

Taking Security in Africa

A Comparative Guide for Investors

Egypt

May 2024



About This Guide

In light of Africa's sustained economic growth over the last two decades, the continent has become an increasingly attractive destination for investment.

However, to a foreign investor, assessing legal risk requires an understanding of the laws and legal systems particular to the jurisdictions in which the investment is being made. The many different legal systems of the continent's 54 countries and regional blocs can be challenging to navigate. Africa's complex legal systems and the limited information about how those systems apply to foreign investments are often seen as obstacles to investment.

This guide provides an overview of the types of assets over which security can be taken, the different types of security, as well as the related procedures for the perfection and enforcement of such security in Africa. With contributions from leading local law firms, we focus on eight of the most active jurisdictions for foreign direct investment: Egypt, Ethiopia, Ghana, Kenya, Mauritius, Nigeria, South Africa, and Uganda.

This Egypt chapter was prepared with the help of Egyptian firm Matouk Bassiouny & Hennawy.

Clement N. Fondufe, *Co-Chair, Africa Practice*
Kem Ihenacho, *Co-Chair, Africa Practice*

Contents

04	Types of Security Interests
06	Perfecting Security Interests and Priority
08	Enforcement of Security
09	Insolvency/Bankruptcy Proceedings
12	Contacts

Types of Security Interests

What categories of assets are typically provided as security to lenders in Egyptian financings?

Shares

A share pledge may be taken over shares or quotas in an Egyptian joint stock or limited liability company. The pledge of shares would take the form of an agreement between the pledgor and the pledgee. In case of a pledge over shares of an Egyptian joint stock company, the agreement must be registered with Misr for Central Clearing, Depository and Registry (MCDR). In case of a limited liability company, a pledge over quotas would be perfected by virtue of an annotation on the quota certificate(s) and the quotaholders' ledger, as well as by the transfer of possession of the quota certificate to the pledgee or a third party.

Bank Accounts

Security over bank accounts is regulated under law no. 115 of 2015 and the executive regulations enacted thereunder pursuant to law no. 108 of 2016 (the Movable Collateral Law). Current accounts and time deposits in designated bank accounts may be pledged and/or assigned if the account holder and the account bank enter into a pledge agreement and/or an assignment agreement which is subject to registration with the Egyptian Collateral Registry (the ECR), an electronic register established for perfection of security created under the Movable Collateral Law.

Land

Security over immovable property may be taken by way of an official real estate mortgage over land, buildings, and/or buildings under construction. The real estate mortgage agreement must be registered with the relevant competent notary public office in order to be effective.

Contractual Rights

Security may be taken over contractual rights by way of an assignment by way of security pursuant to an assignment agreement. The assignment created pursuant to such agreement must bear a certified date (e.g., by notarisation) in order to be effective against third parties. In practice, the date certification of the assignment agreement is achieved by virtue of a notice of assignment served through a court bailiff.

Insurance Proceeds

Security may be taken over insurance proceeds by two means:

- by virtue of an assignment by way of security; or
- by endorsement of the insurance policy in favour of the secured parties, which is the method used more commonly in practice.

Authorisations and Licences

Governmental authorisations and licences are issued on the basis of "personal consideration" (*intuiti personae*) under Egyptian law. Accordingly, transfer or assignment of authorisations or licences may, in certain scenarios, be conditioned upon obtaining the approval of the competent regulatory authority responsible for issuing the same. Under the Movable Collateral Law, it is prohibited to create security over licences issued by the State, public authorities, or any public juridical body.

Intellectual Property

Intellectual property such as trademarks, patents, and industrial designs are included in a person's *fonds de commerce*, which may be mortgaged through a *fonds de commerce* mortgage.

Personal Property and Tangible Assets

Security may be taken over movable property by way of a possessory mortgage, a *fonds de commerce* mortgage, or a mortgage over movable property registered with the Egyptian Collateral Registry.

Aircraft and Ships

Aircraft: Security may be taken over aircraft by way of an official mortgage document, executed before the administrative authority entrusted with the registration of aircraft, i.e., the Egyptian Civil Aviation Authority.

Ships: Security may be taken over vessels and vessels under construction by way of mortgage.

Types of Security Interests

Can security be taken over future assets?

As per the provisions of the Movable Collateral Law, the ECR has been created for the registration of any security interest granted over present and future movables. Said movables include any tangible (present or future) or intangible movables owned by the debtor or guarantor securing an obligation, debt, loan, or credit facility. The ECR allows for the perfection of security interests created in accordance with the provisions of the relevant law.

Are there any restrictions on who can legally grant and/or hold a security interest?

Any natural Egyptian citizen with legal capacity and authority to grant a security interest may legally grant the same. A natural Egyptian citizen may also hold certain types of security, such as pledge of shares as well as assignments by way of security. It is also permitted under the executive regulation of the Movable Collateral Law that a natural person granting a financing or credit hold a security over movables. While there is no express legal restriction in this regard, from a practical perspective it may be challenging to register a real estate mortgage or a *fonds de commerce* mortgage in favour of a natural person.

Egyptian juridical persons, on the other hand, may grant and/or hold a security interest, subject to the rules applicable to each type of collateral and any restrictions in their constitutional documents.

In relation to foreign lenders, Egyptian law is clear on restricting said entities from holding a security interest on certain types of assets. For instance, the Movable Collateral Law requires that the entity that the security is registered in the name of be licenced as an Egyptian bank, an Egyptian financial leasing company, or other Egyptian companies licenced to provide credit solutions. This means that the ECR is limited to Egyptian entities.

Foreign lenders that wish to hold such form of security must appoint a local security agent on their behalf, except for lenders which are established pursuant to a treaty, such as the European Bank for Reconstruction and Development.

Egyptian law prohibits the creation of security over any asset which may not be disposed of legally. This includes public monies, namely all real estate and movable property which is designated for the public benefit and is owned by the state or by public legal persons.

Are security trustees or security agencies recognised under Egyptian law? If so, do any steps need to be taken to ensure the enforceability of a security trustee's or a security agent's right in the secured property?

Egyptian law does not recognise the concept of a security trustee. However, the appointment of a security agent is common, especially in the context of syndicated loan agreements. The role, duties, and rights of a security agent are regulated by contract, since Egyptian law does not stipulate further requirements as to the enforceability of a security agent's right in security.

What about third-party security?

Third-party security is permissible, and the entity granting such security may receive a commercial benefit for doing so. In case no commercial benefit is obtained, however, the security grant will be considered a gratuity and shall be subject to provisions regulating gratuity.

Perfecting Security Interests and Priority

Are there any asset-specific perfection requirements?

Shares

To perfect a pledge over shares that are deposited with the MCDR (which includes all shares listed on the Egyptian Stock Exchange (EGX) as well as unlisted shares), the relevant share pledge must be submitted to the MCDR so that the latter may register the share pledge in its records upon submission of the required documents.

The obligation to register the shares with the MCDR has been introduced by virtue of an amendment to the Companies' Law (no. 4 of 2018). As such, all Egyptian joint stock companies, as well as companies limited by shares, are required to register their shares with the MCDR.

Bank Accounts

A pledge and/or assignment of cash deposits, or amounts, in a bank account is perfected through registering the security interest over the movable assets with the ECR. Generally, registration of all security interest registrable with the ECR, including bank accounts, is completed by the pledgee.

Land

A real estate mortgage is perfected through registering the mortgage (which must be in written form acceptable to the competent Notary Public office) with the competent notary public office.

Contractual Rights

To perfect an assignment against the debtor or third parties, the debtor must be notified of (or must otherwise acknowledge) the assignment. In practice, such notice of assignment is served by virtue of a court bailiff and entails a certification of the date of the assignment agreement.

Insurance Proceeds

To perfect an assignment of insurance proceeds, the insurer must be notified of (or must otherwise acknowledge) the assignment. The date of such assignment must be certified. Alternatively, an endorsement of the insurance policy in favour of the secured party may be completed.

Intangible Assets and Intellectual Property

A *fonds de commerce* mortgage is perfected through registration with the notary public and annotation on the mortgagor's commercial register. Alternatively, a pledge over movables may be registered with the ECR. From a practical perspective, it is also acceptable to register a *fonds de commerce* mortgage with both the notary public and the ECR.

Personal Property and Tangible Assets

Possessory mortgage: Assets subject to a possessory mortgage must be transferred to the creditor in order to perfect the mortgage. The creditor may also register its rights as a possessory mortgage in the ECR.

Fonds de commerce mortgage: A *fonds de commerce* mortgage is perfected through registration with the notary public and annotation on the mortgagor's commercial register. The creditor may register its rights under the *fonds de commerce* mortgage in the ECR.

Aircrafts and Ships

Aircraft: Mortgages over aircraft are perfected through an official document written and executed before the administrative authority entrusted with the registration of aircraft. The mortgage must be registered in the aircraft register held with the Egyptian Civil Aviation Authority.

Ships: A maritime mortgage over a vessel or vessel under construction must be registered at the vessels' registry.

Perfecting Security Interests and Priority

What are the fees, costs, and expenses associated with creating and perfecting security in Egypt?

Mortgage registration fee: A fee cap of EGP 100,000 is legally applicable to, and payable in respect of, the registration of a mortgage in the event that such mortgage grants a security interest to a bank or a financial institution providing financing or credit facilities. Egyptian banks and foreign banks alike are eligible for the aforementioned cap by virtue of the Banking Law No. 194 of 2020 (Banking Law), which recently expressly applied the abovementioned cap to foreign banks, since the applicability of the same to foreign banks was vague under the preceding legislation. The registration fee shall be determined as follows:

- EGP 25,000, if the value of the mortgage does not exceed EGP 10 million;
- EGP 50,000, if the value of the mortgage does not exceed EGP 20 million;
- EGP 75,000, if the value of the mortgage does not exceed EGP 30 million; and
- EGP 100,000, if the value of the mortgage exceeds EGP 30 million.

Notary public fees: Such fees are payable if involvement of a notary public is required as part of any formalities required in connection with the perfection of a security interest (e.g., the establishment of date certainty). In addition, registration of *in rem* security interests is subject to survey fees, which typically is commensurate to the nature and size of the relevant land and/or property.

Stamp duty: A nominal stamp duty of EGP 0.9 per page is payable on any document which is intended to produce a legal effect in Egypt. If the relevant document was issued offshore and was brought into Egypt to be used, the stamp duty shall be due upon its usage. Credit facilities and loans provided by local banks are subject to a proportional stamp duty equivalent to 10 basis points levied quarterly on the highest debt balance under the facility, loan, or borrowing provided by banks.

Can security over the same asset be granted to two creditors? If so, how will priority be determined?

Security over a single asset may be granted to more than one creditor.

Registrable security interests: For a security interest that must be registered (such as real estate and *fonds de commerce* mortgages), the priority of creditors is determined according to the date and time of registration or annotation.

Non-registrable security interests: For a security interest that is not subject to registration (such as insurance proceeds and assignment of contractual rights), the priority of creditors is determined subject to the dates on which their assignments are date certified in accordance with local law.

Shares deposited with the MCDR: While there is no express restriction of granting share security to multiple creditors, in practice, the system at the MCDR only allows for registration to one creditor.

Enforcement of Security

Outside the context of bankruptcy or insolvency proceedings, what steps should a secured party take to enforce its security interest?

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

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

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

Share pledge: In order to enforce a share pledge, the pledgee must first request payment of the secured

debt from the pledgor, usually through service of an official notice through a court bailiff. If the pledgor does not make payment within 10 days after notification, the pledgee may enforce its rights over the shares in accordance with the EGX sale and purchase rules. The aforementioned process applies only to Egyptian banks and branches of foreign banks registered with the CBE by virtue of Article 107 of the Banking Sector Law, while the process applicable to foreign banks differs, as enforcement shall take place through public auction and by an enforcement judge.

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

Are any governmental or other consents required in connection with the enforcement of any category of security interest?

Generally, while no governmental or other consents are required in order to enforce any category of security, in order for a creditor to enforce its security interests, a creditor generally must obtain a court order, which is simpler and more accelerated than a court judgment. Subsequently, the assets subject to security are sold in a public auction. As elaborated above, certain security may exceptionally be enforced without the need for a court order.

Are there any restrictions on who can enforce a security interest over assets located in, or governed by the laws of, Egypt?

Under Egyptian law, only the registered pledgee, mortgagee, or assignee (as applicable) may enforce a security interest over assets located in, or governed by, the laws of Egypt regardless of such creditor's nationality and domicile.

Insolvency/Bankruptcy Proceedings

Overview

The Egyptian bankruptcy regime is primarily set out in the Restructuring, Rescue, and Bankruptcy Law no. 11 of 2018 (the Bankruptcy Law). However, the newly introduced Banking Sector Law explicitly excludes the application of the Bankruptcy Law to Egyptian banks and introduces a new chapter on settlement of distressed banks. The law allows the CBE, in certain scenarios, to extend facilities to distressed banks, take over the governance of the distressed bank, and/or appoint an interim bank to reserve the rights of the distressed bank and carry out its obligations.

Notably, Egyptian law distinguishes between insolvency procedures applicable to non-merchant individuals and bankruptcy procedures applied to merchants, including companies.

Bankruptcy proceedings, in accordance with the Bankruptcy Law, may only be declared by virtue of a court order at the request of the debtor, any of its creditors, or the public prosecutor. The debtor's right to submit such a request in order to file for its own bankruptcy is limited to merchants — whether natural persons or legal entities (the latter category includes companies, branches, and agencies) — which carry out their activities in Egypt.

To file for its own bankruptcy, a merchant must submit a request to the competent court within 15 days of the date of the default in paying due amounts for reasons attributable to the merchant's business conditions. This request must include the merchant's commercial records and documents, the reasons for its default, the names and addresses of its debtors and creditors, the amount of debt owed, and the security on such debt. Additionally, a certificate must be submitted evidencing that: (i) the merchant did not previously present such a request or submit a request that was rejected three months prior; and (ii) a deposit of EGP 10,000 having been made at the clerk's office.

In order to file for its debtor's bankruptcy, the creditor must deposit its statement requesting all necessary protective measures to be taken as well. The statement must also include any evidence of the debtor's refrainment of payment of due debts at the clerk's office in the competent court, accompanied by an amount equivalent to EGP 10,000 to meet the costs of publishing the bankruptcy court order. The clerk's office shall then decide upon the soonest hearing and notify the debtor.

Are “company rescue” or reorganisation procedures available?

Restructuring procedures prior to a declaration of bankruptcy are available. To be eligible to benefit from such proceedings, the relevant person must: (i) have been a merchant for a minimum period of two years prior to filing; (ii) have a minimum capital of EGP 1 million; (iii) not have committed fraud; (iv) be suffering from a turbulent financial status; (v) not have initiated proceedings for company rescue against bankruptcy; and (vi) not be undergoing liquidation proceedings.

Company rescue procedures prior to a declaration of bankruptcy are also available subject to the following conditions, whereby the relevant person must: (i) have been a merchant for a minimum period of two years prior to filing; (ii) not have committed fraud; (iii) be suffering from a turbulent financial status that caused him/her to be unable to pay due debts; (iv) file the request within 15 days starting from the date of the default in paying due amounts; (v) not be subject to liquidation procedures; and (vi) obtain the approval of the majority of the partners or general assembly of the company, subject to the type of company.

Insolvency/Bankruptcy Proceedings

Will the commencement of insolvency proceedings against a grantor of security affect the ability of a secured party/creditor to enforce the security interests granted to it by that company?

As soon as the court declares a merchant bankrupt, all its debts shall be considered due. Therefore, liens mandatorily preferred by law (such as debts related to judicial expenses and tax dues), shall take priority. After satisfaction of rights mandatorily preferred by law, secured creditors shall recover outstanding debt from the assets taken as security according to the ranking of registration. Finally, all unsecured creditors of a bankrupt borrower share the enforcement proceeds pro rata to each creditor's participation in the total indebtedness.

Where a secured creditor is not able fully to recover the debt after enforcement of security, such creditor will rank *pari passu* with the unsecured creditors and will hope to obtain the remaining debt due from the proceeds of liquidation of the bankrupt merchant's assets. The bankrupt merchant's assets will be divided by the number of creditors, each according to the percentage of that creditor's debt.

Priority of creditors differs when the debtor is an Egyptian bank. Under Article 175 of the Banking Sector Law, liens ranked in said law shall take priority, regardless of any provision stating otherwise. Under the current umbrella, banks' liquidation proceedings are ranked as follows:

1. secured creditors shall recover outstanding debt from the assets taken as a security according to the ranking of registration (e.g., first, second, third degree);
2. liquidator's fees;
3. clients' deposits (other than those of related parties);
4. employees' salaries for six months prior to appointing the liquidator;

5. governmental dues (CBE loans relating to the settlement procedures);
6. taxes and insurance dues; and
7. private sector loans extended after appointing the liquidator.

Finally, the unsecured creditors will share any remaining liquidation proceedings on a pro rata basis related to the total indebtedness of the debtor.

Are there any preference periods, clawback rights, or preferential creditors' rights that creditors should be aware of?

Any security granted by the bankrupt merchant from the date of cessation of its due payments may be deemed unenforceable against its creditors if: (i) such security granted by the bankrupt merchant affects rights of its creditors; and (ii) the counterparty to the bankrupt merchant knew that such merchant has ceased payments that are due and payable to its creditors.

Egyptian law provides for liens of higher priority which will be enforced before any other security. These liens of higher priority vary depending on the nature of the secured asset, especially depending on whether the asset is movable or immovable property.

Certain preferential creditors must be accounted for in the order of priority in respect of liens attached to movable property that are subject to enforcement. Examples of such preferential creditors are creditors entitled to:

- amounts paid to keep and maintain the debtors' movable assets;
- amounts due to the treasury, including taxes and fees;
- amounts due to the seller of the movable asset subject to enforcement; and
- amounts due to the partners who, along with the debtor, own the movable asset subject to enforcement.

Insolvency/Bankruptcy Proceedings

Certain preferential creditors must be accounted for in the order of priority in respect of liens attached to immovable property that are subject to enforcement. Examples of such preferential creditors are creditors entitled to:

- amounts due to the seller of the immovable property and its fixtures and fittings (subject to satisfaction of registration requirements);
- amounts due to contractors and architects who built the immovable asset subject to enforcement; and
- amounts due to the partners who, along with the debtor, own the immovable asset subject to enforcement.

Can debt owed by a company to a creditor be contractually subordinated to debt owed by that company to another creditor? Are contractual subordination provisions that are agreed among creditors legally recognised on the insolvency or bankruptcy of the company?

Egyptian law does not specifically regulate the subordination of debt. In practice, creditors enter into subordination agreements. The treatment of such agreements in the case of the bankruptcy of the debtor has not been sufficiently tested.

How is priority among secured parties determined on the insolvency of the debtor?

Priority among secured parties is determined according to the relevant subordination agreements.

Contacts

Latham & Watkins



Clement N. Fondufe

Co-Chair, Africa Practice
clement.fondufe@lw.com
+44.207.710.4685



Kem Ihenacho

Co-Chair, Africa Practice
kem.ihenacho@lw.com
+44.20.7710.4560



JP Sweny

Partner
john-patrick.sweny@lw.com
+44.20.7710.1870



David J. Ziyambi

Partner
david.ziyambi@lw.com
+44.20.7710.5807



Chidi Onyeche

Associate
chidi.onyeche@lw.com
+44.20.7710.1006

This guide was authored by Latham & Watkins in collaboration with:

Matouk Bassiouny & Hennawy
12 Mohamed Ali Genah, Garden City
Cairo, Egypt

+202.2796.2042
<https://matoukbassiouny.com>

Matouk Bassiouny & Hennawy



Mahmoud Bassiouny

Partner



Nadia Abdallah

Counsel



Amgad Nagy

Associate

LATHAM & WATKINS^{LLP}

Austin	Milan
Beijing	Munich
Boston	New York
Brussels	Orange County
Century City	Paris
Chicago	Riyadh
Dubai	San Diego
Düsseldorf	San Francisco
Frankfurt	Seoul
Hamburg	Silicon Valley
Hong Kong	Singapore
Houston	Tel Aviv
London	Tokyo
Los Angeles	Washington, D.C.
Madrid	

LW.com

Taking Security in Africa: A Comparative Guide for Investors is published by Latham & Watkins as a news reporting service to clients and other friends. The information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the lawyer with whom you normally consult. The invitation to contact is not a solicitation for legal work under the laws of any jurisdiction in which Latham lawyers are not authorized to practice. A complete list of Latham's thought leadership can be found at www.lw.com.

Latham & Watkins operates worldwide as a limited liability partnership organized under the laws of the State of Delaware (USA) with affiliated limited liability partnerships conducting the practice in France, Hong Kong, Italy, Singapore, and the United Kingdom and as an affiliated partnership conducting the practice in Japan. Latham & Watkins operates in Israel through a limited liability company, in South Korea as a Foreign Legal Consultant Office, and in Saudi Arabia through a limited liability company. © Copyright 2024 Latham & Watkins. All Rights Reserved.