

**International
Comparative
Legal Guides**



Project Finance

2024

13th Edition

Contributing Editor:

John Dewar
Milbank LLP

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Expert Analysis Chapters

1

Why the World Needs Project Bonds (and Project Finance Lawyers)
John Dewar, Milbank LLP

7

ESG and Sustainability at the Core of Financing: A European Union Perspective
Vanda Cascão, Assunção Cristas & Filipa Calheiros Ferraz, VdA

Q&A Chapters

16

Cyprus
Patrikios Pavlou & Associates LLC:
Stella Strati & Stylianos Trillides

26

Egypt
Matouk Bassiouny & Hennawy: Mahmoud Bassiouny,
Amgad Nagy, Aya Omar & Israa Mostafa

35

England & Wales
Milbank LLP: John Dewar & Suzy Azim

55

Finland
Borenus Attorneys Ltd: Niina Nuottimäki &
Ben Fallström

63

Germany
GvW Graf von Westphalen: Andrea Torka,
Alina Sturm, Dr. Sebastian Rohrer & Dr. Patrick Wolff

72

Ghana
N. Dowuona & Company: NanaAma Botchway &
Achiaa Akobour Debrah

84

Greece
Sardelas Petsa Law Firm:
Panagiotis (Notis) Sardelas &
Konstantina (Nantia) Kalogiannidi

93

India
Cyril Amarchand Mangaldas: Santosh Janakiram &
Surya Sreenivasan

104

Indonesia
AGI Legal: Oene J. Marseille, Giffy Pardede &
Raoul Aldy Muskitta

114

Japan
TMI Associates: Mizuki Koshimoto,
Akane Matsushita, Takako Fukuda &
Tsugumichi Watanabe

126

Kenya
Oraro & Company Advocates: Pamella Ager &
James Kituku

137

Malaysia
Rahmat Lim & Partners: Dzuhairi Jaafar Thani &
Syed Rashid bin Rahim Alsree

151

Myanmar
Allen & Gledhill (Myanmar) Co., Ltd.: Minn Naing Oo &
Lee Jun Yee

160

Nigeria
Famsville: Akabunwa Blessing Oluwapamilerin,
Rachael Olayemi & Halima Aigbe

168

Portugal
Raposo Bernardo & Associados – Sociedade
de Advogados SP, RL: Nelson Raposo Bernardo,
Joana Andrade Correia &
Manuel Esteves de Albuquerque

176

Singapore
Allen & Gledhill LLP: Kok Chee Wai & Kelvin Wong

186

Switzerland
Prager Dreifuss Ltd.: Daniel Hayek & Mark Meili

194

Taiwan
Lee and Li, Attorneys-at-Law: Robin Chang &
Andrea Chen

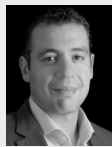
203

USA
Milbank LLP: Daniel J. Michalchuk &
Richard M. Hillman

218

Zimbabwe
Mushoriwa Moyo: Farai Mushoriwa,
Mwanatsa Masona & Isheanotida Chikaka

Egypt



**Mahmoud
Bassiouny**



**Amgad
Nagy**



**Aya
Omar**



**Israa
Mostafa**

Matouk Bassiouny & Hennawy

1 Overview

1.1 What are the main trends/significant developments in the project finance market in your jurisdiction?

Recently and most notably, Egypt held the UN Climate Change Conference of the Parties (**COP27**), where a notable number of environmentally friendly projects have been signed, including but not limited to 10 GW and 5 GW capacity wind power plants, as well as green hydrogen projects and the operations and maintenance of an electric highspeed rail.

Additionally, the project finance market in Egypt witnessed: (a) the issuance of a new Banking Law No. 194 of 2020 (the Banking Law), which replaced the previous legislation of 2003. The new law embraces new financial technologies within the regulatory system and expressly permits the creation of security in favour of foreign banks and international financial institutions; and (b) the inauguration of the Egyptian Collateral Registry (**ECR**) created pursuant to the Movable Collateral Law No. 115 of 2015 (**MCL**), which enables security to be created over bank accounts and future assets.

1.2 What are the most significant project financings that have taken place in your jurisdiction in recent years?

Several significant project financings have taken place in Egypt over the past few years including, but not limited to, the facilities extended by, among other lenders, the Industrial and Commercial Bank of China Limited to the New Urban Communities Authority for the purpose of financing the Central Business District within the New Administrative Capital.

The renewable energy field is also growing significantly in light of Egypt's 2030 vision. Benban solar park projects undertaken near Aswan – intended to be one of the largest solar parks in the world – were financed by various syndications, primarily led by the International Finance Corporation (**IFC**) and the European Bank for Reconstruction and Development (**EBRD**), among others.

2 Security

2.1 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

Typically, security over each type of asset would be regulated pursuant to a different agreement. In cases where perfection of security over different types of assets would follow the same process, it is possible to combine such security into one agreement, although it is common local practice to have a separate agreement for each type of asset.

2.2 Can security be taken over real property (land), plant, machinery and equipment (e.g. pipeline, whether underground or overground)? Briefly, what is the procedure?

Yes, security may be taken over real property (land), plant, machinery, and equipment in Egypt. The process for creating a real estate mortgage is to enter into a mortgage agreement which must be registered with the competent Notary Public Office. Regarding plant, machinery, and equipment, security over such types of assets may be taken in the form of a *fonds de commerce* mortgage which would be registered with the Notary Public, or a non-possessory pledge which would be registered with the ECR and created by virtue of the MCL.

2.3 Can security be taken over receivables where the chargor is free to collect the receivables in the absence of a default and the debtors are not notified of the security? Briefly, what is the procedure?

From a practical perspective, an assignment by way of security over receivables is enforceable upon the occurrence of a default. However, the parties may agree that the enforcement trigger is an event different from the occurrence of a default. Otherwise, an assignment of receivables would effectively be a means of fulfilment of the creditors' obligations. In any case, whether a regular assignment or an assignment by way of security, the debtors must either approve or be notified of the assignment. Such notification must bear *date certaine*.

2.4 Can security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

Yes, security may be taken over cash deposited in bank accounts by virtue of an account pledge agreement. This must be registered with the ECR.

2.5 Can security be taken over shares in companies incorporated in your jurisdiction? Are the shares in certificated form? Briefly, what is the procedure?

Yes, Egyptian law recognises share pledges. The signed share pledge agreement must be registered with the *Misr* for Central Clearing, Depository and Registry (MCDR).

Shares were commonly in certificated form until the issuance of amendments to the Companies Law No. 159 of 1981 (the **Companies Law**) in 2018 which required all joint stock companies to centrally deposit their shares with MCDR.

2.6 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets (in particular, shares, real estate, receivables and chattels)?

The registration fees regarding real estate mortgages are capped at EGP 100,000 for mortgages exceeding a value of EGP 30 million. With respect to pledge of shares, a fixed fee of EGP 200 is payable to the MCDR. As for receivables and chattels, fees for registration with the ECR are capped at EGP 500.

2.7 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

The registration of a share pledge and movables pledge does not involve a significant amount of time or expense. The timeline for registration is around one to two business days upon satisfaction of all required documents. However, the timeline is now longer and the fees are greater in respect of real estate mortgages and *fonds de commerce*. In order to register a real estate mortgage, the ownership of the immovable shall initially be registered with the Notary Public, which may take up to 12 months due to the fact that it is a lengthy process.

2.8 Are any regulatory or similar consents required with respect to the creation of security over real property (land), plant, machinery and equipment (e.g. pipeline, whether underground or overground), etc.?

Generally speaking, no consents are required to create security over assets owned and erected on land which is owned by the security provider. If, however, an entity solely enjoys a usufruct right over land and wishes to create security over the assets erected on such land, the approval of the competent authority which has jurisdiction over the land will be required. A *fonds de commerce* mortgage may be granted in favour of local and foreign banks, as well as international financial institutions as security for the facilities injected in Egypt subject to the prior approval

of the Central Bank of Egypt (CBE). Each type of security must be registered with the relevant competent authority in order to make it enforceable.

3 Security Trustee

3.1 Regardless of whether your jurisdiction recognises the concept of a “trust”, will it recognise the role of a security trustee or agent and allow the security trustee or agent (rather than each lender acting separately) to enforce the security and to apply the proceeds from the security to the claims of all the lenders?

Although the concept of a trust is not recognised in Egypt, security agents are commonly used in syndicated loans. Typically, the security agent holds the security interests for itself and on behalf of the secured parties, and in cases of default, it is entitled to initiate enforcement procedures on behalf of the lenders.

3.2 If a security trust is not recognised in your jurisdiction, is an alternative mechanism available (such as a parallel debt or joint and several creditor status) to achieve the effect referred to above which would allow one party (either the security trustee or the facility agent) to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

While the concept of trust is not specifically recognised under Egyptian law, the concept of agency is regulated in the Civil and Commercial Codes. Please refer to our response to question 3.1 above.

4 Enforcement of Security

4.1 Are there any significant restrictions which may impact the timing and value of enforcement, such as (a) a requirement for a public auction or the availability of court blocking procedures to other creditors/the company (or its trustee in bankruptcy/liquidator), or (b) (in respect of regulated assets) regulatory consents?

In principle, enforcement of security under Egyptian law is completed by selling the asset in a public auction following a court process. However, certain specific laws, such as the Banking Law and the MCL, expressly set forth simpler enforcement procedures in relation to the enforcement of a share pledge registered in favour of an Egyptian bank and the enforcement of a bank account pledge. In relation to real estate mortgages, an “execution order” is issued by the competent court upon the request of the creditor and registered with the competent Notary Public.

4.2 Do restrictions apply to foreign investors or creditors in the event of foreclosure on the project and related companies?

In general, there are no restrictions applied specifically to foreign investors or creditors enjoying security in Egypt. However, we note that public monies (as opposed to private monies) may not be subject to enforcement.

5 Bankruptcy and Restructuring Proceedings

5.1 How does a bankruptcy proceeding in respect of the project company affect the ability of a project lender to enforce its rights as a secured party over the security?

Bankruptcy is regulated by the Restructuring, Preventive Composition, and Bankruptcy Law No. 11 of 2018 (**Bankruptcy Law**).

Upon the issuance of a judgment declaring the bankruptcy of the debtor (i.e. the project company), the enforcement proceedings undertaken by the creditors prior to the issuance of the judgment shall be suspended. Following the judgment, interest on unsecured loans shall be suspended, and interest on secured loans may not be collected, unless connected to the sale of collateral assets. Payment of the principal shall take priority, followed by interest due before the issuance of the judgment and, finally, interest due after the issuance of the judgment.

5.2 Are there any preference periods, clawback rights or other preferential creditors' rights (e.g. tax debts, employees' claims) with respect to the security?

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

The merchant is considered bankrupt from the date of payment cessation of its commercial debts. The court may fix such date within the limit of two years prior to the issuance of the judgment declaring the bankruptcy of the merchant.

5.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?

Yes, unincorporated joint ventures, public sector companies, and public business sector companies are excluded from the scope of the Bankruptcy Law. Banks registered with the CBE are also excluded from said scope and fall within the scope of the Banking Law.

5.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of the project company in an enforcement?

Yes, a pledge over the project company's shares may be enforced outside of court pursuant to the Banking Law and the MCDR Law. Following service of a notification to the debtor with the due payment, the creditor may enforce its rights over the shares in accordance with the EGX sale and purchase rules, noting that MCDR requires that the pledgee be coded on the EGX to be able to sell the shares in an enforcement scenario.

5.5 Are there any processes other than formal insolvency proceedings that are available to a project company to achieve a restructuring of its debts and/or cramdown of dissenting creditors?

Yes, the Bankruptcy Law provides for two procedures under court supervision that mitigate the financial distresses of a company and provide a first line of defence ahead of bankruptcy: (i) the restructuring procedure, which aims to help the debtor manage financial and administrative turbulence by developing a plan to restructure or reorganise the debtor's business; and (ii) the preventive composition, which aims to prevent insolvent liquidation in case the company's financial condition may lead to cessation of the company's due payments, or if the company has ceased making such payments.

5.6 Please briefly describe the liabilities of directors (if any) for continuing to trade whilst a company is in financial difficulties in your jurisdiction.

The powers and liability of the board of directors of a company vary depending on the type of procedures undertaken in respect of the company (i.e. restructuring, preventive composition, or bankruptcy). In relation to bankruptcy, the board of directors of the company will not be able to manage the funds of the company (and consequently shall not be liable) following the issuance of the judgment declaring its bankruptcy. The competent court shall appoint a "bankruptcy trustee" entitled to manage the funds subject to the bankruptcy proceedings, and act on behalf of the company in respect of any lawsuits and business required for such management.

6 Foreign Investment and Ownership Restrictions

6.1 Are there any restrictions, controls, fees and/or taxes on foreign ownership of a project company?

In principle, there are no restrictions, controls, fees, or taxes on foreign ownership of a project company in Egypt. The State guarantees that foreign investors receive the same treatment as local investors. However, in some specific cases the percentage of foreign ownership is subject to some restrictions. For example, pursuant to Law No. 14 of 2012 on the Integrated Development of the Sinai Peninsula (the **IDSP Law**), investment projects in the Sinai Peninsula shall take the form of an Egyptian joint-stock company with an Egyptian shareholding of at least 55%. Foreigners may not own project lands in the Sinai Peninsula. It is worth noting that, according to the recent Presidential Decree No. 128 of 2022, Sharm el-Sheikh, Dahab, and the Gulf of Aqaba, located in South Sinai Governorate, are excluded from being subject to the provisions of the IDSP Law.

6.2 Are there any bilateral investment treaties (or other international treaties) that would provide protection from such restrictions?

We are not aware of bilateral investment treaties that provide protection from the restrictions on foreign ownership of project companies stipulated under Egyptian Law.

6.3 What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of investment specially protected?

Investment projects – investment activities including but not limited to the industrial, agricultural, trade, education, tourism, and health sectors – may not be nationalised. The ownership of investment projects may not be expropriated, except for public utility purposes in exchange for fair and equitable compensation. Further, funds of investment projects may not be seized, frozen or confiscated except by virtue of a judicial order or final judgment.

7 Government Approvals/Restrictions

7.1 What are the relevant government agencies or departments with authority over projects in the typical project sectors?

The regulatory authorities vary depending on the type of project. By way of example, the Egyptian Electric Utility and Consumer Protection Regulatory Agency (**EgyptERA**) is the regulatory authority in the electricity field. As for oil and gas concessions, the regulatory authority may be the Egyptian General Petroleum Corporation (**EGPC**), Egyptian Natural Gas Holding Company (**EGAS**), or Ganope Petroleum Company (**GANOPE**), as the case may be. Regarding real estate projects established in the new urban communities, the competent authority is the New Urban Community Authority (**NUCA**).

7.2 Must any of the financing or project documents be registered or filed with any government authority or otherwise comply with legal formalities to be valid or enforceable?

Facility or loan agreements do not need to be registered or filed with any authority. However, some security documents should be registered with different authorities for enforceability purposes. Real estate mortgage agreements and *fonds de commerce* mortgage agreements must be registered with the competent Egyptian Notary Public office, while share pledge agreements are filed with the MCDR and movable pledge agreements are registered with the ECR. Although project documents do not generally need to be registered or filed, certain project documents such as oil and gas concessions must take the form of a law approved by the House of Representatives.

7.3 Does ownership of land, natural resources or a pipeline, or undertaking the business of ownership or operation of such assets, require a licence (and if so, can such a licence be held by a foreign entity)?

Natural resources shall not be subject to disposal. The right to exploit (as opposed to an ownership right of) natural resources may only be granted by virtue of a law approved by the Parliament for a maximum period of 30 years.

Ownership of lands shall be registered with the competent Egyptian Notary Public office. Foreign ownership of lands is restricted and subject to several conditions under Law No. 230 of 1996.

7.4 Are there any royalties, restrictions, fees and/or taxes payable on the extraction or export of natural resources?

Typically, royalties are applied in respect of extraction of some natural resources (i.e. oil and gas), and export of the same is exempted from taxes by virtue of the concession agreement.

Mineral and salt materials may not be exported except upon the approval of the Egyptian Mineral Resources Authority. The exportation of critical primary materials enjoying strategic and industrial value (in addition to the other materials determined by the Council of Ministers based on the request of the competent Minister) may be prohibited except in case of adding value to the same or undertaking industrial projects in relation to the materials.

7.5 Are there any restrictions, controls, fees and/or taxes on foreign currency exchange?

At present, there are no restrictions or foreign exchange controls in Egypt. Foreign currency exchange is only permitted through banks registered with the CBE and licensed foreign exchange bureaus. From a practical perspective, banks may request evidence of the source of foreign currency when making a deposit of the same.

7.6 Are there any restrictions, controls, fees and/or taxes on the remittance and repatriation of investment returns or loan payments to parties in other jurisdictions?

There are no express legal restrictions on the remittance and repatriation of investment returns and loan payments offshore. Repatriation and remittance of dividends and interest payments in connection with loans are subject to withholding tax in Egypt. This is subject to any lower rate provided under any relevant double taxation treaty.

7.7 Can project companies establish and maintain onshore foreign currency accounts and/or offshore accounts in other jurisdictions?

Yes. As per the Banking Law, each natural or juridical person shall have the right to: (i) maintain and preserve all foreign currencies which are assigned to it or which it owns or acquires; and (ii) perform any foreign currency transaction including the onshore and offshore transfer of foreign currency.

7.8 Is there any restriction (under corporate law, exchange control, other law or binding governmental practice or binding contract) on the payment of dividends from a project company to its parent company where the parent is incorporated in your jurisdiction or abroad?

The project company shall abide by the required dividend distributions that are: (i) stipulated under the Companies Law; and (ii) regulated under the project company's by-laws or articles of association, noting that, if the dividends obtained by an Egyptian project company are denominated in EGP and will be repatriated offshore, such dividends must be exchanged into the relevant foreign currency before repatriation.

7.9 Are there any material environmental, health and safety laws or regulations that would impact upon a project financing and which governmental authorities administer those laws or regulations?

The Environmental Law No. 4 of 1994 and its executive regulations issued by virtue of the Prime Minister's Decree No. 338 of 1995, in addition to the regulations issued by the Ministry of Environment and its affiliated authorities, are the general framework governing environmental matters in relation to existing/upcoming projects in Egypt. The Labor Law No. 12 of 2003 has also provided for the provisions and regulations required to preserve occupational health, safety, and security for worksites.

7.10 Is there any specific legal/statutory framework for procurement by project companies?

This will depend on whether the project company is established as a public company or private company. Public companies are subject to Public Procurement Law No. 182 of 2018 and its executive regulations No. 692 of 2019, which set out the provisions governing procurement and contracts entered into by public authorities/entities. Private companies, however, are subject to their internal procurement regulations.

8 Foreign Insurance

8.1 Are there any restrictions, controls, fees and/or taxes on insurance policies over project assets provided or guaranteed by foreign insurance companies?

If the project assets associated with the insurance policies exist in Egypt, pursuant to Article 81 of Law No. 10 of 1981 regulating the supervision and inspection of insurance in Egypt, insurance policies should be conducted in Egypt through one of the Egyptian insurance companies licensed by and registered at the Financial Regulatory Authority (**FRA**) in order to be enforceable before Egyptian courts. However, as an exception to the aforementioned rule, the FRA may license and permit the creation of insurance policies through a non-licensed or non-registered company (i.e., a non-Egyptian insurance company) upon the request of the insured party and in accordance with the rules and regulations established by the board of directors of the FRA.

8.2 Are insurance policies over project assets payable to foreign (secured) creditors?

Insurance policies may be payable to local or foreign creditors by designation as first loss payee or through an assignment of insurances.

9 Foreign Employee Restrictions

9.1 Are there any restrictions on foreign workers, technicians, engineers or executives being employed by a project company?

There is a set of restrictions listed under the applicable Egyptian regulations for employment in an Egyptian entity. Said restrictions are as follows:

- (i) No foreigners shall work in Egypt unless they obtain a work permit from the Ministry of Manpower and Immigration (**MoM**), and/or related manpower offices. Such foreigner must enter Egypt for work purposes.

- (ii) The percentage of foreign employees in any establishment may not exceed 10% of the total number of Egyptian employees insured by said establishment (please note that the following are excluded from the application of the aforementioned 10%: (i) employees of representative offices; (ii) branch managers; (iii) the employer and their children; (iv) establishments where the number of local employees does not exceed five; and (v) establishments that consist of members of the same family (i.e., a husband and wife, his ascendants and/or descendants). An exception to the aforementioned percentage may be granted by the Exceptions Committee at the MoM after the approval of the competent minister.

10 Equipment Import Restrictions

10.1 Are there any restrictions, controls, fees and/or taxes on importing project equipment or equipment used by construction contractors?

On 13 February 2022, the CBE issued a circular pursuant to which utilisation of the documentary collection for the importation of products (e.g., project equipment) was suspended and replaced by the use of letter of credits. On 29 December 2022, the CBE revoked the aforementioned circular and re-authorised the utilisation of documentary collection for all importation activities. Further, the Decree No. 770 of 2005, issued by the Minister of Commerce and Industry, sets forth certain restrictions on importation including, *inter alia*, the following:

- (i) Article 6 of the abovementioned Decree provides that the imported goods shall not be included in the list of suspended goods provided under Annex 1 of said Decree.
- (ii) Article 7 of the same provides that the imported goods must be new. However, as an exception from the aforementioned rule, second-hand goods may be imported in cases regulated under Annex 2 of the aforementioned Decree, in addition to the goods that are regulated by virtue of a special provision under this Ministerial Decree or have been approved by the Minister of Commerce and Industry to be imported.

Taxes applied to imported equipment vary depending on the type/category of said equipment.

10.2 If so, what import duties are payable and are exceptions available?

Importation duties and any exceptions related thereto vary depending on the type of imported goods.

11 Force Majeure

11.1 Are force majeure exclusions available and enforceable?

Article 165 of the Egyptian Civil Code provides for a description of *force majeure* whereby “*in the absence of a provision of law or an agreement to the contrary, a person is not liable for the damage occurred if it proves that the damage resulted from an independent cause in which it took no part, such as an unforeseen event, force majeure, or the fault of the affected party or a third party*”. While there is no express definition for what is considered a “*force majeure*” event under Egyptian law, the same has been interpreted by Egyptian doctrine and judicial precedents. In order for a “*force majeure*” exclusion to be enforceable, subject to the discretionary power of the competent court, certain conditions must first be met whereby the occurred event:

- (i) was not within reasonable control of the affected party;
- (ii) was not foreseeable at the time of concluding the agreement;
- (iii) could not have reasonably been avoided or overcome by the affected party exercising reasonable diligence; or
- (iv) is not (directly or indirectly) a result of the negligence, wilful conduct, or default of the affected party.

12 Corrupt Practices

12.1 Are there any rules prohibiting corrupt business practices and bribery (particularly any rules targeting the projects sector)? What are the applicable civil or criminal penalties?

Corrupt practices and bribery are primarily regulated pursuant to the Penal Code No. 58 of 1937 (as amended), Criminal Procedures Law No. 150 of 1950 (as amended), Illicit Profit Law No. 62 of 1975 (as amended), Central Auditing Organization Law No. 144 of 1988 (as amended), Money Laundering Law No. 80 of 2002 (as amended), Banking Law, Law No. 3 of 2005 Regulating Competition and Preventing Monopolistic Practices (as amended), and Law No. 10 of 2009 establishing the FRA. Applicable civil or criminal penalties over corrupt business practices and bribery vary according to the offence/violation committed and the relevant facts of the case.

13 Applicable Law

13.1 What law typically governs project agreements?

Project agreements, especially those concluded with public entities, are commonly governed by Egyptian law. It should be noted that opting for foreign law is acceptable so long as the same does not violate Egyptian public order and morality.

13.2 What law typically governs financing agreements?

In cross-border financings, English law is commonly the governing law of the finance documents, whereas Egyptian law is chosen for local financing. In any case, local security documents are subject to Egyptian law.

13.3 What matters are typically governed by domestic law?

Local security documents are typically governed by Egyptian law. Additionally, for local financings, the finance documents are commonly subject to Egyptian law.

14 Jurisdiction and Waiver of Immunity

14.1 Is a party's submission to a foreign jurisdiction and waiver of immunity legally binding and enforceable?

Submission to a foreign jurisdiction is generally a valid and enforceable choice, subject to private international law rules. It must, however, be noted that foreign law, for evidential purposes, is treated as a matter of fact and must be proven by the concerned party. In certain matters, Egyptian law provides for the exclusive jurisdiction of local courts.

Immunity from suit may be waived contractually. However, waiver of immunity from enforcement is subject to a restriction whereby real property and movables owned by the State or public juridical persons which are allocated for public interest in fact, or pursuant to a law, regulation, or decree of the competent minister, are considered public monies which are not subject to attachment.

15 International Arbitration

15.1 Are contractual provisions requiring submission of disputes to international arbitration and arbitral awards recognised by local courts?

Parties to a contract may agree to arbitration as a means of settling any disputes arising therefrom. Due to Egypt being a party to the New York Convention, a foreign arbitral award obtained in a state which is a party to the New York Convention should be recognised and enforced by the competent Egyptian court under an exequatur after verifying that:

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

15.2 Is your jurisdiction a contracting state to the New York Convention or other prominent dispute resolution conventions?

Yes, Egypt is a party to the New York Convention in addition to the Convention of 1965 on the settlement of investment disputes States and the nationals of other States.

15.3 Are any types of disputes not arbitrable under local law?

As per Arbitration Law No. 27 of 1994, arbitration is not permitted in matters that are not capable of amicable settlement between the parties.

15.4 Are any types of disputes subject to mandatory domestic arbitration proceedings?

Resorting to arbitration to settle disputes is an exception from the general method of settling disputes through national courts and is subject to the agreement of the relevant parties in writing.

16 Change of Law / Political Risk

16.1 Has there been any call for political risk protections such as direct agreements with central government or political risk guarantees?

To the best of our knowledge, Egypt has not witnessed recent calls for political risk protections.

17 Tax

17.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders, or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

The following applies in respect of withholding tax under Egyptian law:

- (a) **Domestic lenders:** No withholding tax is applicable on domestic lenders (Egyptian tax residents and those with a permanent establishment situated in Egypt) from the interest received.
- (b) **Foreign lenders:** The withholding tax rate applicable on the interest paid to foreign lenders (non-Egyptian tax residents and those with no permanent establishment in Egypt) is 20%. This is subject to any benefit provided under any relevant double tax treaty.

It depends on whether the proceeds are treated as part of the loan principal amount or as in excess of the loan principal amount. The repayment of the loan principal amount is not subject to withholding tax, while the excess should be subject to the treatment mentioned above.

17.2 What tax incentives or other incentives are provided preferentially to foreign investors or creditors? What taxes apply to foreign investments, loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

- **Cross-border loans:** Reference is made to the incentive mentioned in the answer to question 17.1(a) (second paragraph) above with respect to cross-border loans.
- **Special income tax incentives:** Additionally, the Investment Law issued by Law No. 72 of 2017 (the **Investment Law**) and its Executive Regulations, provides specific tax incentives for all qualified investment projects that (i) have been newly incorporated with fresh assets after the issuance of the Investment Law, and (ii) within three years (may be extended to additional periods not exceeding nine years in total) of the issuance of the Executive Regulations of the Investment Law in 2017 (ending by 28 October 2026), shall enjoy, based on their geographic location, the following tax incentives for up to seven years (the incentives will be deducted from the taxable net profits):
 - (a) Deducting 50% of the investment costs from the taxable income for the projects that will be incorporated in the geographical locations in most need of development, as will be further determined in the executive regulation (**Category A Zones**). According to the Egyptian Cabinet's Decree No. 7 of 2020, among other zones, the part of Port Said located on the eastern side of Suez Canal is one of the Category A Zones.
 - (b) Deducting 30% of the investment costs from the taxable income for the projects that will be incorporated in qualified geographical locations other than Category A Zones (**Category B Zones**) for the following projects, noting that additional projects may be included hereunder, as determined by the Supreme Investment Council:
 - i. extensive labour projects to be determined by the executive regulation;
 - ii. small- and medium-sized projects;

- iii. projects that relay or produce new and renewable energy;
- iv. national, strategic and touristic projects as determined by the Supreme Investment Council;
- v. tourism projects as determined by the Supreme Investment Council;
- vi. projects that produce or distribute electricity as determined by the Prime Minister;
- vii. projects that export their products outside Egypt;
- viii. automotive projects;
- ix. wood manufacturing, furniture, printing and packing, and petrochemical projects;
- x. antibiotics, pharmaceuticals, cancer drugs, and cosmetics products;
- xi. agriculture, food manufacturing and recycling of agriculture wastes; and
- xii. engineering, metallurgical, textile and leather industries.

The above tax incentives are subject to a ceiling of 80% of the company's paid-up capital at the commencement of operation.

Stamp duty tax and other incentives under the Investment Law:

- Investment projects under the Investment Law are exempted from stamp duty and notarisation fees of incorporation contracts, and facility agreements necessary for the embellishment of the project for five years from the date of registration with the commercial register.
- Land registration contracts shall also be exempted from said taxes and fees.
- Equipment and machinery imported by investment projects under the Investment Law, which are necessary for the establishment of the project, are subject to a unified custom duties tariff at the rate of 2%.

18 Other Matters

18.1 Are there any other material considerations which should be taken into account by either equity investors or lenders when participating in project financings in your jurisdiction?

This is not applicable to Egypt.

18.2 Are there any legal impositions to project companies issuing bonds or similar capital market instruments? Please briefly describe the local legal and regulatory requirements for the issuance of capital market instruments.

Generally speaking, the Capital Market Law No. 95 of 1992 (as amended) and the Companies Law have outlined certain prerequisites for a company to issue bonds including, *inter alia*: (i) an extraordinary general assembly resolution approving the issuance of the bonds; (ii) as per Article 162 of the executive regulations of the Companies Law, the full payment of the issued capital of the company issuing bonds; and (iii) the total value of the issued bonds must not exceed the bond issuer's net assets.

Furthermore, as per Article 2 of the Capital Market Law, any juridical person who wishes to issue securities must notify the FRA first. If the FRA does not object within seven business days from the date of its notification, the issuance procedures will proceed. The executive regulations of the Capital Market Law specify the notification data and the documents to be attached thereto.

19 Islamic Finance

19.1 Explain how *Istina'a*, *Ijarah*, *Wakala* and *Murabaha* instruments might be used in the structuring of an Islamic project financing in your jurisdiction.

Istina'a, *Ijarah*, *Wakala* and *Murabaha* are types of Islamic products offered by Islamic banks depending on the type of project itself. If, for instance, the project's purpose is to manufacture and lease-to-own machines and/or equipment, an *Ijarah* financing would be appropriate.

19.2 In what circumstances may *Shari'ah* law become the governing law of a contract or a dispute? Have there been any recent notable cases on jurisdictional issues, the applicability of *Shari'ah* or the conflict of *Shari'ah* and local law relevant to the finance sector?

As a matter of Egyptian law, parties to a contract are free to agree any choice of law, to the extent not violating Egyptian public order and morality. It is worth noting that, in offering Islamic products such as *Mudaraba*, *Murabaha*, or *Ijarah*, financial institutions typically ensure that generally accepted principles of *Shari'ah* are applied. This includes concepts such as the purpose of the finance being compliant with *Shari'ah* (i.e. not to be utilised in the trade of alcohol or gambling activities; etc.) and directing any default interest into charitable purposes.

To the best of our knowledge, there have not been any recent notable cases regarding the applicability of *Shari'ah* or the conflict of *Shari'ah* and Egyptian laws in relation to the finance sector. As per Article 2 of the Egyptian Constitution of 2014, "[...] *the principles of the Islamic Shariah are the principal source of legislation*". Accordingly, the Egyptian legal system is based on, in addition to civil law, the principles of Islamic *Shari'ah* and shall not conflict therewith.

19.3 Could the inclusion of an interest payment obligation in a loan agreement affect its validity and/or enforceability in your jurisdiction? If so, what steps could be taken to mitigate this risk?

No, noting that if the interest to be paid by an Egyptian entity exceeds 7% *per annum*, including compounding or capitalisation of interest, or interest exceeding the principal, such excess may be rendered unenforceable. It should also be noted, however, that it could be argued that the calculation and determination of interest is subject to Article 50 of the Egyptian Commercial Code No. 17 of 1999, allowing such rate between merchants to a contractual maximum of the rate declared by the CBE from time to time.



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