financing has been gradually evolving into a public/private mix with the emergence of a private health care financing market that has been operating largely unregulated and unsupervised.

Currently, in the public sector, the Ministry of Health and Population (MOHP) provides health care services that are in principle available to all Egyptians and that are financed by the State budget. The Health Insurance Organization (HIO) provides health care services to those employed in the public and private sectors that are financed with employment-based contributions and State subsidies for vulnerable groups such as children. Since the mid-1980s, the three State-owned insurance companies offer group health insurance to general insurance clients at below cost that are financed with subsidies from premiums from other lines of businesses.

On the private sector side, Middle East Medicare, a private legal entity sponsored by the private Nile Badrawi Hospital, began in 1989 offering healthcare services on a prepaid basis. Since then, some 40 entities supply a variety of health care services financed with prepayments. Syndicates, or private non-profit legal entities under the Trade Union Law (Law No. 35/1976), provide health care services to their members financed with membership fees and internal subsidies. The largest of these is the Health Insurance of the Medical Union (HIMU), established in 1988. In April of 2000, the Egyptian International Medical Insurance Company (EIMIC) became the first licensed private insurance company offering a mix of health insurance and managed health care, but was unsuccessful.

Today, there are two basic models emerge for voluntary health care financing in Egypt: (a) *traditional health insurance*, where the insurance company pays for claims submitted for services rendered by health care providers, contracted or not, on a fee-for-services basis under a health insurance policy; and (b) *prepay health plans*, where predetermined health care services are provided directly or through a network of contracted providers for a prepaid fixed fee under a health plan contract.

The legal entities involved in traditional health insurance are the State general insurance companies and private general insurance companies all of them organized, licensed and regulated under general insurance law and regulations and supervised by the Egyptian Insurance Supervisory Authority (EISA). Prepay health care financing and delivery is conducted by an undetermined number (around 40) of corporations or groups of individuals, mostly physicians, some organized as corporations under the Investment Law and other whose status is yet to be determined, operating without license and not subject to supervision and regulation.

Health care financing under health insurance is a minimal business in Egypt (less than 1% of premium income, as indicated in one interview). Most health insurance policies are riders to life insurance policies or are offered as group insurance to large corporations that have general insurance policies. Losses are higher than premium income, and the health insurance products are subsidized.

The health care financing business is in prepay financing and delivery. The flourishing and growth of several important players indicate that the future of private health care financing in Egypt is in the prepay financing and not in traditional health insurance. Determining the number of entities involved, the population covered, the services offered and the volume of financial operations is important to have a clear notion of the industry to be regulated.

The need and interest in legislating, regulating and supervising prepay health care financing has been in EISA's agenda at least in the last six years. The renovated efforts by EISA also have today the support of the prepay financing industry that sees in regulation and supervision a way to protect their interest and limit the entry of unsuited companies through licensing and regulation. Insurance companies are also interested as they may consider seeking a prepay license and entering into the prepay business in due time as it is common in many countries.

Health insurance and prepay health care financing supplement mandatory social health insurance, and are not designed to replace or substitute the social insurance system. Nevertheless, because private health care financing the public interest in general, and the interest of customers in particular, it is of the concern of the State to (a) properly define and distinguish health insurance and prepay health care financing activities; (b) determine the legal nature, the requirements and procedures under which legal entities conduct licensed prepay health care financing; (c) determine appropriate supervision and regulation of the performance of these licensed legal entities.

Syndicates may not need a pre-pay license when limiting the financing and delivery of health care services to their own members and members of their immediate families within the confines of the Trade Union legislation. If a syndicate intend to operate as an open system with open enrollment, consideration should be given to require a license from EISA and shall be subject to the same requirements, and regulations, supervision and control as any other prepay financing companies to avoid unfair competition. It was mentioned during interviews that Syndicates cover a population close to 4 million, a figure that needs to be verified

### **III. REGULATION AND SUPERVISION OF PREPAY HEALTH CARE FINANCING**

In prepay health care financing regulation there are three aspects to consider: (1) the financial supervision and regulation; (2) the regulation of health care provider and suppliers; and (3) consumer protection.

**3.1. Financial Supervision and Regulation. Role of EISA.** Having EISA as the insurance supervisor, to be the supervisor and regulator of prepay health care financing is a valid option. Other option is to have a separate specialized supervisor that could be considered when the private health care market matures. EISA' role would focus on licensing, and in regulating capital and solvency requirements and other prudential norms, controlling that the services included in the health plans are delivered as promised, control of fraudulent and unlawful practices and unfair competition: and in building confidence in the quality and soundness of prepay companies as financial institutions.

As a condition of license, EISA's mandate includes verification of licensure and certification of all healthcare providers (physicians, nurses and allied healthcare personnel, hospitals and clinics and outpatient facilities) contracted by prepay companies to ensure that financial risks and service responsibilities will be met.

EISA has competence to establish mechanisms to hear complaints against decisions of prepay financing industry.

**3.2. Health Care Providers and Suppliers Supervision. Role of the Ministry of Health and Population.** Licensing, accreditation and certification of health care providers and suppliers is the competence of the Ministry of Health and Population. Pre-pay financing companies need to be required to contract only with duly licensed, accredited and certified providers, as a condition of the license. EISA and the Ministry need to establish permanent inter-institutional Coordination mechanism to ensure compliance with these requirements and to work together in joint areas of supervision and regulation.

**3.3. Consumer Protection.** EISA has a Dispute Settlement Committee that can be adapted to settle disputed between the prepay financing companies and consumers regarding fulfillment of the health plans, and between pre-pay companies and providers regarding the services contracts included in health plans. The Ministry of Health and Population could consider establishing similar procedure to settle disputes regarding the clinical aspects of the services provided, that is, disputes between prepay contracted providers and consumers. These aspects have not been discussed in detail and further exchange of ideas is needed, including introducing the notion of Health Ombudsman.

#### **IV. PROPOSED DRAFT LEGISLATION ON PRIVATE HEALTH CARE FINANCING**

EISA has taken the initiative to reinitiate the dialogue towards legislating prepay health care financing. A first draft has served this purpose (Annex 1). Circulated to prepay financing industry, it was considered and written comments were issued (Annex 2). The Project was asked to study the EISA draft, and work with EISA and the prepay industry in advancing in an exchange of ideas to go forward with several drafts towards a consensus (Annex 3). Following the comments by the Project, EISA asked the Project to produce Suggestions for Draft Legislation (Annex 4). After the mission was completed, EISA presented comments over the suggestions by the Project (Annex 5).

The first draft by EISA was largely based on the current insurance legislation on general insurance. As a result of the work with the prepay industry and in dialogue with EISA, it has been acknowledge that prepay health care financing is a type of insurance, since there is management of financial risk. It is, however, a special type of insurance different from traditional health insurance and that it is not contemplated in the definition of insurance under the insurance legislation and the civil code. Therefore, the need is to have specific legislation enacted on the matter.

The concerns of the prepay financing industry refer mainly to capital requirements, solvency margins and, foremost, of the composition and role of the Boards of Directors of the prepay companies and the eventual role of EISA in their composition and performance. These are legitimate concerns of an industry largely dominated by sole or few owners that want control of the Board of Directors and minimal supervisory interference. These are issues that require further debate and clarification.

Several working sessions were conducted with representatives of prepay financing industry and all documents included in the Annexes have been shared and discussed. In one of the working sessions a representative of the Ministry of Health and Population participated.

Likewise, several meetings were held with the Chairman of EISA to fully inform of the work being done and to receive from him suggestions and policy statements.

## V. CONCLUSIONS

The mission accomplished all the tasks included in the Terms of Reference. Good working relationships were established with prepay financing industry, EISA, the Ministry of Health and Population and USAID.

The EISA draft law was analyzed and commented in writing. Comments were duly translated, distributed, and discussed. Further suggestions for drafting legislation of prepay health care financing were prepared and presented at the request of EISA. There is genuine interest on the part of all stakeholders to continue the exchange of ideas and to reach point of consensus that will eventually lead to a final draft law to be transit according to the Egyptian legislative procedure

This first stage has been successful and the time is ripe for a continuous effort to leading to legislate, supervise and regulate prepay health care financing industry. The project should take good use of this window of opportunities and provide a continuous collaboration to EISA and stakeholders.

The next steps that are suggested are the following:

1. Continue the exchange of ideas, comments and counter-comments towards reaching consensus of the various topics.
2. Convene a Formal Working Group on Prepay Health Care Financing (EISA, Prepay financing industry, Ministry of Health and Population, and others to be determined). EISA could host the Working Group so that meetings can be held formally, with agenda, minutes taken and follow up conducted. The Project can provide continuous technical assistance.
3. Provide stakeholders with literature and international experiences.
4. Invite the Ministry of Health to fully participate in all the discussion process.
5. Conduct a Workshop (September/October 2006) with all stakeholders on Trends of Prepay Health Care Financing and Ideas for Egypt.

## **MEETINGS**

### **INSURANCE COMPANIES**

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### **USAID**

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**ANNEX 1. DRAFT LAW ON LAW OF MEDICAL AND HEALTHCARE INSURANCE  
PREPARED BY EISA**

**Draft Law no.( ) on Medical Insurance and Health care**

The President of the Republic

In the Name of the People

After reviewing Law no.10 of 1981 on Supervision and Control of Insurance in Egypt, Law no 51 of 1981 on the Regulations of Medical Facilities, Law No.159 of 1981 of Joint Stock Companies, Partnership Limited By Shares And Limited Liability Companies and the Act of the Minister of Economy and International Trade no.362 of 1996 on the Promulgation of The Executive Regulations Of Supervision And Control Of Insurance In Egypt

The People's Assembly hereby enacts and promulgates the following:

**Article (1)**

The provisions of the attached law shall be applicable on medical treatment and health care insurance. All relevant facilities that provide same services shall submit an application to the Egyptian Insurance Supervisory Authority (EISA) within three months as of the enforcement of the present law to issue a license to continue practicing the activities during the time of the application of the law. The companies shall render their conditions compatible in compliance with the provision thereof within the period of one year as of the enforcement of the law and according to a plan approved by EISA.

**Article (2)**

The Minister of Investment shall thereby issue an act on the Executive Regulation of this Law within six months as of putting the Law into force.

**Article (3)**

The Law shall be promulgated in the official gazette and shall be effective as of the date of promulgation.

**Hosni Mubarak**

**Law of Medical and Healthcare Insurance**

**Article (1)**

The provisions of law shall be applicable to any entity that presents medical treatment and healthcare insurance services only whether directly or indirectly and incur all risks in return of in-advance-payments made by the assured, the beneficiaries or both.

Government organizations and trade unions providing the same aforementioned services shall be exempted from the provision of this law

**Article (2)**

The organization that practices medical and healthcare insurance, according to the provision of this law, shall take the form of an Egyptian joint stock company with a minimum issued capital of five million Egyptian Pounds and a minimum paid-up capital of half of the aforementioned amount on establishing the company.

The remainder of the issued capital of the company shall be fully paid within a maximum period of five years as of the date of registering the company at EISA.

The capital of the company may not be reduced except upon the approval of EISA, provided that the capital of the company is not lower than the minimum range set forth in the previous paragraph of the article thereof.

### **Article (3)**

The founders of the company shall submit to EISA: an application to obtain preliminary approval to form the company, a technical and economic feasibility study, statement of mission, a potential profile of the company's activities, a five-year-business plan and all data and information necessary for examining the application.

EISA shall decide on the proposed application in compliance with the standards prescribed by the Executive Regulations.

The founders, after obtaining the preliminary approval, shall undertake the necessary measures of forming the company according to the applicable relevant provisions of the law.

### **Article (4)**

The company shall, afterward, present an application to EISA requesting the registration and licensing the activities of the company. The application will be presented with the following:

- ◆ The contract of association
- ◆ The signed copy of the memorandum of associations and the articles of association
- ◆ A one-thousand-pound- receipt of registration.
- ◆ The names of the members of the board of directors and the managing officers of the department of medical treatment and healthcare contracts, in addition to, their curricula vitae and track records.
- ◆ The document indicating that the company or the contracted entity assigned to offer medical treatment and healthcare services has acquired a license to practice such activities in accordance with the provisions of Law no. 51 of 1981 on the Regulations Governing Medical Facilities.
- ◆ A list of rates of potential services to be offered by the company within the twelve months preceding the registration of the company.
- ◆ Sample forms of the insurance contracts proposed to be utilized on dealing with the assured and the beneficiaries of medical treatment and healthcare insurance programs.
- ◆ Reinsurance arrangements
- ◆ Any other documents specified by the Executive Regulations.

### **Article (5)**

The Chairman of the Board of Directors of EISA shall issue the decision of registering and licensing the activities of the company within one month of the completion of the requirements of registration. The decision of registration shall be published, on the expenses of the company, in the monthly bulletin of EISA and EISA shall register the company in its book of registration.

The company may not commence practicing its activities prior to obtaining the registration and licensing. Furthermore, the company may not practice any other activities.

**Article (6)**

The Board of Directors of the Company shall include two members with relevant experience as specified by the Executive Regulations provided that one of two members would be the executive manager.

The company, using EISA's relevant forms, shall inform the Board of Directors of EISA with the nomination of the members of the board of directors of the company, executive managers and all the relevant information thereof with 30 days of the date of the aforementioned decision.

EISA, in a decision indicating the causes, may object to the nomination of any of the members within 15 days as of the date of being informed thereof.

In the court of law, the elapse of a period of 30 days as of the day of informing EISA of the decision without EISA's contesting thereto shall thereby be deemed as an approval.

**Article (7)**

The company shall quote on all the document issued thereby the numbers and the dates of the both the license issued by EISA and the registration in EISA's registration books permitting the company to perform medical treatment and healthcare insurance services in the Arab Republic of Egypt.

**Article (8)**

The company shall report to EISA all the modifications or changes that are introduced to the information of: registration and practice license, board of directors, executive managers, service rates or contract forms ratified by EISA.

The report shall be submitted in compliance with the terms and conditions of the Executive Regulations of this law and shall be submitted together with the relevant modified and amended documents.

The aforementioned amendments and modifications may not be enforced unless same are approved by EISA. In a court of law the elapse of a period of 30 days as of the day of informing EISA on the decision without EISA's objecting to such decision shall thereby be deemed as an endorsement thereof.

The company, on its expenses, shall publish the amendments introduced to the information of registration and license in the monthly bulletin of EISA.

**Article (9)**

The company shall allocate the technical reserves necessary to cover the liabilities of the beneficiaries of the medical treatment and healthcare services as follows:

1. A liabilities reserve for the new assurances issued before the end the fiscal year and still in force after the end of the fiscal year with a minimum of 40% of the total amount of the underwritings of the company for the elapsed year.
2. Reserve for reported claims that were not settled until the date of the preparation of the balance sheet.
3. Reserve for unreported claims to date of the compilation of the balance sheet.
4. Reserve of the fluctuation of the L/R value which the Executive Regulations of this law shall stipulate the basis for estimating and utilizing.

Under all circumstances, the reserves of the company shall be adequate to cover the liabilities and rights of the contracting parties. If EISA, through auditing the reserves of the company, established that such reserves were insufficient, the company shall embark on carrying out the measures necessary to complete such reserves in accordance with the relevant rules laid down by EISA.

EISA may request the company to submit a certificate drawn out by an EISA registered actuarial expert stating that the available reserves of the company are sufficient and same were estimated according to accredited standards.

#### **Article (10)**

The company shall earmark reserves that amount to at least the value of the technical reserves set forth in the previous Article. Such reserve funds may not be sequestered save after sequestering the other funds of the company.

The company shall present to EISA information on the reserve funds in compliance with the provisions of the law thereof and at the dates specified by the Executive Regulations.

#### **Article (11)**

The company shall invest the allotted funds in consistence with the provisions of the previous article in the investment channels and in ratios determined by the Executive Regulations of this law.

#### **Article (12)**

The value of the assets of the company shall exceed the total value of the liabilities thereof with at least 20% of the net premiums of the previous year.

#### **Article (13)**

The company governed by the provisions of this law shall present to EISA: all sample forms of contracts, individual or collective policies; the terms and conditions of policies and contracts; rates and all the introduced amendments to the aforementioned items to be subject to review in the light of the studies necessary to establish fair rates.

EISA shall review the terms and rates applied in the companies on regular basis within the framework of the real results achieved by such companies to safeguard quality service and fair rate, provided that the company commit themselves to carry out the amendments deemed suitable by EISA.

#### **Article (14)**

The company shall keep the following records:

- ◆ Insurance register: to record the contracts and documents concluded with policyholders and the beneficiaries. The registers shall include: names, addresses, the dates of concluding the policy, the term of policy or the document, insurance coverage and limits and the riders.
- ◆ Register of claims or medical service costs: it shall include claims presented to the company, the date of submitting the claims, the name and address of the beneficiary, the estimated cost of the claim for each case and the date of paying the claim. In case the company declines to cover the claim, the book shall comprise the date and the reason for issuing such a decision.

- ◆ Register of intermediaries: It shall include the names and EISA's registration numbers of the intermediaries who act as intermediaries in concluding contracts and issuing documents.
- ◆ Register of allotted reserves: It shall show the amount of money that shall be allotted as reserves in the Arabic Republic of Egypt and methods of investing them.
- ◆ Register of agreements: It shall comprise reinsurance transactions of the company. The book shall include names and addresses of the parties to the reinsurance contracts; the date of initiating and expiry of each agreement; the amendments of such agreements and any other relevant information that are deemed appropriate by the company concerning an agreement.

#### **Article (15)**

The company shall, to EISA, submit a quarterly and annual reports ratified by the Chairman of the Board of Directors and the Chief Financial Officer proving that the balance sheet, the surplus, claims, income, outgo, technical reserve, allotted reserves of the company has been compiled in the sound and correct manner and that same correctly reflect the financial status of the company based on the books and on other data that were left under the disposal of the company.

The quarterly and annual reports shall be submitted on the models and forms prepared by EISA and at the dates set forth by the Executive Regulations.

The annual report shall be ratified by the chief financial officer of the company. It shall include all the data and information on all the transactions undertaken by the company within the year. The company shall submit a certificate drawn out by an EISA-accredited actuarial expert registered in the actuarial expert directory acknowledging to the soundness and applicability of the rating standards and the advantages awarded by the company, in addition to, a certificate attesting that the technical reserves of the company matches the liabilities of the company.

#### **Article (16)**

Without prejudice to the right of EISA to review the books and registers stated in the provisions of the law, EISA shall audit periodically the transactions of the company and the registers and books of the company to safeguard the soundness of the company's financial status, its adherence to the provisions of this law and the compliance of the company with the technical best practices. EISA may undergo a comprehensive auditing of the financial transactions of the company if for any reason EISA came under the impression that the policyholders' funds and beneficiaries' rights are undermined, that the company would not be able to cover the liabilities, the company's practices has proven injurious to the market or that the company has violated any of the provisions of this law.

Same procedures may be undertaken upon the request of the shareholders possessing at least one tenth of the capital of the company or a minimum of 500 of the policyholders and the beneficiaries.

The relevant company shall provide EISA with all required information, data and documents during the auditing procedures. The inspection shall be carried out according to the procedures stipulated by the Executive regulation of the present law.

#### **Article (17)**

In case the that outcome of the auditing proves that: the company is at risk of falling **faulty**, the method of practicing its actions has proven detrimental to the market or that the company has breached the provisions of the law, the Board of Directors of EISA shall undertake all measures and procedures that Board of Directors of EISA deems appropriate particularly the following:

1. Issuing a warning to the company.
2. Limiting the company's approvals of the new transactions and upgrading the list of its current transactions.
3. Assigning the company to compile financial position statement and annual closing statement within less than a year.
4. Inviting the board of directors of the company to session to examine the irregularities attributed to the company and measures that should be taken to eliminate such irregularities. The meeting of the board of directors shall be attended by one or more representative of EISA.
5. Appointing an observer of the board of directors of the company for the period determined by the Board of Directors of EISA. The member shall be entitled to participate in and express opinion on issues raised during the discussions of the board of directors without having the right to vote.
6. Appropriating the divisible surplus to be distributed over the shareholders or to utilize part of the surplus to consolidate the net assets of the company.
7. Amending the investment policies and reinsurance procedures of the company.
8. Dismissing one or more member of the executive management of the company.
9. Dissolving the board of directors of the company and authorize a transitional chairman to manage the company until appointing a new board of directors.

#### **Article (18)**

EISA shall be entitled to prevent the company from approving new transactions or renewing current ones for at least one month and for a maximum period of one year if any of the following two cases occurs:

- ◆ The company is practicing its activities in way contrary to the terms and conditions stated in the license.
- ◆ If the company violated the medical insurance and healthcare plan or the rate list of the services certified by EISA.

EISA shall cancel the activity cessation decision once it verifies that the reasons for such decision were eliminated. Should the suspension period elapse without the company taking procedures to eliminate infringements or should the company repeat the irregularities that brought about the suspension decision, EISA then shall cancel the registration of the company and practice license in compliance with the provisions mentioned in Article 21 of this law.

#### **Article (19)**

In case the company wanted to transfer all or part of its transactions, contracts concluded, policies issued with all obligations in the Arab Republic of Egypt to one or more other insurance company subject to the provisions of this law, the company shall submit an application according to the terms and conditions set forth in the Executive Regulations.

The application shall be published in the Egyptian Gazette and two other widely circulated newspaper according to the provisions stipulated in the Executive Regulations.

The application shall solicit comments from the parties concerned to be referred to EISA within a maximum of three months as of the date of publication.

Transferring the policies and contracts of the company together with the obligations shall be executed upon a decision by EISA, if such transference proved to be not to the disadvantage of policyholders, beneficiaries, creditors, nor parties to contracts concluded with the company in the Arab Republic of Egypt.

Such decision shall be published in the Egyptian Gazette and the assured, beneficiaries and creditors of the company shall utilize such decision as an evidence in the court of law.

In such case the funds of the company in the Arab Republic of Egypt shall be transferred to the transferee company in compliance with the provisions of transference of property and funds cession provided that the transferred funds is thereby exempted from stamp tax, registration and archiving charges.

### **Article (20)**

The company shall, in case of intending to halt all the activities and **release** all or part of the funds thereof shall submit to EISA a request together with the following documents:

1. A document that indicate that the company has relieved itself completely and entirely from all its liabilities towards the subscribers and has transferred all its transactions to another insurance company subject to the provisions of this law.
2. A document proving that the company has, in two daily widely circulating newspapers, published in adherence to the Executive Regulations an announcement. Such announcement shall be published in the aforementioned newspapers at least three times provided that a time span of 15 days should elapse before posting the announcement again.
3. The announcement shall state that the company has decided to submit a request to EISA to release all or part of the funds of the company after the elapse of the period of three months as of the date of the last announcement.
4. The announcement shall call upon the subscribers, the beneficiaries and other parties concerned to come forward with any protest to EISA and set the deadline for protesting on the aforementioned day of presenting the application.

EISA shall decide to grant the company its request in case that no person objected to the request within the indicated period of presenting protests.

But if a protest was submitted during the aforementioned period, no decision shall be taken save after reaching an agreement or a final ruling concerning the protest. However, the Chairman of EISA may order the release of the funds of the company on the condition that the company keeps an amount that covers the liabilities of the company towards the protester including the expenses necessary to keep any of the assets of the company.

### **Article (21)**

The registration and the license to practice part or all of the activities shall be annulled in the following cases:

- ◆ If the registration and license were illegally acquired
- ◆ If the company persisted on breaching the provisions of this law or the Executive Decisions.
- ◆ If EISA established that the company is unable to cover its liabilities.

- ◆ If EISA recognized that the company recurrently neglected paying the due claims and has repetitively had unjustifiable dispute over sound claims.
- ◆ If the paid up capital of the company decreased below the minimum level set forth in Article (2) of the provisions of this law and the company did not undertake the necessary procedure to complete such deficiency despite being requested to do so.
- ◆ If the company, in the Arab Republic of Egypt, did not keep the allotted reserves as stated in Article (10) of this law or if the company failed to complete such reserves within one year of requesting the company to do so.
- ◆ If the company desisted from submitting its records and documents for auditing and review by EISA or its auditors, or if the company refused to offer the records and the data that should be presented according to the provisions of the law despite being served more than once with a written request to comply for three months.
- ◆ If an approval was issued to transfer all the contracts, documents and accrued liabilities of the company in the Arabic Republic of Egypt to another company in agreement with the provisions of Law no. (19) of this law.
- ◆ If the company ceased all its activities in the Arab Republic of Egypt and released its funds in concert with Article of provision no. (20) of this law.
- ◆ If a court ruling was issued establishing the bankruptcy of the company.
- ◆ If the company breached any of the conditions of the license of practice and did not attempt to amend such breach despite being asked more than once to adjust its course of action during a period set forth by the Executive Regulation of the present law.

No decision of writing off or revoking the practice license of the company shall be issued without notifying the company using a registered letter requesting it to provide in writing its defense within one month as of the date of notification. A decision to write off and revoke partially or fully the practice license of a company shall be issued by the Board of Directors of EISA and shall be ratified by the competent Minister to be published in the Egyptian Gazette.

The impact of the full or partial writing off and canceling of the practice license shall only be enforceable upon the transactions specified in the issued decision.

In all circumstances the company whose registration and practice license were written off and partially or a fully shall not dispense with any of its funds nor any of the guarantees presented thereby except after applying the procedures prescribed in Article no (20) of the law thereof. The decision of writing off the registration of the company and revoking of the practice license shall entail the suspension of all the transactions undertaken by the company and stated in the decision.

The Chairman of the Board of Directors of EISA may allow the company to conduct the current transactions that are underway at the time of registration and practice license revoking according to the conditions specified by the Chairman for such purpose. The Chairman may decide to close down the company.

The liquidation of the company shall be executed in compliance with the rules agreed upon by the Chairman of the Board of Directors of EISA. Under a three-member- supervisory committee appointed by the Chairman, the liquidation procedures shall be carried out in such a way to guarantee the full satisfaction of the obligations and liabilities of the company.

## Article (22)

The companies subject to the provision of this law may establish a union or one or more assisting body with the aim of improving and upgrading the service; agreeing on collection, analysis and publication of data; embarking on acts to prevent or decrease the losses; strengthening ties with similar unions abroad or undertake any other matters of interest to the members of such unions.

**Article (23)**

The holders of policy and contracts of medical treatment and healthcare insurance may resort to EISA to settle any dispute that might arise between them and any assuring company without prejudice to the rights of the assured to resort to litigation or arbitration according to the situation.

The Executive Regulation of the Law thereof shall govern the procedures of settling disputes.

**Article (24)**

Any beneficiary of medical treatment and healthcare insurance shall be entitled to obtain from the assuring company or the insurance company issuing the policy a cover note comprising the advantages accorded to him or to the beneficiary. The cover note shall not include any misleading article or statement, nor shall it comprise any faulty data.

**Article (25)**

Subject to imprisonment and or payment of a fine of at least five thousand Egyptian Pounds any person who

1. Practices medical treatment and healthcare insurance without a license in the Arab Republic of Egypt.
2. Desists from submitting registers and documents to the representatives of the EISA who are authorized to review such documents and registers, or whoever delays providing the data that should be presented at certain dates stipulated by the provisions of this law and the Executive Regulations thereof. In any of the aforementioned two cases, a ruling of penalty payment may be passed and the ruling shall prescribe the value of the penalty for every day of desisting or delaying presenting the registers and document with a maximum of 50 Egyptian Pounds per day.
3. Acknowledges, manipulates and hides intentionally and for the purpose of fraud any of the data, memoranda or other documents that should be submitted to EISA or should be posted to inform the public.
4. Discloses secrets obtained in the course of his work according to the provisions of this law.

Any company that violates the conditions, forms and rates approved by EISA shall pay a fine not less than five thousand Egyptian Pounds and not more than one hundred thousand Egyptian Pounds per an incident of violation and fines shall be compounded according to the number of the violations.

EISA shall file a criminal action in case of infringement by submitting a written request for initiating litigation process and EISA may during any point of the litigation process and until the passing of a final ruling in the criminal act to reconcile with the violating party in return of paying all or part of the aforementioned fine. Such conciliation shall entail the suspension of the criminal law suit.

## **Explanatory Note of Medical Insurance Draft Law**

The insurance activities in Egypt are governed by Law no.(10) of 1981 on supervision and control of insurance and its Executive Regulations. Among the insurance transactions that are regulated by the Law is medical treatment insurance. Recently, the issue of natural persons and legal persons contracting medical service providers to offer medical and healthcare insurance contracts has been discussed. Such discussions led to examining the status of the medical service providers to consider whether they would be legally considered as the assurer in an insurance contract, hence subject to the Laws and Provisions of the Law of Control and Supervision of Insurance stipulated in Law no. (10) of 1981.

Furthermore, it was decided that providers of such services shall not be considered on par with insurance companies and consequently shall not be subject to the provisions of Law no (10) of 1981 previously mentioned; because the performance in the contracts concluded by such providers is not financial performance according to its definition in Article no.747 in the Civil Code.

And because of the mushrooming of new insurance providers, the beginning of some foreign insurance brokers to practice their activities by offering insurance contracts different from the available contracts, the practice of some medical facilities unlicensed insurance activities and the increasing applications to EISA to license medical insurance activities to the detriment of the activities of the operating insurance company, it was decided to consider setting up a new legal framework by enacting a new legislation that regulates the activities of such facilities and render them subject to the supervision and control of EISA being the competent authority mandated to supervise and control the actions of all facilities that practice insurance transactions.

A draft law has been drawn out in the light of the provisions of Law no.(10) of 1981 and some other relevant pioneering compared laws.

The proposed draft is made of the Articles of Promulgation and 25 proposed articles. Article no. (1) has determined the range of the application of the law and excluded the medical treatment and healthcare insurance services provided by governmental organization and trade unions. Article no.(2) has prescribed the requirements and prerequisites that should be available in any facility that provides medical insurance and healthcare services. Article no.(2) has, also, stated that such facility should take the form of a joint stock company with a minimum capital of five million Egyptian Pounds. Such amount has been specified to safeguard that the insurance service provider financial capacity would be appropriate and allow it to continue practicing its activities in the medical insurance and healthcare services. The set capital, furthermore, would prevent any small entity from introducing its services in the market thus hindering EISA from undertaking its supervisory role effectively. On the other hand, Articles no. (3), (4) and (5) has dealt with: the necessary measures to be taken to establish a company that would practice medical insurance and healthcare services and the method of registration and licensing. Article no.(6) has specified a condition that the board of directors of the company should comprise two members with relevant experience who would act as executive managers. Article no (6), moreover, has compelled the company to report to EISA all the decisions concerning the nomination of the board of directors and executive managers.

Article no.(7) has stipulated that the company must include on all the documents its issue the number of the practice license. In addition, the aforementioned article stated that the company must inform the EISA with all the modifications or changes that are introduced to the registration

and practice license data ratified by EISA. The company under such provision is responsible of notifying the customers with such modifications and changes that were approved by EISA.

Articles no. (9) and (10) have stated that the company must form the technical reserves necessary to match its liabilities. The company, under the previously mentioned articles, is required to determine the nature of such reserves (allot such reserves). Such reserves, under articles (9) and (10) are never subject to sequestration except after sequestering all other funds of the company.

Article no.(11) has indicated that the company should invest the allotted reserves in the channels and ratios determined by the Executive Regulations.

Article no.(12) has stipulated that the values of the asset of the company should be above the total value of its liabilities at a rate of 20% of the net premiums of the past year.

Article no. (13) has held the company responsible to submit to EISA samples of all forms of the contracts, individual and collective policies, rates and conditions and any introduced amendment to be reviewed in the light of the studies conducted to ensure fair rating.

Article no. (14) has specified the books and registers that the company should keep. Meanwhile Article no.(15) has mentioned that the company should submit a quarterly and an annual reports on its activities to prove that the balance sheet, profits and losses, incomes and outgo, technical reserves and financial provisions matching the liabilities of the company have been compiled according to sound standards and such information reflect the actual financial status of the company.

On the other hand, Article no. (17) has shown the measures and procedures EISA should follow in cases: the results of reviewing the transactions of the company proved that it is defaulting , its practices are injurious to the marker or if it was found in breach of any provisions of this law.

Article no.(18) has permitted EISA to bar any company from accepting any new transactions or renewing any current ones for at least one month and for a maximum of one year in case: the company is found to practice any activity in a method contrary to the terms and conditions of the license, or the company violated medical insurance and healthcare service laws or the rates lists approved by EISA.

Article no. (19) has specified the procedures that should be undertaken by the company if it intends to transfer all the contracts it concluded, all the policies it issued and all the incurred liabilities to one or more insurance company. Meanwhile, Article no. (20) has indicated the actions that should be carried out by the company once it decides to cease all its transactions and release part or all of its capital.

Article no. (21) has set forth the cases where EISA is entitled to write off the registration of the company and revoke its practice license partially or fully. The said article also explained the procedures to be taken in that case and the repercussions of such article.

Article no. (22) has allowed the companies governed by this law to form a union or an assisting body with the aim of improving and upgrading the services provided. On the other hand, Article no. (23) has permitted the assured, policyholders and beneficiaries of medical treatment and healthcare insurance to resort to EISA to settle any dispute that may arise between them and the assurer companies without prejudice to their right to litigation and arbitration according to the situation. The said article has specified the Executive Regulations to be the reference for the provisions regulating dispute settling.

Article no. (24) has allowed any beneficiary of medical treatment and healthcare insurance to obtain from the contracting company or the original issuer of the policy a cover note including all the provisions accorded to the beneficiary.

Finally Article no. (25) has specified the penalties for anyone who violates the provision of this law. The article, also, has stipulated that a criminal action should be filed upon a written application submitted by EISA stating the reason for filing such criminal law suit. The article allowed for the conciliation with the violating party in return of paying part or all of the prescribed fine as long as no court ruling was passed in the criminal law suit.

The draft law was prepared and submitted to the Legislation Unit of the Supreme Administrative Court that approved it. The Minister of Investment is thereby honored to submit the draft of the Law to the President of the Republic. In case of approving the draft, kindly sign the draft in preparation of submitting it to the People's Assembly (parliament).

Minister of Investment

Mahammoud Muhyeddin

## **ANNEX 2. COMMENTS BY PREPAY COMPANIES ON THE DRAFT LAW PREPARED BY EISA**

### **Comments on the Medical Insurance Draft Law**

#### **I) Introduction to the Law:**

The introduction states that the law is drafted after reviewing law no. 10/1981 that regulates the work of insurance companies and law no. 51/1981 that regulates medical organizations. It is clear here that the draft law is fully adopted from law no. 10/1981, against which we raised many objections regarding its application on health care companies. Law no. 51/1981 brings in a blatant confusion between the concerned parties as will be explained in the following sections.

#### **II) Article (1):**

Article (1) states that the regulations of this law are applicable on any entity that provides medical insurance and health care. The point of combining both terms –medical insurance and health care- is not clear. Does it indicate that both are equal or that they are different kinds of services? If it is meant to differentiate between them, it offers no definition of both services in contrast to law no. 10/1981 that clearly and accurately defines what insurance services are.

#### **III) Article (2):**

Article (2) stipulates a 5-million-Egyptian-pound-capital for health insurance and health care companies which were already established in accordance with the investment law with a capital of LE2.5,000 000 for member companies. It is important to note here that member companies are generally involved in major economic activities that require large capitals necessary for the purchase of equipment or materials needed for production. Nevertheless, the investment law commits member companies to a minimum of a 2.5-million-Egyptian-pound-capital. Health care companies do not necessitate large capitals since the purchase of equipment, materials, or devices is not a valid requirement.

#### **IV) Article (4) – Clause (5):**

This article specifies the documents required for submission to EISA for obtaining licenses. Article (5) also mentions the issuing of medical practice licenses as mandatory for companies providing medical insurance and health care in accordance with law 51/1981 regulating HMOs. The role of health care companies as actual providers of medical services to clients is clearly confused from the role of hospitals or doctors subject to surveillance by the Ministry of Health. It is not logical for health care companies to be obligated to present medical practice license to all their clients.

#### **V) Clause (8):**

Clause (8) of the same article –article (4)- states that re-insurance policies are required for submission by HMOs to obtain licenses. The term 're-insurance' implies that the company's activity is insurance and that the insurance company is obligated to provide re-insurance on the operations that have already been insured. The law presents a major contradiction afterwards when it adds in the Explanatory Notes section in the appendix to the draft law that "it has been

agreed upon that health insurance and health care companies are not identical to general insurance companies subject to the regulations of law no.10/1981."

It is well-known that even general insurance companies meet considerable difficulties upon attempting to re-insure their medical insurance policies. Most of these companies now do not provide re-insurance on medical insurance policies because re-insurers abroad refuse to re-insure them (medical insurance policies.) Some re-insurers abroad have even requested from general insurance companies to cancel their medical insurance policies because they do not fall under their responsibilities.

**VI) Article (6) – Clause (17 (g), (f):**

Article (6) empowers EISA to object to the nomination of members of the board of directors and executive managers. This stands in obvious contradiction with the investment law that regulates the establishment of health care companies. The investment law also regulates the nomination of the chairman and members of the board of directors of member companies in accordance with agreements reached by the company's general assembly that is responsible for submitting nominations and approving/disapproving them. Article (17) also gives EISA the authority to disqualify one or more executive managers or break up the board of directors and appoint a representative to assume duties until a new board or directors has been appointed. According to the investment law, the company's general assembly is the one responsible for disciplining the board of directors and it possesses the authority to break it up if it is in the interest of the shareholders or if the board commits violations described in the investment law. In short, this article is in complete contradiction to the investment law that was –according to the draft law's introduction- reviewed. It also denies the company's general assembly –that convenes under the supervision of the General Authority for Investment- the right to exercise its principal authority.

**VII) Article (9):**

Article (9) obligates health care companies to set four types of liabilities in Egyptian banks as follows:

- a) The equivalent of 40% of the company's total underwriting of the previous year for covering the company's insurance operations before the fiscal yearend (please note that the company activity here was listed as 'insurance')
- b) Liabilities for the claims reported to but not yet settled by the company
- c) Liabilities for claims that have been reported to the company
- d) Liabilities for adverse fluctuations stated in the executive bylaw (we have not yet received the executive bylaw)

40% is a very high percentage, taking into consideration the financial nature of health care companies, which can be explained as follows:

- ◆ Health care companies do not receive outstanding payments at once from clients. They are settled on 4 – 8 month installments in the year of contract.
- ◆ Installments are instantly used by health care companies.
- ◆ Health care companies do not provide catastrophic compensations that require the payment of large amounts of money in one installment, similar to general insurance companies

- ◆ Health care companies, just like all service companies, allocate part of their profits as collaterals for any changes in prices. However, it is not possible for these companies to allocate 40% of the clients' installments. Also, Article (12) estimates the value of the company's operations in a way that makes the assets exceed that value by 20%. So, for example, if the company's capital is LE5,000000 (which is the minimum capital required by Article (2) of the draft law), this company cannot accept operations less than 1.6000000, leaving the company with only 2.4, 000000 for financing these operations and administrative and other costs (salaries,...etc). This is applicably impossible and is significantly restrictive to the company's capacity for growth and development that are much needed for facing the challenges expected by foreign health care companies which will be expectedly licensed in Egypt.
- ◆ The article does not clarify methods and timeframes of expenditures or withdrawals from the company's liabilities.
- ◆ The article also does not clearly define what the adverse fluctuations are and suffice with referring the explanation to the executive bylaw.
- ◆ The article does not explain whether the outstanding payments due to health care companies, i.e., the installments that have not been paid up yet, will constitute part of these liabilities or health care companies will have to supply them.

**VIII) Article (15) – Last clause:**

Health care companies are required to present certificates issued by actuarial experts and accredited by the General Authority for Investment that attest to the integrity of pricing principals, benefits and validity. It is evident that this is another regulation that concerns general insurance companies.

**IX) Article (16):**

This article states that at least 500 employees (which can possibly be the total number of subscribers in one Client Company, i.e., any health care company) can request an inspection/investigation of the health care company's financial operations without the need for presenting a justification, which puts the health care company in a weaker position, allowing the Client to easily obtain 500 signatures on an inspection request or to threaten or blackmail it.

**X) Article (23):**

This article allows the insured party to resort to EISA for resolving disputes that may arise with health care providers. It also gives the insured party the right to resort to the Court of Law or Arbitration. It is self-evident that the insured party's right to resort to the court of law is maintained --a right that is currently maintained for health care companies clients without the need to resort to EISA. It is noteworthy that most of the disputes that occur with health care companies --which happen very rarely- are related to exclusively medical issues that cannot be examined by EISA since they require medical expertise. In most cases, the disputes are referred to a medical committee of professors of medicine to resolve them. Usually, the disputes are cordially resolved through compromises made by health care providers to protect their reputation.

**XI) Explanatory Notes:**

**Page 16:**

- a) There is evident confusion in using the terms 'health care company' and 'health care provider.'
- b) Again, we wish to emphasize that health care companies are not subject to law no. 10/1981 that regulates general insurance companies.
- c) We also want to emphasize that drafting this law comes in response to the complaints made by general insurance companies about health care companies competing with them.

**Conclusion**

The draft law for health care companies that is submitted for the second time by EISA is not essentially different than the one previously submitted in 2003. It is very much identical to law no.10/1981 that regulates the work of general insurance companies which have entirely different activities and financial operations than health care companies. This makes it impossible for already established companies to operate in the framework of the proposed law and discourages new ones from starting businesses in this field.

The currently operating companies have proved their credibility and proficiency in the Egyptian market for many years. The government should support them to enable them to face the challenges posed by foreign companies instead of threatening or restricting regulations on them in favor of the foreign companies that are expected to enter the market or in favor of currently operating general insurance companies. Current health care companies take pride in having ventured with a new and difficult field and in having established –in a very short time- all the resources needed for operating and meeting clients' expectations.

EISA is not an authority of expertise or specialty to be able to take decisive actions in medical issues that fall under the tasks and responsibilities of the Ministry of Health. EISA's responsibility is exclusively related to insurance activities from a financial perspective that is more oriented to general insurance companies rather than health care ones.

**Recommendations**

**Major features of the medical care companies draft law**

- 1- Health care companies should be established in accordance with the investment law's requirement of a minimum capital of LE2.5,000000 and the membership of at least two experts in the board of directors.
- 2- Health care companies should obtain their licenses from the Ministry of Health and should operate under its supervision.
- 3- The General Medical Commission should have the authority of resolving medical disputes that occur between health care companies and their clients.
- 4- Financial disputes between health care companies and their clients should be resolved by the Court of Law.
- 5- Investments made through using the installments that health care companies receive from clients should be restricted to 15% only.

**Hernán L. Fuenzalida-Puelma Consulting**

Dr. Hesham Maged, Care Plus for Health Care, June 10, 2006

**ANNEX 3. COMMENTS BY BP CON THE DRAFT LAW DRAFT LAW ON MEDICAL AND HEALTH CARE INSURANCE (EISA V.2 -2006)**

<b>DRAFT LAW ON MEDICAL AND HEALTH CARE INSURANCE (EISA v.2 -2006)</b>		
<b>Article</b>	<b>Comments By Prepayment Chamber</b>	<b>Comments Bearing Point</b>
<b>INTRODUCTION</b>		
<p>The President of the Republic In the Name of the People After reviewing Law no.10 of 1981 on Supervision and Control of Insurance in Egypt, Law no 51 of 1981 on the Regulations of Medical Facilities, Law No.159 of 1981 of Joint Stock Companies, Partnership Limited By Shares And Limited Liability Companies and the Act of the Minister of Economy and International Trade no.362 of 1996 on the Promulgation of The Executive Regulations Of Supervision And Control Of Insurance In Egypt The People's Assembly hereby enacts and promulgates the following:</p> <p align="center"><b>Article (1)</b></p> <p>The provisions of the attached law shall be applicable on medical treatment and health care insurance. All relevant facilities that provide same services shall submit an application to the Egyptian Insurance Supervisory Authority (EISA) within three months as of the enforcement of the present law to issue a license to continue practicing the activities during the time of the application of the law. The companies shall render their conditions compatible in compliance with the provision thereof within the period of one year as of the enforcement of the law and according to a plan approved by EISA.</p>	<p><b>I) Introduction to the Law:</b> The introduction states that the law is drafted after reviewing law no. 10/1981 that regulates the work of insurance companies and law no. 51/1981 that regulates medical organizations. It is clear here that the draft law is fully adopted from law no. 10/1981, against which we raised many objections regarding its application on health care companies. Law no. 51/1981 brings in a blatant confusion between the concerned parties as will be explained in the following sections.</p>	<p>The draft is not based on the Insurance Legislation. The introduction states that the Insurance Law has been reviewed for the purposes of drafting the law. ♦</p> <p>The same is applicable to the reviewing of the law on medical organizations. ♦</p> <p>The prepayment health care financing and delivery (“prepayment schemes”) are different from traditional insurance companies and are not medical organizations. ♦</p> <p>They are a new specialized form of insurance and delivery of health care that needs to be defined, supervised and regulated. ♦</p>

<b>DRAFT LAW ON MEDICAL AND HEALTH CARE INSURANCE (EISA v.2 -2006)</b>		
<b>Article</b>	<b>Comments By Prepayment Chamber</b>	<b>Comments Bearing Point</b>
<p style="text-align: center;"><b>Article (2)</b></p> <p>The Minister of Investment shall thereby issue an act on the Executive Regulation of this Law within six months as of putting the Law into force.</p> <p style="text-align: center;"><b>Article (3)</b></p> <p>The Law shall be promulgated in the official gazette and shall be effective as of the date of promulgation.</p>		
<b>ARTICLES</b>		
<p><b>Article (1)</b></p> <p>The provisions of law shall be applicable to any entity that presents medical treatment and healthcare insurance services only whether directly or indirectly and incur all risks in return of in-advance-payments made by the assured, the beneficiaries or both.</p> <p>Government organizations and trade unions providing the same aforementioned services shall be exempted from the provision of this law.</p>	<p><b>II) Article (1):</b></p> <p>Article (1) states that the regulations of this law are applicable on any entity that provides medical insurance and health care. The point of combining both terms –medical insurance and hearth care- is not clear. Does it indicate that both are equal or that they are different kinds of services? If it is meant to differentiate between them, it offers no definition of both services in contrast to law no. 10/1981 that clearly and accurately defines what insurance services are</p>	<p>The terminology is confusing ♦ indeed. What the draft intends to characterize, not to define, are these entities that finance health care and deliver the financed health care goods and services. This needs to be discussed and clarified.</p> <p>Any entity: current legal entity? ♦ Future legal entities only? All entities? Law needs article on Definitions. Confusion of terminology</p> <p>Definition of insurance under this ♦ law is needed</p> <p>Medical treatment and healthcare ♦ insurance: Does it means HMO-type (combining financing and delivery)?</p> <p>Risks: two, services-related, and ♦ financial</p> <p>Assured: definition ♦ Beneficiary: definition ♦</p>
<b>Article (2)</b>	<b>III) Article (2):</b>	The already established companies ♦

<b>DRAFT LAW ON MEDICAL AND HEALTH CARE INSURANCE (EISA v.2 -2006)</b>		
<b>Article</b>	<b>Comments By Prepayment Chamber</b>	<b>Comments Bearing Point</b>
<p>The organization that practices medical and healthcare insurance, according to the provision of this law, shall take the form of an Egyptian joint stock company with a minimum issued capital of five million Egyptian Pounds and a minimum paid-up capital of half of the aforementioned amount on establishing the company.</p> <p>The remainder of the issued capital of the company shall be fully paid within a maximum period of five years as of the date of registering the company at EISA.</p> <p>The capital of the company may not be reduced except upon the approval of EISA, provided that the capital of the company is not lower than the minimum range set forth in the previous paragraph of the article thereof.</p>	<p>Article (2) stipulates a 5-million-Egyptian-pound-capital for health insurance and health care companies which were already established in accordance with the investment law with a capital of LE2,500,000 for member companies. It is important to note here that member companies are generally involved in major economic activities that require large capitals necessary for the purchase of equipment or materials needed for production. Nevertheless, the investment law commits member companies to a minimum of a 2.5-million-Egyptian-pound-capital. Health care companies do not necessitate large capitals since the purchase of equipment, materials, or devices is not a valid requirement.</p>	<p>conducting prepayment schemes would have, most likely, to change their legal and financial status to the new law.</p> <p>The capita requirements need to be commensurable to the nature of the financial and delivery business, size and volume of operations, and other criteria that need to be determined in details by the supervisor.</p> <p>Legal status of current HMOs? All incorporated under the provisions of the Investment Law?</p> <p>How many prepayment schemes exist, large, medium and small? With which legal and financial status? How many subscribers? How many beneficiaries? Which is the gross contributions/subscriptions volume?</p> <p>Which are the current capital requirements, etc.?</p> <p>Proposed minimum capital seems too high.</p> <p>It seems that the requirements for general insurance are being applied with no regard to the special features of prepayment schemes.</p>
<p><b>Article (3)</b> The founders of the company shall submit to EISA: an application to obtain preliminary approval to form the company, a technical and economic feasibility study, statement of mission,</p>		<p>Interesting situation of prior approval to form a company and after the license.</p> <p>Does this mean that EISA will impose certain conditions and</p>

<b>DRAFT LAW ON MEDICAL AND HEALTH CARE INSURANCE (EISA v.2 -2006)</b>		
<b>Article</b>	<b>Comments By Prepayment Chamber</b>	<b>Comments Bearing Point</b>
<p>a potential profile of the company's activities, a five-year-business plan and all data and information necessary for examining the application.</p> <p>EISA shall decide on the proposed application in compliance with the standards prescribed by the Executive Regulations.</p> <p>The founders, after obtaining the preliminary approval, shall undertake the necessary measures of forming the company according to the applicable relevant provisions of the law.</p>		<p>special features for the company to eventually obtain a license?</p> <p>No company can be forms until the Executive Regulations are in force? ♦</p> <p>Which will be the process of discussion for this Executive. Regulations and with which stakeholders? ♦</p> <p>The supervisor needs to have the power to issue regulations as instructions, directives, etc ♦</p>
<p><b>Article (4)</b></p> <p>The company shall, afterward, present an application to EISA requesting the registration and licensing the activities of the company. The application will be presented with the following:</p> <ul style="list-style-type: none"> <li>♦ The contract of association</li> <li>♦ The signed copy of the memorandum of associations and the articles of association</li> <li>♦ A one-thousand-pound- receipt of registration.</li> <li>♦ The names of the members of the board of directors and the managing officers of the department of medical treatment and healthcare contracts, in addition to, their curricula vitae and track records.</li> <li>♦ The document indicating that the company or the contracted entity assigned to offer medical treatment and healthcare services has acquired a license to practice such activities in accordance with the provisions of Law no. 51 of 1981 on the Regulations Governing Medical Facilities.</li> </ul>	<p><b>IV) Article (4) – Clause (5):</b></p> <p>This article specifies the documents required for submission to EISA for obtaining licenses. Article (5) also mentions the issuing of medical practice licenses as mandatory for companies providing medical insurance and health care in accordance with law 51/1981 regulating HMOs. The role of health care companies as actual providers of medical services to clients is clearly confused from the role of hospitals or doctors subject to surveillance by the Ministry of Health. It is not logical for health care companies to be obligated to present medical practice license to all their clients.</p>	<p>Which are the differences between: contract of association, memorandum of association, and articles of association? ♦</p> <p>Having a department of medical treatment and health care contracts is compulsory? Should the law determine the internal structure of the companies? ♦</p> <p>Or, should the law determine that certain professionals and certain functions in the company need some qualifications? ♦</p> <p>The commitment should be that the company will contract only with licensed, accredited, certified providers and that its violation with bring forth sanctions. ♦</p> <p>There is no way to anticipate rates. ♦</p> <p>At the most what can be provided is are cost estimates of types of health</p>

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<b>Article</b>	<b>Comments By Prepayment Chamber</b>	<b>Comments Bearing Point</b>
<ul style="list-style-type: none"> <li>◆ A list of rates of potential services to be offered by the company within the twelve months preceding the registration of the company.</li> <li>◆ Sample forms of the insurance contracts proposed to be utilized on dealing with the assured and the beneficiaries of medical treatment and healthcare insurance programs.</li> <li>◆ Reinsurance arrangements</li> <li>◆ Any other documents specified by the Executive Regulations.</li> </ul>		<p style="text-align: right;">plans.</p> <p>It would be a responsibility for the Supervisor to issue instructions on health plans' contracts. The commitment should be to abide by those rules on contract models.</p> <p>Reinsurance should not be a requirement to start a prepayment company. This is blind application of general insurance norms.</p>
<p><b>Article (5)</b> The Chairman of the Board of Directors of EISA shall issue the decision of registering and licensing the activities of the company within one month of the completion of the requirements of registration. The decision of registration shall be published, on the expenses of the company, in the monthly bulletin of EISA and EISA shall register the company in its book of registration.</p> <p>The company may not commence practicing its activities prior to obtaining the registration and licensing. Furthermore, the company may not practice any other activities.</p>		<p>Prepayment companies would have and exclusive and excluding line of business concerning prepayment of health care financing.</p>
<p><b>Article (6)</b> The Board of Directors of the Company shall include two members with relevant experience as specified by the Executive Regulations provided that one of two members would be the executive manager.</p> <p>The company, using EISA's relevant forms, shall inform the Board of Directors of EISA with the</p>	<p><b>VI Article (6) – Clause (17 (g), (f):</b> Article (6) empowers EISA to object to the nomination of members of the board of directors and executive managers. This stands in obvious contradiction with the investment law that regulates the establishment of health care companies. The investment law also regulates the nomination of the chairman and members of the board of directors of member companies in accordance with agreements</p>	<p>It seems that the Egyptian corporate model is one of NO separation between decision-making and supervision (Board of Directors) and Executive Management. One member of the Board is the Executive Manager.</p> <p>The supervisor should have the</p>

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<b>Article</b>	<b>Comments By Prepayment Chamber</b>	<b>Comments Bearing Point</b>
<p>nomination of the members of the board of directors of the company, executive managers and all the relevant information thereof with 30 days of the date of the aforementioned decision.</p> <p>EISA, in a decision indicating the causes, may object to the nomination of any of the members within 15 days as of the date of being informed thereof.</p> <p>In the court of law, the elapse of a period of 30 days as of the day of informing EISA of the decision without EISA's contesting thereto shall thereby be deemed as an approval</p>	<p>reached by the company's general assembly that is responsible for submitting nominations and approving/disapproving them. Article (17) also gives EISA the authority to disqualify one or more executive managers or break up the board of directors and appoint a representative to assume duties until a new board or directors has been appointed. According to the investment law, the company's general assembly is the one responsible for disciplining the board of directors and it possesses the authority to break it up if it is in the interest of the shareholders or if the board commits violations described in the investment law. In short, this article is in complete contradiction to the investment law that was –according to the draft law's introduction- reviewed. It also denies the company's general assembly –that convenes under the supervision of the General Authority for Investment- the right to exercise its principal authority.</p>	<p>power to indicate certain qualifications for Board Members and for key personnel.</p> <p>The right to object nominees need to be based upon objective criteria in regulations. ♦</p>
<p><b>Article (7)</b></p> <p>The company shall quote on all the document issued thereby the numbers and the dates of the both the license issued by EISA and the registration in EISA's registration books permitting the company to perform medical treatment and healthcare insurance services in the Arab Republic of Egypt.</p>		<p>Matter of regulation and not of law ♦</p>
<p><b>Article (8)</b></p> <p>The company shall report to EISA all the modifications or changes that are introduced to the information of: registration and practice license, board of directors, executive managers, service rates or contract forms ratified by EISA.</p>	<p><b>V) Clause (8):</b></p> <p>Clause (8) of the same article –article (4)- states that re-insurance policies are required for submission by HMOs to obtain licenses. The term 're-insurance' implies that the company's activity is insurance and that the insurance company is obligated to provide</p>	<p>The issue of contract forms and contract approvals need further discussion. The principle should be that the supervisor set forth general guidelines for contract drafting but it does not approve contracts. If ♦</p>

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<p>The report shall be submitted in compliance with the terms and conditions of the Executive Regulations of this law and shall be submitted together with the relevant modified and amended documents.</p> <p>The aforementioned amendments and modifications may not be enforced unless same are approved by EISA. In a court of law the elapse of a period of 30 days as of the day of informing EISA on the decision without EISA's objecting to such decision shall thereby be deemed as an endorsement thereof.</p> <p>The company, on its expenses, shall publish the amendments introduced to the information of registration and license in the monthly bulletin of EISA.</p>	<p>re-insurance on the operations that have already been insured. The law presents a major contradiction afterwards when it adds in the Explanatory Notes section in the appendix to the draft law that "it has been agreed upon that health insurance and health care companies are not identical to general insurance companies subject to the regulations of law no.10/1981."</p> <p>It is well-known that even general insurance companies meet considerable difficulties upon attempting to re-insure their medical insurance policies. Most of these companies now do not provide re-insurance on medical insurance policies because re-insurers abroad refuse to re-insure them (medical insurance policies.) Some re-insurers abroad have even requested from general insurance companies to cancel their medical insurance policies because they do not fall under their responsibilities.</p>	<p>contracts are approved, the supervisor shares legal responsibility if damages are awarded because of faulty drafted provisions.</p> <p>Then form and content of reports should be a matter of internal regulations and not of Executive Regulations. The prepayment business and market is dynamic and requires flexibility in the reporting requirements. Disclosure and other transparency and accountability issues need to be constantly taken into consideration.</p>
<p><b>Article (9)</b> The company shall allocate the technical reserves necessary to cover the liabilities of the beneficiaries of the medical treatment and healthcare services as follows:</p> <ul style="list-style-type: none"> <li>◆ A liabilities reserve for the new assurances issued before the end the fiscal year and still in force after the end of the fiscal year with a minimum of 40% of the total amount of the underwritings of the company for the elapsed year.</li> <li>◆ Reserve for reported claims that were not settled until the date of the preparation of the balance sheet.</li> <li>◆ Reserve for unreported claims to date of the</li> </ul>	<p><b>VII) Article (9):</b> Article (9) obligates health care companies to set four types of liabilities in Egyptian banks as follows:</p> <ol style="list-style-type: none"> <li>a) The equivalent of 40% of the company's total underwriting of the previous year for covering the company's insurance operations before the fiscal yearend (please note that the company activity here was listed as 'insurance')</li> <li>b) Liabilities for the claims reported to but not yet settled by the company</li> <li>c) Liabilities for claims that have been reported to the company</li> <li>d) Liabilities for adverse fluctuations stated in the executive bylaw (we have not yet received the</li> </ol>	<p>The whole subject matter of technical reserves needs revision. The final draft needs to address all of these concerns and establish a normative framework suitable to the prepayment business, to be detailed in regulations/instructions by the supervisor.</p> <p>Special rules need to be defined and specified that take into account the nature of the prepayment business, size and volume of operation, etc.</p>

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<p>compilation of the balance sheet.</p> <p>◆ Reserve of the fluctuation of the L/R value which the Executive Regulations of this law shall stipulate the basis for estimating and utilizing.</p> <p>Under all circumstances, the reserves of the company shall be adequate to cover the liabilities and rights of the contracting parties. If EISA, through auditing the reserves of the company, established that such reserves were insufficient, the company shall embark on carrying out the measures necessary to complete such reserves in accordance with the relevant rules laid down by EISA.</p> <p>EISA may request the company to submit a certificate drawn out by an EISA registered actuarial expert stating that the available reserves of the company are sufficient and same were estimated according to accredited standards.</p>	<p>executive bylaw)</p> <p>40% is a very high percentage, taking into consideration the financial nature of health care companies, which can be explained as follows:</p> <ul style="list-style-type: none"> <li>◆ Health care companies do not receive outstanding payments at once from clients. They are settled on 4 – 8 month installments in the year of contract.</li> <li>◆ Installments are instantly used by health care companies.</li> <li>◆ Health care companies do not provide catastrophic compensations that require the payment of large amounts of money in one installment, similar to general insurance companies</li> <li>◆ Health care companies, just like all service companies, allocate part of their profits as collaterals for any changes in prices. However, it is not possible for these companies to allocate 40% of the clients' installments. Also, Article (12) estimates the value of the company's operations in a way that makes the assets exceed that value by 20%. So, for example, if the company's capital is LE5,000000 (which is the minimum capital required by Article (2) of the draft law), this company cannot accept operations less than 1.6000000, leaving the company with only 2.4, 000000 for financing these operations and administrative and other costs (salaries,...etc). This is applicably impossible and is significantly restrictive to the company's capacity for growth and development that are much needed for facing the challenges</li> </ul>	

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<b>Article</b>	<b>Comments By Prepayment Chamber</b>	<b>Comments Bearing Point</b>
	<p>expected by foreign health care companies which will be expectedly licensed in Egypt.</p> <ul style="list-style-type: none"> <li>◆ The article does not clarify methods and timeframes of expenditures or withdrawals from the company's liabilities.</li> <li>◆ The article also does not clearly define what the adverse fluctuations are and suffice with referring the explanation to the executive bylaw.</li> <li>◆ The article does not explain whether the outstanding payments due to health care companies, i.e., the installments that have not been paid up yet, will constitute part of these liabilities or health care companies will have to supply them.</li> </ul>	
<p><b>Article (10)</b> The company shall earmark reserves that amount to at least the value of the technical reserves set forth in the previous Article. Such reserve funds may not be sequestered save after sequestering the other funds of the company.</p> <p>The company shall present to EISA information on the reserve funds in compliance with the provisions of the law thereof and at the dates specified by the Executive Regulations.</p>		<p>Same comment as above. This issue needs conceptual and technical revision. ◆</p>
<p><b>Article (11)</b> The company shall invest the allotted funds in consistence with the provisions of the previous article in the investment channels and in ratios determined by the Executive Regulations of this law.</p>		<p>Same comment as above. ◆</p>
<p><b>Article (12)</b> The value of the assets of the company shall exceed the total value of the liabilities thereof</p>		<p>Same comment as above ◆</p>

<b>DRAFT LAW ON MEDICAL AND HEALTH CARE INSURANCE (EISA v.2 -2006)</b>		
<b>Article</b>	<b>Comments By Prepayment Chamber</b>	<b>Comments Bearing Point</b>
with at least 20% of the net premiums of the previous year.		
<p><b>Article (13)</b>                      The company governed by the provisions of this law shall present to EISA: all sample forms of contracts, individual or collective policies; the terms and conditions of policies and contracts; rates and all the introduced amendments to the aforementioned items to be subject to review in the light of the studies necessary to establish fair rates.</p> <p>EISA shall review the terms and rates applied in the companies on regular basis within the framework of the real results achieved by such companies to safeguard quality service and fair rate, provided that the company commit themselves to carry out the amendments deemed suitable by EISA.</p>		
<p><b>Article (14)</b>                      The company shall keep the following records:</p> <ul style="list-style-type: none"> <li>◆ Insurance register: to record the contracts and documents concluded with policyholders and the beneficiaries. The registers shall include: names, addresses, the dates of concluding the policy, the term of policy or the document, insurance coverage and limits and the riders.</li> <li>◆ Register of claims or medical service costs: it shall include claims presented to the company, the date of submitting the claims, the name and address of the beneficiary, the estimated cost of the claim for each case and the date of paying the claim. In case the company declines to cover the claim, the book</li> </ul>		

<b>DRAFT LAW ON MEDICAL AND HEALTH CARE INSURANCE (EISA v.2 -2006)</b>		
<b>Article</b>	<b>Comments By Prepayment Chamber</b>	<b>Comments Bearing Point</b>
<p>shall comprise the date and the reason for issuing such a decision.</p> <ul style="list-style-type: none"> <li>◆ Register of intermediaries: It shall include the names and EISA's registration numbers of the intermediaries who act as intermediaries in concluding contracts and issuing documents.</li> <li>◆ Register of allotted reserves: It shall show the amount of money that shall be allotted as reserves in the Arabic Republic of Egypt and methods of investing them.</li> <li>◆ Register of agreements: It shall comprise reinsurance transactions of the company. The book shall include names and addresses of the parties to the reinsurance contracts; the date of initiating and expiry of each agreement; the amendments of such agreements and any other relevant information that are deemed appropriate by the company concerning an agreement.</li> </ul>		
<p><b>Article (15)</b>                      The company shall, to EISA, submit a quarterly and annual reports ratified by the Chairman of the Board of Directors and the Chief Financial Officer proving that the balance sheet, the surplus, claims, income, outgo, technical reserve, allotted reserves of the company has been compiled in the sound and correct manner and that same correctly reflect the financial status of the company based on the books and on other data that were left under the disposal of the company.</p> <p>The quarterly and annual reports shall be submitted on the models and forms prepared by</p>	<p><b>VIII) Article (15) – Last clause:</b>                      Health care companies are required to present certificates issued by actuarial experts and accredited by the General Authority for Investment that attest to the integrity of pricing principals, benefits and validity. It is evident that this is another regulation that concerns general insurance companies.</p>	

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<b>Article</b>	<b>Comments By Prepayment Chamber</b>	<b>Comments Bearing Point</b>
<p>EISA and at the dates set forth by the Executive Regulations.</p> <p>The annual report shall be ratified by the chief financial officer of the company. It shall include all the data and information on all the transactions undertaken by the company within the year. The company shall submit a certificate drawn out by an EISA-accredited actuarial expert registered in the actuarial expert directory acknowledging to the soundness and applicability of the rating standards and the advantages awarded by the company, in addition to, a certificate attesting that the technical reserves of the company matches the liabilities of the company.</p>		
<p><b>Article (16)</b> Without prejudice to the right of EISA to review the books and registers stated in the provisions of the law, EISA shall audit periodically the transactions of the company and the registers and books of the company to safeguard the soundness of the company's financial status, its adherence to the provisions of this law and the compliance of the company with the technical best practices.</p> <p>EISA may undergo a comprehensive auditing of the financial transactions of the company if for any reason EISA came under the impression that the policyholders' funds and beneficiaries' rights are undermined, that the company would not be able to cover the liabilities, the company's practices has proven injurious to the market or that the company has violated any of the</p>	<p><b>IX) Article (16):</b> This article states that at least 500 employees (which can possibly be the total number of subscribers in one Client Company, i.e., any health care company) can request an inspection/investigation of the health care company's financial operations without the need for presenting a justification, which puts the health care company in a weaker position, allowing the Client to easily obtain 500 signatures on an inspection request or to threaten or blackmail it.</p>	<p>This provision is clearly taken from regulations governing general insurance. It is not applicable in the case of prepayment health care financing. ♦</p>

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<b>Article</b>	<b>Comments By Prepayment Chamber</b>	<b>Comments Bearing Point</b>
<p>provisions of this law.</p> <p>Same procedures may be undertaken upon the request of the shareholders possessing at least one tenth of the capital of the company or a minimum of 500 of the policyholders and the beneficiaries.</p> <p>The relevant company shall provide EISA with all required information, data and documents during the auditing procedures. The inspection shall be carried out according to the procedures stipulated by the Executive regulation of the present law.</p>		
<p><b>Article (17)</b></p> <p>In case the that outcome of the auditing proves that: the company is at risk of falling <b>faulty</b>, the method of practicing its actions has proven detrimental to the market or that the company has breached the provisions of the law, the Board of Directors of EISA shall undertake all measures and procedures that Board of Directors of EISA deems appropriate particularly the following:</p> <ul style="list-style-type: none"> <li>◆ Issuing a warning to the company.</li> <li>◆ Limiting the company's approvals of the new transactions and upgrading the list of its current transactions.</li> <li>◆ Assigning the company to compile financial position statement and annual closing statement within less than a year.</li> <li>◆ Inviting the board of directors of the company to session to examine the irregularities attributed to the company and measures that should be taken to eliminate such</li> </ul>		

<b>DRAFT LAW ON MEDICAL AND HEALTH CARE INSURANCE (EISA v.2 -2006)</b>		
<b>Article</b>	<b>Comments By Prepayment Chamber</b>	<b>Comments Bearing Point</b>
<p>irregularities. The meeting of the board of directors shall be attended by one or more representative of EISA.</p> <ul style="list-style-type: none"> <li>◆ Appointing an observer of the board of directors of the company for the period determined by the Board of Directors of EISA. The member shall be entitled to participate in and express opinion on issues raised during the discussions of the board of directors without having the right to vote.</li> <li>◆ Appropriating the divisible surplus to be distributed over the shareholders or to utilize part of the surplus to consolidate the net assets of the company.</li> <li>◆ Amending the investment policies and reinsurance procedures of the company.</li> <li>◆ Dismissing one or more member of the executive management of the company.</li> <li>◆ Dissolving the board of directors of the company and authorize a transitional chairman to manage the company until appointing a new board of directors.</li> </ul>		
<p><b>Article (18)</b>                      EISA shall be entitled to prevent the company from approving new transactions or renewing current ones for at least one month and for a maximum period of one year if any of the following two cases occurs:</p> <ul style="list-style-type: none"> <li>◆ The company is practicing its activities in way contrary to the terms and conditions stated in the license.</li> <li>◆ If the company violated the medical insurance and healthcare plan or the rate list of the</li> </ul>		

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<p>services certified by EISA.</p> <p>EISA shall cancel the activity cessation decision once it verifies that the reasons for such decision were eliminated. Should the suspension period elapse without the company taking procedures to eliminate infringements or should the company repeat the irregularities that brought about the suspension decision, EISA then shall cancel the registration of the company and practice license in compliance with the provisions mentioned in Article 21 of this law.</p>		
<p><b>Article (19)</b>                      In case the company wanted to transfer all or part of its transactions, contracts concluded, policies issued with all obligations in the Arab Republic of Egypt to one or more other insurance company subject to the provisions of this law, the company shall submit an application according to the terms and conditions set forth in the Executive Regulations.</p> <p>The application shall be published in the Egyptian Gazette and two other widely circulated newspaper according to the provisions stipulated in the Executive Regulations.</p> <p>The application shall solicit comments from the parties concerned to be referred to EISA within a maximum of three months as of the date of publication.</p> <p>Transferring the policies and contracts of the company together with the obligations shall be</p>		

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<p>executed upon a decision by EISA, if such transference proved to be not to the disadvantage of policyholders, beneficiaries, creditors, nor parties to contracts concluded with the company in the Arab Republic of Egypt.</p> <p>Such decision shall be published in the Egyptian Gazette and the assured, beneficiaries and creditors of the company shall utilize such decision as an evidence in the court of law.</p> <p>In such case the funds of the company in the Arab Republic of Egypt shall be transferred to the transferee company in compliance with the provisions of transference of property and funds cession provided that the transferred funds is thereby exempted from stamp tax, registration and archiving charges.</p>		
<p><b>Article (20)</b>                      The company shall, in case of intending to halt all the activities and <b>release</b> all or part of the funds thereof shall submit to EISA a request together with the following documents:</p> <ul style="list-style-type: none"> <li>◆ A document that indicate that the company has relieved itself completely and entirely from all its liabilities towards the subscribers and has transferred all its transactions to another insurance company subject to the provisions of this law.</li> <li>◆ A document proving that the company has, in two daily widely circulating newspapers, published in adherence to the Executive Regulations an announcement. Such announcement shall be published in the</li> </ul>		

<b>DRAFT LAW ON MEDICAL AND HEALTH CARE INSURANCE (EISA v.2 -2006)</b>		
<b>Article</b>	<b>Comments By Prepayment Chamber</b>	<b>Comments Bearing Point</b>
<p>aforementioned newspapers at least three times provided that a time span of 15 days should elapse before posting the announcement again. The announcement shall state that the company has decided to submit a request to EISA to release all or part of the funds of the company after the elapse of the period of three months as of the date of the last announcement. The announcement shall call upon the subscribers, the beneficiaries and other parties concerned to come forward with any protest to EISA and set the deadline for protesting on the aforementioned day of presenting the application.</p> <p>EISA shall decide to grant the company its request in case that no person objected to the request within the indicated period of presenting protests.</p> <p>But if a protest was submitted during the aforementioned period, no decision shall be taken save after reaching an agreement or a final ruling concerning the protest. However, the Chairman of EISA may order the release of the funds of the company on the condition that the company keeps an amount that covers the liabilities of the company towards the protester including the expenses necessary to keep any of the assets of the company.</p>		
<p><b>Article (21)</b> The registration and the license to practice part or all of the activities shall be annulled in the following cases:</p>		

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<b>Article</b>	<b>Comments By Prepayment Chamber</b>	<b>Comments Bearing Point</b>
<p>If the registration and license were illegally acquired</p> <p>If the company persisted on breaching the provisions of this law or the Executive Decisions.</p> <p>If EISA established that the company is unable to cover its liabilities.</p> <p>If EISA recognized that the company recurrently neglected paying the due claims and has repetitively had unjustifiable dispute over sound claims.</p> <p>If the paid up capital of the company decreased below the minimum level set forth in Article (2) of the provisions of this law and the company did not undertake the necessary procedure to complete such deficiency despite being requested to do so.</p> <p>If the company, in the Arab Republic of Egypt, did not keep the allotted reserves as stated in Article (10) of this law or if the company failed to complete such reserves within one year of requesting the company to do so.</p> <p>If the company desisted from submitting its records and documents for auditing and review by EISA or its auditors, or if the company refused to offer the records and the data that should be presented according to the provisions of the law despite being served more than once with a written request to comply for three months.</p> <p>If an approval was issued to transfer all the contracts, documents and accrued liabilities of the company in the Arabic Republic</p>		

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<b>Article</b>	<b>Comments By Prepayment Chamber</b>	<b>Comments Bearing Point</b>
<p>of Egypt to another company in agreement with the provisions of Law no. (19) of this law.</p> <p>If the company ceased all its activities in the Arab Republic of Egypt and released its funds in concert with Article of provision no. (20) of this law.</p> <p>If a court ruling was issued establishing the bankruptcy of the company.</p> <p>If the company breached any of the conditions of the license of practice and did not attempt to amend such breach despite being asked more than once to adjust its course of action during a period set forth by the Executive Regulation of the present law.</p> <p>No decision of writing off or revoking the practice license of the company shall be issued without notifying the company using a registered letter requesting it to provide in writing its defense within one month as of the date of notification. A decision to write off and revoke partially or fully the practice license of a company shall be issued by the Board of Directors of EISA and shall be ratified by the competent Minister to be published in the Egyptian Gazette.</p> <p>The impact of the full or partial writing off and canceling of the practice license shall only be enforceable upon the transactions specified in the issued decision.</p> <p>In all circumstances the company whose registration and practice license were written off</p>		

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<p>and partially or a fully shall not dispense with any of its funds nor any of the guarantees presented thereby except after applying the procedures prescribed in Article no (20) of the law thereof. The decision of writing off the registration of the company and revoking of the practice license shall entail the suspension of all the transactions undertaken by the company and stated in the decision.</p> <p>The Chairman of the Board of Directors of EISA may allow the company to conduct the current transactions that are underway at the time of registration and practice license revoking according to the conditions specified by the Chairman for such purpose.</p> <p>The Chairman may decide to close down the company.</p> <p>The liquidation of the company shall be executed in compliance with the rules agreed upon by the Chairman of the Board of Directors of EISA. Under a three-member- supervisory committee appointed by the Chairman, the liquidation procedures shall be carried out in such a way to guarantee the full satisfaction of the obligations and liabilities of the company.</p>		
<p><b>Article (22)</b> The companies subject to the provision of this law may establish a union or one or more assisting body with the aim of improving and upgrading the service; agreeing on collection, analysis and publication of data; embarking on</p>		<p>It should be associations (trade associations) to represent and defend the interests of the prepayment industry and to eventually perform as Self Regulatory Organization. ♦</p>

<b>DRAFT LAW ON MEDICAL AND HEALTH CARE INSURANCE (EISA v.2 -2006)</b>		
<b>Article</b>	<b>Comments By Prepayment Chamber</b>	<b>Comments Bearing Point</b>
acts to prevent or decrease the losses; strengthening ties with similar unions abroad or undertake any other matters of interest to the members of such unions.		
<p><b>Article (23)</b> The holders of policy and contracts of medical treatment and healthcare insurance may resort to EISA to settle any dispute that might arise between them and any assuring company without prejudice to the rights of the assured to resort to litigation or arbitration according to the situation.</p> <p>The Executive Regulation of the Law thereof shall govern the procedures of settling disputes.</p>	<p><b>X) Article (23):</b> This article allows the insured party to resort to EISA for resolving disputes that may arise with health care providers. It also gives the insured party the right to resort to the Court of Law or Arbitration. It is self-evident that the insured party's right to resort to the court of law is maintained --a right that is currently maintained for health care companies clients without the need to resort to EISA. It is noteworthy that most of the disputes that occur with health care companies –which happen very rarely- are related to exclusively medical issues that cannot be examined by EISA since they require medical expertise. In most cases, the disputes are referred to a medical committee of professors of medicine to resolve them. Usually, the disputes are cordially resolved through compromises made by health care providers to protect their reputation.</p>	<p>EISA would have to establish a procedure for conflict resolution. Various levels could be considered, some in coordination with the Ministry of Health:</p> <ul style="list-style-type: none"> <li>Conflicts between prepayment and providers ○</li> <li>Customers' conflicts with pre-payments ○</li> <li>Customer conflicts with providers (Health Ombudsman, a specialized, simple mechanism of conflict resolution either under the MOH or at EISA with the MOH?) ○</li> </ul>
<p><b>Article (24)</b> Any beneficiary of medical treatment and healthcare insurance shall be entitled to obtain from the assuring company or the insurance company issuing the policy a cover note comprising the advantages accorded to him or to the beneficiary. The cover note shall not include any misleading article or statement, nor shall it comprise any faulty data.</p>		<p>All subscribers need to have a copy of the contract detailing benefits. This should be a legal requirement.</p>
<p><b>Article (25)</b> Subject to imprisonment and or payment of a fine of at least five thousand Egyptian Pounds any</p>		<p>No comments for the moment.</p>

<b>DRAFT LAW ON MEDICAL AND HEALTH CARE INSURANCE (EISA v.2 -2006)</b>		
<b>Article</b>	<b>Comments By Prepayment Chamber</b>	<b>Comments Bearing Point</b>
<p>person who</p> <ul style="list-style-type: none"> <li>◆ Practices medical treatment and healthcare insurance without a license in the Arab Republic of Egypt.</li> <li>◆ Desists from submitting registers and documents to the representatives of the EISA who are authorized to review such documents and registers, or whoever delays providing the data that should be presented at certain dates stipulated by the provisions of this law and the Executive Regulations thereof. In any of the aforementioned two cases, a ruling of penalty payment may be passed and the ruling shall prescribe the value of the penalty for every day of desisting or delaying presenting the registers and document with a maximum of 50 Egyptian Pounds per day.</li> <li>◆ Acknowledges, manipulates and hides intentionally and for the purpose of fraud any of the data, memoranda or other documents that should be submitted to EISA or should be posted to inform the public.</li> <li>◆ Discloses secrets obtained in the course of his work according to the provisions of this law.</li> </ul> <p>Any company that violates the conditions, forms and rates approved by EISA shall pay a fine not less than five thousand Egyptian Pounds and not more than one hundred thousand Egyptian Pounds per an incident of violation and fines shall be compounded according to the number of the violations.</p> <p>EISA shall file a criminal action in case of infringement by submitting a written request for</p>		

<b>DRAFT LAW ON MEDICAL AND HEALTH CARE INSURANCE (EISA v.2 -2006)</b>		
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<p>initiating litigation process and EISA may during any point of the litigation process and until the passing of a final ruling in the criminal act to reconcile with the violating party in return of paying all or part of the aforementioned fine. Such conciliation shall entail the suspension of the criminal law suit.</p>		
	<p><b>XI) Explanatory Notes:</b>  <b>Page 16:</b>                      a) There is evident confusion in using the terms 'health care company' and 'health care provider.'                      b) Again, we wish to emphasize that health care companies are not subject to law no. 10/1981 that regulates general insurance companies.                      c) We also want to emphasize that drafting this law comes in response to the complaints made by general insurance companies about health care companies competing with them.</p>	<p>The draft law needs an article on definitions to address situations like this one. ♦                      Prepayment schemes re not providers and not health care companies. ♦                      Prepayment schemes are special insurance companies (different from traditional insurance companies) engaged in the financing and delivery of health care on pre-paid under subscriptions/contributions to access the goods and services described in a given health plan. ♦</p>

## **ANNEX 4. BP SUGGESTIONS FOR THE DRAFTING OF A LAW ON PRE-PAID HEALTH CARE FINANCING**

### **PREAMBLE**

(Note: the following are some ideas to include in a Preamble to the Draft Law or in the Explanatory Notes to the Draft Law).

Health insurance products supplied by insurance companies in Egypt are mostly “riders” to life insurance policies and general insurance policies, and are traditional reimbursement policies where there is separation between insurers/financiers and health care providers. Health insurance is a minor insurance business comprising X% of total premium income and covering a limited number of people.

Over the years, new forms of private health care financing have emerged in Egypt combining the financing and the provision of health care goods and services. These modalities of *pre-payment or subscription schemes* consist of payments or subscriptions (avoiding the word premium that is typical of traditional health insurance) at regular intervals regardless of utilization of services, for a pre-determined package of health care services by the same provider (or associations or networks of providers) that receives the pre-payments and controls the delivery of health care goods and services. The pre-payment financier (in fact an insurer) finances the provision of health care goods and services, provides those services directly or under contracts, and controls the actual provision of health care services with administrative/clinical approvals and monitoring.

Because this health care financing is different from indemnity health insurance and the business is conducted by entities that are also different from insurance companies, they have been largely unregulated and unsupervised. The need to legislate, supervise and regulate this special type of health care financing and the entities that participate in this health care financing is shared by the entities already involved, by the Egyptian Insurance Supervisory Authority (EISA) and by the Ministry of Health and Population.

The following questions emerge:

- ◆ Are prepayment schemes a form of insurance? The answer is yes, since the prepayment business of financing and delivery of health care involve the management of financial risks, as well as the management of services risks.

- ◆ Are prepayment schemes the same as traditional health insurance and should they be regulated and supervised the same? The answer is no. Prepayment health care financing is different from traditional health insurance and should be legislated, regulated and supervised differently.
- ◆ Who should regulate pre-payment health care financing schemes? The model suggested for Egypt is to have EISA regulating the legal and financial aspects of prepayment health care financing and prepayment health care companies, and the Ministry of Health and Population supervising and regulating health care providers and suppliers and the delivery of health care goods and services.

The main economic reasons for supervising and regulating formal pre-payment health care plans are market failures, financial stability, financial efficiency and consumer protection.

**Market Failures.** From the economics and law perspective, market failures justify regulatory intervention because they require corrective actions to amend the economic failure of the market. Market failures include asymmetric information, moral hazard, adverse selection and monopolistic power.

**(a) Asymmetric information.** In health care, perfect consumer information is most probably impossible. On the one hand, consumers regard medical treatment as an endeavor that is complex and mysterious. The effectiveness of medical science and medical treatment is uncertain in spite of the extraordinary technological progress in diagnoses (particularly laboratory tests) and therapy (pharmaceuticals, surgery, rehabilitation) in the last fifty years. Almost by definition, physicians control information that is usually not available to the patient. On the other hand, private health insurers control information on coverage, exclusions and other “details” that are not always properly disclosed or if at all. Consumers regard the content of a health insurance policy contract as complex, cryptic and difficult to fully understand or even find. Requiring systematic consumer information is instrumental in improving educated individual decision-making when purchasing health insurance.

**(b) Moral hazard.** Moral hazard refers to excess demand of health care goods and services because of changes in the attitudes of consumers as insured patients (and health care providers as well) derived from the fact of becoming insured against the costs and payments of such care. *Consumer moral hazard* arises because being insured reduces the financial cost of treatment and thus there is less incentive to adopt healthy lifestyles, and because zero or

reduced payment at point of service induces a higher rate of service use. *Provider moral hazard* takes place when health care providers are unaware of the costs of health care goods and services and when there is supplier-induced demand.

**(c) Adverse selection.** Adverse selection takes place when individuals at greater risk of illness enroll in an insurance program in larger proportions than they are found in the general population. The insurer is not always aware of the knowledge of their health situation or has no idea of their health risk. This asymmetry of information against the insurer is called “*adverse selection*.” Private insurers counteract with exclusion lists, higher premium to select out high-risk individuals or groups. This is called “*selection bias*”. The expression “adverse selection”, however, has prevailed encompassing both meanings, but with particular reference to the latter. Adverse selection on the part of the private insurer is particularly common where certain risks such as chronic diseases, pre-existing medical conditions, and the elderly, are considered uninsurable or undesirably insurable.

**(d) Monopolistic Power.** When competition fails, the result is an increase in the number of larger and fewer firms controlling an industry. This entails, or is very close to entail, a monopoly. Monopolies preclude consumer choice, fix prices, and eliminate competition with the consequential artificial shortages and higher prices. Economic power brings with it political influence and corruption. Supervision and mostly proper regulation should keep competition alive and healthy (transparent).

**(e) State interventions to solve market imperfections are also imperfect (“State/government failures”).** The influence of interest groups, political considerations and the struggle of conflicting values in decision-making and in implementation processes contribute to obscure the rationality of State interventions.

**Financial Stability.** Failure of prepaid companies could undermine confidence and have contagious effects on the insurance and financial systems as a whole. Thus, the imposition of minimum prudential standards and official regular surveillance are meant to avoid present and future anxieties against the future stability of the private health insurance system.

Under no circumstances, supervision should give the false impression that there are no risks or that there is an implicit State or government guarantee against failure of the health insurance financial institution. Prudential requirements can reduce the risk for consumers. Unnecessarily strict prudential standards and over-intrusive monitoring and inspections can inhibit competition,

innovation and flexibility in the marketplace. The cost-effectiveness of supervision is important, and the supervisor has to make continuous assessments of the impact of the supervisory and regulatory requirements.

**Financial Efficiency.** The market approach to financial supervision requires effective competition between providers of private health care financing. Effective competition means cost efficiency and price restraint. Competition should enhance efficiency by improving the accessibility, design and pricing of health care financing products. It should limit restrictive practices, and should lead to the most productive allocation of resources. Also, it should facilitate efficiency with the control of market failures and by limiting the barriers to entry in the health insurance/pre-payment market. Competition should encourage innovation and generate strong, profitable and creative insurers and, hopefully, lead to more satisfied customers.

**Consumer protection.** Protecting consumers is one of the main reasons for supervising and regulating private health insurance. This means requiring adequate information disclosure to overcome the asymmetry of information failure and the provision of inadequate and unequal information, that prevent consumers to assess the risks, quality, and relative prices of private health in insurance options. Controlling misrepresentation of products, and misleading information, bad or inadequate advice, undeclared conflicts of interests and fraud, is essential to protect consumers. Market imperfections and incompetent and unethical practices can be substantially reduced with information disclosure requirements and codes of business behavior. Prudential supervision protects against “institutional risk” such as an insurance company from collapsing. Competitive, informed markets operating under fair trading rules on a level playing field will improve efficiency, protect consumers, enhance public confidence in institutions and contribute to system stability more generally.

## ITEMS TO CONSIDER ON DRAFTING THE LAW

(**Note:** Legislative drafting should be done following the established Egyptian procedures and practices. What is included in this Report are suggestions on topics that should be part of the Law. The suggestions are not intended to interfere with the drafting procedures.)

**The Law should be a framework Law.** This means that the Law puts forward the basic parameters regarding pre-payment health care financing. Details should be developed in Executive Regulations issued by the Ministry of Investment on broad financial matters. Issues related to health and health care providers and suppliers could be broadly included in the Joint Executive Regulations issued by the Ministry of Investment and the Ministry of Health. Other details related to day-to-day operations and needed to respond to the dynamic nature of the prepaid financial business should be regulated by means of instructions, directives, circulars and orders approved by the Board of EISA.

### **Draft Law no. ( ) on Private Prepaid Health Care Financing**

The President of the Republic In the Name of the People,  
After reviewing Law no.10 of 1981 on Supervision and Control of Insurance in Egypt, Law no 51 of 1981 on the Regulations of Medical Facilities, Law No.159 of 1981 of Joint Stock Companies, Partnership Limited By Shares And Limited Liability Companies and the Act of the Minister of Economy and International Trade no.362 of 1996 on the Promulgation of The Executive Regulations Of Supervision And Control Of Insurance In Egypt, and conscious of the need to legislate, supervise and regulate the activities of private prepaid health care financing and deliver,

The People's Assembly hereby enacts and promulgates the following:

#### **Article (1)**

The provisions of the attached law shall be applicable to prepaid health care financing and to Prepaid Health Care Companies (PHCs). Prepaid health care financing is considered a special form of insurance that is different from insurance as defined in Law no. 10 of 1981 and thus requires specific legislation, supervision and regulation set forth in the attached law. All private entities, regardless of their legal status, presently involved in any form of prepaid health care financing shall submit an application for license and registration to the Egyptian Insurance Supervisory Authority (EISA) within three months as of the enforcement of the present law to continue practicing the activities during the time of the application of the law. The companies shall transform their legal status in conformity with the provisions of the attached law and fulfill the conditions of the Law and regulations within the period of one year as of the enforcement of the law and according to a plan and directives approved and issued by EISA.

#### **Article (2)**

The Minister of Investment shall issue the Executive Regulation of this Law within six months as of putting the Law into force. Other regulatory details shall be included in the instructions, directives and guidelines approved and issued by EISA.

### **Article (3)**

The Law shall be promulgated in the official *Gazette* and shall be effective as of the date of promulgation.

**Hosni Mubarak**

## **Law on Prepaid Health Care Financing**

### **Article (1). Definitions**

#### *Suggestion to add an article on definitions along some of this lines*

The following definitions shall be applicable under the present Law:

- ◆ Financial supervisor and regulator: the Egyptian Insurance Supervisory Authority (EISA).
- ◆ Health and health care providers and suppliers supervisor and regulator: the Ministry of Health and Population.
- ◆ Prepaid health care financing: payments in the form of subscriptions (to differentiate these payments from premiums that are typical of indemnity health insurance) at regular intervals regardless of utilization of services, for a pre-determined package of health care goods and services by the same provider (in association or in networks of providers) that receives the pre-payments and control the delivery of the health care goods and services.
- ◆ Prepaid health care companies (PHCs): legal entities licensed by EISA under the present law that engage exclusively in the business of prepaid health care financing and delivery.
- ◆ Health care plans or health care contracts: the contracts celebrated by PHCs individually or in groups for the prepaid financing and provisions of predetermined packages of health care goods and services including prevention, diagnostics, treatment, and rehabilitation.
- ◆ Subscribers: the individuals or legal entities, such as employers, making payments for prepaid health care plans.
- ◆ Beneficiaries: the persons indicated in the health care plans that are entitled to receive the prepaid health care goods and services.
- ◆ Third party Administrators: legal persons licensed by EISA to manage prepaid health care financing schemes.
- ◆ Health care providers: individuals and legal entities, public and private, duly licensed, accredited and certified by the Ministry of Health and Population to render professional and technical health care related services.

- ◆ Health care suppliers: individuals and legal entities, public and private, duly authorized to import, manufacture, and market health care goods such as pharmaceuticals, prostheses, and medical equipment.

## **Article (2). Scope of the Law**

The provisions of the present law shall be applicable to any individual or legal person directly or indirectly engaged in prepaid health care financing and delivery services as described herein.

Government organizations and trade unions providing the same aforementioned services shall be exempted from the provision of this law. Nevertheless, trade unions and government organizations would be required to contract with a licensed Third Party Administrator to manage the prepaid health care financing and delivery.

## **Article (3). Prepaid Health Care Companies**

All PHCs shall take the form of an Egyptian joint stock company with a minimum issued capital of (XXX) million Egyptian Pounds with a minimum paid-up capital of half of the aforementioned amount on establishing the company. The remainder of the issued capital of the company shall be fully paid within a maximum period of three years as of the date of registering the company at EISA.

*(Note: the current requirement under the Investment Law of 2.5 million pounds is consistent with similar requirements in other countries)*

PHCs have the legal obligation to provide sufficient and timely information to subscribers and beneficiaries regarding the health plans, prices, and modalities and conditions for the provision of the health care goods and services.

PHCs can celebrate contracts with public and private health care providers and suppliers.

## **Article (4) Supervision and Regulation**

Supervision and regulation of prepaid health care financing and of PHCs shall be entrusted to EISA regarding legal and financial aspects of prepayment health care financing and to the Ministry of Health concerning the health and clinical aspects related to health care providers and suppliers and the delivery of health care goods and services. To ensure that appropriate inter-institutional supervisory coordination is effective, EISA and the Ministry of Health and Population shall sign Memoranda of Understanding for the joint supervision and regulation of PHCs, health care providers and suppliers. These Memoranda include the obligation on the part of PHCs to submit health related data to the Ministry of Health.

## **Article (5) Role of EISA**

EISA shall have the following functions and attributions concerning PHCs:

- ◆ License and register PHCs after verifying that the legal requirements have been met.
- ◆ License register brokers, agents, third party administrators, sales persons and other intermediaries involved in prepaid health care financing as may be indicated in directives issued by EISA.
- ◆ Issue administrative interpretations of laws, regulations and other norms applicable to supervised persons and entities involved in prepayment health care financing.
- ◆ Supervise the legal and financial aspects of the PHC for the fulfillment of their obligations under this Law and those legal and financial aspects related to the execution of the contracts with providers and the health plans with subscribers and beneficiaries.
- ◆ Require that PHCs comply with the legal requirements for their operation, capital, reserves and other financial legal and regulatory requirements, and issue the corresponding accounting and auditing instructions to this effect.
- ◆ Issue instructions, directives and guidance to regulate:
  - Capital, reserves, solvency margin and other financial issues related to the management of assets.
  - Form, content and opportunity for the presentation to EISA of financial reports, balances and other financial reporting.
  - Minimum uniform provisions in contracts between PHC and health care providers and suppliers and health plans to secure clarity in the contractual provisions, and facilitate their application and interpretation. This is without prejudice of the contractual freedom of the parties involved regarding terms and conditions and coverage and delivery benefits. EISA shall not require previous approval of the contracts and health plans.
  - Periodic mass media publications with sufficient and timely information of interest to the public concerning the legal status, and financial situation of PHCs. These publications should take place, at least, once a year.
- ◆ Supervise and assure that the PHC comply with the laws and regulations that govern them, as well as with the legal and financial instructions issued by EISA. This is without prejudice to complying with the laws, regulations and instructions of other regulatory and supervisory authorities such as the Ministry of Health and Population regarding health, clinical and health care providers.
- ◆ Inspect operations, books, assets, archives and documents and require from PHC managers and administrators the submission of information EISA deems necessary for fulfilling its supervision role.
- ◆ Impose sanctions established in the law.

EISA shall have a specialized unit for Prepaid Health Care Financing Supervision to undertake the functions set forth in this law and its regulations. The unit shall have the competent and diversified personnel in consonance with the nature of the prepaid health care financing activity.

#### **Article (6). Licensing**

To obtain a prepaid health care financing license, an application is submitted to EISA by a legal representative of the interested parties in a format proscribed by EISA and including all the

information required in a licensing instruction issued by EISA. The application has to be accompanied by a technical and economic feasibility study, and a profile of the company's structure and potential activities.

After the license is granted, the owners of the license shall undertake the necessary measures of forming the joint stock company according to the provisions of this law. If the company is not formed in a period of three months, the license will be automatically revoked. After completion of the formalities for the formation of the PHC, documents shall be submitted to EISA for registration in EISA's Registry of PHCs.

The license is for the exclusive business of prepaid health care financing as defined in this law.

It is illegal to engage in the business of prepaid health care financing without a license granted by EISA. Illegal prepaid activities are subject to sanctions established in this Law without prejudice to sanctions established in other laws and regulations.

The PHC shall identify itself in all documents with the name of the PHC and the number and date of its license and registration number in EISA's Registry of Licensed PHCs.

#### **Article (7). PHC Board of Directors**

The Board of Directors of the PHC shall include two members with relevant experience as specified in "fit-and-proper" requirements by the Executive Regulations. The executive manager of the PHC can be one of the qualified members of the Board or the Board can hire a qualified third person hired to this effect. In this case the executive or general manager participates in the deliberations of the Board with voice and no vote.

The PHC, using EISA's standard forms, shall inform EISA of the names and qualifications of the members of the Board of Directors, executive and general manager and other key personnel determined in the instructions issued by EISA within 30 days of the date of the aforementioned decision.

EISA, in a decision indicating the causes, may object to the nomination of any of the members within 15 days as of the date of being informed thereof for reasons of probity or any legal impediment. The objected party will have 10 days to obtain revision of the decision.

The elapse of a period of 15 days as of the day of informing EISA of the decision without EISA's contesting thereto shall thereby be deemed as an approval.

#### **Article (8). Technical reserves and solvency margin**

PHCs are required by law and following instructions issued by EISA to have a solvency position that is sufficient to fulfill its obligations to policyholders and other parties. EISA's instructions on solvency margin should be developed specifically for the type of business and the financial risk incurred by the PHCs.

Prudential requirements on reserves and solvency margin issued by EISA will be based on the following criteria:

- ◆ The standards for the establishment of technical reserves (technical provisions) representing the liabilities assumed with subscribers and beneficiaries and health care providers and suppliers have to be objective, consistent and comparable among the PHCs. The main reserves should correspond to “loss reserves” and should include provisions for claims incurred but not reported.
- ◆ Outstanding claims to be calculated into the technical reserves should include claims to be paid, claims under processing, and claims under scrutiny. Subscription income received in excess, subscriptions paid in anticipation and subscriptions to be regularized are also part of the technical reserves calculations.
- ◆ “Loss Reserves” safeguard commitments assumed directly with subscribers and beneficiaries. Commitments with health care providers, the “loss reserves” consider the liabilities for health care goods and services already rendered.

Assets/Investments supporting technical reserves and solvency margin shall follow investment regimes established by EISA and valued in accordance with accounting practices.

Prudential directives regarding the management of investments should address, but may not be limited to, the mixture and diversification by type of investment; limits or restrictions on the amount that may be held in particular types of financial instruments, property, and receivables; the safekeeping and custody of assets; the appropriate matching of assets and liabilities; and the level of liquidity. Because investment portfolios carry a range of investment-related risks that might affect the coverage of technical provisions and the solvency margin, PHCs need to identify, measure, report and control the main risks to EISA.

The detailed formulation of an investment management policy and internal risk control methodology is, in the end, the responsibility of the board of directors of the PHC.

#### **Article (9) Non-financial registries**

The company shall keep the following records in conformity with instructions for each to be issued by EISA:

- ◆ Health plans registry: to record the contracts and documents concluded with subscribers and beneficiaries.
- ◆ Registry of health care providers and suppliers with indication of their respective licenses, accreditation, certification and permits, as appropriate.
- ◆ Registry of intermediaries: It shall include the names and EISA's registration numbers of the intermediaries who act as intermediaries in concluding contracts and issuing documents.
- ◆ Registry of claims: it shall include claims presented to the company, the date of submitting the claims, the name and address of the beneficiary, the estimated cost of

the claim for each case and the date of paying the claim. In case the company declines to cover the claim, the book shall comprise the date and the reason for issuing such a decision.

#### **Article (10). Reporting**

PHCs shall submit to EISA quarterly and annual reports ratified by the Chairman of the Board of Directors and the Chief Financial Officer for which they assume legal responsibilities. The format, content, and periodicity of the reports shall follow directives by EISA and shall include, among others, balance sheet, income, claims, technical reserves and solvency margin, reflecting the financial status of the PHC. EISA may require actuarial analysis if the volume of operations of the PHC justifies it.

#### **Article (11). Auditing**

Without prejudice to the right of EISA to review books and registers as financial supervisor, EISA shall periodically audit the books, registers and transactions of the PHCs to safeguard the financial stability, adherence to the provisions of this law and its regulations and the compliance to corporate governance and financial best practices.

EISA may undergo comprehensive auditing of the financial transactions of PHCs if for any reason EISA came under the impression that policyholders' financial interests and beneficiaries' rights could be undermined; that the PHC appear to be unable to cover the liabilities; that the corporate and financial practices detected by EISA through regular off-site review of books and on-site inspections seems to be injurious to the health care financing market; and that the company has violated any of the provisions of this law.

Same procedures may be undertaken upon the request of the shareholders possessing at least one tenth of the capital of the PHC.

The relevant company shall provide EISA with all required information, data and documents during the auditing procedures. The inspection shall be carried out according to the procedures stipulated by the Executive Regulation of the present law.

#### **Article (12). Enforcement Interventions**

EISA can use any one or more of the following enforcement tools if auditing and inspections reveal that the PHC is conducting business or it is engaged in practices that are against the provisions of this Law and its regulations:

- ◆ Restricting the business paid health care financing activities
- ◆ Stopping or withholding approval for the writing of new health insurance or prepaid health plans
- ◆ Directing to discontinue practices that are unsafe, unsound or improper
- ◆ Putting the assets of the PHC in trust or restricting disposal of those assets.
- ◆ Suspending license

- ◆ Written warning on the performance of questionable activities or practices
- ◆ Imposing fines
- ◆ Managerial intervention via a temporary observer designated by EISA or the appointment of an Intervening Administrator to temporarily correct and manage the private health care financing entity
- ◆ Barring individuals from the business of prepaid health care financing
- ◆ Revocation of license, which entails the liquidation of the private health care financing entity

### **Article (13). Supervisory Intervention**

EISA shall be entitled to prevent the company from approving new transactions or renewing current ones for at least one month and for a maximum period of one year if any of the following two cases occurs:

- ◆ The company is practicing its activities in a way contrary to the terms and conditions stated in the license.
- ◆ If the company violates the medical insurance and healthcare plan or the rate list of the services certified by EISA.

EISA shall cancel the activity cessation decision once it verifies that the reasons for such a decision were eliminated. Should the suspension period elapse without the company taking procedures to eliminate infringements or should the company repeat the irregularities that brought about the suspension decision, EISA then shall cancel the registration of the company and practice license in compliance with the provisions mentioned in Article 21 of this law.

### **Article (14). Mergers and Transfers**

Mergers of PHCs shall be approved by EISA. EISA shall issue instructions for processing merger requests. The main role of EISA will be to ensure that financial stability of the proposed merger, that the interests of subscribers and beneficiaries are protected, and that the terms and conditions of the signed health care plans are respected.

Transfers of all or part of a PHCs assets and liabilities, health plans included, in the Arab Republic of Egypt to one or more other PHCs shall be approved by EISA in accordance with instructions to this effect issued by EISA.

Applications for mergers and transfers shall be published in the Egyptian Gazette and two other widely circulated newspaper according to the provisions stipulated by EISA.

The application shall solicit comments from the parties concerned to be referred to EISA within a maximum of three months as of the date of publication.

Decisions by EISA shall be published in the *Egyptian Gazette* and shall become legal decisions that can be used as evidence in a court of law.

Mergers and transfers shall take place in compliance with the provisions of transference of property and funds cession. The transferred funds shall be exempted from stamp tax, registration and archiving charges.

#### **Article (15). Cessation of prepaid financing activities**

A PHC intending to halt all or part of the prepaid financing and delivery activities and release all or part of the funds thereof shall submit a request for approval to EISA, together with the following documents:

1. Documented evidence that the PHC has relieved itself completely and entirely from all its liabilities towards the subscribers of health care plans and has transferred all its transactions to another insurance company subject to the provisions of this law and in compliance with the instructions and approval of EISA.
2. A document proving that the company has, in two daily widely circulating newspapers, an announcement published at least three times provided that a time span of 15 days should elapse before posting the announcement again. The announcement shall state that the company has decided to submit a request to EISA to release all or part of the funds of the company after the elapse of the period of three months as of the date of the last announcement. The announcement shall call upon the subscribers, the beneficiaries and other parties concerned to come forward with any protest to EISA and set the deadline for protesting on the aforementioned day of presenting the application.

EISA shall decide on the request if there are no objections to the request within the indicated period of presenting protests.

If a protest is submitted during the aforementioned period, no decision shall be taken save after reaching an agreement or a final ruling concerning the protest. Nevertheless, the Chairman of EISA may order the release of the funds of the company on the condition that the company keeps a reserves amount that covers the liabilities of the company towards the protester including the expenses necessary to keep any of the assets of the company to EISA's satisfaction.

#### **Article (16). License cancellation**

The license to practice part or all of the prepaid health care financing activities shall be cancelled in the following cases:

- ◆ If the license was illegally acquired.
- ◆ If the PHC is not constituted in accordance with the law.
- ◆ If the PHC does not maintain the capital and reserves as required by EISA.
- ◆ If the company persisted in breaching the provisions of this law, the Executive Regulations or the instructions, directives and guidelines issued by EISA.
- ◆ If EISA determines that the company is unable to cover its liabilities.

- ◆ If the PCH recurrently hires or contracts health care providers and suppliers that do not meet licensing and other requirements set forth by the Ministry of Health and Population.
- ◆ If EISA establishes that the PHC recurrently neglects paying the due claims and has repetitively had unjustifiable dispute over sound claims.
- ◆ If the company does not submit records and documents for auditing and review by EISA or its auditors, or if the company refuses to offer the records and the data that should be presented according to the provisions of the law despite being served more than once with a written request to comply for three months.
- ◆ If an approval was issued to a PHC to transfer all the contracts, documents and accrued liabilities of the company in the Arabic Republic of Egypt to another PHC company.
- ◆ If the company ceased all its activities in the Arab Republic of Egypt and released its funds in concert with the provisions of the present law.
- ◆ If a court ruling was issued establishing the bankruptcy of a PHC.
- ◆ If the PHC breaches any of the conditions of the license and does not attempt to amend such breach despite being asked more than once to adjust its course of action during a period set forth by the Executive Regulations of the present law.

No decision of writing off or revoking the practice license of a PHC shall be issued without notifying the company using a registered letter requesting it to provide in writing its defense within one month as of the date of notification. A decision to write off and revoke partially or fully the license shall be issued by the Board of Directors of EISA and shall be ratified by the competent Minister to be published in the *Egyptian Gazette*.

In all circumstances the company whose registration and practice license were written off shall not dispense with any of its funds and shall refrain from conducted any transactions that is not expressly approved by EISA.

The Chairman of the Board of Directors of EISA may allow the company to conduct the current transactions that are underway at the time of registration and practice license revoking according to the conditions specified by the Chairman for such purpose. The Chairman may decide to close down the company with the approval of the Board of Directors of EISA.

The liquidation of the PHC shall be executed in compliance with the rules stipulated in the instructions issued by EISA. A liquidator shall be appointed by EISA to carry out the liquidation procedures to guarantee, to the extent possible, the full satisfaction of the obligations and liabilities of the PHC.

#### **Article (17). Trade associations**

PHCs may establish a union or a trade association to represent their business and corporate interests, assist in developing corporate governance, transparency and accountability, and in improving and upgrading the scope and quality of the prepaid health care financing and delivery, and serve as body for the collection, analysis and publication of data; strengthening ties with

similar unions and associations abroad, perform as a self-regulatory organization for its members and, in general, undertake any other lawful matters of interest to the members.

#### **Article (18). Dispute resolution**

EISA shall set up a procedure for administrative conflict resolution between PHCs and health care providers and subscribers and beneficiaries regarding legal and financial issues in the respective contracts and health care plans, including coverage of predetermined health care goods and services without prejudice to the rights of the parties to resort to arbitration or litigation according to the situation. EISA shall issue instructions on instructions for conflict resolution. EISA does not have competence over health care malpractice and clinical issues.

#### **Article (19). Health care plans disclosure**

Subscribers and beneficiaries of health care plans offered by PHCs are entitled to obtain, and the PHC has the obligation to make available, the full content of the health plans including all benefits, exclusions and other financial and service limitations. Misleading information or statement and faulty data shall constitute a violation of the conditions of the license and subject to sanctions by EISA.

#### **Article (20). Sanctions**

Subject to imprisonment and/or payment of fines, as appropriate, in accordance with directives issued by EISA, at least five thousand Egyptian Pounds any natural or legal person for:

- ◆ Making false statements in application for a license
- ◆ Conducting prepaid health care financing business without license or registration
- ◆ Incorrect declaration or refusal of providing information
- ◆ Violation of laws and regulations
- ◆ Refusal of implementation of measures prescribed by EISA
- ◆ Violation of professional secrets
- ◆ Illegal investments
- ◆ Illegal inter-company transactions
- ◆ Failure to submit or to submit in due time a copy of the auditors report
- ◆ Failure to give information or to give correct or complete information or to supply it in due time
- ◆ Not giving required notice on insolvency
- ◆ Misrepresenting or concealing actual financial situation
- ◆ Proposing or authorizing distribution of profits in violation of law or the approved business plan
- ◆ Violation of the business plan by carrying on business not envisaged in the business plan
- ◆ Any conduct endangering solvency
- ◆ Violation of provisions regarding technical provisions.
- ◆ Violation of by-laws concerning the establishment and principles of operation

◆ Fictitious balance sheets

### **Explanatory Notes on the Draft Law on Private Prepaid Health Care Financing**

*Insurance activities in Egypt are governed by Law no. (10) of 1981 on the supervision and control of insurance and by its Executive Regulations. Among the insurance products is medical treatment or health insurance. Recently, the issue of natural and legal persons contracting medical service providers to offer medical and health care financing has been discussed. Such discussions led to examining the status of health care providers involved in health care financing to consider whether they would be legally considered as insurers in the services offered and hence being subject to the Laws and Provisions of the Law of Control and Supervision of Insurance stipulated in Law no. (10) of 1981.*

*Furthermore, it has been decided that providers of such financial and health care services shall not be considered on par with insurance companies and consequently shall not be subject to the provisions of Law no (10) of 1981 previously mentioned; because the performance in the contracts concluded by such providers is not financial performance according to its definition in Article no.747 in the Civil Code.*

*Due to the growing presence of new private prepaid health care financiers and providers of health care services, the fact that some foreign insurance brokers are also involved in offering health care financing different from the traditional health insurance contracts, the practice of some health care facilities to engage in unlicensed health care insurance activities, and the increasing applications to EISA to license medical insurance activities separated from insurance companies, it was decided to consider stipulating a new legal framework for prepaid health care financing as a special and specialized type of insurance that is different from indemnity health insurance. The new legislation regulates the activities of Prepaid Health Care Companies and renders them subject to the supervision and control of EISA in legal and financial matters and to the Ministry of Health and Population in health and health care providers and suppliers matters.*

**(Note:** The following paragraphs needs to be re-written after completion of the Draft law)

The proposed draft is made of the Articles of Promulgation and 25 proposed articles. Article no. (1) has determined the range of the application of the law and excluded the medical treatment and healthcare insurance services provided by governmental organization and trade unions. Article no.(2) has prescribed the requirements and prerequisites that should be available in any facility that provides medical insurance and healthcare services. Article no.(2) has, also, stated that such facility should take the form of a joint stock company with a minimum capital of five million Egyptian Pounds. Such amount has been specified to safeguard that the insurance service provider financial capacity would be appropriate and allow it to continue practicing its activities in the medical insurance and healthcare services. The set capital, furthermore, would prevent any small entity from introducing its services in the market thus hindering EISA from undertaking its supervisory role effectively. On the other hand, Articles no. (3), (4) and (5) have dealt with: the necessary measures to be taken to establish a company that would practice medical insurance and healthcare services and the method of registration and licensing. Article no.(6) has specified a condition that the board of directors of the company should comprise two members with relevant

experience who would act as executive managers. Article no (6), moreover, has compelled the company to report to EISA all the decisions concerning the nomination of the board of directors and executive managers.

Article no.(7) has stipulated that the company must include on all the documents its issue the number of the practice license. In addition, the aforementioned article stated that the company must inform the EISA with all the modifications or changes that are introduced to the registration and practice license data ratified by EISA. The company under such provision is responsible of notifying the customers with such modifications and changes that were approved by EISA.

Articles no. (9) and (10) have stated that the company must form the technical reserves necessary to match its liabilities. The company, under the previously mentioned articles, is required to determine the nature of such reserves (allot such reserves). Such reserves, under articles (9) and (10) are never subject to sequestration except after sequestering all other funds of the company.

Article no.(11) has indicated that the company should invest the allotted reserves in the channels and ratios determined by the Executive Regulations.

Article no.(12) has stipulated that the values of the asset of the company should be above the total value of its liabilities at a rate of 20% of the net premiums of the past year.

Article no. (13) has held the company responsible to submit to EISA samples of all forms of the contracts, individual and collective policies, rates and conditions and any introduced amendment to be reviewed in the light of the studies conducted to ensure fair rating.

Article no. (14) has specified the books and registers that the company should keep. Meanwhile Article no.(15) has mentioned that the company should submit a quarterly and an annual reports on its activities to prove that the balance sheet, profits and losses, incomes and outgo, technical reserves and financial provisions matching the liabilities of the company have been compiled according to sound standards and such information reflect the actual financial status of the company.

On the other hand, Article no. (17) has shown the measures and procedures EISA should follow in cases: the results of reviewing the transactions of the company proved that it is defaulting , its practices are injurious to the marker or if it was found in breach of any provisions of this law.

Article no.(18) has permitted EISA to bar any company from accepting any new transactions or renewing any current ones for at least one month and for a maximum of one year in case: the company is found to practice any activity in a method contrary to the terms and conditions of the license, or the company violated medical insurance and healthcare service laws or the rates lists approved by EISA.

Article no. (19) has specified the procedures that should be undertaken by the company if it intends to transfer all the contracts it concluded, all the policies it issued and all the incurred liabilities to one or more insurance company. Meanwhile, Article no. (20) has indicated the actions that should be carried out by the company once it decides to cease all its transactions and release part or all of its capital.

Article no. (21) has set forth the cases where EISA is entitled to write off the registration of the company and revoke its practice license partially or fully. The said article also explained the procedures to be taken in that case and the repercussions of such article.

Article no. (22) has allowed the companies governed by this law to form a union or an assisting body with the aim of improving and upgrading the services provided. On the other hand, Article no. (23) has permitted the assured, policyholders and beneficiaries of medical treatment and healthcare insurance to resort to EISA to settle any dispute that may arise between them and the insurance companies without prejudice to their right to litigation and arbitration according to the

situation. The said article has specified the Executive Regulations to be the reference for the provisions regulating dispute settling.

Article no. (24) has allowed any beneficiary of medical treatment and healthcare insurance to obtain from the contracting company or the original issuer of the policy a cover note including all the provisions accorded to the beneficiary.

Finally Article no. (25) has specified the penalties for anyone who violates the provision of this law. The article, also, has stipulated that a criminal action should be filed upon a written application submitted by EISA stating the reason for filing such criminal law suit. The article allowed for the conciliation with the violating party in return of paying part or the entire prescribed fine as long as no court ruling was passed in the criminal law suit.

The draft law was prepared and submitted to the Legislation Unit of the Supreme Administrative Court that approved it. The Minister of Investment is thereby honored to submit the draft of the Law to the President of the Republic. In case of approving the draft, kindly sign the draft in preparation of submitting it to the People's Assembly (Parliament).

Minister of Investment, Mahammoud Muhyeddin

## ANNEX 5. COMMENTS BY EISA TO BP SUGGESTIONS FOR A DRAFT LAW ON PREPAY HEALTH CARE FINANCING AND BP OBSERVATIONS TO THE COMMENTS

(Note: EISA comments received after the June mission to Cairo are included *verbatim* in the left hand column and BP observations are indicated in the right side column)

<b>EISA's Comments on BP Suggestions For Law Draft On Pre-Paid Health Care Financing and BP Observations (July 2006)</b>	
<b>EISA Comment</b>	<b>BP Observations</b>
<p><b>Article (2)</b> (2<sup>nd</sup> para.) Government organizations and trade unions providing the same aforementioned services shall be exempted from the provision of this law.</p> <ul style="list-style-type: none"> <li>• <i>Why shall Government organizations and trade unions providing the same aforementioned services be exempted from the provision of this law.</i></li> <li>• <i>What is the scope of the law for syndicates?</i></li> </ul>	<p>In principle, any type of organization involved in prepay financing activity should be subject to the common rules and regulations. In the draft prepared by EISA, trade unions and governmental organizations were excluded from the common prepay legislation, supervision and regulation. One option is to allow trade unions to conduct their financial activity, only with registration with EISA, for as long as their provide financial services to their members and family members. The moment the trade union or syndicate opens enrolment to other persons, then their enter into the business of prepay health care financing and should be subject to licensing and all the financial and clinical requirement as the rst of the companies in the business. Otherwise, the coherence of the supervisory and regulatory system for prepay health care financing is fragmented and there is room for unfair competition.</p>
<p><b>Article (3)</b> A minimum issued capital of (xxxxx)million.....etc <i>It will be L.E 2 million to L.E 5 million ( it 'll be discussed later).</i></p>	<p>To be discussed. What is important is to agree on a minimum capital requirement that is significant to ensure that solid companies enter into the market.</p>
<p><b>Article (5)</b> (item 6) EISA shall not require approval of the contracts and health plans. <i>EISA is supposed to approve the standard contract .</i></p>	<p>Yes, EISA should approve the standard contract. The question to debate is if EISA should also register the variety of contracts and the health plans attached to them. In some jurisdictions, the supervisor does register</p>
<p><b>Article (6)</b> (2<sup>nd</sup> para) If the company is not formed in a period of three months, the license will be automatically revoked.</p> <ul style="list-style-type: none"> <li>• <i>Amending the period of three months to six months.</i></li> </ul>	<p>In agreement. The next draft should indicate six months instead of three months.</p>
<p><b>Article (8)</b></p> <ul style="list-style-type: none"> <li>• <i>The limits of technical provisions should be specified.</i></li> </ul>	<p>Yes to both issues. Both need to be developed in the next draft.</p>

<b>EISA's Comments on BP Suggestions For Law Draft On Pre-Paid Health Care Financing and BP Observations (July 2006)</b>	
<b>EISA Comment</b>	<b>BP Observations</b>
<ul style="list-style-type: none"> <li>• <i>EISA should approve the investment policy of companies.</i></li> </ul>	
<p><b>Article (13):</b> (item 2)                      If the company violated the medical insurance and health plan.  <i>Is there interference between the role of EISA and the Ministry of Health?</i></p>	Health plans have two sides, like a coin. On the one side are the financial obligations related to the package of services contracted, and these issues are usually the concern of the financial supervisor; the other, refers to the clinical content of the health plans and the quality of the care providers, and these issues are usually the concern of the health supervisor, the Ministry of Health
<p><b>Article (16) ( the last para.)</b>  <b>Independent articles should be added on:</b></p> <ul style="list-style-type: none"> <li>• <b>Liquidation</b></li> <li>• <b>Brokers</b></li> <li>• <b>Financial managers requirements (Fit &amp; proper).</b></li> </ul>	In agreement. This should be done for the next draft.
<p><b>Article (18)</b>  <i>Independent committee should be formed for dispute resolution, including in its membership members from EISA, the Chamber of Commerce or syndicate and independent expert.</i></p>	In agreement. The Independent Dispute Resolution Committee should be included in the next draft of the law. The composition of the Committee needs to ensure objectivity. It should include members from EISA, the Ministry of Health and Population, and independent financial and clinical experts that are not related to prepay financing business or industry. The participation of the Chamber of Commerce perhaps should be left open to discussion.