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Securitisation 2024

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Egypt: Law & Practice and Trends & Developments

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EGYPT

Law and Practice

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Matouk Bassiouny & Hennawy was established in 2005 and has since developed into a premier full-service business law firm in Egypt and the MENA region, with offices in Algeria, Sudan, and the UAE, as well as two country desks covering the firm's Libya and South Korea practices. It has over 200 lawyers who are trained locally and internationally in common and civil law systems and are fully conversant in English, Arabic, French, and Korean. The firm's finance & projects practice group's primary goal is to provide its clients with legal advice on the banking and finance sector in the MENA region, and on the strengths and weaknesses of security available to lenders in the market.

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1. Specific Financial Asset Types

1.1 Common Financial Assets

The laws and regulations governing securitisation transactions in Egypt have not explicitly identified (or excluded) the types of financial assets that could be securitised. There are certain conditions, such as the financial asset being assignable, unconditional, and free from any encumbrances. If these conditions are met, the assets can be securitised according to the legal process and regulations provided by the law and the regulator.

There is, however, a practice as to which assets are commonly securitised in the Egyptian capital markets. These include consumer finance loans, loans to small and medium enterprises, microfinancing, nano-financing, auto loans, and residential real estate.

1.2 Structures Relating to Financial Assets

The transaction structure remains just about the same for each type of financial asset mentioned and can be characterised as a "true sale securitisation". The originator usually enters an assignment of proceeds agreement with an issuer to assign the financial rights arising from the consumer finance loans or the micro-financing in return for the issuance of securitisation bonds. There must be different professionals engaged in the transaction, such as a legal adviser, an auditor, a financial adviser, a custodian, and a rating agency. The transaction can be generally grouped into three phases.

- Phase 1 – the advisers assist in conducting a due diligence exercise on the documentation underlying the assigned receivables from legal and accounting perspectives. The due diligence reports are sent to the rating agency for review and assessment.
- Phase 2 – then starts a phase of drafting the legal documentation. There is usually an information memorandum or subscription note, an assignment of proceeds agreement between the originator and the issuer, a collection agreement between the issuer and a collection agency, and custody agreement between the issuer and a custodian.
- Phase 3 – the legal documentation, along with other formal requests, corporate, and secretarial documents, must be filed with the Financial Regulatory Authority (the FRA) as the Egyptian capital markets regulator.

There are additional requirements if the securitisation bonds are issued as green bonds or part of a sustainability programme. This includes appointing a consultant to check that the requirements of sustainability or environmental considerations are fulfilled according to the applicable laws and regulations.

1.3 Applicable Laws and Regulations

The Egyptian Capital Markets Law and its Executive Regulation govern securitisation transactions in Egypt. There is a dedicated chapter in the Capital Markets Law that covers the nature and structure of securitisation transactions. The FRA also contribute by issuing different circulars and regulations to address certain procedural or operational matters, as well as providing interpretations or clarifications for issues that are not clear under the law.

1.4 Special-Purpose Entity (SPE) Jurisdiction

The SPEs are defined under the Capital Markets Law as the entity that "carries out the activities of issuing tradable bonds in return for the financial rights and dues, along with any related

securities, assigned to such entity". These companies are incorporated according to the provisions of the Capital Markets Law and obtain a licence from the FRA to act as an issuing company in securitisation transactions. They have the purpose of securitising financial rights and are prohibited to carry out any activities other than these.

1.5 Material Forms of Credit Enhancement

There are various forms commonly used as credit enhancements in Egyptian securitisation transactions. They are all decided by the originator, but their quality is reflected in the rating of the bonds given by the credit rating agency. Material forms of these credit enhancements include letters of guarantee, credit default service accounts, cash reserve accounts, and credit insurance policies.

These forms of credit enhancement are not mandatory by law, although their presence secures a minimum level of credit rating for the bonds and assigned portfolio. In practice, the originator opens a credit default service account with the custodian and deposits a percentage of the issued bonds to be utilised for servicing the bonds in case there are any defaults in the collected proceeds. The amount deposited as a percentage from the bonds issuance is agreed between the credit rating agency and the originator, but there are certain requirements set by the credit rating agency to achieve at least the minimum rating of the bonds as provided by the law. Typically, later, during the bond's lifetime, the originator issues a letter of guarantee in favour of the issuing company and the bondholders to replace the credit default service account and free the cash in that account for other uses by the originator.

At the same time with the credit default service account, the originator creates a cash reserve account to be used as a first line defence against any defaults in the collected sums prior to utilising the credit default service account or the letter of guarantee. Both the credit default service account and the cash reserve account can be invested by the custodian in safe capital market instruments, such as treasure bills, to maximise the benefit for the bondholders.

The credit default service account and the reserve account are considered internal credit enhancements of the bonds that are calculated as a certain percentage of the net present value of the assigned portfolio after deducting the present value of total costs and expenses associated with the bonds throughout their tenor. This calculation takes in consideration risks associated with deficits arising from any early repayment or defaults in payment.

2. Roles and Responsibilities of the Parties

2.1 Issuers

The SPE usually acts as the issuer of the bonds and the assignee of the future cash flows. It is generally responsible for protecting the rights of the bondholders and ensuring that other stakeholders, such as the custodian and collector, are compliant with their contractual obligations. The Capital Market Law provides that the SPE is the company that creates, and issues tradable bonds backed by assigned financial rights and receivables, and any security package associated with such financial rights. These are companies established under the supervision of the FRA and have their main purpose as securitisation companies. They may act on several securitisations with different originators, but they may

not operate any other activities than their main purpose.

The SPE has the central role of being a party to all the legal documents underlying the securitisation process. They execute the assignment agreement as assignee with the originator. They appoint a collector in accordance with a collection and service agreement, and they further appoint a custodian in accordance with a custody agreement.

In all these agreements, they must act as a protector for the rights and interests of the bondholders throughout the tenor of the bonds. The SPE also arranges with the credit rating agency the issuance of the credit rating certificates for the bonds and the assigned portfolio. They provide further documentation and reports needed by the regulator or the custodian to ensure that different stakeholders are observing their obligations under the legal documentation and provisions of the issuance.

2.2 Sponsors

There is no sponsorship in the Egyptian marketplace.

2.3 Originators/Sellers

The originator is the owner of the financial rights that are assigned to the issuer. The originator enters into an assignment agreement as an assignor with the issuer as assignee to assign all the financial rights and future cashflows associated with the underlying portfolio subject of the transaction. The assignment means that all rights, and, in most cases, security packages associated with these financial rights are transferred legally to the issuer. The transfer remains conditional upon the subscription in all the bonds by the subscribers.

The originator usually takes the role of collecting the receivables from each obligor. This is not an obligatory requirement, although, it serves to bypass the process of legally notifying the obligors that the rights of the originator have been assigned. According to the Capital Markets Law, if the originator remains the collector of the assigned proceeds, then there is no obligation to notify the obligors of the assignment.

The Capital Markets Law also compel the originator to exercise due care in protecting the rights of the bondholders. In that respect, the originator is obliged to supply the amounts collected from the debtors to the custodian immediately upon collection, accompanied by a statement showing the amounts collected at the end of each month throughout the issuance period, and to further maintain separate books for each securitisation portfolio.

2.4 Underwriters and Placement Agents

Any placement or underwriter agent must be licensed by the FRA in accordance with the Capital Markets Law. The entities operating these activities are usually departments of investment inside commercial banks, or investment banks. Although, any company can apply for the underwriting activity licence subject to the capital requirements and other provisions of the Capital Markets Law. In securitisation, a financial consultant is appointed to advise the originator throughout the different steps of the process. If the financial consultant is a commercial, they usually – although not necessarily – assume the responsibilities of a placement and underwriter agent.

The agent is responsible for marketing the bonds and looking for investors to subscribe in the bonds. Given that most securitisation transactions in Egypt are offered through a private place-

ment, the placement agent has a limited role in finding investors amongst banks, investment firms, and funds. The placement is conducted privately through an offering to high-net-worth investors and investment firms. The underwriter also charges additional fees for guaranteeing subscription in the full amount of the bonds.

2.5 Servicers

As mentioned earlier, the originators usually perform the role of a servicer and collection agent in the Egyptian marketplace. This is to avoid the process of legally notifying each customer or obligor of the originator that an underlying assignment transaction has taken place. Servicers, or collectors as usually referred to, are agents of the issuer and responsible for collecting the cash proceeds and transferring them to the collection account of the issuer maintained with the custodian.

The servicer is responsible for reporting any defaults by the obligors to the FRA and the issuing company. There is usually a cure period given for the obligors to fulfil their payment obligations of any late payments. Then the servicer would be required to initiate the necessary legal actions – on behalf of the issuer – and inform the FRA and the issuer accordingly concerning any progress made.

2.6 Investors

Investors are entities which invest cash in the issued bonds under a securitisation transaction. These entities can be financial institutions, such as commercial banks, investment banks, capital market funds, and individuals, whether persons subscribing in publicly offered bonds or high-net-worth individuals.

The offering can be either a public offering or a private placement. For private offerings, the investors must be “Qualified Investors” according to the criteria set by the regulations of the FRA as follows.

- High-net-worth individuals:
  - (a) natural persons who have expertise of not less than three years in the credit, money management and investments fields or management of funds or worked at any bank, insurance company or any Egyptian or foreign financial institution (as defined below);
  - (b) natural persons who hold financial instruments or financial debt instruments exceeding EGP500,000 in at least two Egyptian joint-stock companies other than the issuing company; and
  - (c) companies whose paid-up capital is not less than EGP1 million.
- Financial institutions include:
  - (a) banks, and branches of foreign banks that are subject to the supervision of the Central Bank of Egypt;
  - (b) insurance and reinsurance companies;
  - (c) companies whose purpose is to contribute to the incorporation of other companies (ie, holding companies); and
  - (d) companies and entities that practice activities of stock exchanges.

2.7 Bond/Note Trustees

Similar to the concept of trusteeship and appointment of a trustee in other jurisdictions, the Egyptian law requires the appointment of a custodian to safekeep and hold the securitisation bonds in custody. It is important that the custodian is a licensed entity by the FRA to perform such activities in accordance with the Capital Markets Law and the FRA regulations. The custodian usually enters an agreement with the issuer which stipulates all the rights and obligations in relation to the transaction. The contents of this

agreement must be summarised and disclosed in the information memorandum of subscription.

The role of the custodian includes:

- safekeeping the documentation of the pool of assets;
- maintaining the collection accounts, as well as other accounts such as the reserve and default service accounts; and
- preparing periodical reports to the bondholders and the FRA in relation to the collection of proceeds.

The custodian is further obliged to have separate books, financial statements, and accounts for each securitisation transaction.

2.8 Security Trustees/Agents

See **2.7 Bond/Note Trustees**.

3. Documentation

3.1 Bankruptcy-Remote Transfer of Financial Assets

The Capitals Market Law states that the issuing of tradable bonds against the financial rights and future receivables, along with prescribed collaterals (the "Securitisation Portfolio") is transferred by the originator and the SPE under an assignment agreement. Such assignment must be conducted by virtue of an agreement in form and substance acceptable to the FRA. Furthermore, for the assignment agreement to be valid and enforceable, the assignment must be immediate, unconditional and must transfer all the rights, payments payable upon maturity and collaterals to the SPE.

The assignment agreement entails a true sale of the assigned portfolio and accordingly no recourse or legal obligations can arise thereafter towards the originator in relation to the assigned debt. The originator usually acts as an agent to the SPE in relation to collecting the debts on behalf of the SPE. Therefore, the originator is at the same time liable in his/her capacity as collection agent.

The documentation used to effect securitisation transactions usually covers the following principal subject matters:

- a description of the assets to be assigned;
- the undertaking to assign those assets;
- the counter value (ie, the purchase price to be paid by the assignee in exchange for the assigned assets);
- the method by which the assignment is effectuated;
- the assignment itself;
- servicing provisions; and
- representations, warranties and covenants.

In light of the most recent amendments to the Capital Markets Law which were issued in 2022 by virtue of Law No 13 of 2022, expected future cash receivables have been introduced under securitisation processes. In this regard, repayments may be secured by payments on future cash flow receivables as opposed to the traditional route of the funding source being banks or non-banking financial institutions. Consequently, FRA – in compliance with the new introductions made to the Capital Markets Law – has issued Decree No 115 of 2022 reiterating the same.

3.2 Principal Warranties

Besides the standard warranties, the originator under the securitisation portfolio assignment agreement, typically represents and warrants the following as required by the FRA being the supervisory authority:

- that it owns the securitisation portfolio and all its related rights and securities;
- that the securitisation portfolio is free from pledges and liens that would affect the interest of bondholders;
- that it is not necessary for his/her debtors to be notified of the securitisation portfolio assignment agreement;
- that the rights and securities, subject to the securitisation portfolio, shall guarantee the rights (principal and return) of the bondholders;
- that it has full authority to conclude, sign and execute the securitisation portfolio assignment agreement; and
- that there is no litigation or lawsuit that would have a material adverse effect on the securitisation portfolio assignment agreement.

3.3 Principal Perfection Provisions

For the assignment of the securitisation portfolio to be duly and fully perfected, the SPE shall notify FRA of the final securitisation portfolio assignment agreement, which shall be in accordance with the form prepared by FRA pursuant to Article 307 of the Executive Regulation of the Capital Markets Law, as well as, publishing the summary of such agreement in two widespread daily newspapers, at least one which is in Arabic within one week of the date of the agreement. Additionally, the FRA must approve the issuance of the relevant securitisation bonds by the SPE.

3.4 Principal Covenants

In a typical securitisation transaction, the originator undertakes the following covenants:

- not to dispose of assets related to the securitisation portfolio;
- to deliver on the effective date of the securitisation portfolio assignment agreement, all contracts and documents evidencing the rights and receivables along with the relevant collateral subject of the securitisation portfolio;
- to obtain and maintain all authorisations; and
- to send notice to the SPE of the occurrence of certain events (eg, stop purchase event, and change of control).

Further, the securitisation entity may undertake that it shall not distribute any of its dividends until the full settlement of the securitisation bondholders.

3.5 Principal Servicing Provisions

The usual practice in the Egyptian marketplace is that the originator acts as an agent on behalf of the SPE in relation to collecting the debts from original debtors. In that case, the originator would be liable in his capacity as an agent on behalf of the SPE. It is typical to include covenants covering these activities as well. Such covenants usually include the obligation to protect the rights of the bondholders, and to maintain all systems necessary for the collection and management of receivables. However, the originator in its capacity as assignor and the SPE in its capacity as the assignee under the securitisation portfolio assignment agreement may not act as a collection agent. In such case, the originator is required to notify each obligor by a registered mail with an acknowledgement of receipt of such assignment, for its due perfection and enforceability towards others.

3.6 Principal Defaults

A distinction between the events of default made by the:

- client under the customers' contracts subject of the assignment; and
- originator should be made.

It is worth noting that FRA has issued templates regarding several securitisation documents including but are not limited to:

- the client's contracts (ie, consumer finance contracts, micro-finance contracts and small and medium-sized enterprises contracts); and
- the information memorandum and related agreements thereto.

The authors set below examples of defaults and cures that are commonly incorporated under customers' contracts and the securitisation agreements:

- The client shall be in an event of default under the customer's contracts in case of the following:
  (a) failure to pay the due amounts in the prescribed time;
  (b) utilisation of the amounts extended for purposes other than those prescribed thereunder;
  (c) submission of inconsistent or incorrect data relating to the client;
  (d) loss of capacity, death, sequestration, insolvency or bankruptcy of the client; and
  (e) expropriation measures or administrative seizure are undertaken or if part or all of the financed project is disposed or if it is leased to others.

In this regard, all amounts extended under the customer's contract shall be due and payable by the client and his respective guarantor(s) without need of notification or warning. Additionally, the originator shall attempt to collect the amounts amicably as part of the remedy period. Upon the lapse of such remedy period, the originator shall serve the client a warning for payment. In the event that failure of payment persists, the originator shall commence legal proceedings against the defaulting client.

The originator shall be, in an event of default, under a collection agreement in case of the following:

- inconsistency of any of the rights that ought to be assigned and the undertakings and representations thereunder; and
- failure to assign the rights.

In this regard, the assignor shall repurchase those inconsistent rights and shall be liable to compensate the assignee for the losses incurred. Further, the assignor shall deliver the entirety of the Securitisation Portfolio to the assignee. Additionally and in anticipation of any events of defaults by the originator, the FRA has obliged the SPEs under any securitisation transaction to conclude a backup services agreement with an alternative collector by virtue of which such alternative collector will be responsible of collection in the event that the originator has become in an incurable event of default.

3.7 Principal Indemnities

Indemnities in securitisation vary and are subject to the negotiations between the parties of the securitisation transaction. Generally, the originator indemnifies the SPE in the following cases:

- losses arising from a violation to the securitisation documents; and
- the SPE discovers on the effective date of the assignment agreement that any of the rights constituting the Securitisation Portfolio subject to the assignment are not in conformity with the representation, warranties and covenants provided by the originator under the Securitisation Portfolio assignment agreement.

Further, we have seen that under assignment agreements, the assignor indemnifies the assignee in case of failure of assignment regarding the Securitisation Portfolio or in case the percentage of rights do not conform to the specifications provided thereunder and such inconformity has exceeded an agreed upon percentage of the total value of the rights prescribed thereunder.

Typically, in case of defaults relating to non-payment, a claim may be made using the promissory note and filing a non-payment protest.

3.8 Bonds/Notes/Securities

The documents that are customarily included under the Securitisation Portfolio are:

- the information memorandum entered into amongst all parties to the securitisation transaction as being detailed under **3.10 Offering Memoranda**;
- the assignment agreement entered into between the originator and the SPE;
- the collection and services agreement entered into between the collector (whether the originator or an elected third party) and the SPE;
- the custody agreement entered into between the SPE and the Custodian; and
- the backup services agreement entered into between the backup servicer and the SPE.

3.9 Derivatives

Derivatives in Securitisation Processes

Derivatives are not extensively regulated under Egyptian Law per se; however, other concepts have been introduced that embody the same intention thereof. The authors refer to the Capital Markets Law by virtue of which a derivatives exchange may be created to trade contracts which value derive from financial or in-kind assets, price indicators, commercial papers, commodities, financial instruments or other indicators determined by FRA, whether in the form of future contracts or swap contracts. In alignment with the Capital Markets Law, the FRA has issued Decree No 33 of 2019 regarding the Licensing Conditions and Procedures for a Derivatives Exchange.

Nonetheless, we have not seen the emergence of a derivative exchange. Instead, derivatives are typically traded over the counter in the Egyptian Exchange. In all cases, we have not seen the utilisation or implementation of derivatives in securitisation transactions as opposed to derivatives utilised to hedge against interest rates and fluctuations in foreign currencies exchange rates.

The Risks Being Hedged Against

The principal risk that may arise and is associated with securitisation transaction is the non-payment of the amounts by the clients/debtors under the customers' contracts or the failure of the originator to collect/assign the monies to the SPE. Mitigations for such risks typically include issuance of promissory note by the debtor and its guarantors and the guarantee made by the guarantors of the client/debtor under the customers' contracts.

3.10 Offering Memoranda

Securitisation processes in Egypt take effect through private subscriptions rather than public subscriptions. In this regard, an information memorandum (IM) is prepared as opposed to an offering memorandum.

Typically, an IM includes information regarding the subscription amount, interest levied, redemption period, Securitisation Portfolio including but not limited to the due diligences prepared by the transactions' legal advisor and the transaction's auditor, the events of default,

financial model and coupon information. Further, IMs include details regarding the originator, the SPE, issuance, parties' rights and obligations and a summary on each agreement (stipulated under **3.8 Bonds/Notes/Securities**).

4. Laws and Regulations Specifically Relating to Securitisation

4.1 Specific Disclosure Laws or Regulations

The parties of the securitisation are required to make numerous disclosures according to the Capital Markets Law. These disclosures are usually included in the information memorandum or subscription note that is published to the subscribers. For example, the originator must disclose detailed information about the securitised portfolio. This includes the geographic distribution of the obligors, any concentration loans, and the cash flows arranged in many ways so as to give the full picture to any subscriber.

The securitisation company or the issuer must disclose all information about previous securitisation. This includes a disclosure concerning duly payments of principal and interest of previous bonds, and the rating of each bond. It certainly gives comfort to potential subscribers to understand that the issuing company fulfilled its previous obligations towards bondholders.

Different stakeholders disclose their licences obtained from the FRA, such as the placement and underwriting agent, the custodian, and the auditor. Several chapters in the information memorandum disclose the provisions of the agreements executed between the parties, including the assignment agreement, the service contract, and the custody contract. The information memorandum also clarifies the role of each party involved in the process, such as the underwriter, the auditor, and the legal consultant.

4.2 General Disclosure Laws or Regulations

In addition to the disclosures related to the issuance, there are general rules related to financial instruments (ie, bonds) if they are listed in a stock exchange. These are generally subject to the provisions of the Capital Markets Law and its Executive Regulation, in addition to the listing rules of the Egyptian Exchange, and other regulations issued by the FRA.

4.3 Credit Risk Retention

See **1.5 Material Forms of Credit Enhancement**.

4.4 Periodic Reporting

Periodic Reporting of Companies Issuing Financial Instruments to a Public Subscription

In accordance with the Capital Markets Law and its Executive Regulation, each company that issues financial instruments to public subscription shall submit to the FRA the following documents:

- semi-annual reports, regarding its activities and the outcome of its businesses; and
- balance sheet and financial statements, attached with the relevant reports of the board of directors and auditor.

Additionally, the company (ie, company issuing financial instruments) and its auditor must provide FRA with the data and documentation which it may require to verify the contents of the Prospectus, the periodic reports, data and financial statements of the issuing company.

- Semi-annual reports – the reports shall include the data, which disclose and reflect the correct financial position of the issuer.
- Balance sheet and financial statements shall be:
  - (a) prepared according to the accounting standards and auditing rules referred to in the Executive Regulation; and
  - (b) be attached to the relevant reports of the board of directors and auditor.

The issuer shall further publish the summary of such financial statements, its clarifications and the auditor's report in accordance with the rules and regulations set by the FRA.

Material Requirements of Periodic Reporting of EGX

EGX shall provide the FRA, within one week from the date of its approval to list a particular financial instrument, with any further data requested by the FRA related to a specific financial instrument (ie, shares, bonds, and Sukuk). Additionally, EGX shall submit to the FRA periodic reports about the trading of listed financial instruments in the stock exchange. These reports include the following.

- Daily notification on trading – this includes the type of the traded financial instrument, the price, total amount of financial instruments traded, type of each transaction, total number of the transactions per day, in addition to the total number of over-the-counter transactions.
- Bi-monthly and monthly notification on trading – this includes the volume of traded financial instruments in terms of quantity, total value, and number of transactions.
- Annual notification on trading – this includes the volume of traded financial instruments in terms of quantity, value and number of transactions compared to the previous year. This report must highlight the:
  - (a) total trading market for the year;
  - (b) the movement of trade distributed among sectors in various activities;
  - (c) the most important phenomena that occurred during the year and its impact on the stock market; and
  - (d) the volume of dealing in financial instruments and stock market management proposals to remedy the negative effects of this phenomenon.

The FRA is the competent authority for receiving the documents and reporting disclosures. The FRA either examines these documents submitted by the companies issuing financial instruments for public subscription or, otherwise, assign such examination to a specialised entity. The FRA must inform the issuing company about its observations and can request further clarifications depending on the outcome of the examination.

In case of non-compliance with any of the required periodic reporting, there is a penalty of imprisonment and/or a fine of an amount between EGP20,000 and EGP1 million for the non-complying issuing company. The criminal proceedings are initiated against the director who is actually responsible for the daily management of the company.

4.5 Activities of Rating Agencies

Companies having the purpose of rating, classification, and ranking of financial instruments (commonly referred to as rating agencies) are regulated under the Capital Markets Law and its Executive Regulation.

The Executive Regulation provides certain requirements to ensure the transparency of rating agencies, such as the following.

- Companies dealing in financial instruments, banks, auditors, classified entities, or its classified issued financial instruments shall not be a shareholder in rating agencies.
- Rating agencies shall avoid acting in conflict with its nature. Neither the rating agency nor its employees can have an interest in the entity it is working for, such as the issuer of the bond or financing Sukuk subject of classification.
- The credit rating rules and procedures are set in accordance with the Executive Regulation. Rating agencies cannot amend the rules and grades, or its internal control rules and procedures unless after obtaining the approval of the FRA.
- The managing director of a rating agency or its employees holding key positions must have sufficient experience in the field of classification of securities or credit analysis, and examination of creditworthiness.
- The credit rating certificate shall include the name of its issuing company, the date of the classification, its indication, an explanation of its intent, a statement indicating the significance of each of the other classification grades and comparing them with the corresponding grades of other companies engaged in the same activity, to ensure full and clear distinction between different grades.

The FRA provides further requirements on its website for an entity to be licensed as a rating agency and can participate in the rating, classification, and ranking activities. The FRA remains the regulator of entities undertaking these activities. There is a register maintained by the FRA for the registration of licensed rating agencies, which can carry out financial evaluation and prepare studies to determine fair values in cases where this is required under the Capital Markets Law or its Executive Regulation. The FRA sets the controls for registration and write-off from the register.

Rating agencies must further perform their roles in compliance with the financial evaluation standards issued by the FRA. There is currently one rating agency operating in Egypt, which is Middle East Rating & Investors Service (MERIS), which collaborates with Moody's Corporation as its technical agent. The FRA is attempting to allow other entities enter into this field and the obtain the relevant licence. For that purpose, the FRA issued Decree No 151 of 2023 which allows other companies to apply for the rating licence. The Decree sets out the criteria that all applicants must collaborate with a worldwide reputable technical agents to elevate the competition. The FRA has received the application of three new entities (at the time of this), including technical agents such as S&P Global Ratings, and CRIF Ratings.

4.6 Treatment of Securitisation in Financial Entities

The Central Bank of Egypt provides the regulations addressing capital and liquidity rules for banks. There is no similar – publicly available – regulations for other insurance or financial entities. The regulations of the Central Bank of Egypt differentiate between whether the bank is an investor or an originator in a securitisation transaction.

If the bank is an investor, the exposure of a securitisation transaction is calculated as a weighted risk of 100% in the base capital. Whereas if the bank is an originator, it takes a weighted risk in

the base capital gradually increasing from 20% until 350% depending on the rating of the bonds and its tenor.

4.7 Use of Derivatives

The Capital Markets Law and its Executive Regulation provide for the establishment of an Egyptian derivatives exchange. This exchange will be a venue for trading in different derivatives contracts, such as futures, forwards, and swaps. The exchange has not been established until now, and so all derivatives transactions are conducted over the counter.

Derivatives are not regulated under Egyptian law with specific articles or a body of law. Accordingly, derivatives transactions are always subject to the general principles of contract law, taking in consideration certain regulatory requirements and the Banking Law if a bank is party to the agreement. For example, banks are prohibited from entering into any speculative currency swap transactions on the Egyptian pound. Also, non-deliverable forwards were restricted by the CBE until this rule was abolished recently through the CBE Circular dated 27 October 2022, which allowed these transactions between banks and their corporate clients only. There are certain rules as well on how to consider derivatives transactions for capital adequacy based on the nature of the transaction being on the "banking book" or the "trading book" of the bank.

4.8 Investor Protection

The laws governing securitisation are quite centred around the protection of investors through several guarantees. The FRA also issues regulations the guarantee minimum level of transparency to help investors take the right decision.

The disclosures that should be made by all parties in the information memorandum, such as disclosures of the originator, the issuer, the auditors, and the legal consultant are all aimed at providing the highest levels of transparency for the bondholders. The regulatory framework provides highly strict sanctions in case of any fraud, misrepresentation, or deceiving information. The penalties include amounts as high as EGP20 million or double the amount gained, in addition to the criminal charges associated with any such fraudulent practices.

4.9 Banks Securitising Financial Assets

In accordance with the Banking Law, the Central Bank of Egypt is the regulatory authority for banks and gives the necessary licensing to carry out banking activities and other capital market activities by banks. The FRA remains the regulatory authority for filing and reporting of capital market instruments, in addition to the licensing of companies – other than banks – that operate capital market activities.

If a bank intends to issue any capital market instruments, such as securitisation bonds, they must obtain the regulatory clearance of both the Central Bank of Egypt, as the supervisory body of banks, and the FRA, as the supervisory body of issuing capital market instruments. A bank may accordingly securitise its portfolio of loans or credit cards to a securitisation company by filing the required documents and disclosure to the FRA in accordance with the Capital Markets Law and the relevant regulations.

Banks remain subject to Central Bank regulations in terms of disclosure, credit risk retention, reporting, accounting, and capital adequacy ratio requirements of the Central Bank of Egypt. There is a body of regulatory circulars issued by the Central Bank of Egypt which covers all these various topics and require compliance from all banks.

4.10 SPEs or Other Entities

SPEs are defined pursuant to Article 41 bis of the Capital Markets Law as the entity that "carries out the activities of issuing tradable bonds in return for the financial rights and dues, along with any related securities, assigned to such entity". There are certain requirements under the Capital Markets Law and its Executive Regulation to establish an SPE, the most important of these are as follows.

- There must be among the founders at least 50% of the share capital owned by juridical entities, and at least 25% owned by financial institutions.
- The ultimate beneficial owners must be disclosed.
- An economic and technical feasibility study must be submitted to the FRA.
- The directors must have minimum experience in the financial sector.
- The capital must be at least EGP5 million or its equivalent in other currencies.

Some companies can be allowed to issue securitisation bonds – although not having the purpose of being a securitisation company – but this remains subject to the approval of the FRA and is limited to a portfolio of their activities. The FRA further require these entities to separate the securitised portfolio from other books and financial rights of the company from an accounting perspective. The company must submit a request to FRA, in addition to a statement of the rights and securities included in the securitisation portfolio, a letter of acceptance of appointment by a custodian, and a statement of acknowledgement from a service entity that will collect the transferred rights and documents.

4.11 Activities Avoided by SPEs or Other Securitisation Entities

SPEs must have the sole purpose of practicing securitisation activities, as they are prohibited from carrying out any activities other than the securitisation activities.

4.12 Participation of Government-Sponsored Entities

Some public authorities, such as the New Urban Communities Authority (NUCA), have issued securitisation bonds as well, to securitise their portfolio of future cash flows arising from the sale of residential units. NUCA is considered a public authority affiliated to the Ministry of Housing, Utilities, and Urban Communities. They follow the same rules and regulations of the Capital Markets Law and the relevant regulations issued by the FRA. The may be additionally required to comply with their articles of incorporation in terms of the capacity to carry out such transactions.

4.13 Entities Investing in Securitisation

See **2.6 Investors**.

4.14 Other Principal Laws and Regulations

The Capital Markets Law and its Executive Regulation is the main law for securitisation rules and procedures. It is complemented by the regulations and circulars issued periodically by the FRA. The Central Depository Law can be also relevant if the bonds will be listed in the EGX. This is in addition to the listing and trading rules of the EGX.

5. Synthetic Securitisation

5.1 Synthetic Securitisation Regulation and Structure

Synthetic securitisations are not recognised or regulated under Egyptian laws.

6. Structurally Embedded Laws of General Application

6.1 Insolvency Laws

In a true sale securitisation transaction, the bankruptcy of the originator does not have an impact on the financial assets being securitised. This is the case with securitisation transactions in the Egyptian marketplace. Given that the originator assigned the financial rights without recourse, the rights have entered into the balance sheet of the issuer as an asset and cannot be calculated among the assets of the originator anymore.

Pursuant to the Bankruptcy Law No 11 of 2018 ("Bankruptcy Law"), the power of the bankrupt person to control and dispose of its assets ceases immediately upon the issuance of the bankruptcy ruling. Any transactions carried out on the day of the court ruling are considered as having taken place after the ruling.

A bankruptcy may have an effect on the originator if it acts at the same time as the collector, as is mostly the case in the Egyptian marketplace. In that case, the originator would be having further obligations to fulfil as a collection agent. In case the collection agent is declared bankrupt, there is usually a backup servicer or collector appointed according to the requirements of the FRA. The backup service immediately steps in and assumes the role of a servicer and collector.

6.2 SPEs

The company undertaking the securitisation activity shall take the form of either a joint-stock company or limited liability company established for this purpose with a paid-up capital of at least EGP5 million.

The SPE generally must be owned by corporate entities representing at least 50% of its capital, and 25% of these must be financial institutions. The financial rights and future receivables, along with their relevant collaterals, are assigned in the favour of the SPE in a true sale securitisation transaction. The quantity of covenants and obligations set by the law on each part of the securitisation afford a minimum level of transparency for the disclosure of all risks associated with the investment in the securitisation bonds.

The due diligence exercises conducted by the legal consultant and the auditor are also aimed at identifying any legal risks associated with the legal documentation of the assigned portfolio. These represent a safety net along with the other credit support measures taken by the originator, such as reserve account, credit default service account, and credit insurance policy on the obligors. The cumulative effect of these safeguards renders the fact that the SPE declares bankruptcy obsolete. The financial rights of the bondholders are backed by future cash flows paid by the obligors of the originator. If the obligors default, a first line of defence is the reserve account, then there is the default service account, and then the credit insurance. If all these methods do not suffice, the collector must seek legal recourse against the defaulting obligor to recover the rights of the bondholders towards the issuing company.

6.3 Transfer of Financial Assets

The originator as an assignor and the SPE as an assignee to which the title to the portfolio is transferred must enter into an agreement in line with the format required by the FRA for the transfer of the securitisation portfolio. All assigned rights, entitlements, and guarantees must be conveyed in an effective, full, and unconditional manner, and the transferor must attest to their existence at the time of the transfer but shall not be liable for their fulfilment thereafter. A comprehensive summary of the transfer agreement must be published in two widely circulated morning daily newspapers, at least one of which must be in Arabic, and the transfer to the SPE must be finalised. The FRA must be notified of this process as well.

The assignor shall give notice in writing, by registered mail with an acknowledgement of receipt, to all obligors whose financial obligations or receivables, and guarantees were assigned by the originator. In case the originator acts as the collector under a collection and service agreement with the issuer, then the Capital Markets Law exempts the parties from notifying the assignment to each obligor. In that manner, an assignment of rights is valid and enforceable towards the originator and the obligors.

The legal counsel provides a true sale opinion in relation to the securitisation transaction. This opinion covers the legal elements required for a true sale transaction. It includes evidence that transfer has fulfilled all the legal elements based in the reviewed documents and executed agreements between the parties. The legal contracts underlying such future financial obligations must allow the originator to assign its rights without the consent of the obligor. Accordingly, the rating agency can reply on such legal opinion to give the bonds and the portfolio the credit rating adequate for a true sale securitisation transaction.

6.4 Construction of Bankruptcy-Remote Transactions

This can be achieved through a true sale transaction as clarified in **6.1 Insolvency Laws**, **6.2 SPEs**, and **6.3 Transfer of Financial Assets**.

6.5 Bankruptcy-Remote SPE

The SPE can be considered a bankruptcy-remote entity given its nature and purpose of establishment. By its definition, the SPE is a company established for the sole purpose of issuing securitisation bonds. It has an obligation to separate the books of each transaction in terms of the accounts and receivables. Each bondholder is supposed to have a claim against the SPE, but this is backed by the future cash flows of the securitised portfolio.

7. Tax Laws and Issues

7.1 Transfer Taxes

The authors prefer not to write on tax matters.

7.2 Taxes on Profit

No information has been provided in this jurisdiction. See **7.1 Transfer Taxes**.

7.3 Withholding Taxes

No information has been provided in this jurisdiction. See **7.1 Transfer Taxes**.

7.4 Other Taxes

No information has been provided in this jurisdiction. See **7.1 Transfer Taxes**.

7.5 Obtaining Legal Opinions

No information has been provided in this jurisdiction. See **7.1 Transfer Taxes**.

8. Accounting Rules and Issues

8.1 Legal Issues with Securitisation Accounting Rules

All Egyptian companies, including the custodian, the SPE, and the originator are bound by the Egyptian Accounting Standards (EAS) according to the Companies' Law. The EAS are essentially derived from the IFRS. The Capital Market Law reiterates the importance of keeping separate accounting books for different securitisation transactions by all stakeholders of the securitisation transaction. This is reflected in the many declarations that need to be submitted to the FRA from the custodian, the originator, and the issuer that they can keep separate accounting books for each securitisation transaction. The FRA further requires the auditor of the SPE to submit a detailed report that clarifies the methods and capability of the SPE to keep that obligation from an accounting perspective.

8.2 Dealing with Legal Issues

The legal counsel conducts a due diligence exercise on the securitised portfolio. This exercise is followed by a report that raises any material issues found during the review of the documents. The report is reviewed and assessed by the rating agency to help have a transparent picture regarding the legal documents underlying the financial rights and its guarantees.

The legal counsel further assists all parties with the drafting of the securitisation documents. This includes mainly the information memorandum or subscription note, the assignment agreement, the custody agreement, and the collection and service agreement.

In the final phases of the securitisation, the legal counsel assists with submitting the required documents to the FRA and help in clarifying any legal issues that may arise during the submission.

Trends and Developments

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Matouk Bassiouny & Hennawy was established in 2005 and has since developed into a premier full-service business law firm in Egypt and the MENA region, with offices in Algeria, Sudan, and the UAE, as well as two country desks covering the firm's Libya and South Korea practices. It has over 200 lawyers who are trained locally and internationally in common and civil law systems and are fully conversant in English, Arabic, French, and Korean. The firm's finance & projects practice group's primary goal is to provide its clients with legal advice on the banking and finance sector in the MENA region, and on the strengths and weaknesses of security available to lenders in the market.

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An Overview of Securitisation in Egypt

Securitisation has been at the forefront of financial transactions in Egypt throughout recent years. Many Egyptian companies prefer to raise funds through securitisation rather than the loan market to make use of their receivables in generating immediate cash flows. This has been particularly relevant for non-banking financial institutions and capital market companies whose balance sheets contain high volumes of receivable accounts pertaining to their nature of activities.

Securitisation is the process used to issue bonds backed by other financial assets. It entails selling (or as the legal term suggests, assigning) the assets of a company (the originator) to the bondholders – through a special purpose vehicle (SPV) – against immediate cash proceeds going the other way into the originator that result from the subscription in the bonds by the bondholders. It is quite common for financial companies in Egypt, and other parts of the world, to raise funds through securitisation using their portfolio of receivables in activities such as financial leases, consumer loans, mortgages, and credit card debts of its customers.

The process of securitisation is a win-win situation for both financing companies and investors. For financing companies as originators, they can raise immediate cash at more affordable rates than they can get through commercial banks. This cash is generated through receivable accounts (in other words, the money a business is owed by its customers) sitting on their balance sheet that cannot be immediately collected (ie, illiquid assets). They can utilise this cash in expansion plans or to increase their portfolio of customers and reach larger clientele.

Another benefit for the originator is that the securitisation process does not entail the burdening terms of a loan agreement with a commercial bank. Commercial banks tend to include detailed terms about how the business is run, including restrictions on borrowing, selling of assets, and certain senior management decisions. These requirements can be demanding and costly for the business in terms of having to negotiate and secure the bank consent on common operational matters.

For investors, they benefit from the income generated by the bonds which includes the principal and the interest on the bonds. Investors may also sell these bonds to another buyer at any time, thanks to the liquidity of the bond as a security. It is commonplace in the Egyptian market that the securitisation bonds are offered to private and high-net-worth individuals in a private offering. This allows entities such as commercial banks, money market funds, and investment banks to participate and subscribe in the offering.

There are different types of securitisations in jurisdictions around the world depending on the type of assets and the legal mechanism adopted in the process. The most common type adopted by Egyptian capital market financiers is the issuance of securities backed by accounts receivable in a "true sale securitisation" as the legal term goes. This process requires the originator to hire different consultants that assist with requirements of offering and subscription by the regulator.

The originator must have a financial advisor that prepares the financial model of the issuance. The financial adviser also arranges the financial roadshow for the bonds to promote to investors. There must be a legal adviser that prepares the documentation, conducts a due diligence

on the assigned portfolio, and assists in fulfilling any legal requirements from the regulator. The bonds must be given a financial rating through an acknowledged credit rating agency, and the portfolio of receivables must be reviewed by an auditor.

The Egyptian regulator is the Financial Regulatory Authority (the FRA), which oversees all capital market activities as per the law. The process must comply with and fulfil all the guidelines of the regulator issued in the form of regulations and directives. This is certainly in addition to the laws and by-laws pertaining to capital market activities and companies in general.

There is a similarity between the role of the regulator in giving the authorisation to offer the bonds, and commercial banks in loan transactions which authorise drawdown under the conditions precedent to the terms of the loan. The requirements are uniform and anticipated to a larger extent in the case of the regulator than commercial banks. In drawing this comparison, the time of drawdown (or effectively receiving the proceeds of the bonds by the originator) is considered the most crucial and time-sensitive procedure in the process from the company's perspective. The regulator has a certain set of rules that must be followed consistently, as opposed to commercial banks which conduct lengthy negotiations to have more favourable terms of drawdown.

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