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# Acquisition Finance 2022

Egypt: Law & Practice  
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## Law and Practice

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## 1. MARKET

### 1.1 Major Lender-Side Players

Aside from Egyptian banks, and in particular, Banque Misr, and National Bank of Egypt, the two publicly owned banks with the largest market share of the banking market, international finance institutions with an African focus, have been recently relatively active in the Egyptian acquisition finance space.

### 1.2 Corporates and LBOs

See **1.1 Major Lender-Side Players**.

### 1.3 COVID-19 Considerations

The effects of the COVID-19 pandemic significantly impacted the acquisition finance market in 2021.

However, several initiatives by the Central Bank of Egypt (the CBE) addressed Egyptian banks, and the stepping up of Africa-focused financial institutions have mitigated the COVID 19 disruption. Since the beginning of 2022, we have witnessed a resurgence of interest from local and international financial institutions in acquisition financing in the Egyptian market.

## 2. DOCUMENTATION

### 2.1 Governing Law

The CBE is the relevant governmental authority responsible for regulating Egyptian banks' rules practising acquisition finance. If the target of the proposed acquisition is an Egyptian bank, then the CBE would be the competent regulatory authority for approval, with the Egyptian Banking Law setting out detailed processes for bank shares' acquisitions (depending on the acquisition threshold), while the Financial Regulatory Authority (FRA) would be the competent authority in the case of the acquisition target being a company under its supervision. Each of these

requires different procedures, requirements and approvals in the case of acquiring a controlling stake in a targeted company.

### 2.2 Use of Loan Market Agreements (LMAs) or Other Standard Loans

The Loan Market Association's (LMA's) forms are the most often used and relied upon in the Egyptian market for acquisition financing. We, however, note that when Egyptian banks do the financing, then the governing law, would typically be Egyptian law, with dispute resolution being the Cairo Regional Centre for International Commercial Arbitration as the preferred dispute resolution forum.

### 2.3 Language

The requirements relating to the language used in documentation mainly depend on the governing law and if those documents are planned to be used in Egypt at a later stage as the place of execution.

In general, Egyptian law does not require documentation in the Arabic language, except for filing and registering some types of securities, such as real estate and commercial mortgages. Any document intended to be used before an Egyptian administrative or judicial authority must be in the Arabic language or accompanied by an accredited Arabic-language translation. However, it should be noted that, in practice, certain government-owned or controlled entities may require that the documentation is in Arabic or bilingual, with the Arabic language prevailing in the case of discrepancy.

### 2.4 Opinions

Typical legal opinions are issued for the benefit of lenders, covering:

- the capacity and authority of the person signing the finance documents; and

- the validity and enforceability of the finance documents. In some projects with a complex permitting matrix, a separate opinion on the adequacy and sufficiency of permits in place may be required.

## **3. STRUCTURES**

### **3.1 Senior Loans**

Egyptian banks cannot advance more than 50% of the acquisition value whilst considering revenue streams from the combined target and acquirer and would also get collateral from the acquirer and the target (as a condition subsequent post-acquisition).

### **3.2 Mezzanine/Payment-in-Kind (PIK) Loans**

A mezzanine loan is increasingly used whether by itself or with an Egyptian bank, to fund the required equity portion of the acquirer. However, they may entertain a lower ranking of security than those of the senior debts or at least share the same security package.

A payment-in-kind (PIK) loan is not a typical financing arrangement in the Egyptian market and is exceptionally used in cross-border transactions, especially if those transactions involve off-take agreements in the oil and gas sector.

### **3.3 Bridge Loans**

Bridge loans are usually availed on a bilateral basis to ensure the necessary financings are in place until finalising the ultimate syndicate financing, with the debt-provider generally being one of the future Mandated Lead Arrangers (MLAs) that will be part of a syndication, thus, bridging between the instant necessity of the financing and the final financing structure.

### **3.4 Bonds/High-Yield Bonds**

Private corporations' issues of high-yield bonds are rare unless through private placements fully underwritten by banks, investment banking firms or qualified financial investors. However, regular bonds are more commonly issued in the Egyptian market to secure the required finance that may not be availed by banks on similar terms or pricing.

Sukuk are also currently increasingly considered by corporates as well as by government bodies.

### **3.5 Private Placements/Loan Notes**

Private placements are not very common in the context of raising funds in the acquisition finance space but are more used in equity capital market transactions.

### **3.6 Asset-Based Financing**

Asset-based financing is very typical in the Egyptian market, whereby the value of the availed loan(s) will mostly depend on the value of the acquired assets. Domestic banks are proactive in asset-based financing (aside from securities acquisition financing) and mainly relevant to project financing.

It should be noted that a significant share of asset-based financing is associated with real estate acquisition in the new urban communities in Egypt to meet the funding necessity of real estate developers.

## **4. INTERCREDITOR AGREEMENTS**

### **4.1 Typical Elements**

The basic function of an intercreditor agreement is to regulate communication and actions by lenders, such as enforcement and decision-making. The importance and complexity of an intercreditor agreement follow the underlying

transaction, in particular, the type and classes of lenders, the type and location of security and the legal regime governing that security, and the different banks' roles (onshore and/or offshore security agent, onshore and/or offshore account bank, etc).

## 4.2 Bank/Bond Deals

No pattern is followed in the case of bank/bond deals, as they differ significantly on a case-by-case basis and would always be subject to the agreed terms between all the concerned parties and the terms and conditions stipulated in the relevant prospectus or information memorandum, as the case may be. Banks usually act as underwriters in the case of bond issuance to ensure that the required subscription is covered.

## 4.3 Role of Hedge Counterparties

Mostly, the hedge counterparties will be a party to the intercreditor agreement, where its dues will most likely be treated as part of the senior debt, against some obligations that will be imposed on the hedge counterparties along with the applied mechanics of voting in certain cases and the distribution of the enforcement proceeds. All those elements vary for each transaction, according to the agreed terms between all the related parties.

## 5. SECURITY

### 5.1 Types of Security Commonly Used

In acquisition finance, generally, the lenders would require the perfection of a pool of collaterals/securities, which would typically comprise the following.

#### Pledge over Movables

The Movables Collateral Law No. 115 of 2015 regulates security over movables (eg, pledge over bank accounts, future assets, movable assets including intangible and tangible assets, "excluding, among others: securities and some

future assets, such as monies generated from wages, life insurance policies, etc"), would require that the pledge agreement is in writing, that it has a *date certaine*, and that it precisely identifies the pledged assets. The pledged assets could be delivered to the security agent or any other third party as trustee or even kept by the pledgor. Such a law could also be used to perfect a commercial mortgage pledge (where the tangible and intangible assets of the debtor would be pledged, in the same manner as in "*fonds de commerce*").

#### Real Estate Mortgages

Foreign banks and international financial institutions can benefit from a real estate mortgage as per the CBE law, provided that the entity in question submits its constitutional documents and fulfils various requirements to the satisfaction of the notary public.

#### Share Pledge

A pledge over the share capital could be executed by virtue of several laws, each of which differs significantly as to the applied procedures, the availability depending on some factors, including, inter alia, the identity of the pledgee, and the associated rights to the pledge. The pledge could be perfected by using:

- the CBE law;
- articles of the Commercial Code; or
- the Misr for Central Clearing, Depository and Registry law (MCDR).

#### Assignment of Receivables

The assignment of receivables is executed by an assignment agreement between the debtor(s) and the security agent, which would be acknowledged by the payee master, along with other formal requirements to be fulfilled in order for that assignment agreement to be valid vis-à-vis third parties and the payee master.

### Fonds de Commerce Mortgage

A fonds de commerce mortgage is now permitted to be perfected in favour of foreign banks and international financial institutions, provided that the availed credit facility/loan is used in Egypt and the CBE's prior approval has been obtained as per the CBE law and perfected in an agreement, whereby all the business of the debtor as tangible and intangible assets (including leasehold rights, trade name, goodwill, machinery and equipment, etc), are pledged in favour of the security agent.

### 5.2 Form Requirements

See 5.3 Registration Process.

### 5.3 Registration Process

In Egypt, depending on the type of security, the registration and filing process will differ.

A pledge over movables – the pledge agreement must be filed and registered before the Egyptian Collateral Registry (ECR), the registry with which security over movables must be registered. However, it is limited to certain Egyptian entities. Thus, beneficial usage of the security agent role by one of the banks licensed in Egypt is enabled.

- Real estate mortgages – the mortgage agreement must be in writing, and subject to Egyptian law. That mortgage agreement must be filed and registered with the relevant notary public where the real estate is located. Foreign banks and international financial institutions must also submit their constitutional documents and fulfil various requirements to the satisfaction of the notary public.
- Share pledge – the pledge agreement must be filed and registered with the Misr for Central Clearing, Depository and Registry (MCDR), the entity responsible for the central depository of shares in all Egyptian joint-stock companies (listed and unlisted). The

MCDR requires that all the related parties be coded on the Egyptian Exchange (EGX) to be able to sell the shares in an enforcement scenario. This coding system on the EGX is available for foreign and Egyptian entities and individuals.

- Assignment of receivables – as per Egyptian law, perfecting an assignment vis-à-vis third parties and the payee master is achieved by obtaining:
  - (a) an acknowledgement from the payee master; and
  - (b) establishing a *date certaine*.
- This is, in practice, commonly achieved by notifying the payee master of the assignment through the court bailiff, thus establishing a *date certaine*, in addition to obtaining an acknowledgement from the payee master.
- Fonds de commerce mortgage – foreign banks and international financial institutions must obtain the CBE's prior approval. Registration is perfected before the notary public, and annotation is placed on the mortgagor's commercial register. Alternatively, a commercial mortgage could be executed through a pledge over movables and registered with the ECR (restricted to the entities prescribed by law as per the first point above in relation to the pledge over movables).

### 5.4 Restrictions on Upstream Security

Upstream security, in essence, is not restricted after obtaining the relevant corporate authorisations, except for the following restrictions:

- Article 99 under the Companies Law restricts founders, for five years following the incorporation, as well as its board members, at any point in time, from entering into a related-party transaction unless permitted by way of a general assembly resolution and any contract to the contrary shall be null and void;
- as per Article 96 of the Companies Law, it is not permissible for a company to extend a

loan to or guarantee any of its board members;

- related-party contracts (that do not consider the company's best interest) are subject to annulment under Article 100 of the Companies Law and, therefore, entering into an arm's-length transaction is recommended.

## 5.5 Financial Assistance

The concept of financial assistance does not exist in Egypt (except within the banking sector) whereby the CBE may provide financial assistance to a licensed bank facing financial problems. Having said that, a newly issued amendment (Law No 11 of the year 2021) to the Bankruptcy Law No 11 of 2018 has been recently published in the Official Gazette, whereby the trader facing financial distress at the composition stage and while arranging for the restructuring plan, can include methods and proposals for availing finance from the existing creditors or others and it further provides the mechanism by which and when that entity shall have its debts satisfied.

## 5.6 Other Restrictions

The applied interest rate on any loans availed between related parties must be on an arm's-length basis (ie, according to the market practice), to avoid transfer-pricing rules, as the Egyptian Tax Authority (ETA) may adjust the pricing of transactions between related parties if the transaction involves elements that would not normally be included in transactions between non-related parties. Its purpose is to shift the tax burden to tax-exempt or non-taxable entities. Where this is the case, the ETA may determine the taxable profit based on the price they determine, according to the market practice.

## 5.7 General Principles of Enforcement

The primary methods of enforcing security in Egypt vary between asset classes and are considered in greater detail below. Under Egyp-

tian law, enforcement procedures regulate the enforcement of security, although the Banking Law (Law No 194 of 2020) provides for simpler procedures for banks licensed by the CBE to enforce security.

It is worth noting that some factors and elements must be examined carefully, including, inter alia, related security documents and the identity of the security agent "if any", as the below-stated enforcement procedures could vary according to the case at hand. Enforcement of collateral generally requires that the secured claims, among other requirements, are due and payable immediately.

### Commercial Mortgage

In order to enforce a commercial mortgage, the pledgee must first request payment of the secured debt from the mortgagor, usually through the service of an official notice through a court bailiff. If the pledgor does not pay the secured debt within five days following that request, the pledgee may apply to the competent court for a sale order in relation to the pledged assets. Unless otherwise ordered by the court, the sale must be carried out by way of public auction.

### Fonds de Commerce Mortgage

In order to enforce a fonds de commerce mortgage, the mortgagee must first request the payment of the secured debt from the mortgagor (as well as any other person in possession of the mortgaged asset), usually through the service of an official notice through a court bailiff. If the mortgagor does not make payment within eight days of that notification, the mortgagee may submit a petition to the summary judge requesting the sale of the mortgaged asset through a public auction. The judge will specify the date and time of the public auction.

### **Real Estate Mortgage**

In order to enforce a real estate mortgage by Egyptian banks and branches of foreign banks registered with and licensed by the CBE, a payment default with respect to the secured debt must first have remained outstanding for a period of 30 days; the mortgagee must then request the mortgagor to make payment of that secured debt within a further 60 days. The notification is usually through the service of an official notice through a court bailiff. If the mortgagor does not make the due payment, the mortgagee may request the competent judge to issue an *exequatur* (execution order) of the mortgage agreement and an order for seizure of the secured asset. The mortgagee must then notify the mortgagor of the *exequatur* and grant the mortgagor 30 days to make the payment. The *exequatur* is annotated by the competent notary public. If the mortgagor fails to make the due payment, the secured asset will be sold in a public auction under the supervision of the enforcement judge.

### **Share Pledge**

In order to enforce a share pledge, the pledgee must first request payment of the secured debt from the pledgor, usually through the service of an official notice through a court bailiff. If the pledgor does not make payment within ten days after notification, the pledgee may enforce its rights over the shares in accordance with the Egyptian Exchange (EGX) sale and purchase rules. The aforementioned process applies only to Egyptian banks and branches of foreign banks registered with and licensed by the CBE by virtue of Article 107 of the Banking Law, whilst the process applicable to other pledgees (ie, foreign banks) differs, as enforcement must take place through a public auction and by an enforcement judge unless that pledge was perfected in accordance with the MCDR's newly issued amendments; in such a case, the pledgee if that were stated clearly in the agreement, would in

specific cases have the right to appropriate the pledged shares.

### **Bank Account Pledge**

In order to enforce a bank account pledge, amounts in the pledged accounts or pledged deposits may be set-off against amounts owed by the pledgor to the pledgee. If the pledgee is the account bank, a set-off would be applied directly. If the account bank is different from that of the pledgee, set-off takes place by virtue of a notification from the pledgee to the account bank. The due amounts subject to a set-off must be undisputed in order for the set-off to take place.

### **Joint Guarantees**

These are where the security agent is entitled to take recourse against the debtor and/or the guarantor.

While no governmental or other consents are required to enforce upon any category of security, in principle, enforcement must be by virtue of a court order and through the sale of the assets that are the subject of the security in a public auction. As previously elaborated, certain security may exceptionally be enforced without the need for a court order.

Under Egyptian law, the creditor may enforce over assets located in, or governed by the laws of Egypt, regardless of that creditor's nationality and domicile. However, the enforcement procedures may vary depending, *inter alia*, on the identity of the creditor, for example, by banks licensed by the CBE.

For Egyptian courts to enforce a foreign court judgment or foreign arbitral award, a request for enforcement of a foreign court judgment or foreign arbitral award (as applicable) must be filed before the competent Egyptian court. Egyptian courts would enforce a judgment of a foreign



court without further review of the merits, provided that:

- the foreign courts offer reciprocal treatment to judgments obtained in the courts of Egypt under an effective treaty between Egypt and the foreign country which provides for such reciprocal treatment;
- the parties to the dispute were duly notified and properly represented in the proceedings;
- the courts of Egypt are not competent to hear the dispute which constituted the object of the foreign judgment, and the foreign courts are shown to have been competent to hear the dispute in accordance with the laws of that foreign country;
- the judgment is final and conclusive in accordance with the foreign law; and
- the judgment does not conflict with a prior Egyptian judgment in the same case and is not contrary to public policy in Egypt.

Egypt is a signatory to the New York Convention for the Enforcement of Arbitral Awards. Additionally, pursuant to the Egyptian Arbitration Law, international arbitration awards are enforceable in Egypt. The following documents must accompany the application for enforcement:

- the original award or a signed copy;
- a copy of the arbitral agreement;
- an Arabic translation of the award authenticated by the competent authority if the award were not issued in Arabic;
- a copy of the minutes evidencing the deposit of the award with the competent court in the Arab Republic of Egypt; and
- a copy of the notification of the award to the party against whom the award has been made.

## 6. GUARANTEES

### 6.1 Types of Guarantees

Generally, the lenders would seek a joint corporate guarantee from:

- the debtor(s) and its group (excluding the borrower); and
- the main shareholders/sponsors (which varies on a case-by-case basis).

The security agent is entitled to take recourse against the debtor and/or the guarantor as it deems fit. The guarantees are not required to be filed or registered with any governmental bodies, and, accordingly, no fees would be required for doing so.

### 6.2 Restrictions

See **5.4 Restrictions on Upstream Security**.

### 6.3 Requirement for Guarantee Fees

There is an administrative fee that would be applied in the case of a guarantor providing securities that should be filed and registered with the notary public, which will vary on a case-by-case basis, subject to the particulars of the case at hand.

## 7. LENDER LIABILITY

### 7.1 Equitable Subordination Rules

Any act committed by a bankrupt other than those stated below and during the period starting from the default of payment date and before the issuance of the bankruptcy verdict may be nullified and will not be recognised against the creditors if the conduct is harmful to them and the offender knows at the time of the act that the bankrupt debtor has stopped paying his or her dues.

These acts are:

- the granting of donations of any kind, except for small gifts that are customarily made;
- the repayment of any debt before its maturity, whatever the manner of payment;
- debt repayment in a manner other than that agreed upon, and repayment by using a commercial paper or bank transfer shall be deemed as payment in money;
- any mortgage or other contractual collateral, as well as any real estate allocation rights over the debtor's assets to secure a pre-existing debt.

## 7.2 Claw-Back Risk

If the debtor files for insolvency or is subject to an insolvency claim, all transactions made by that debtor within two years preceding a court order identifying the bankruptcy status (the "suspicious period") could be challenged by any third party that has the capacity and interest to challenge those transactions, or by the company's insolvency administrator.

If it has been proven before the competent court that a payment made by the debtor or a transaction decreasing the debtor's net worth has been made during the suspicious period, the court may order the clawing-back of any such payment or terminating the transaction with retroactive effect.

## 8. TAX ISSUES

### 8.1 Stamp Taxes

Pursuant to the Egyptian Stamp Duty Law No. 111 of 1980, the stamp duty rate over loans is 40 basis points levied annually on the highest debt balance under the facility/loan provided by the lenders during the financial year. The burden of stamp duty is split equally between the lender and the borrower and is payable in quarterly

instalments by the lender. The burden of that duty may not be shifted by contract.

Pursuant to the principle of territoriality, stamp duty does not apply to a facility/loan provided by foreign lenders that are not registered in Egypt.

Additionally, income tax is withheld at a rate of 20%, in principle; see **8.2 Withholding Tax/Qualifying Lender Concepts**.

### 8.2 Withholding Tax/Qualifying Lender Concepts

Withholding tax at a rate of 20% is applicable to interest payments made by Egyptian entities or non-resident entities that have a permanent establishment in Egypt to non-resident lenders, to the extent that the tenor of the loan or credit facility is less than three years, and subject to:

- any double-taxation treaty providing a lower withholding tax rate or an exemption from tax; and
- a thin-capitalisation rule of 4:1.

Accordingly, interest payments to any foreign lender in relation to a loan/facility with a minimum tenor of three years are exempted from withholding tax, subject to a thin-capitalisation rule of 4:1.

### 8.3 Thin-Capitalisation Rules

An Egyptian company would be allowed the deduction of debit interest paid on loans/facilities if the loans/facilities granted to the Company are within a fourth of the average equity (calculated according to the financial statements prepared pursuant to Egyptian accounting standards). The thin-capitalisation rule, as provided by the Egyptian Income Tax Law, states that the debt-to-equity ratio is 4:1. The debt would include loans/facilities, bonds and any form of financing by debts, with fixed/variable interest.

With respect to the debit interest, it includes all amounts paid by a taxpayer in return for the loans/facilities and securities, including bonds.

## 9. TAKEOVER FINANCE

### 9.1 Regulated Targets

Generally, the acquisition is permitted in Egypt without the requirement of obtaining governmental approvals in advance, with certain exceptions applied to target companies performing activities in specific sectors. Acquiring banks, depending on the equity stake in the target company (10% or more), would be required to obtain the CBE's prior approval while acquiring an equity stake in a telecommunication company would require the pre-approval of the National Telecommunication Regulatory Authority (NTRA) to be obtained. The same requirements apply to acquiring an equity stake in healthcare providers and education-providers companies, which requires the pre-approval of the Ministry of Health and Ministry of Education, respectively, to be obtained.

Additionally, companies operating in the Sinai Peninsula require a minimum Egyptian shareholder stake of 55% and a maximum foreign stake of 45%. In the case that a company is operating in the Sinai Peninsula (excluding some specific areas therein) and owns any real estate properties therein, it must be 100%-owned by Egyptians. In both cases, the prior approval of various Egyptian authorities would be required to approve an acquisition of an equity stake in those companies.

Furthermore, acquiring an equity stake (10% or more) in a company falling under the supervision of the FRA would require the pre-approval of the latter.

### 9.2 Listed Targets

Acquiring an equity stake of certain percentages in:

- a listed company; or
- any company of which shares have been offered for public subscription in the market or through a public offering in the trading market, even if they are not listed on the stock exchange, would require the submission of a mandatory tender offer that must be approved in advance by the FRA.

Acquiring an equity stake of (10%) or more in a listed company that owns assets in specific areas in the Sinai Peninsula by an Egyptian national would require the prior approval of the Ministry of Defence, Ministry of Interior, and the Egyptian General Intelligence. The same would apply in the case of foreign ownership of 5% or more of an equity stake in the said companies.

## 10. JURISDICTION-SPECIFIC FEATURES

### 10.1 Other Acquisition Finance Issues

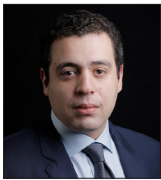
Any transfer of shares must be executed through a broker licensed in the EGX, and all the related parties (seller and buyer) are coded in the EGX.

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firm's finance and projects group's primary goal is to provide clients with practical legal advice on the banking, finance and project development transactions in the Matouk Bassiouny jurisdictions. Headed by Mahmoud Bassiouny, the group maintains close relationships with Egyptian and international banks and financial institutions, government players and large corporates, which enables them to have first-hand knowledge of what constitutes commercially acceptable solutions for major institutions involved in complex transactions.

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