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GUIDES 2023**

The Legal 500 Country Comparative Guides

Egypt PROJECT FINANCE

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

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EGYPT

PROJECT FINANCE



1. What are the typical ownership structures for project companies in your jurisdiction? Does this vary based on the industry sector?

The Egyptian Companies Law No. 159 of 1981, as amended (**Companies Law**), regulates several forms of companies. Generally, joint stock companies (**JSC**) and limited liability companies (**LLC**) are the most common forms for project companies. There are certain sectors which requires a specific form of company. For instance, companies participating in the renewable energy Feed-in Tariff programme must be incorporated as joint stock companies.

2. Are there any corporate governance laws or accounting practices that foreign investors in a project company should be aware of?

The number of foreign employees in an establishment, including its branches, should not exceed 10% of the number of insured Egyptian employees. Additionally, the salaries of Egyptian employees must not be less than 80% of the total payroll paid by the relevant company to its employees. Furthermore, it is worth noting that in relation to (a) LLCs whose issued capital is EGP 250,000 or higher and (b) joint stock companies, in case a dividend distribution is resolved, employees are entitled to a profit share equal to 10% of the distributable dividends subject to a cap of their aggregate annual wages.

3. If applicable, what forms of credit support from sponsors or host governments are typically provided?

Egyptian law regulates different forms of security which may be taken. Sponsors may provide several forms of credit support such as parent company guarantees, share pledges, share retention and equity subordination, in addition to other forms of security which may be

provided by the project company as elaborated under our response to question 4.

From a host government perspective, a sovereign guarantee by the Ministry of Finance is typically provided as credit support.

4. What types of security interests are available (and suitable) for a project financing in your jurisdiction?

Security may be taken over tangible and/or intangible movables pursuant to a movables collateral agreement which must be published with an electronic registry, namely Egyptian Collateral Registry (**ECR**) or by virtue of a *fonds de commerce* mortgage which entails granting security over the business as an on-going concern and must be registered with the Notary Public. Security may also be taken over bank accounts, shares, insurances, real property and receivables, in addition to sponsor support set out in our response to question 3 above.

5. How are the above security interests perfected?

Pledges over movables, bank accounts and assignments of rights by way of security are perfected by publishing the security document with the ECR, a process which is entirely led by the pledgee. The timeline for perfecting this form of security is typically 1-2 business days and the cost for publication is nominal, capped at EGP 500. Assignments of rights by way of security may, alternatively, be perfected by virtue of service of a notice bearing *date certaine* against the counterparty and procuring the counterparty's acknowledgement. In practice, establishing *date certaine* of the notice is typically achieved by serving the notice through court bailiff.

Security over registered real estate may be created by virtue of an official mortgage agreement which must be duly registered with the Notary Public Authority or possessory mortgage agreement. Registration of real

estate mortgages in favour of banks, foreign banks and international financial institutions is subject to a cap on fees equal to EGP 100,000. The timeline for registering a real estate mortgage varies but is generally up to 6 – 12 months. Registration of a real estate mortgage with the geographically competent Notary is subject to renewal every 10 years.

Similarly, security over a *fonds de commerce*, must be created by virtue of an official mortgage agreement which is subject to registration with the Notary Public Authority. Once created and registered, the mortgage must be duly annotated on the mortgagor's commercial register within 14 days from the date of its registration. Registration fees are also subject to the abovementioned cap in relation to real estate mortgages.

Security over shares is perfected by virtue of registering the share pledge with Misr for Central Clearance, Depository and Registry (MCDR) against nominal registration fees.

In relation to insurances, security over the same may either take the form of an endorsement of the insurance policy or by perfecting an assignment of rights arising out of said insurances by way of security in the manner elaborated above.

6. Please identify how security is enforced (notably the enforcement options available for secured parties) both pre and post insolvency/bankruptcy of the project company?

In principle, enforcement of security is through a public auction which is subject to court supervision. As an exception to the foregoing, duly perfected pledges over bank accounts may be enforced by setting off amounts standing to the credit of the pledged bank account against the outstanding amount owed to the pledgee. Additionally, share pledges registered in favour of a bank subject to the supervision of the Central Bank of Egypt (CBE) enjoy facilitated enforcement procedures, whereby the pledgee bank may directly sell the pledged shares at the Egyptian Exchange. Recent legislative amendments have also allowed enforcement of share pledges by way of the pledgee acquiring the pledged shares, provided that the valuation method is stipulated in the share pledge agreement entered into between the pledgor and pledgee.

According to Article 20 of the Movables Collateral Law No. 115 of 2015, as amended (**Movables Collateral Law**) in the event of the debtor's bankruptcy, declaration of insolvency or liquidation proceedings,

movables published in the ECR shall not enter into bankruptcy funds or into the general security of creditors, provided that such movables are published prior to the commencement of the bankruptcy, insolvency or liquidation proceedings. In such cases, creditors whose rights are published in the ECR shall commence proceedings for the sale of such movables in accordance with the manner specified in the security agreement and fulfil their rights secured by such movables within one year from the date of bankruptcy, insolvency or liquidation proceedings, taking into account the payment acceleration specified in the security agreement. Any surplus from the proceeds of the sale of movables in excess of meeting the creditors receivables are returned to the grantor or debtor, as the case may be.

7. What are other important considerations in relation to the security regime in the jurisdiction that secured parties should be aware of?

As elaborated above, banks subject to the supervision of the Central Bank of Egypt enjoy facilitated enforcement procedures in relation to security over shares. Additionally, publishing movable collateral with the ECR is possible for limited types of creditors. On that basis, foreign lenders may be required to appoint an onshore security agent in order to take security over movables which is publishable with the ECR and may optionally do in order to benefit from simplified enforcement procedures in relation to share pledges.

8. What key project risks should lenders be aware of in project financings in your jurisdiction? This may include, but may not be limited to, the following risks: force majeure, political risk, currency convertibility risk, regulating or permitting risk, construction/completion risk, supply or feed stock risk or legal and regulatory risk).

Whilst there are currently no applicable foreign exchange controls, Egypt has historically witnessed hard currency unavailability whereby entities faced challenges in sourcing out foreign currency.

9. Are any governmental / regulatory consents required and are any financing or project documents requirement to be filed

with any authority in order to be admissible in evidence in a court of law, valid or enforceable?

In principle, it is not required to file or record financing or project documents in order to ensure admissibility of the same in evidence. However, subject to the nature of the agreement, certain agreements may require registration with a public authority or otherwise. Project documents relating to title to real property or *in rem* rights, such as usufruct rights, must be registered with the competent Notary Public in order to ensure enforceability vis-à-vis third parties. Security documents must also be registered and perfected as elaborated above in order to ensure enforceability.

Furthermore, documents shall be admissible as evidence in Egypt provided that: (i) if not originally drawn up in Arabic, an official translation thereof into Arabic by the Translation Department of the Ministry of Justice is produced; and (ii) a variable court fee of approximately 7.5% (relating to the value of the claim) is paid at the rendering of the judgment, which court fees will be payable by the party against whom the judgment is issued. Similar court fees will be payable in connection with the taking of an appeal from an adverse judgment, and further costs will be assessed in connection with the execution of any judgment rendered in any such action or upon such enforcement.

10. Are there any specific foreign exchange, royalties, export restrictions, subsidies, foreign investment, that are relevant for project financings (particularly in the natural resources sectors)?

According to Article 212 of the Central Bank and Banking Sector Law No. 194 of 2020, any natural or juridical person has the right to possess foreign currency and to undertake any foreign currency transaction, including the transferring thereof to Egypt as well as the remittance thereof abroad.

Such transfers or remittances must be conducted with an Egyptian bank, Egyptian branch of a foreign bank or other entities licensed by the Central Bank of Egypt (CBE) in accordance with the rules and regulations issued by the CBE's Board of Directors.

In relation to royalties, oil and gas concessions typically stipulate a right for the Government to a royalty, in cash or in kind, of ten per cent (10%) of the total quantity of the oil or gas produced and saved, from the area covered by the concession agreement, during the development period. This royalty is paid by the relevant

public entity on behalf of the contractor from its share of petroleum as specified under the relevant concession agreement.

11. Please set out any specific environmental, social and governance issues that are relevant. For example, are project companies subject to certain ESG laws, reporting requirements or regulations?

The Environmental Law provides that any natural or juristic person, public or private, is obliged to submit a study of the environmental impact of the enterprise or project to the competent administrative authority or the licensor of the authorisation prior to the implementation of the project. The competent administrative authorities or licensor shall send the completed environmental impact assessment studies to the Environmental Affairs Agency for its opinion.

Furthermore, the owner of the enterprise shall maintain an environmental ledger in accordance with the form attached to the Environmental Regulations indicating the impact of the activity of the enterprise on the environment.

12. Has any public-private partnership models or laws been enacted in the jurisdiction, and if so, are they specific to certain industry sectors?

The Egyptian Public-Private Partnership Law has been promulgated by virtue of law No. 67 of 2010, as amended, and applies to partnerships with the private sector relating to infrastructure, services, and public utilities.

13. Will foreign judgments, arbitration awards and contractual agreements to arbitrate be upheld?

The Arab Republic of Egypt is a signatory to the New York Convention for the Enforcement of Arbitral Awards. In this regard, the Arbitration Law No. 27 of 1994 provides that a party that seek to enforce an arbitral award should deposit the following documents:

- a. the original award or a signed copy;
- b. a copy of the arbitral agreement;
- c. an Arabic translation of the award, authenticated by a 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.

In the event that a final judgment of any foreign court was rendered against an Egyptian entity, such judgment would be enforced by the courts of Egypt against the Egyptian entity, without further review of the merits, provided that:

- a. the foreign courts that offer reciprocal treatment to judgments obtained in the courts of Egypt;
- b. the parties to the dispute were duly notified and properly represented in the proceedings;
- c. 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 foreign laws;
- d. the judgment is final and conclusive in accordance with foreign law; and
- e. the judgment does not conflict with a prior Egyptian judgment in the same case and is not contrary to public policy in Egypt.

14. Is submission to a foreign jurisdiction and waiver of immunity effective and enforceable?

Subject to conflict of law rules, immunity from suit may be waived contractually. However, immunity from enforcement in relation to public monies is not enforceable. According to Article 87 of the Egyptian Civil Code (**ECC**), real estate and movables owned by the state or by public juristic entities, which are allocated as a matter of fact or by law, decree or decision of the competent minister, to public interest are considered public monies and these monies may not be disposed of, enforced upon or owned by way of prescription.

15. Please identify what you consider to be (a) the key current issues for project financing in your jurisdiction; and (b) any emerging trends or topics which should be considered or focused on by project financing stakeholders.

In order to ensure enforceability of property rights in

Egypt, such rights must be registered with the Notary Public. A large portion of land and real estate in Egypt is not registered. Therefore, registration of security over real estate property and lands, commonly required by lenders, is often times a very cumbersome and lengthy process.

Egypt is witnessing great attention to environmental matters. It may be the case the carbon offsetting becomes a statutory obligation by virtue of anticipated substantial legislative changes.

16. Please identify in your jurisdiction what key legislation or regulations have been implemented (or will / plan to be) for projects in connection with the energy transition?

Several legislations relating to carbon capture, utilisation and storage as well as carbon offset are currently being studied by the competent authorities in Egypt. Legislative amendments necessary to permit trading of carbon credits are also being examined. Egypt has inked agreements during COP27 in order to establish, among other partners, the first African company to permit carbon credit trading.

17. Please identify if there are any material tax considerations which need to be taken into account for a project financing in your jurisdiction, and if so, how such tax issues can be mitigated.

Pursuant to Egyptian stamp tax law No. 111 of 1980, the stamp tax rate over loans is 40 basis points levied annually on the highest debt balance under the facility, loan or borrowing provided by banks during the financial year. Such stamp duty is equally split between the lender and the borrower and is payable on equal quarterly instalments by the lender. The burden of such obligation may not be shifted by contract.

In our view, pursuant to the principal of territoriality, stamp duty is not applicable to a facility, loan or borrowing provided by foreign banks that are not registered in Egypt.

Furthermore, Article 56 of the Egyptian Tax Law No. 91 of 2005 obligates legal entities resident in Egypt as well as entities that are non-resident and have a permanent establishment in Egypt, to withhold tax at the rate of 20% on interest, whether paid directly or indirectly, to non-residents (unless qualifying for a lower withholding tax rate or an exemption from tax under the relevant

treaty for the avoidance of double taxation or a similar treaty between Egypt and the country where such non-resident is incorporated, or otherwise by way of special legislation) without any deductions, and to remit the tax withheld to the Tax Authority during the first fifteen days of the month following the month in which the withholding occurred. Under the same Article, there is no tax imposed in Egypt in connection with payment of interest made by a borrower to any lender that has no permanent establishment in Egypt in connection with a loan or a credit facility with a tenor of at least three years.

Pursuant to the Value Added Tax Law No. 67 of 2016 as amended by virtue of Law No. 3 of 2022 (**VAT Law**), payment of interest to non-resident entities may be subject to value added tax (**VAT**) at the rate of 14% under the reverse charge mechanism.

18. What types of funding structures (e.g. debt, equity or alternative financing) are typical for project financing in your jurisdiction. For example, are project bond issuances, Islamic finance and - in the context of mining deals - streams or royalties, seen as attractive (and common) options for stakeholders?

Most commonly, we have seen sponsors procure debt financing, whether conventional or Islamic, from banks

and financial institutions. Such debt arrangements typically include a leverage ratio requiring a certain amount of equity to be funded in the project. In certain limited instances, we have seen sponsors finance projects solely through equity.

To the best of our knowledge, project bond issuances are not common in practice.

19. Please explain if there are any regional development banks or export credit agencies, and if so, what is their role in project financing in your jurisdiction and beyond.

Regional development banks and export credit agencies have participated in several local financings. Regional development banks typically act as lenders, while export credit agencies usually provide credit insurance such that they subrogate lenders following the occurrence of an event of default.

20. Please explain if there are any important insurance law principles or considerations in connection with any project financing in your jurisdiction.

According to Insurance Law No. 10 of 1981, as amended (**Insurance Law**), any insurances procured by an Egyptian entity must be obtained through licensed Egyptian insurance companies.

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