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Banking & Finance 2021

Egypt: Law & Practice and Trends & Developments
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Law and Practice

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1. LOAN MARKET PANORAMA

1.1 Impact of Regulatory Environment and Economic Cycles

The banking laws in Egypt have recently been subject to material revamps that culminated in the issuance of Banking Law No 194 of 2020 (the “Banking Law”), which expanded upon the previous banking legislation, the Central Bank Law of 2003. The Banking Law decides on many unclear and controversial matters from the previous legal regime and embraces new financial technologies within the regulatory system, which help the loan market to improve, and, accordingly, the banks to perform better.

The legislator has also expanded on other corporate financing alternatives – such as through the recent issuance of the Microfinance Law, the Consumer Finance Law and the Factoring and Financial Leasing Law – in addition to the many other initiatives of the Central Bank of Egypt (CBE) in relation to companies operating in the tourism sector and mid-level residential units financing. This is in addition to transactions of issuing bonds and securitisation that have started to attract some corporations.

These types of financing have created different structures of lenders and alleviated the pressure on the banking sector in certain sectors. They have also created competitor financiers that can offer corporate finance solutions as an alternative to traditional banking products. In relation to the loan market in Egypt, the real estate sector remains a huge player, with a lot of greenfield projects and restructuring deals resulting from the economic impact of the COVID-19 pandemic.

1.2 Impact of the COVID-19 Pandemic

Amid the crisis of the COVID-19 pandemic, the CBE has taken many initiatives to alleviate its

implications for the banking and finance sector, and issued several circulars addressed to Egyptian banks, prompting them to exempt clients from paying all expenses and commissions related to bank transfers made in Egyptian pounds. Moreover, certain circulars have been issued that explain the rules of payment through mobile phones to eliminate cash transactions.

Certain circulars have been issued to extend some initiatives taken in 2020 for the benefit of defaulting clients, in order to help such clients to be removed from the CBE blacklist. In addition, the CBE has issued circulars for the benefit of employees working in the tourism sector to profit from certain facilities made available by the banks. Also, the CBE has issued circulars to exempt the banks from certain obligations. Some circulars have been issued to encourage the banks to carry out activities in compliance with the new provisions under the Banking Law.

Pursuant to the aforementioned circular, the restrictions are only in place for a temporary period; however, the deadline for the application of the same has yet to be announced by the CBE.

1.3 The High-Yield Market

Egyptian banks operate under regulations from the CBE to manage any default risk and undertake ongoing measures for screening the creditworthiness and financial health of borrowers. This has limited the high-yield market to foreign non-institutional lenders and other alternative forms of trade financing offered by foreign traders. Thus, the high-yield market operates in different conditions that do not interpolate with mainstream institutional lending, whether under Egyptian or foreign institutions.

1.4 Alternative Credit Providers

The loan market has recently seen an increased reliance on international financial institutions and

multilateral development agencies compared to previous decades and macroeconomic projects. These institutions are taking a bigger role in the local loan market as they offer convenient solutions that have a competitive edge over Egyptian commercial banks. Foreign commercial banks have also followed suit in financing mega infrastructure projects in several transactions according to syndicated loan structures.

Such lending transactions are, by convention, based on English law or the laws of the State of New York. Foreign commercial banks usually rely on the documentation of the Loan Market Association, while each international financial institution relies mostly on its own standard set of loan documentation. The reliance on standard documents is an advantage that streamlines the loan documentation process; nonetheless, the application of foreign law to lending transactions in Egypt has proved to be a burden on transaction costs in several instances.

1.5 Banking and Finance Techniques

There are certain techniques on which firms and commercial banks are relying to mitigate the risk of their portfolios. In light of highly leveraged corporations and sovereign debt borrowers, a hedging arrangement or a sovereign guarantee is the trend to provide a safe harbour against the potential risk. There are also several mega project transactions that have involved the participation of an insurance agency to mitigate any default risk.

In addition, borrowers are concerned about interest rate risks and the volatility of interest rates. This has led to an increased reliance on selection notices to have the option to choose between variable and fixed interest rates at certain points throughout the lifetime of the loan.

1.6 Legal, Tax, Regulatory or Other Developments

As an indicator of economic activity, the overnight interbank lending rate remained unchanged after cuts in September and November 2020 as a response to the steady decline in inflation rates during the second and third quarters of 2019 and the similar international trend in minimising interest rates. This development is expected to revitalise the loan market in Egypt and provide a competitive edge for Egyptian commercial banks over foreign lenders and international financial institutions.

1.7 Developments in Environmental, Social and Governance (ESG) or Sustainability Lending

The Financial Regulatory Authority (FRA) has recently issued regulations requiring companies to prepare disclosure reports on environmental, social and governance (ESG) standards after obtaining the approval of the first issuance of green bonds in the Egyptian capital market with an amount of USD100 million to one of the companies listed on the Egyptian Exchange (EGX). Companies listed on the EGX and companies with non-banking financial activities have to provide ESG disclosure reports related to sustainability (ESG standards) reports. In addition, other reports related to the financial consequences of climate change shall also be provided by such companies. As of January 2022, a quarterly statement with the procedures taken, or that will be taken, by companies with respect to such disclosures shall be also provided to the FRA by the companies.

2. AUTHORISATION

2.1 Authorisation to Provide Financing to a Company

Commercial lending activities in Egypt are subject primarily to the Banking Law, which defines

a banking activity that would require a licence from the CBE as any service provided customarily by banks in Egypt on a recurring basis. For a bank to operate in Egypt, it must have a licence from the CBE and comply with all the regulations of the CBE.

Other non-banking financial services are regulated under the Capital Market Law and are regulated by the FRA. This includes types of financing such as factoring, invoice discounting, securitisation, margin trading and investment banking. Moreover, according to Microfinance Law No 141 of 2014 as amended, companies that are licensed by the FRA can provide micro-financing to businesses with a ceiling of up to EGP200,000 for each loan.

3. STRUCTURING AND DOCUMENTATION CONSIDERATIONS

3.1 Restrictions on Foreign Lenders Granting Loans

The Banking Law defines banking activities as those that involve accepting deposits and providing loans to companies and individuals. These are the main activities of commercial banks in Egypt and would require the entity that practises these activities to have a licence from the CBE. The Banking Law includes an explicit restriction on any entity not licensed to practise such activities.

This restriction, although broad and explicit, is faced with the reality that many foreign commercial banks provide loans to companies in Egypt, including governmental and public entities, on a non-recurring basis. It is also common practice to have intra-group and shareholders' loans without considering such transactions caught by the Banking Law restriction.

These practices have led to a development in the construction of the rule regarding the Banking Law restriction, so that the acceptable interpretation is deemed to catch lending activities by an entity that are recurrent, continuous and offered on a non-solicited basis to potential borrowers in Egypt. The settled position, then, is that competent authorities close their eyes to foreign lenders providing loans to Egyptian entities as long as such lending is not advertised or offered to the public and is not considered a significant part of the lending activities of the foreign lender.

3.2 Restrictions on Foreign Lenders Granting Security

The regulatory framework around granting securities to foreign lenders may vary according to the type of collateral involved. For example, Article 106 of the Banking Law gave foreign banks and foreign financial institutions the right to take real estate mortgages and commercial mortgages. This can be practically achieved through a prior authorisation from the CBE.

In relation to the Movable Collaterals Law, which regulates the granting of securities such as pledges over bank accounts, future assets and movable assets, including intangible assets, the law requires the entity benefiting from the security to be licensed as an Egyptian bank, a financial leasing company, or other Egyptian companies licensed to provide credit solutions. This means that the Egyptian Collaterals Registry is limited to Egyptian entities, which can exclusively have online accessibility to the register.

In relation to real estate mortgages, Egyptian law does not include any general restriction on a foreign lender being a mortgagee under a mortgage contract. However, there is a disparity between the legal rule and its application. The offices of the Notary Public in Egypt, being the competent authority responsible for real estate mortgage registration, do not, as a matter of

practice, accept any mortgage registration with a foreign entity as a beneficiary. It is yet to be clarified whether such practice is based on internal regulations or a common practice developed throughout the years.

A pledge on shares in a joint-stock company is executed in the form of an agreement that has to be registered with Misr for Central Clearing, Depository and Registry (MCDR), the authority responsible for the central depository of all shares in joint-stock companies, in order to block any trading on the shares in the registers of the MCDR. One of the requirements for the MCDR to register such pledge is that the pledgee must be coded on the EGX to be able to sell the shares in an enforcement scenario. This coding system on the EGX is available for foreign as well as Egyptian entities and individuals.

3.3 Restrictions and Controls on Foreign Currency Exchange

There are no specific restrictions, controls or other concerns regarding foreign currency exchange, which is permitted through banks registered with the CBE and licensed foreign exchange bureaus. The Banking Law also includes several provisions that provide for the licensing of foreign currency exchange firms, and payment facilitators and payment aggregators, although these provisions leave the details of the licensing processes to be decided by the board of directors of the CBE.

3.4 Restrictions on the Borrower's Use of Proceeds

According to the Banking Law, the borrower must utilise the loan proceeds for the purposes contained in the credit approval of the bank and the bank must supervise such utilisation. The utilisation of the facility proceeds is subject to the general principles of Egyptian law regarding corruption, terrorism and money laundering. The utilisation by the borrower of the loan proceeds

for any of the aforementioned purposes would be penalised under the relevant criminal provisions. Furthermore, the utilisation of the loan proceeds for a purpose other than the purpose included in the credit approval is subject to imprisonment and a fine that cannot exceed EGP1 billion and must not be less than EGP100,000.

In Islamic finance transactions, the general rules of sharia apply and, as such, the proceeds cannot be utilised in activities such as gambling, activities relating to alcohol, or arms trading.

3.5 Agent and Trust Concepts

The concept of a trust is not specifically recognised under Egyptian law, although its general features can be found in the agency rules, with certain disparities. It is common in syndicated loans to have security and facility agents play an administrative role representing the interests of the syndicate lenders.

The facility agent can be appointed in the same debt instrument to act on behalf of the lenders in relation to the management of documentation and transfer of funds to and from the borrower. The security agent holds the security documents on behalf of the lenders, and in cases of default, it is entitled to initiate enforcement procedures on behalf of the lenders.

Typically, a loan agreement includes an obligation on the borrower to pay annual fees to the agents, in consideration for the services performed by them. The agency roles as clarified can be based on the agency provisions included in the Civil and Commercial Codes.

3.6 Loan Transfer Mechanisms

The transfer of a loan between lenders can be made by way of an assignment that is subject to the Egyptian Civil Code (ECC). The assignment agreement is executed between the existing lender and the new lender without the neces-

sity of having the borrower as a party. The notification to the borrower, however, is required to make the assignment effective towards the borrower. Also, in practice, the existing lender and the new lender sign an assignment certificate whereby the assignor bank is exempted from its obligations under the loan agreement.

Security interests can also be transferred by way of an ECC assignment from a theoretical perspective. However, it is recommended in many cases to cancel the security interest and create a new security interest in favour of the new lender. This is especially relevant in cases where the existing security interest does not include favourable terms for the new lender or there are practical considerations that impede the transfer of security process.

3.7 Debt Buy-Back

There are no specific restrictions on debt buy-back by the borrower or sponsor.

3.8 Public Acquisition Finance

There are no rules regarding “certain funds” with respect to public acquisition finance transactions. The usual set of documentation is commonly used in these transactions. All information on loans and other financings taken by the bidder must be disclosed in its subscription bulletin.

4. TAX

4.1 Withholding Tax

Interest payments paid overseas to entities that are non-resident in Egypt by entities that are resident or have a permanent establishment in Egypt are subject to withholding tax at a rate of 20%, whether paid directly or indirectly, without any deductions, and subject to any double taxation treaty that may provide for a lower withholding tax rate or an exemption from tax to the

extent that the tenor of the loan or credit facility is less than three years.

Interest payments to any offshore lender in connection with a loan or credit facility with a tenor of at least three years are exempt from withholding tax, which must be remitted to the Tax Authority on the first business day following the day on which the withholding was deducted.

4.2 Other Taxes, Duties, Charges or Tax Considerations

Pursuant to Egyptian Stamp Duty Law No 111 of 1980, a stamp duty tax is levied in respect of credit facilities and loans extended by banks. The rate of the stamp duty tax is 10 basis points every quarter calculated on the highest debt balance throughout the quarter under the facility, loan or borrowing extended by the bank. The stamp duty tax must be borne and split equally between the lender and the borrower, and should be transferred by the lender to the Tax Authority within a maximum period of seven days from the end of each quarter.

4.3 Usury Laws

Under the ECC, to the extent that interest payable by an Egyptian entity would exceed 7% per annum, including compounding or capitalisation of interest, or interest exceeding the principal, such excess is unenforceable.

It may be argued that the calculation and determination of interest is subject to Article 50 of the Commercial Code, which allows such rate between merchants to a contractual maximum of the rate declared by the CBE from time to time. This restriction does not apply to banks licensed and registered in Egypt to undertake banking activities, which banks are entrusted to freely set interest rates subject to the nature of the banking activities in accordance with the Banking Law.

5. GUARANTEES AND SECURITY

5.1 Assets and Forms of Security

Egyptian law recognises various forms of security over assets, including a real estate mortgage, a tangible and intangible movables mortgage, a pledge of bank accounts, a pledge of shares, security on claims and receivables such as accounts receivables and rights under contracts. The security takes the form of an agreement between the pledgor and the pledgee.

Perfection of the security will vary subject to the nature of the same. In order to perfect a real estate mortgage, it shall be notarised with the Notary Public, while perfection of a possessory mortgage entails transferring the possession of the movables that are the subject of the mortgage to the pledgee in order for the pledge to take effect. The Egyptian Collaterals Registry has been recently established to register a security interest over movable assets. In the case of a share pledge, the relevant security interest must be registered with the MCDR. Unregistered security interests would carry the risk of unenforceability toward third parties.

The fees for registering securities will vary according to the type of the security and, in certain instances, subject to the amount of the loan.

5.2 Floating Charges or Other Universal or Similar Security Interests

Floating charges are not explicitly regulated under Egyptian law. However, under the Movable Collaterals Law, a pledge may be granted over future assets and registered with the Egyptian Collaterals Registry. A security interest may also be granted to secure a future debt, an overdraft, or a revolving line of credit.

5.3 Downstream, Upstream and Cross-Stream Guarantees

Corporate guarantees, including downstream and cross-stream, are generally permissible subject to the existence of corporate commercial interest. Upstream guarantees are permitted to the extent that the parent company is not represented on the board of directors of the guarantor. The Companies Law further prohibits any company from guaranteeing the obligations of its board members. Thus, if any subsidiary is guaranteeing the obligations of its parent company, the parties must confirm that the parent is not represented on the board of the subsidiary during the lifetime of the financing.

5.4 Restrictions on Target

There is no explicit legal provision restricting the target from granting security in the context of the acquisition of its own shares. In practice, the acquirer grants the shares of the target as security for the financing of its transaction. In this regard, the target may not provide a guarantee in relation to liabilities of any of its board members, and hence the acquirer may not be represented on the board of directors of the target.

5.5 Other Restrictions

Generally, no further consents are required. Please refer to **5.1 Assets and Forms of Security**. From a practical perspective, registration of in rem security interests may trigger significant survey fees subject to the nature and size of the land, and as determined on a case-by-case basis.

5.6 Release of Typical Forms of Security

Security release mechanics vary depending on the type of security, but security interests are typically released upon the instructions of the pledgee following the complete repayment of the debt obligations by the pledgor.

Regarding the pledge of shares, the termination instructions by the pledgee must be notified to the MCDR to release the block placed on the shares. For other forms of registrable securities, the release will also have to be perfected in accordance with instructions from the pledgee to the authority responsible for the registration of the pledge.

5.7 Rules Governing the Priority of Competing Security Interests

Regarding the priority of competing security interests, certain creditors enjoy a general or specific lien created by virtue of the law over all or part of the assets of the debtor. For example, the law determines a priority ranking of a lien for judicial expenses and tax obligations over any other debts. Other than lien rankings provided by the law, different lenders have the right to secure their debt and subordinate contractually their rights between themselves and/or other creditors, such as in the case of subordinating a shareholder loan to a creditor. If there is no subordination contractually, the rank of each security interest is determined pursuant to its date of registration and perfection, whereby earlier registration takes precedence over later.

Any contractual subordination executed prior to bankruptcy procedures will survive. However, the borrower shall not undertake any action contradicting the restructuring plan (eg, granting securities) prepared in light of its potential bankruptcy that will affect the lenders' interests. Accordingly, the contractual subordination concluded after the restructuring plan may not survive, subject to the discretionary power of the competent court. If the competent court declared the bankruptcy of the borrower, it shall not administrate or dispose of its assets and hence the contractual subordination will not survive.

6. ENFORCEMENT

6.1 Enforcement of Collateral by Secured Lenders

The enforcement of security under Egyptian law is generally completed through selling the asset by public auction through courts. Certain laws expressly set forth simpler enforcement procedures, such as the Banking Law in relation to the enforcement of a share pledge registered in favour of Egyptian banks and the Movable Collaterals Law in relation to a pledge over bank accounts. A general overview on enforcing security in Egypt is as follows.

- Immovables (ie, lands and buildings) – an “execution order” is issued by the competent court upon the request of the creditor and annotated in the competent Notary Public office. The creditor shall notify the debtor of the execution order and grant a period of 30 days to the debtor to make the due payment. If the debt is not paid, the property will be sold in public auction under the supervision of the enforcement judge.
- Movables – regarding movable properties pledged under a fonds de commerce mortgage, should the debtor not make the payment within the following eight days from the notification of the debtor, the creditor may request that a summary judgment is rendered permitting the sale of some or all of the debtor's assets under the fonds de commerce mortgage agreement by way of public auction. However, if the movables are pledged separately (as opposed to by way of a fonds de commerce mortgage), the creditor has the right to request from the competent court the sale of the pledged property in whole or in part following the lapse of five days from the notification to the debtor with the due payment.
- Share pledge – following serving a notification to the debtor with the due payment, the

creditor may enforce its rights over the shares in accordance with the EGX sale and purchase rules, noting that the MCDR requires that the pledgee must be coded on the EGX to be able to sell the shares under an enforcement scenario.

- Bank accounts and cash deposits – a set-off is usually executed between the pledged accounts/deposits and the amounts owed by the debtor.

6.2 Foreign Law and Jurisdiction

The choice of foreign law as governing law of the contract is valid to the extent it does not contravene Egyptian public policy or public morality. The submission to a foreign jurisdiction is generally a valid and enforceable choice, subject always to private international law rules. In certain matters, Egyptian law provides for the exclusive jurisdiction of local courts.

Waiver of immunity from lawsuits in the Arab Republic of Egypt is upheld. However, public assets (ie, assets owned by public entities and allocated for public utility) cannot be the subject of any enforcement proceedings according to the ECC.

6.3 A Judgment Given by a Foreign Court

In relation to foreign courts' judgments, a request for enforcement of a judgment by a foreign court must be filed in Egyptian courts, in order to review that the foreign judgment satisfies the following conditions (without reviewing the merits of the dispute):

- the courts of Egypt are not competent to hear the dispute, and the foreign courts are competent for the matter in accordance with the rules of international private law for the choice of jurisdiction in that country;

- that the parties to the dispute were duly notified and properly represented in the proceedings;
- that the judgment is final and enforceable in accordance with the law of the foreign country;
- that the judgment does not conflict with any prior judgment issued by an Egyptian court in the same case and is not contrary to public policy in Egypt; and
- the country where the judgment is issued adopts a reciprocal treatment for the judgments of Egyptian courts.

In relation to foreign arbitral awards, Egypt is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the New York Arbitration Convention of 1958. A foreign arbitral award obtained in a state that is a party to the New York Convention should be recognised and enforced by the competent Egyptian court under an exequatur after verifying that:

- the arbitral award does not conflict with prior judgments issued by Egyptian courts on the same subject matter of the dispute;
- the arbitral award is not contrary to public policy in Egypt; and
- the party against which the arbitral award is rendered has been duly notified.

6.4 A Foreign Lender's Ability to Enforce Its Rights

There are no specific restrictions on a foreign lender's ability to enforce its rights under a loan or security agreement to the extent that the structure of the agreements and perfection requirements comply with the law. Exceptionally, certain rules may apply for the enforcement of a real estate mortgage considering the rules of foreign ownership of lands or real estate. This might also depend on the place where the property is located.

7. BANKRUPTCY AND INSOLVENCY

7.1 Company Rescue or Reorganisation Procedures Outside of Insolvency

Egyptian law differentiates between insolvency procedures applied to non-merchant individuals and bankruptcy procedures applied to merchants, including companies. The Restructuring, Reconciliation, and Bankruptcy Law issued in 2018 provides two procedures that mitigate the financial distress of a company and provide a first line of defence ahead of bankruptcy.

Restructuring/Reorganisation

The purpose of restructuring is to figure out a plan to organise and overcome the financial and administrative turbulence of the bankrupt company. Any company may request restructuring provided that its capital is not less than EGP1 million and it has conducted business in a continuous manner for the previous two years without committing any fraud. The company may not request restructuring in the event that a judgment has been issued declaring its bankruptcy or opening rescue/reconciliation procedures. The competent judge will approve the plan prepared by the restructuring committee. The company will remain in control of its business; nonetheless, the competent judge may appoint an assistant.

Reconciliation/Rescue

Subject to the condition of two years of conducting business, any company that may be declared bankrupt, and did not commit fraud or gross negligence, has the right to request “a reconciliation from bankruptcy” if there is a disorder in its financial conditions that may lead to cessation of its due payments, or it has ceased payment (even if a bankruptcy declaration has been requested), and has the right to request a “reconciliation from bankruptcy” and submit it to the competent court.

Any company may request a reconciliation from bankruptcy upon the approval of the majority of its partners or general assembly subject to the type of the company; however, a company subject to liquidation procedures may not request the same. The company under reconciliation will continue managing its own monies under the supervision of a trustee appointed by the competent court. The company can also conclude all kinds of ordinary transactions necessary for its business.

7.2 Impact of Insolvency Processes

Upon the issuance of a judgment declaring the bankruptcy of the debtor, the debtor shall not repay any debt of a creditor unless through the court proceedings. Following the judgment, the interest on unsecured loans shall be suspended, and the interest on secured loans may not be requested unless to the extent of the amounts collected from selling any collateral assets. Payment of the principal shall take priority, followed by the interest due before the issuance of the judgment, then the interest due after the issuance of the judgment.

7.3 The Order Creditors Are Paid on Insolvency

The liens ranked as such and preferred by virtue of law shall take priority (such as debts related to judicial expenses and tax dues). After the satisfaction of rights mandatorily preferred by law, secured creditors shall recover outstanding debts from the assets taken as security according to the ranking of registration (ie, first, second, third degree). Finally, the unsecured creditors will share any remaining enforcement proceedings on a pro rata basis related to the total indebtedness of the debtor. If a secured creditor did not collect all its debt, then the creditor must participate with the remaining debt in the pro rata distribution of unsecured creditors.

7.4 Concept of Equitable Subordination

The ranking of creditors is stated under the law and hence the court may not rearrange this order in any way that contradicts the law. However, the court shall terminate the bankruptcy process in the event that all the creditors reach a settlement with the debtor, who has acted in good faith and did not commit any fraud.

7.5 Risk Areas for Lenders

There is the inherent risk associated with the fact that the monies of the debtor may not be sufficient to pay the debt of all creditors. In that case, the proceeds will be shared on a pro rata basis between creditors unless there are secured creditors.

8. PROJECT FINANCE

8.1 Introduction to Project Finance

Egyptian law generally regulates banking activities, such as loans and credit facilities, letters of guarantee and letters of credit. The Banking Law does not regulate particular forms of bank loan facilities, albeit certain types of financing such as real estate development financing and acquisition financing are specifically regulated by the CBE. In practice, the banking market in Egypt recognises different types of bank credit facilities.

In project financing, Egyptian banks typically require a high debt-to-equity ratio and a capitalisation of the project company that is proportionate to the size of the project. Such requirements may generally be mitigated with the provision of security, such as share pledges and parent company guarantees. In any case, the project company must utilise the proceeds of the loan for the purposes included in the banks' credit approvals, and the utilisation must be supervised by the banks.

8.2 Overview of Public-Private Partnership Transactions

Egyptian law recognises public-private partnership (PPP) contracts pursuant to which a project company is entrusted with the financing, construction, equipment and operation of infrastructure projects and public utilities, and making its services available, or financing and rehabilitating such utilities with an obligation to maintain works that have been constructed or rehabilitated and to provide services and facilities necessary to enable the project to produce or provide services regularly and progressively throughout the contract.

PPPs are primarily regulated under Law No 67 of 2010 regulating partnership with the private sector in infrastructure projects, services and public utilities (the "PPP Law") and the executive regulations enacted thereunder. PPP contracts must be concluded for a term of no less than five years and up to 30 years from the date of completion of the construction and equipping works or completion of the rehabilitation works and with a minimum aggregate value of EGP100 million. The Cabinet of Ministers, upon the recommendation of the Supreme Committee for Public Private Partnership Affairs, may, if required due to a material public interest, agree to conclude a PPP contract for a term longer than 30 years.

Pursuant to the PPP Law, PPP projects may not be tendered except following the approval of the Supreme Committee for Public Private Partnership Affairs, following a request by the competent authority in light of the studies prepared under the supervision of the PPP Central Unit at the Ministry of Finance. Contrary to the public procurement law, which is not applicable to PPP projects, the PPP Law does not envisage or provide for contracting by way of direct award.

8.3 Government Approvals, Taxes, Fees or Other Charges

Subject to the nature and type of the project, project financing to privately owned companies would not generally require governmental approvals. In relation to certain projects, such as renewable energy projects under the Feed-in Tariff programme, the regulatory authority may require project companies to obtain a certain percentage of financing from offshore lenders. Additionally, the approval of the competent authority may be required in relation to the security package to be granted to lenders subject to the nature of the project.

On the lending side, as a matter of Egyptian law, a licence from the CBE is required in order to undertake banking activities in Egypt. The definition of “banking activities” under Egyptian law is broad and includes any service provided customarily by banks in Egypt on a recurring basis. Accordingly, lending in Egypt on a recurring basis would require a licence from the CBE.

Subject to any arrangements with the competent authority to provide a copy or summary of the finance documents and requirements in relation to the registration of onshore security, it is generally not required for project finance documents to be registered or filed with any governmental body or authority.

In relation to project financing provided by one or more Egyptian banks, finance documents would typically be governed by Egyptian law, with the Cairo Regional Centre for International Commercial Arbitration (CRCICA) as the dispute resolution forum. With respect to cross-border project finance transactions in which lenders are based offshore, financing documents are commonly subject to English law.

8.4 The Responsible Government Body

In 2014, Egypt witnessed the promulgation of a new Mineral Resources Law No 198 of 2014 and its executive regulation issued by virtue of Prime Minister’s Decree No 1657 of 2015 (the “Mineral Resources Law”) governing mineral resources; ie, resources obtained from mines, quarries and salterns. Pursuant to the Mineral Resources Law, the Egyptian Mineral Resources Authority (EMRA) solely regulates and supervises the exploration for, and exploitation of, mine ores.

Exploration for, and exploitation of, oil and gas is also subject to concession agreements approved by the House of Representatives, with the Egyptian General Petroleum Corporation being the primary government body competent in matters relating to exploration, production and refining.

Electricity is generally regulated under Electricity Law No 87 of 2015, pursuant to which, the Egyptian Electricity Transmission Company is established as the sole grid operator. The Egyptian Electric Utility and Consumer Protection Agency (EgyptERA) is the electricity market regulator.

Furthermore, and in addition to the above-mentioned laws, the oil and gas, power and mining sectors shall also be subject to the internal regulations issued by each relevant regulatory authority.

8.5 The Main Issues when Structuring Deals

Legal Form of the Project Company

Egyptian law does not provide for specific restrictions in relation to the form of a project company in the context of a project financing as this shall be subject to the type of each project and its relevant agreement executed between its parties (eg, project companies established in relation to energy projects under the Feed-in Tariff programme must be a joint-stock com-

pany). One point to note when structuring the security package is that an upstream corporate guarantee by an Egyptian entity is only permissible to the extent that the guaranteed entity is not represented on the board of directors of the Egyptian company.

Laws Relevant to Project Companies

Companies established in Egypt are generally subject to the Egyptian Companies Law. However, the laws relevant to the project company shall depend on the type of project itself.

Restrictions on Foreign Investment

Generally, Investment Law No 72 of 2017 grants all investments (whether Egyptian or foreign investments) an equal and fair treatment and guarantees to foreign investors a treatment similar to that granted to the national investors. Although there are no restrictions on foreign ownership as the company may be wholly owned by foreigners, there are certain activities that are restricted by law for foreigners to participate in, such as:

- commercial agency, which is required to be wholly owned by Egyptians or persons who have held Egyptian nationality for at least ten years;
- importation activities for trading purposes, whereby 51% of the shareholders must be Egyptians; and
- acquiring land and/or real estate in the Sinai Peninsula (excluding the cities of Sharm El-Sheikh and Dahab, as per Presidential Decree No 28 of 2021), whereby the company is required to be wholly owned by Egyptians. Additionally, a company operating in the Sinai Peninsula (implementing investment and integrated development projects) must be established in the form of a joint-stock company and 55% of its shareholders must be Egyptians. By way of exception to the aforementioned threshold, the requirement to have

55% Egyptian shareholders in companies that conduct the implementation of integrated development projects in the Sinai Peninsula may be exempted by virtue of a presidential decree issued in this regard and upon obtaining the required Cabinet and competent authorities' approvals allowing for such.

8.6 Typical Financing Sources and Structures for Project Financings

Projects are typically financed by a combination of debt and equity, and subject to a gearing ratio agreed between the lender and the borrower. Shareholders' loans are typically extended and may be subject to capitalisation throughout the tenor of the debt financing in order to maintain the agreed gearing ratio. Financing backed by export credit agencies is also a typical source of financing for projects.

8.7 The Acquisition and Export of Natural Resources

Natural resources are generally governed by the Egyptian Constitution, Law No 61 of 1958 as amended, in relation to the granting of concessions relating to the investment of natural resources and public utilities, as well as the relevant law of the concession setting out regulatory and contractual terms.

The Egyptian Constitution prohibits disposing of natural resources as being a state public property. Granting the right to exploit natural resources or a concession to a public utility shall take place by law for a period not exceeding 30 years, while granting the right to exploit quarries, small mines and salterns (or granting a concession in this regard) shall be for a period not exceeding 15 years by law as well.

Noting that, the relevant law of the concession usually sets the licences and permits required to be obtained for the exploitation of the natural resources and the requirements that must be

met by companies that are granted the right of exploitation or concession.

8.8 Environmental, Health and Safety (EHS) Laws

Law No 4 of 1994 and its executive regulations issued by virtue of Prime Minister's Decree No 338 of 1995 (the "Environmental Law") is the general framework governing the environmental, health and safety matters in relation to existing projects/upcoming projects in Egypt. Pursuant to the aforementioned law, the Egyptian Environmental Affairs Agency is the competent authority to issue environmental permits/approvals.

Additionally, there are other regulatory frameworks governing specific environmental, health and safety measures. For example, Law No 55 of 1977 and its executive regulations governing the establishment/operation of thermal equipment and steam boilers, along with obtaining the required management and operating permits, and Law No 119 of 2008 governing the specifications, obligations and requirements for establishing a new building or modifying an existing building.

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Trends and Developments

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Increasing Attraction of Fintech Companies for Finance Providers

At the beginning of this century when social media platforms were created, it seemed as if having an online existence as an individual through social media platforms was nothing but a kind of luxury that let you have an enjoyable time. Some could argue that this remains true today to a certain extent, although the transformation of online platforms to become indispensable is evidenced in social, commercial, political and charitable endeavours. This is even more true for business ventures, no matter in which sector they operate or the size of the firm, whether it is a start-up or a big corporation.

Most businesses along the spectrum of the supply chain have learnt that an online platform or any form of presence on the internet is indispensable for their growth. The financial services sector has also followed this path and during the second decade of this century, fintech business has gained a lot of appeal for investors from existing financial institutions and venture capitalists. Solutions of financings offered for fintech companies are on the rise from equity funds as well as traditional bricks-and-mortar banks that are looking to establish subsidiaries in this field.

Low Banking Penetration Rate in Egypt Poses Challenge to Digitalisation Initiatives

In Egypt, the political turmoil that occurred after 2011 has hindered any collective and concentrated efforts from the government. Nonetheless, starting from 2016, the Egyptian government has had several initiatives, with the collaboration of the Central Bank of Egypt (CBE), to digitalise the economy and allow all financial transactions of the government to benefit from the growing

technology, in addition to the adoption of an extensive agenda for the financial inclusion of all segments of the population in the banking sector. This might seem challenging, as Egypt maintains one of the lowest bank account penetration rates in the region and all over the world. The bank penetration rate for Egypt is less than the world average as well as the average rate in Africa. The good news is that the curve of development in this area has increased rapidly, and doubled from 2011 to 2017.

Banking Law No 194 of 2020 (the “Banking Law”) included many provisions regarding financial inclusion and on 17 July 2019 the CBE issued rules regulating the categorisation of financial inclusion services and products that must be offered by banks. The CBE also issued, on 11 November 2018, rules for due diligence procedures on clients that would benefit from the financial inclusion services and products. In addition, the CBE issued many guiding principles during the first and third quarters of 2021 for Egyptian banks to work on the enhancement of financial inclusion services and products. The CBE has broad authority to follow up the implementation of these principles and other guiding rules on financial inclusion. Finally, the CBE issued, on 24 March 2021, an explanatory memo regarding the application of due diligence procedures and requirements for the products and services offered to clients under the umbrella of the financial inclusion initiative.

At first, it seems that the progress in the fintech sector is interdependent on the developments to be made in financial inclusion. It could be assumed that an individual using any fintech service would have prior knowledge or utilisa-

tion of traditional banking services. This leads to a conclusion that the progress in fintech requires a high rate of penetration in the banking sector. This can be true with regard to advanced fintech services such as digital banking services of deposits and peer-to-peer (P2P) direct transfers, or even credit services. However, the adoption of fintech solutions allowed for a leap in using certain services offered in Egypt as compared to the bank account penetration rate; for example, the usage of payment facilitators and payment aggregators in Egypt. These service providers offer cash receipts through certain outlets throughout Egypt to facilitate payments for essential services such as utility bills.

This fact can find its premise in the penetration rate in the sector of mobile carriers, which slightly exceeds 100%, as opposed to the penetration rate in the banking sector of a little more than 30%. Higher numbers of the population carry mobiles or smartphones than there are bank account holders of eligible criteria. Accordingly, the fintech products currently offered in Egypt seem to be relying on the presence of bricks-and-mortar banks rather than banks that operate completely in a digital atmosphere. For example, the activities of payment aggregation and payment facilitation require, according to the current regulations, that these companies have a relationship with an existing licensed bank and all their required authorisations must be run through this bank. The banks even conduct a kind of supervisory role over these operators in terms of the management of cash flows and due diligence requirements with their clients.

This situation is exacerbated by the fact that there are no regulations in place for digital banking in Egypt. Apart from digital wallets, payment facilitation and payment aggregation, the service of digital banking is briefly mentioned in the Banking Law without any guidelines or concrete steps. This lack of regulation has led compa-

nies, such as Fawry, to be huge market players in the payment sector to fill the gap between the migration to e-commerce and the lack of electronic channels to conduct these transactions. Fawry has offered, and still offers, services of cash receipt through its outlets to cater for those persons who do not have a bank account or a bank card through which to conduct their online transactions.

Many of the banks and mobile operators in Egypt are also interested in owning stakes in this business, whether through the establishment of dedicated subsidiaries or through internal divisions that operate, one way or another, payment facilitation services through digital mobile wallets.

Need for a Swift Learning Curve for the Central Bank of Egypt

As declared publicly on several occasions, the CBE is in the process of issuing regulations that address digital banking companies that operate independently from traditional banks. Digital banking is mentioned in the Banking Law very briefly, and the Law does not give any details about the services offered or the process of operating a business in this field. It remains to be seen whether the regulations that will be issued by the CBE will include a vast range of banking activities such as deposits, direct transfers, the issuance of payment cards and fintech credit services, or if they will be limited to a few of these. The issuance of such rules would allow for offering more digital banking services than the limited operations of digital wallets and payment facilitations currently in place.

It is worth noting that the CBE currently runs a regulatory sandbox for fintech companies in accordance with the guidelines issued in May 2019 in this regard. This sandbox shall certainly be enriched by the issuance of digital banking regulations and the adoption of developed fin-

tech services, especially when operated independently of the existence of a traditional bank, as anticipated. It would be reassuring to operate start-ups in this field through a controlled environment that allows the regulator to explore and adjust its experiences and tools with the lowest possible exposure to risks.

These processes of anticipated legislative efforts would open the door for foreign direct investments that would not necessarily be in the financial sector but could extend to other sectors such as telecommunications and information technology. The regulatory framework of digital banking and fintech in general must not operate in isolation of other projects needed to enhance the infrastructure of telecommunications and information technology solutions. A lot of these projects are essential for the fintech sector to operate and develop smoothly without many obstacles in their operations. The Egyptian government must understand the importance of easing the requirements for investments in newly developed generations of mobile networks and internet cables, in a way that allows this field to catch up with the expected developments in financial technologies.

The governmental efforts must be combined with genuine efforts directed at streamlining the licensing processes and the implementation of any procedural requirements for the firms that will operate in the fintech industry. It is well known that the CBE as a regulator is still in the process of exploring and learning how the procedures can be implemented as these are all nascent efforts. The learning process of the regulator could prove to be very costly and would be a hindrance to the whole process if the learning curve of the regulator is not developed swiftly.

Conclusion

The authors' belief is that Egypt must create an environment of a detached community from the usual daily life of Cairo governmental offices that is burdened with red tape and formalities. The CBE must create a regulatory environment in its offices or competent units that mimics smart villages in its operations and methodology. This can be supported by the experiments of other countries, especially in matters such as network securities and verification of identity.

Also, the legal environment must undergo certain changes in relation to the adoption of rules of evidence that acknowledge the use of electronic methods for verification and proof of evidence. At the time of writing, the legal practice in Egypt cannot provide a comfortable degree of certainty and advice that recommends the utilisation of complete electronic transactions and online verification processes without gaps. There are certain patchworks of pieces of legislation and court rulings that refer to some sort or another of a digital medium of communications, but the Civil Code and the Rules of Evidence must be amended to take into consideration e-commerce, electronic payments, offer and acceptance by email and other online methods, and electronic documents. A legal discussion must be conducted to acknowledge the developments in cybersecurity measures (as can be affordable in Egypt) and whether, in that context, digital migration can provide a similar or lower degree of risk than the traditional physical transactions and methods of doing business.

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