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Egypt: Law and Practice

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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 its Libya and South Korea practices. Its over 200 lawyers are trained locally and internationally in common and civil law systems and are fully conversant in English, Arabic, French and

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1. Loan Market Overview

1.1 The Regulatory Environment and Economic Background

The banking laws and regulations in Egypt have been subject to continuous amendments and updates throughout the past decade. The Banking Law No 194 of 2020 (the “Banking Law”), which was issued on 15 September 2020, substituted the previous banking legislation, the Central Bank Law No 88 of 2003. The Banking Law determines many unclear and unsettled matters from the previous legal regime and embraces new financial technologies within the regulatory system. This has helped the banking sector reach out to unbanked businesses, including for services such as lending and cash management activities.

The legislature has also expanded on other corporate financing alternatives – such as through the recent issuance of the Microfinance Law, the Consumer Finance Law and the Factoring and Financial Leasing Law – in addition to the many other initiatives of the Central Bank of Egypt (CBE) with the aim of upholding the tourism sector, small and medium enterprises (SMEs), the industrial, agricultural and construction sectors, real estate financing and other business

fields. This is in addition to transactions of issuing bonds and securitisations that have started to attract the interest of new business sectors.

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

1.2 Impact of Global Conflicts

During the past year, the Egyptian loan market has been subjected to market fluctuations and multiple economic cycles as a result of distressing global conflict. Due to such turmoil and the resulting uncertainty in the region, the Egyptian pound has been devaluated. Consequently, the Egyptian loan market has been adapting to the surrounding difficulties, and the effects thereof, in order to maintain economic growth and prosperity.

By way of example, the Russia-Ukraine war has added tension to the Egyptian economy caus-

ing inflation to soar; as Egypt relies heavily on Ukraine for agricultural commodities, there was a deficit in these and this was reflected in a price hike for a number of products and commodities. Moreover, as per the CBE Circular dated 11 March 2024, the CBE has extended the exemption of rice, beans and lentils, being basic necessities, from the 100% cash cover requirements for import transactions intended for trade purposes in order to ease the economic pressure.

Further, the Israeli-Palestinian conflict intensified Egypt's macroeconomic challenges. According to UNDP estimates, the total decline in tourism and Suez Canal revenues until 2025 may reach a maximum of USD19.8 million under a high-intensity scenario. Whilst the Suez Canal is one of the most important sources of foreign exchange for Egypt, accounting for almost 10% of account receipts in 2022/2023, the Suez Canal generated USD8.8 billion as opposed to the USD7 billion achieved the year before (see the UNDP assessment: [The Potential Socioeconomic Impacts of the Gaza War on Egypt](#)).

To alleviate such economic turmoil, the CBE's Monetary Policy Committee (MPC) decided in a special meeting – based on a press release dated 6 March 2024 – to raise the CBE's overnight deposit rate, the overnight lending rate, and the rate of the main operation by 600 basis points to 27.25%, 28.25% and 27.75%, respectively. The discount rate was also raised by 600 basis points to 27.75%.

The increased funding costs caused the CBE to renew its initiatives for many of the troubled sectors that are crucial to the economy. For example, several initiatives were introduced and re-introduced for the distressed and struggling businesses and sectors, as mentioned above. Additionally, Egypt has witnessed a shift towards

digital banking, whereby fintech solutions ease loan applications and accessibility in the Egyptian market. This has been realised pursuant to the CBE's new regulations regarding the issuance of the licensing framework for digital banks on 12 July 2023. In the same vein, as published on 2 May 2024, the board of directors of the CBE has granted a preliminary approval to Misr Digital Innovation to incorporate the first digital bank in Egypt entitled "One Bank".

1.3 The High-Yield Market

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

The recent inclination towards securitisation did not affect the loan market in a significant way, as this relates to businesses that operate in quite specific sectors, such as capital market activities. The securitisation transactions also operate under legal and regulatory requirements that set out minimum rating requirements for the assigned rights and the issued bonds.

1.4 Alternative Credit Providers

The loan market has recently seen an increased reliance on international financial institutions and multilateral development agencies compared to previous decades and macroeconomic projects. These institutions are taking a bigger role in the local loan market as they offer convenient solutions that have a competitive edge over Egyptian commercial banks. Foreign commercial banks

have also followed suit in financing infrastructure mega-projects in several transactions according to syndicated loan structures.

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

Additionally, recent trends have seen companies increasingly resorting to alternative financing methods such as factoring, financial lease and other non-banking financial solutions. These activities provide alternative forms of credit, subject to obtaining the required licences by the Financial Regulatory Authority (FRA), and operate under different pieces of legislation, such as the Financial Leasing and Factoring Law No 176 of 2018. Most recently, Egypt issued Law No 5 of 2022 regulating and developing the use of financial technology in non-banking financial activities for the regulation of fintech financial activities.

1.5 Banking and Finance Techniques

There are certain techniques that firms and commercial banks are currently relying on to mitigate the risks to their portfolios. Against the backdrop of highly leveraged corporations and sovereign debt borrowers, a hedging arrangement or a sovereign guarantee often provides a safe harbour against potential risk, which is typically governed by International Swaps and Derivatives Association (ISDA) Master Agreements.

There are also several mega-project transactions that involved the participation of an insurance agency to mitigate any default risk.

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

1.6 ESG/Sustainability-Linked Lending

On 19 December 2022, and in tandem with COP27 which was hosted by Egypt, the CBE announced that all Egyptian banks had completed measuring the carbon footprints of their head offices. A carbon footprint is an index for measuring greenhouse gases (including carbon dioxide and methane) and other gases causing global warming and climate change.

Further, on 21 May 2023, on account of the Arab Day for Financial Inclusion, which takes place on 27 April each year, the CBE announced a number of sustainable finance initiatives. These include:

- allowing banks to operate outside their branches among different governorates (particularly in remote areas);
- allowing citizens to open bank accounts without a floor limit or any expenses;
- encouraging customers that opened electronic wallets to activate and use these; and
- undertaking activities that help spread financial awareness.

In the same vein, the CBE issued a recent decree dated 3 November 2022 regulating sustainable finance. Accordingly, it instructed banks to adopt sustainable finance policies within their credit and investment policies and related procedures

in light of the CBE directory principles of sustainable finance dated 18 July 2021. These policies and procedures were to be provided to the CBE no later than 1 October 2023. Additionally, the board of directors of banks would adhere to such policies and procedures and ratify any reports prepared in this respect. Further, banks would incorporate an independent sustainability and sustainable finance administration affiliated to the chief executive officer (managing director) or their deputy no later than 1 April 2023 in charge of internal co-ordination amongst the different sectors of the bank. The administration would observe the adherence to the CBE directory principles of sustainable finance. Further, banks should prepare regular reports as further illustrated under the CBE regulations and provide these to the CBE sustainability administration. Moreover, as of July 2023, banks should take the opinion of an environment consultant, as authorised by the Ministry of Environment, to evaluate the environmental risks of projects by large companies requesting any funding.

2. Authorisation

2.1 Providing Financing to a Company

Commercial lending activities in Egypt are primarily subject to the Banking Law, which defines banking activities as those comprising, basically and habitually, the acceptance of deposits, the obtainment of finance, and the investment of these funds in providing finance and credit facilities and contributing to the capital of companies, as well all that is considered by banking customs as a banking activity.

Other non-banking financial services are regulated under the Capital Market Law No 95 of 1992, as amended, and are regulated by the FRA. This includes types of financing such as factoring,

invoice discounting, securitisation, margin trading and investment banking. Moreover, according to the Microfinancing Law No 141 of 2014 as amended, companies that are licensed by the FRA can provide financing to SMEs as well as microfinancing.

3. Structuring and Documentation

3.1 Restrictions on Foreign Lenders Providing Loans

A banking activity is defined under the Banking Law as “any activity comprising, basically and habitually, the acceptance of deposits, the obtainment of finance, and the investment of these funds in providing finance and credit facilities and contributing to the capital of companies, as well all that is considered by banking customs as a banking activity”.

The Trade Law No 17 of 1999 (the “Trade Law”) regulates banking activities in Chapter 3, which are:

- monetary deposits;
- debentures deposits;
- safes letting;
- securities pawning;
- bank transfers;
- ordinary bank credits;
- documentary credits;
- discounts;
- letters of guarantee; and
- current accounts.

As a matter of practice, it is common for foreign banks and financial institutions to lend to Egypt. To the best of the authors’ knowledge, transactions in which an Egyptian bank is a borrower are always done by foreign registered “banks”.

It should be noted that Egyptian law does not provide for a codified definition of recurrence. As a matter of practice, some international lenders (generally through a private banking solicitor on a targeted basis, ie, personal physical meetings with no mass advertisement means), UHNW individuals or large corporates have offered banking services, and to the best of the authors' knowledge the regulator has not raised any issues in relation thereto.

3.2 Restrictions on Foreign Lenders Receiving Security

The regulatory framework of granting security to foreign lenders may vary according to the type of collateral involved. For example, Article 106 of the Banking Law gives foreign banks and foreign financial institutions the right to perfect *fonds de commerce* provided an authorisation by the CBE has been issued.

Limitations Relevant to the Movable Collaterals Law

The Movable Collateral Law No 115 of 2015 (the "Movable Collaterals Law"), which regulates the granting of security over movable assets, tangible or intangible, existing or future, including bank accounts, machinery and equipment, trade marks, patents and copyrights, requires the entity benefiting from such security to be licensed as an Egyptian bank, a financial leasing company, or another type of Egyptian company licensed to provide credit solutions. This means that the Egyptian Collateral Registry is limited to Egyptian entities, which have exclusive online access to that Registry. As an alternative route, international banks and financial institutions may appoint an onshore security agent on their behalf that is entrusted with preparing and negotiating the security documents as well as registering and perfecting these in their favour. Such regis-

tration ensures that the collateral concerned is enforceable vis-à-vis third parties.

Limitations Relevant to a Shares Pledge

To ensure the enforceability of a shares pledge vis-à-vis third parties, a pledge over shares shall take the form of a written agreement that has to be registered with Misr for Central Clearing, Depository and Registry (MCDR), the authority responsible for the central depository and registry over shares and other financial instruments, in order to block any trading over said shares in the registers of the MCDR. One of the requirements for MCDR to register such a pledge is that the pledgee must be coded on the EGX to be able to sell the shares in an enforcement scenario. The coding system on the EGX is available for foreign as well as Egyptian entities and individuals.

3.3 Restrictions and Controls on Foreign Currency Exchange

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

3.4 Restrictions on the Borrower's Use of Proceeds

According to the Banking Law, the borrower must use the loan proceeds for the purposes contained in the credit approval of the bank whilst the bank concerned must supervise such utilisation. A utilisation of facility proceeds is subject to the general principles of Egyptian

law regarding corruption, terrorism and money laundering. The use by the borrower of the proceeds for any of the aforementioned purposes would be penalised under the relevant criminal provisions. Furthermore, a utilisation of loan proceeds for a purpose other than that included in the credit approval is subject to imprisonment and/or a fine of not less than EGP100,000 and not exceeding EGP1 million.

In Islamic finance transactions, the general rules of Sharia apply and, as such, the proceeds cannot be utilised to fund activities that are not compliant with Shariah law, such as gambling or those relating to alcohol or arms trading.

3.5 Agent and Trust Concepts

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

A facility agent is appointed to act on behalf of the lenders in relation to the management of documentation and transfer of funds to and from the borrower. The security agent holds the security documents on behalf of the lenders, is in charge of the registration and perfection of the security package, and in cases of default, it is entitled to initiate enforcement procedures on behalf of the lenders.

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

3.6 Loan Transfer Mechanisms

The transfer of a loan between lenders can be made by way of an assignment that is subject to the Egyptian Civil Code (ECC). The assignment agreement is executed between the existing lender and the new lender without the necessity of having the borrower as a party (as this is usually obtained in the underlying loan agreement). A notification to the borrower is often served as agreed between the parties concerned. Also, in practice, the existing lender and the new lender sign an assignment certificate whereby the assignor bank is exempted from its obligations under the loan agreement.

However, it is recommended in many cases that the security interest is cancelled and a new security interest is created in favour of the new lender. This is especially relevant in cases where the existing security interest does not include all favourable terms for the new lender or where there are practical considerations that impede the transfer of security process.

3.7 Debt Buyback

There are no specific restrictions on debt buyback by the borrower or sponsor.

Nonetheless, the ECC regulates the concept of “assignment of debt” as to be agreed between the old and new debtor, whilst it does not become enforceable vis-a-vis the creditor concerned unless it is acknowledged by the latter.

3.8 Public Acquisition Finance

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

3.9 Recent Legal and Commercial Developments

The economic turbulence caused by COVID-19, followed by regional instability and global conflict, has caused parties in the loan market to stress the importance of having well-drafted market disruption clauses. Also, many US dollar-denominated loan agreements have recently been subject to addendums for adopting the transition from the London Interbank Offered Rate (LIBOR) to the Secured Overnight Financing Rate (SOFR) as a reference for interest rates.

3.10 Usury Laws

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

It may be argued that the calculation and determination of interest is subject to Article 50 of the Commercial Code, which allows such rate between merchants up to a contractual maximum of the rate declared by the CBE from time to time. However, to end such debate, the legislature provides that this restriction does not apply to banks licensed and registered in Egypt undertaking banking activities, whilst they are entitled to freely set interest rates subject to the nature of the banking activities in accordance with the Banking Law.

3.11 Disclosure Requirements

There are no specific requirements to disclose financial contracts other than the generally applicable regulatory reporting and disclosure requirements for the activities of financial institutions in general. Egyptian banks and financial institutions are also subject to contractual obligations with the US authorities to disclose information relevant to US individuals and enti-

ties under Foreign Account Tax Compliance Act (FATCA) rules. Many of these institutions request specific clauses in the documentation to allow them to disclose such information.

4. Tax

4.1 Withholding Tax

According to Article 56 of the Income Tax Law, issued by Law No 91 of 2005 (ITL), the payment of services fees, interest or royalties by sole proprietorships or juridical persons in Egypt and non-resident entities that have a permanent establishment to offshore entities shall be subject to a withholding tax at the flat rate of 20% of the invoice amount without the possibility to make any expense deductions. This provision excludes interest incurred in respect of loans and credit facilities granted to (i) the government and local administrative units and other public juridical persons obtained from offshore sources; and (ii) public sector, private sector and public business sector companies provided that the tenor of the underlying loan or credit facility is a minimum of three years.

Based on a recent amendment to the ITL introduced under Law No 30 of 2023, the tax exemption applicable on interest shall remain in effect in respect of loans and credit facilities obtained by public sector, private sector and public business sector companies provided interest payment commenced prior to the Law coming into force. This is read as a cancellation of the other exemption scenarios.

4.2 Other Taxes, Duties, Charges or Tax Considerations

Pursuant to the Egyptian Stamp Duty Law No 111 of 1980, a stamp duty tax is levied in respect of the balance of credit facilities and loans

extended by banks. The rate of the stamp duty tax is ten basis points every quarter calculated over the highest debt balance of each quarter under the facility, loan or borrowing extended by the bank. The stamp duty tax must be borne and split equally between the lender and the borrower and should be transferred by the lender to the competent tax authority within a maximum period of seven days from the end of each quarter.

4.3 Foreign Lenders or Non-money Centre Bank Lenders

Loans extended by foreign lenders or non-money centre banks remain subject to a withholding tax on interest rates in accordance with the ITL. This is usually mitigated through including tax gross-up and tax indemnity clauses in the loan agreement to shift the burden of tax on the borrower.

5. Guaranties and Security

5.1 Assets and Forms of Security

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

Perfection of a security will vary subject to the nature of the same. In order to perfect a real estate mortgage, it shall be notarised with the Notary Public, while perfection of a possessory mortgage entails transferring the possession of the mortgaged assets to the mortgagee or a third party in order for the mortgage to take effect vis-à-vis third parties. The Egyptian Col-

lateral Registry has been established to register security interest over movable assets, including cash deposited in bank accounts and non-possessory pledges. In the case of a share pledge, the relevant security interest must be registered with MCDR. Unregistered security interests would carry the risk of unenforceability towards third parties.

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

5.2 Floating Charges and/or Similar Security Interests

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

5.3 Downstream, Upstream and Cross-Stream Guaranties

Corporate guarantees, including downstream and cross-stream, are generally permissible subject to the existence of corporate commercial interest. Upstream guarantees are permitted under the Companies Law to the extent that the borrowing shareholder is not represented on the board of directors of the guarantor. The Companies Law further prohibits any company from guaranteeing the obligations of its board members to prevent the abuse of board members' rights for personal interests. Thus, if any subsidiary is guaranteeing the obligations of its parent company, the parties must ensure that the parent company is not represented in the board of directors of the subsidiary at the time of granting the guarantee. Otherwise, such guarantee is deemed null and void as a matter of law.

5.4 Restrictions on the Target

There is no explicit legal provision restricting the target from granting security in the context of the acquisition of its own shares. In practice, an acquirer often grants a shares pledge over its shares in the share-capital of the target as a security for the financing of the transaction. As such shares pledge is deemed a security, the acquirer may not be represented in the board of directors of the target at the time of granting such shares pledge to ensure its validity.

5.5 Other Restrictions

Generally, no further consents are required; please refer to **5.1 Assets and Forms of Security**. From a practical perspective, registration of in rem security interests may trigger significant survey fees subject to the nature and size of the land, and as determined on a case-by-case basis. This applies to foreign lending institutions only, as Egyptian banks benefit from a cap on notarial fees under the Banking Law.

Please note, however, that certain restrictions may arise in relation to the registration of the security. By way of example, the property itself must be registered with the notary public as a prerequisite for registering the real estate mortgage. This may not be practical as the majority of real estate properties in Egypt are not registered due to the lengthy and costly procedures involved.

5.6 Release of Typical Forms of Security

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

Regarding the pledge of shares, the termination instructions by the pledgee must be notified to

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

5.7 Rules Governing the Priority of Competing Security Interests

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

5.8 Priming Liens

Liens ranked as such and mandatorily preferred by virtue of law shall take priority over contractual loan debts. These preferred liens are generally 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. Lastly, unsecured creditors will share any remaining enforcement proceedings on a pro rata basis in relation to the total liabilities of the debtor.

According to Articles 1138, 1139 and 1140 of the ECC, senior debts that have priority over a secured debt created by a contractual relation-

ship, are as follows according to their order of priority.

- The most senior debts are the judicial expenses incurred for the benefit of all creditors for the preservation and sale of the debtor's money. These are the expenses paid for the benefit of all creditors, such as attachment expenses, custodial services expenses and procedures of enforcement expenses. These expenses can be paid by and accordingly be due for one of the creditors undertaking these procedures on behalf of the other creditors or the court. The seniority means that these expenses will be collected from any enforcement proceeds resulting from the sale of the mortgaged assets (whether real estate or commercial) prior to any other rights or debts.
- Second are the amounts due to the public treasury, such as taxes, duties and other rights as regulated under different laws and regulation. These dues to the public treasury are generally regulated under tax laws, such as the ITL or the Real Estate Tax Law. The seniority means that these dues will be collected from the assets subject of the tax dues, each in accordance with the applicable regulations. For example, real estate tax dues may be collected as senior debt from the enforcement proceeds resulting from the sale of the mortgaged real estate assets.
- Third are the amounts incurred for the maintenance and restoration of a movable property, such as maintenance expenses for a car or other movables. These amounts are considered senior debts and can be collected from the value of the relevant movable property upon its sale.

Other senior debts are regulated under Articles 1141 until 1149 of the ECC.

6. Enforcement

6.1 Enforcement of Collateral by Secured Lenders

An enforcement over a security under Egyptian law varies depending on the type of security in question. It is generally completed through selling the asset by a public auction as organised by a court of law. Certain laws expressly set forth simpler enforcement procedures, such as the Banking Law and the Central Depository Law No 93 of 2000 (the "Central Depository Law") in relation to an enforcement over the pledged shares as registered in favour of Egyptian or non-Egyptian banks (as the case may be) and the Movable Collateral Law in relation to a pledge over bank accounts. A general overview of enforcing security in Egypt is as follows.

Immovables (ie, Land and Buildings)

An "enforcement order" is issued by the competent court upon the request of the creditor and annotated in the competent notary public office. The creditor shall notify the debtor of the enforcement order by court bailiff and grant it a period of 14 days to repay its liabilities. If these are not repaid during that period, the creditor is entitled to, upon serving warning of expropriation of the property to the debtor, offer the sale of the property in a public auction under the supervision of the enforcement judge.

Movables

Where the movable pledge agreement entitles the creditor, in the event of non-payment or other event(s) of default to sell the pledged property, the creditor may not initiate the sale proceedings until the lapse of five days from notifying the debtor to repay/perform its obligations by virtue of a registered mail as well as the remaining creditors. Otherwise, the creditor – upon notifying the debtor to repay/perform its obligations

as well as the remaining creditors – shall file a memorandum with the court concerned requesting the sale of all or part of the pledged property. These procedures do not apply in the event no other security interest exists over the pledged property and the debtor approves the sale. The sale proceeds are confined to the creditors' rights as well as the sale expenses.

Share Pledge

An enforcement over pledged shares depends on whether the pledgee is an Egyptian bank or a non-Egyptian bank/financial institution, having regard to the provisions of the Banking Law and/or the Central Depository Law (as the case may be). In the first scenario, this may take the form of (i) selling the pledged shares and financial instruments pursuant to the Egyptian Exchange decrees upon notifying the pledgor concerned within ten business days by a court bailiff; or (ii) acquiring the pledged shares or financial instruments upon the lapse of five days from the date of notifying the pledgor by virtue of a registered mail, provided these rights are explicitly stated in the shares pledge agreement. As for non-Egyptian banks/financial institutions, this may take the form of the sale and/or acquisition of the pledged shares or financial instruments upon the lapse of five days from the date of notifying the pledgor by virtue of a registered mail, provided these rights are explicitly stated in the shares pledge agreement.

Bank Accounts and Cash Deposits

If the creditor is the bank holding the pledged accounts/deposits, a set-off is usually executed between the pledged accounts/deposits and the amounts owed by the debtor; and if the pledged accounts/deposits are held with another bank, such accounts/deposits may be claimed by the creditor.

6.2 Foreign Law and Jurisdiction

The choice of foreign law as the governing law of the parties' agreement is valid to the extent it does not contravene Egyptian public policy or public morality. The application of Egyptian law is only mandatorily applicable on disputes relating to the transfer of technology in accordance with the Commercial Law. However, it must 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, a 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 that are not subject to attachment according to the ECC.

6.3 Foreign Court Judgments

In order to enforce a judgment of any foreign court by the courts of Egypt, without further review of the merits, Egyptian law provides that:

- foreign courts shall offer reciprocal treatment to judgments obtained in the courts of Egypt under an effective treaty between Egypt and the jurisdiction concerned providing for such reciprocal treatment;
- the parties to the dispute should be duly notified and properly represented in the proceedings;
- the courts of Egypt shall not be competent to hear the dispute which constituted the object of the foreign judgment, and foreign courts are shown to be competent to hear the

dispute in accordance with the laws of the jurisdiction concerned;

- the judgment shall be final and conclusive in accordance with foreign law; and
- the judgment shall not conflict with a prior Egyptian judgment in the same case and is not contrary to public policy in Egypt.

6.4 A Foreign Lender's Ability to Enforce Its Rights

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

7. Bankruptcy and Insolvency

7.1 Impact of Insolvency Processes

Pursuant to Article 87 (a) of the Bankruptcy Law No 11 of 2018 (the "Bankruptcy Law"), the bankruptcy trustee shall annotate the declaration of bankruptcy in the Egyptian Collateral Registry (ECR) and the competent notary public office. Repayment of a debt prior to its maturity or upon becoming mature but in a manner other than as agreed on, as well as perfection of a security over the debtor's monies subsequent to the relevant indebtedness, may be deemed unenforceable vis-a-vis the remaining creditors upon suspension of payment and prior to the declaration of bankruptcy. Following the declaration of bankruptcy, accrued interest on unsecured loans shall be suspended, and on secured loans may not be claimed unless to the extent of such amounts collected from the sale of any

of the collateralised assets. Payment of principal shall precede, followed by interest due before the declaration of bankruptcy, then interest due after such declaration.

The financial distress of any Egyptian bank is regulated by Chapter 12 of the Banking Law, which excludes banks from the purview of the Bankruptcy Law, which is the general legislation regulating the bankruptcy of companies in Egypt. The Banking Law designates the CBE as the authority entrusted with regularising the status of banks in financial distress. To realise that objective, the CBE is given wide powers and means to put into effect the provisions of the Banking Law.

Chapter 12 of the Banking Law aims to achieve general objectives such as maintaining the stability of the banking system, protecting the interests of depositors, mitigating losses for creditors, and avoiding the utilisation of public funds in any settlement process. The guiding principles include ensuring the proportionality of the measures with the level of distress, absorbing any losses through equity rights as an initial resort, and giving all creditors of the same rank similar treatment.

7.2 Waterfall of Payments

The order of priority for creditors during a company's bankruptcy proceedings is detailed in 5.8 **Priming Liens**.

7.3 Length of Insolvency Process and Recoveries

It is not possible to estimate the length of typical insolvency processes and the generation of recoveries as such time periods vary depending on the case.

7.4 Rescue or Reorganisation Procedures Other Than Insolvency

Egyptian law differentiates between insolvency procedures applied to non-merchant individuals and bankruptcy procedures applied to merchants, including companies. The Bankruptcy Law provides for two procedures that mitigate the financial distress of a company and provides a first line of defence ahead of bankruptcy. These proceedings are set out below.

Restructuring/Reorganisation

The purpose of restructuring is to set out a plan to organise and overcome the financial and administrative turbulence of the bankrupt company. Any company may apply for a restructuring plan provided that its capital is not less than EGP1 million and it has conducted business in a continuous manner for the previous two years without committing fraud. The company may not apply for a restructuring plan if a court ruling has been issued declaring its bankruptcy or opening rescue/reconciliation procedures. The competent court shall verify the plan prepared by the restructuring committee. The company will remain in control of its business, nonetheless the competent court may appoint an assistant to support the merchant if it deems necessary. Pursuant to Article 18 of the Bankruptcy Law, the methods by which restructuring may be achieved include the revaluation of assets, restructuring debts and capital increase.

Reconciliation/Rescue

Subject to the condition of two years of conducting business, any company that may be declared bankrupt, and that did not commit fraud or gross negligence, has the right to apply for “a reconciliation from bankruptcy” if it has become subject to a disorder in its financial conditions that may lead to suspension of payment, or if it has ceased payment (even if a bankruptcy declara-

tion has been claimed), it has the right to apply for the reconciliation from bankruptcy and submit it to the competent court. Any debtor may apply for a “reconciliation from bankruptcy” upon the approval of the majority of its partners or general assembly depending on the legal structure of the entity concerned provided it has continuously undertaken business for two years prior to such application, as well as remained compliant with the commercial registry and commercial books regulation; however, a company subject to liquidation procedures may not request the same. The company under reconciliation will continue managing its own monies under the supervision of a trustee appointed by the competent court. The company can also conclude all kinds of ordinary transactions necessary for its business.

7.5 Risk Areas for Lenders

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

8. Project Finance

8.1 Recent Project Finance Activity

The main market trends are currently characterised by national financing projects, including infrastructure and real estate, in addition to small and medium-sized projects. The Egyptian Economic Development Conference (EEDC), held in March 2015, presented investment opportunities to domestic and international investors, and highlighted how well the banking sector weathered the economic turbulence that followed the 2011 Egyptian revolution.

Additionally, the project finance market in Egypt witnessed:

- the issuance of a new Banking Law (replacing the previous legislation No 88 of 2003), which embraces new financial technologies within the regulatory system and expressly permits the creation of security in favour of foreign banks and international financial institutions;
- the inauguration of the ECR created pursuant to the Movables Collateral Law (MCL), which enables security to be created over bank accounts and future assets;
- the signing of a significant number of sustainable projects in the renewable energy sector, including green hydrogen projects, the construction of an electric high-speed railway, and many solar and wind farms; and
- the promulgation of the Incentives for Green Hydrogen Production Projects and its Derivatives Law No 2 of 2024, aiming to provide multiple incentives for green hydrogen projects, subject to the satisfaction of some conditions provided thereunder.

8.2 Public-Private Partnership Transactions

Public-Private Partnership Overview

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

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

Limitations Under the PPP Law

Additionally, pursuant to Article 11 of the PPP Law, the assets pertaining to the implementation of the partnership contract may not be seized or enforced. Article 11 provides that “it is not permissible to seize or undertake any enforcement measures on the facilities, tools, machines or equipment designated for implementing the partnership contract and operating or exploiting the project. The project company may not sell the funds and assets of the project, which it may own in accordance with the partnership contract for the project and the facilities being established or developed, except for the purpose of implementing the replacement and renewal programme stipulated in the contract and after obtaining the approval of the competent authority or assign any right to them.”

8.3 Governing Law

Certain national projects and programmes introduced by the government involve templates of previously established project documents that are governed by Egyptian law. These agreements are typically entered into between the

government or public sector entities and the project companies. Project contracts entered into between two or more private sector parties are also typically governed by local laws. It is worth noting that the choice of foreign law to govern project agreements is acceptable provided that it does not contradict public order and public morality. Facility agreements that are entered into between foreign lenders and the project companies are typically governed by a foreign law (for example, English law).

Further, Egypt is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. As such, foreign arbitral awards are recognised and enforceable in Egypt if such awards are obtained in a state that is a party to the New York Convention. For any agreement entered into between an administrative entity, including ministries, public entities, governmental agencies, affiliated entities thereto or state-affiliated companies or those the state participates in and a foreign investor (not defined under the decree concerned) or any agreement entered into that contains an arbitration clause to resort to international arbitration, any amendment to such agreements, or undertaking any procedure to rescind or terminate these, must be submitted to the Supreme Arbitration Committee based on the Presidential Decree No 1062 of 2019 (as amended). Repercussions of the violation of this provision have not yet been regulated.

8.4 Foreign Ownership

Foreign ownership of property and usufruct rights are subject to certain conditions under Law No 230 of 1996. Foreign individuals or entities may own land in Egypt subject to a limit of two properties and within specific area limits.

8.5 Structuring Deals

Egyptian law does not provide for specific restrictions in relation to the form of the project company in the context of a project financing as this shall be subject to the type of project and the relevant agreement executed between its parties (eg, project companies established in relation to energy projects under the feed-in tariff programme must be joint stock companies). One point to note when structuring the security package is that an upstream corporate guarantee by an Egyptian entity is only permissible to the extent that the guaranteed entity is not represented in the board of directors of the Egyptian company at the time of granting the guarantee.

Restrictions on Foreign Investment

Generally, Investment Law No 72 of 2017 regulates the grant of investment incentives (whether in favour of Egyptian or foreign investments), ensuring fair and equitable treatment to foreign investors as is granted to their national counterparts. Although there are no restrictions on foreign ownership as the company may be wholly owned by foreigners, there are legal restrictions on foreigner participation in certain activities, such as the following.

- Commercial agencies are required to be wholly owned by Egyptians or persons who have held Egyptian nationality for at least ten years.
- With respect to importation activities for trading purposes, 51% of the shareholders must be Egyptian.
- Acquiring lands and/or real estate in the Sinai Peninsula (excluding the cities of Sharm El-Sheikh, Dahab and Gulf of Aqaba – Touristic, as per Presidential Decree No 128 of 2022), whereby the company is required to be wholly owned by Egyptians. Additionally, a company operating in the Sinai Peninsula (implement-

ing investment and integrated development projects) must be established in the form of a joint stock company and 55% of its shareholders must be Egyptian. Certain approvals are required and restrictions are imposed on foreign ownership. By way of exception to the aforementioned threshold, the requirement to have 55% Egyptian shareholders in companies that conduct the implementation of integrated development projects in the Sinai Peninsula may be exempted by virtue of a presidential decree issued in this regard. These companies must also obtain the necessary approvals from the Cabinet and other competent authorities to allow them to conduct their activities.

8.6 Common Financing Sources and Typical Structures

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

8.7 Natural Resources

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

The Egyptian Constitution prohibits disposing of natural resources as being a state public property. Granting the right to exploit natural resources

or a concession to a public utility shall take place by law for a period not exceeding 30 years, while granting the right to exploit quarries, small mines and salterns (or granting a concession in this regard) shall be for a period not exceeding 15 years by law.

8.8 Environmental, Health and Safety Laws

Law No 4 of 1994 and its executive regulations issued by virtue of Prime Minister's Decree No 338 of 1995 (the "Environmental Law") is the general framework governing environmental, health and safety matters in relation to existing projects/upcoming projects in Egypt. Pursuant to the Environmental Law, the Egyptian Environmental Affairs Agency is the competent authority to issue environmental permits/approvals. Labour Law No 12 of 2003 further regulates occupational health, safety and security on work sites.

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

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