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Egypt

Lending & Secured Finance

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This country-specific Q&A provides an overview of lending & secured finance laws and regulations applicable in Egypt.

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Egypt: Lending & Secured Finance

1. Do foreign lenders or non-bank lenders require a licence/regulatory approval to lend into your jurisdiction or take the benefit of security over assets located in your jurisdiction?

There are no specific requirements for non-resident foreign lenders or non-bank lenders to lend into Egypt. All regulatory requirements concerning the activities of lending are addressed to Egyptian banks or resident entities. Although, there are certain requirements in case the foreign financial institution is taking security on the assets of a resident borrower as further illustrated below.

There are certain theoretical considerations for any foreign financial institution, although these do not present any material risk from a practical perspective. According to the Banking Law no. 194 of 2020 (the "**Banking Law**"), only banks licensed by the CBE are permitted to practice banking activities in Egypt. This includes lending on a recurrent basis, accepting deposits, and other banking activities as defined in the Banking Law. In this regard, article 63 of the Banking Law stipulates that:

"Any person, natural or juridical, not registered pursuant to the provisions of this chapter, shall be prohibited from exercising any banking activity, with the exclusion of public legal persons exercising any of such business within the limits of the deed of their establishment [...]"

In applying the provisions of this article, banking activity is defined under the Banking Law as *"any activity comprising, basically and habitually, the acceptance of deposits, the obtainment of finance, and the investment of these funds in providing finance and credit facilities and contributing to the capital of companies, as well all what is considered by banking customs a type of banking activities"*.

The Commercial Code no. 17 of 1999 (the "**Commercial Code**") regulates banking activities in Chapter 3, which are:

1. Monetary Deposits;
2. Debentures Deposits;
3. Safes Letting;
4. Securities Pawning;
5. Bank Transfer;
6. Ordinary Bank Credit;

7. Documentary Credit;
8. Discount;
9. Letter of Guarantee; and
10. Current Account.

The law does not provide any definition of the "recurrence" element mentioned under article 63 of the Banking Law. As a matter of practice, it is common for foreign banks and financial institutions to lend into Egypt, with a counterparty borrower resident in Egypt and against assets located in Egypt. Transactions in which an Egyptian bank is borrowing from a foreign financial institution or bank is commonplace, as well as transactions where Egyptian banks participate in a syndicate of foreign financial institutions to lend an Egyptian entity. International lenders and financial institutions usually provide financing to high-net-worth individuals, Egyptian entities, and governmental authorities, without these financial institutions having any resident presence in Egypt.

Foreign banks and financial institutions can take security over certain types of assets located in Egypt, subject to specific legal parameters. These include security over movables according to the Movables Collaterals Law, real estate mortgage, and shares pledge.

Article 106 of the Banking Law allows foreign banks and international financial institutions to take security over *fonds de commerce* or movable collateral provided they are so authorized by the Central Bank of Egypt (the "**CBE**"). Foreign entities can also take security in the form of shares pledge and real estate mortgages. There might be documents required from the foreign entity pertaining to the fact that it is not resident in Egypt, although the principle is there by law to take these security benefits.

2. Are there any laws or regulations limiting the amount of interest that can be charged by lenders?

There is general cap of 7% on interest according to article 226 of the Civil Code. Furthermore, article 64 of the Commercial Code provides that the total amount of interest on a debt must not exceed the principal amount of the debt. Although, Egyptian banks are exempted from these restrictions pursuant to article 88 of the Banking Law. According to the Banking Law, Egyptian banks may

determine the interest rates applicable to their banking transactions having regard to the nature of said transactions, without being restricted by any caps or provisions under other laws, and without prejudice to the soundness of the financial status of the concerned bank as well as competition and antitrust regulation. Banks shall further disclose their actual interest rates and banking services fees to their clients.

Non-bank lenders do not benefit from article 88 of the Banking Law. Foreign lenders usually lend based on instruments governed by foreign laws to avoid being required to comply with the mentioned restrictions.

3. Are there any laws or regulations relating to the disbursement of foreign currency loan proceeds into, or the repayment of principal, interest or fees in foreign currency from, your jurisdiction?

There are no express legal provisions that restrict the disbursement or repayment of loans in foreign currency. Cross-border payments must be conducted through banks or other entities authorized under the Banking Law and the regulations of the CBE. As per the Banking Law, each natural or juristic person shall have the right to: (i) maintain and preserve foreign currency; and (ii) undertake any transaction in foreign currency including onshore and offshore transfers.

4. Can security be taken over the following types of asset: i. real property (land), plant and machinery; ii. equipment; iii. inventory; iv. receivables; and v. shares in companies incorporated in your jurisdiction. If so, what is the procedure – and can such security be created under a foreign law governed document?

Under Egyptian law, security may be taken over real property (land), plant, machinery and equipment and other movable assets as well as shares and financial instruments.

For the perfection of a real estate mortgage, an application shall be submitted to the competent Notary Public office where the concerned property is located, along with the loan agreement and title deed. The notary verifies the accuracy of the coordinates of the real property in light of its title deed and must respond within one week for Egyptian law entities and fifteen days for their non-Egyptian law counterparts. The acceptance or rejection of the application shall be notified to the

applicant by virtue of registered mail.

The perfection of tangible and intangible movable property (being machinery, equipment, inventory, receivables, trademark, *clientele* basis and the like), may take the form of a *fonds de commerce* mortgage according to the *Fonds de Commerce* Law no. 11 of 1940 or pursuant to the Movable Collateral Law no. 115 of 2015 (the "**Movable Collateral Law**"). Under a *fonds de commerce*, the mortgage is perfected through a notarized contract which lists the mortgaged assets and the details of the debt. The notarized contract must be then annotated in the Commercial Registry office within fifteen days from the signing date of the contract.

The movable collaterals scheme under the Movable Collateral Law shall be registered online by uploading the movable collateral contract in the Egyptian Collateral Registry (the "**ECR**"). The pledgee files the relevant electronic form which includes stating the principal information provided under the movable collateral agreement and payment of the necessary fees.

Upon completion of proper registration, both *fonds de commerce* and movable collaterals are deemed enforceable *vis-à-vis* third parties. The mortgage enjoys priority and supersedes all other mortgage rights registered afterwards.

Foreign banks and international financial institutions may take security such as *fonds de commerce* or movable collateral, subject to obtaining a license from the CBE in accordance with the Banking Law.

Pledge of Shares and other financial instruments are regulate under article 51 bis 1 of the Central Depository Law no. 93 of 2000. An agreement to pledge shares must be in writing, date attested and includes a determination of the pledged property (it suffices if the pledge is registered in the pledgor's registers at a central depository and registry company (often Misr for Central Clearing Depository and Registry (the **MCDR**)) to be deemed binding and enforceable *vis-à-vis* third parties.

Generally, Egyptian law gives contracting parties the liberty to agree on a foreign law to govern their agreement so long as it does not contravene with public policy and morals. However, security taking is always subject to necessary formalities to ensure that it is enforceable and enjoys priority according to the Egyptian law. These formalities cannot be completed if the agreement is governed by a foreign law.

5. Can a company that is incorporated in your jurisdiction grant security over its future assets or for future obligations?

Article 1033 of the Egyptian Civil Code no. 131 of 1948 (the "ECC") restricts giving real estate mortgage over an asset that is not yet owned by the mortgagor. This gives protection to the mortgagee against any mortgage that does not identify properly the mortgaged asset. Nonetheless, the Movable Collateral Law allows the perfection of a security over future movables, debts and obligations (including cash flow and receivables). The Movable Collateral Law defines future movable as: *"tangible movable whose existence is anticipated in the future to be owned by the debtor or the security giver in the normal course of business"*.

6. Can a single security agreement be used to take security over all of a company's assets or are separate agreements required in relation to each type of asset?

Egyptian law does not adopt the concept of a floating charge over a group of changing or non-constant assets. Each asset must be identified in the security agreement to allow proper enforcement proceedings on the asset. For a security under the Movable Collateral Law or *fonds de commerce*, the assets need to be listed in the agreement as an annex that provides details sufficient to identify the asset.

7. Are there any notarisation or legalisation requirements in your jurisdiction? If so, what is the process for execution?

We refer to paragraph 4 above.

8. Are there any security registration requirements in your jurisdiction?

We refer to paragraph 4 above.

9. Are there any material costs that lenders should be aware of when structuring deals (for example, stamp duty on security, notarial fees, registration costs or any other charges or duties), either at the outset or upon enforcement? If so, what are the costs and what are the approaches

lenders typically take in respect of such costs (e.g. upstamping)?

Real estate mortgage registration fees vary based on the value of the mortgaged property, whereby registration fees are capped at the following rates:

EGP 100,000 for mortgage property exceeding a value of EGP 30,000,000.

EGP 75,000 for mortgage property not exceeding a value of EGP 30,000,000.

EGP 50,000 for mortgage property not exceeding a value of EGP 20,000,000.

EGP 15,000 for mortgage property not exceeding a value of EGP 10,000,000.

Although, these caps on mortgage fees are for the benefit of the Egyptian banks. Foreign lenders and non-bank lenders do not enjoy this benefit unless an Egyptian bank is engaged as a security agent.

In a pledge of shares, there is a fixed fee of EGP 200 payable to MCDR. As for movable collaterals, the ECR registration fees are capped at EGP 500.

There is also a nominal stamp tax payable on legal documents, and deeds being notarized (around 90 piasters per page). Pursuant to article (3) of the Stamp Duty Law no. 111 of 1980, stamp duty is payable in case of using a document in the Arab Republic of Egypt where such document has been executed abroad. The term "use" is defined under the aforementioned law as the direct usage of such document in order to proceed with any act resulting in or intending to produce any legal effect. The user of the document is responsible to bear the amount of the stamp duty in this regard.

10. Can a company guarantee or secure the obligations of another group company; are there limitations in this regard, including for example corporate benefit concerns?

Corporate guarantees from a company to another group company are permitted under Egyptian law and quite customary in financing transactions. However, pursuant to article 96 of the Companies Law no. 159 of 1981 (the "Companies Law"), an Egyptian company may not guarantee any loan entered into by its board members with other parties. Any agreement entered into in violation of such rule shall be deemed void.

11. Are there any restrictions against providing guarantees and/or security to support borrowings incurred for the purposes of acquiring directly or indirectly: (i) shares of the company; (ii) shares of any company which directly or indirectly owns shares in the company; or (iii) shares in a related company?

Acquisition finance is an issue that is regulated by the CBE. The total financing value provided by Egyptian banks under one acquisition finance transaction shall not exceed 50% of the value of the transaction, and in case the bank desires to exceed such limit, it shall obtain the approval of the CBE.

Furthermore, The CBE generally requires that the total financing value provided by banks to its customers not to exceed 2.5% of the total loan portfolio of the bank, and the financing provided for one customer and all its related parties must not exceed 0.5% of the total loan portfolio of the bank.

12. Can lenders in a syndicate appoint a trustee or agent to (i) hold security on the syndicate's behalf, (ii) enforce the syndicate's rights under the loan documentation and (iii) apply any enforcement proceeds to the claims of all lenders in the syndicate?

Egyptian law does not recognize the concept of trust or a security agency *per se*. Although, the concept of security agency is adopted in many transactions and can be characterized under the general rules of agency in law. Usually, a security agent enters into a security agency agreement with the lenders, and accordingly executes the security documents on their behalf and holds it for their benefit. In case of default by the borrower, the security agent follows the instructions of the lenders to initiate enforcement procedures on their behalf.

13. If your jurisdiction does not recognise the role of an agent or trustee, are there any other ways to achieve the same effect and avoid individual lenders having to enforce their security separately?

We refer to paragraph 12 above.

14. Do the courts in your jurisdiction generally

give effect to the choice of other laws (in particular, English law) to govern the terms of any agreement entered into by a company incorporated in your jurisdiction?

The choice of foreign law to govern any finance documents is valid and effective under Egyptian law. An Egyptian court would give effect to such choice of law in any action, suit or proceeding arising out of the agreements, except to the extent that such law conflicts with Egyptian public policy.

15. Do the courts in your jurisdiction generally enforce the judgments of courts in other jurisdictions (in particular, English and US courts) and is your country a member of The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (i.e. the New York Arbitration Convention)?

The Egyptian Civil and Commercial Procedures Law no. 13 of 1968 regulates the recognition and enforcement procedures of foreign court rulings in Egypt. In order to enforce a foreign court ruling, it must obtain an exequatur, an enforcement order. A court of law will only issue an enforcement order if the foreign court ruling meets the below:

- a. Egyptian courts do not have competence to hear such dispute, and the foreign court that has issued said ruling has competence to decide on the dispute matter.
- b. All parties involved in the proceedings are duly notified and represented in the proceedings.
- c. The ruling in question is considered final according to the laws of the court that has issued it.
- d. The ruling does not conflict with any existing rulings or orders rendered by Egyptian courts and does not violate public policy or morality in Egypt.

Foreign court rulings, consequently, will be enforced, having regard to the same conditions Egyptian court rulings and orders are given, in such jurisdiction (principle of reciprocity).

The Arab Republic of Egypt is a signatory to the New York Convention for the Enforcement of Arbitral Awards. Further, pursuant to the Arbitration Law no. 27 of 1994, international arbitral awards are enforceable in the Arab Republic of Egypt. The following documents must however accompany the application for enforcement:

- a. the original award or a signed copy;
- b. a copy of the arbitration agreement;
- c. an Arabic translation of the award, authenticated by the competent authority if the award was not issued in Arabic;
- d. a copy of the minutes evidencing the deposit of the award with the competent court in the Arab Republic of Egypt (usually the Cairo High Court of Appeals); and
- e. a copy of the notification of the award to the party against whom the award has been made

16. What (briefly) is the insolvency process in your jurisdiction?

Egyptian law connotes a different meaning to insolvency, which is a scheme that applies to individuals (not a trader or business). Pursuant to the ECC, an individual debtor may be declared insolvent if their moneys are not sufficient to cover their outstanding debts. The latter is to be issued by virtue of a court order based on the debtor's request themselves or any of their creditors.

Bankruptcy, which is the scheme that applies to traders and businesses, are regulated under the Bankruptcy Law no. 11 of 2018 (the "**Bankruptcy Law**"). Any trader or business that defaults in paying its commercial debts as a result of financial distresses, can be declared bankrupt by a court of law. Bankruptcy may be declared based on a petition by the trader itself, any of its creditors, the public prosecution, or a court of law – acting without petition in a case – that deems it necessary to rule that a company or business is bankrupt.

17. What impact does the insolvency process have on the ability of a lender to enforce its rights as a secured party over the security?

Upon the issuance of a court ruling declaring bankruptcy, (a) the bankrupt will no more be entitled to manage its financial affairs or dispose thereof. Unlike secured creditors, ordinary creditors and creditors with public liens may not initiate individual claims against the bankruptcy assets or take any other procedures against these; (b) all cash debts of the bankrupt shall become payable, be these ordinary or secured debts; and (c) the interest accrued on ordinary debts shall be deemed suspended. Nonetheless, the bankrupt may, upon the permission of the court, start a new business using money other than the bankruptcy assets. Any creditors associated therewith shall have priority over other creditors.

During bankruptcy proceedings, it is common that the assets are insufficient to satisfy all claims of the creditors whilst keeping the business intact. Therefore, the order or priority in which different claims are addressed becomes crucial. Generally, claims are prioritized in the following manner:

- a. judicial expenses;
- b. public treasury claims;
- c. expenses related to the preservation and repairs of the bankrupt's assets;
- d. general privileges (which include wages of employees);
- e. special privileges (for instance debts related to agricultural expenses and tools, arrears owing to lessors or hotel owners, and payment due to sellers of movables); and
- f. special privileges over real property (the priority of the claim of a real property ranks as of the date of registration and is followed by architects, contractors and co-real property owners' claims).

18. Please comment on transactions voidable upon insolvency.

Any debt transactions, subject to court rulings issued subsequent to the declaration of bankruptcy, shall be deemed unenforceable *vis-à-vis* the creditors. Further, the following actions shall be deemed unenforceable, if taken subsequent to the date in which the business defaults in payment and prior to the court ruling of bankruptcy: (i) grant of donations, save for small gifts; (ii) payment of debts prior to becoming due; (iii) payment of due debts in a manner other than as agreed; and (iv) perfection of a mortgage or a lien over the debtor's money by way of a security for an old debt. Elsewhere, any action other than those enumerated above, taken subsequent to the date of suspension of payment and prior to the declaration of bankruptcy, may be deemed unenforceable *vis-à-vis* the creditors, where (i) regarded as detrimental thereto; and (ii) the counterparty was aware of the suspension of payment of the bankrupt at the time of the transaction.

19. Is set off recognised on insolvency?

Yes. Article 362 of the Civil Code provides that set-off must occur between debts that are due, payable, and can form the basis of a claim in a court of law. Pursuant to the Bankruptcy Law, no set-off may be conducted between the rights and duties of the bankrupt, subsequent to the declaration of bankruptcy, unless

correlated (whereby arising out of one cause or composing a current account).

20. Are there any statutory or third party interests (such as retention of title) that may take priority over a secured lender's security in the event of an insolvency?

We refer to paragraph 17 above.

21. Are there any impending reforms in your jurisdiction which will make lending into your jurisdiction easier or harder for foreign lenders?

The legislator is conscious that easing lending requirements and the process of taking security by lenders is a catalyst for the economy. Therefore, new legislations and amendments to existing legislations were made within the past few years to cater for this. For example, the Movable Collateral Law and other non-banking financing were regulated to allow for different sources of lending and easing the process of taking security by lenders.

Currently, there are no impending reforms in the legal environment that touches upon the issue of foreign lending. The economic concerns regarding foreign currency and inflation rates remain the main drive behind lending transactions.

22. What proportion of the lending provided to companies consists of traditional bank debt versus alternative credit providers (including credit funds) and/or capital markets, and do you see any trends emerging in your jurisdiction?

We do not have a recent or updated reliable figures that reflect the proportionality of each type of financing in the

Egyptian market. Although, we see a relative increase in non-banking lending throughout the recent years. There is a noticeable appetite for financial leasing, factoring, securitization, and other alternative methods of financing. The non-banking financial institutions and their relevant activities are regulated and supervised by the Financial Regulatory Authority.

23. Please comment on external factors causing changes to the drafting of secured lending documentation and the structuring of such deals such as new law, regulation or other political factors

Economic factors such as increasing interest rates and currency fluctuations have a significant implication on the drafting of secured lending documentation and the structuring of such deals. For example:

- a. Transition from Libor into SOFR: financing transactions which were based on the discontinued Libor as a reference rate, had to be amended to reflect the SOFR or any other basis that the parties agree to take.
- b. Unavailability of foreign currency: foreign currency concerns left many borrowers unable to procure the foreign currency required to service their loans. Many companies had to agree with lenders on alternative methods for repayment given that there is no available foreign currency for repayment of debts.
- c. Floating exchange rates and inflation: in the aftermath of the unprecedented increases in interest rates and floatation of Egyptian pound, lenders and borrowers needed to include currency conversion mechanisms and currency or interest rate swap arrangements in order to mitigate the currency and interest rate risks that may result from these transactions.

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