

Egypt

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1 Legislation

What legislation is applicable to bankruptcies and reorganisations?

There are primarily three laws that govern bankruptcies. These are:

- Trade Law No. 17 of 1999, the provisions of which dictate the principles and processes to follow in relation to bankruptcy;
- Law No. 120 of 2009, endowing the recently created economic courts with the exclusive judicial competence to adjudicate bankruptcy cases; and
- the criminal law (found in the Egyptian Criminal Code), which – upon the finding of certain elements such as bad faith or fraud (or both) – allows for the filing of criminal charges against the bankrupt entity, its directors, managers, etc.

Despite the social and economic advantages that derive from the ‘rescue’ option known as restructuring or reorganisation (as opposed to liquidation), there is presently no restructuring law per se in Egypt. However, such an option remains a possibility before the courts if and when the composition of creditors in a given bankruptcy case accept such a process so as to recover greater value from the financially distressed entity.

2 Excluded entities

What entities are excluded from general bankruptcy proceedings and what legislation applies to them?

There are two types of entities that are not subject to bankruptcy proceedings. First, public (state-owned) companies, which, pursuant to Law No. 97 of 1983, may not be declared bankrupt. Second, the Trade Law No. 17 of 1999 stipulates that its bankruptcy provisions shall not apply to certain forms of *ispo facto* companies (*société créée de fait*), not having an independent legal personality.

3 Secured lending and credit (immovables)

What principal types of security are taken on immovable (real) property?

Under Egyptian law, the principal and most common security over real property is the real estate mortgage. While the law recognises other types of encumbrances appurtenant to the land, such as easements for instance, real estate mortgages remain the primary form of security that is customarily taken by lenders to secure a given debt. The process of registering a real estate mortgage, while complex, does not cause any conceptual issue to the land registrar before which such a right or collateral must be inscribed.

4 Secured lending and credit (moveables)

What principal types of security are taken on moveable (personal) property?

Moveable assets can be used as collateral in connection with secured lending in the following manner:

- possessory pledge, whereby the asset at stake will remain in the physical possession of the lender or creditor and the latter will be allowed to dispose of such assets following an event of default from the borrower or pledgor;
- *fond de commerce* mortgage, whereby and pursuant to Law No. 11 of 1940, the borrower or pledgor may grant its lender or creditor a pledge over its *fond de commerce* (business), which includes among other elements, the trade name, address, licences, approvals, equipment, the right to contact clientele, the right to lease the premises used, etc; and
- commercial lien over monies, as a security to the lender or creditor, if and when the debt at stake would qualify as a commercial debt in relation to the borrower or debtor. Commercial liens are governed by Trade Law No. 17 of 1999.

5 Unsecured credit

What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available? Do any special procedures apply to foreign creditors?

Unsecured creditors have a wide array of actions available to them under Egyptian law. Such actions may include the filing of a ‘protesto’ substantiating a state of cessation of payments so as to preserve their rights against a defaulting debtor or its guarantor, the lodging of a preservation motion whereby the debtor’s assets may be attached (subject to the priority right of secured creditors) pending the final outcome of the ongoing or yet-to-be initiated insolvency proceedings, and more importantly, the initiation of insolvency proceedings against the defaulting debtor. In addition to the foregoing, unsecured creditors have, save for their priority, the same rights before the court as secured creditors. This translates into their ability to appeal the decisions of the bankruptcy court, and to take any action in relation to the appointment of the bankruptcy trustee, the controller and their allocated fees. Most chiefly, unsecured creditors have the right to decline any settlement (or reorganisation) suggested by the debtor or the court (or both). Pre-judgment attachments are available if creditors can demonstrate that the assets of the debtor would otherwise be eroded and that there is impending emergency to protect such assets.

All such proceedings however, could prove complex and time-consuming. While it is difficult to determine the time span required for creditors to prevail in their claims against a financially distressed debtor, it is fairly safe to assert that such proceedings may take anywhere between one and three years.

Foreign and domestic creditors are equally treated in Egypt and there are no special proceedings or bankruptcy laws that apply to foreign creditors.

unless so authorised by the court to do so. The court exercises its supervisory powers through the insolvency trustee and a controller specially appointed to that effect. In addition, and since the reorganisation possibility is a consensual rather than a legal process, the composition of creditors would be required to sanction each and every act of the debtor that may produce a material adverse effect on creditors' rights.

13 Rejection and disclaimer of contracts in reorganisations

Can a debtor undergoing a reorganisation reject or disclaim an unfavourable contract? Are there contracts that may not be rejected? What procedure is followed to reject a contract and what is the effect of rejection on the other party?

The debtor undergoing reorganisation is not treated differently than any other merchant or party to a bidding agreement. Unless a given contract lacks one of the conditions necessary for its validity, a debtor – whether undergoing reorganisation or not – cannot disclaim or reject its obligations thereunder. Doing so, without being given the right to unilaterally terminate, would simply constitute breach of contract and possible damages could ensue.

14 Sale of assets

In reorganisations and liquidations, what provisions apply to the sale of specific assets out of the ordinary course of business and to the sale of the entire business of the debtor? Does the purchaser acquire the assets 'free and clear' of claims or do some liabilities pass with the assets?

As mentioned earlier, a reorganisation process, other than through the composition of creditors, is not regulated by Egyptian law. The law, however, contains a number of provisions to regulate the liquidation of the debtor's assets. For instance, as far as moveable property is concerned, the composition trustee may dispose of such assets at its sole discretion or sell the debtor's business altogether in order to pay off creditors' entitlements. In contrast, the debtor's real property cannot be disposed of unless a court order approving such a transfer is obtained.

In relation to any encumbrance related to the assets being sold, the law views such matters as consensual between the acquirer and the composition trustee. Some assets will be passed to the acquirer free and clear of any encumbrance, others could still be attached with third-party rights.

15 Stays of proceedings and moratoria

What prohibitions against the continuation of legal proceedings or the enforcement of claims by creditors apply in liquidations and reorganisations? In what circumstances may creditors obtain relief from such prohibitions?

Upon the initiation of insolvency proceedings, whether voluntary or involuntary, a general moratorium against all individual creditors' claims is issued, and creditors are prohibited from independently initiating any lawsuit to recover on their claims from the debtor. Article 605 of the Trade Law clearly stipulates the aforementioned principle in addition to a general prohibition against any and all independent judicial proceedings to be taken against the debtor (such as preservation measures in the form of attachments etc). This overriding principle applies to all creditors, whether secured, unsecured or generally privileged. The opening of insolvency proceedings, not only precludes creditors from pursuing their claims individually, but also entails a stay of proceedings in relation to any ongoing lawsuit initiated prior to the opening of insolvency proceedings against the debtor in question, and yet to be adjudicated as of the date of the declaration of insolvency.

It is worth noting that the state of moratorium is not applicable to creditors, who by operation of law, benefit from a special privilege insofar as the latter's claims enjoy a priority ranking over certain of the debtor's pre-determined assets or monies.

By way of exception to this general prohibition, the legislator has endowed creditors, subject to obtaining an authorisation from the court, with the authority to undertake preservation measures to protect the assets of the debtor if and when the insolvency trustee fails to adequately fulfil his role. Furthermore, creditors are not bound by the moratorium when a date has been fixed for the foreclosure on the debtor's real property and such a foreclosure has not yet taken place. Other than the above, there are no exceptions or relief for creditors from the general state of moratorium.

16 Arbitration processes in bankruptcy

How frequently is arbitration used in insolvency proceedings? What limitations are there on the availability of arbitration in insolvency cases? Will the court allow arbitration proceedings to continue after an insolvency case is opened?

Arbitration is rarely used to adjudicate or supervise insolvency proceedings. The law, as stated earlier, has attributed exclusive jurisdiction to the economic courts to adjudicate insolvency cases. That said, article 644 of the aforementioned law authorises arbitration as a way to settle insolvency cases when the judge at the economic court – after taking into account the statements of the insolvency controller and the debtor – grants a right to the insolvency trustee to pursue the case at hand before an agreed upon arbitral tribunal. Depending on the value of the claims involved, the insolvency judge may exercise varying degrees of scrutiny over the arbitration process. It is more accurate to assert that the insolvency judge has an absolute discretion as to whether or not a given insolvency case will be submitted before and settled by an arbitral tribunal.

17 Set-off and netting

To what extent are creditors able to exercise rights of set-off or netting in a liquidation or in a reorganisation? Can creditors be deprived of the right of set-off either temporarily or permanently?

Creditors may, subject to one condition, exercise their netting or set-off right. In this regard, article 591 of the Trade Law stipulates that creditors may exercise such a right, whether temporarily or permanently, for as long as there is a clear and unambiguous link, connectivity or causation between the obligations of the debtor and those of the 'exercising' creditor. By way of illustration, a set-off will be possible if and when the debt of both the creditor and debtor finds its source or emanates from the same dealing, contract or tort. Any right of set-off or netting in the course of insolvency proceedings must be subject to the prior approval of the insolvency judge.

18 Intellectual property assets in insolvencies

May an IP licensor or owner terminate the debtor's right to use it when an insolvency case is opened? To what extent may an insolvency administrator continue to use IP rights granted under an agreement with the debtor? May an insolvency representative terminate a debtor's agreement with a licensor or owner and continue to use the IP for the benefit of the estate?

Article 623 of the Trade Law regulates the status of any contracts, whether IP related or otherwise, that the debtor entered into prior to the declaration of bankruptcy. As a general rule, the declaration of the debtor's bankruptcy does not automatically terminate the agreements the debtor entered into with third parties prior to the initiation of insolvency proceedings. By way of exception, such contracts may be terminated if their provisions explicitly state that the bankruptcy of either party would automatically terminate the agreement, or when such contracts were chiefly founded on the identity of the debtor (*intuitu personae*).

As a result, the insolvency trustee is bound by any contract entered into between the debtor and a third party and is subject to all the laws and rules applicable to contracts (ie, voluntary

termination when possible or termination for breach). Because the insolvency trustee does not gain more than the debtor had and is not granted any special treatment by force of law, he cannot, without risking a breach of contract, terminate any of the debtor's agreements or use IP rights for the benefit of the estate after termination of the agreement granting such rights.

19 Post-filing credit

May a debtor in a liquidation or reorganisation obtain secured or unsecured loans or credit? What priority is given to such loans or credit?

A debtor in liquidation or reorganisation cannot obtain any credit facilities, whether secured or otherwise. That said, as explained earlier, the composition of creditors may grant certain leeway to the debtor in the course of reorganisation subject to conditions determined on an ad hoc basis.

20 Successful reorganisations

What features are mandatory in a reorganisation plan? How are creditors classified for purposes of a plan and how is the plan approved? Can a reorganisation plan release non-debtor parties from liability, and, if so, in what circumstances?

The Trade Law does not have specific or elaborate provisions to regulate reorganisation plans. The composition of creditors plays a vital role as to whether a plan, if and when prepared by the debtor, will be approved or rejected. Superseding the powers of the composition of creditors stands the economic court and a judge who, by virtue of article 643 of the aforementioned law, has discretion to allow the sale of the debtor's property during the period between the presentation of the petition and the issuance of the bankruptcy order, if doing so will realise positive benefit to the creditors or the bankrupt. Therefore, there are no mandatory features of a reorganisation plan to be approved, and the composition of creditors, despite the process described above, may be impeded from implementing any given reorganisation plan if so instructed by the court.

21 Expedited reorganisations

Do procedures exist for expedited reorganisations?

There are no procedures in Egypt for expedited reorganisations.

22 Unsuccessful reorganisations

How is a proposed reorganisation defeated and what is the effect of the plan not being approved? What if the debtor fails to perform a plan?

A reorganisation plan is defeated if the composition of creditors or the insolvency court reject it. The ensuing effect of its rejection or the failure of the debtor to abide by an agreed upon reorganisation plan would be the liquidation of the debtor's assets or business and the distribution of the liquidation proceeds deriving therefrom to creditors according to their priority ranking.

23 Bankruptcy processes

During a bankruptcy case, what notices are given to creditors? What meetings are held? What committees can be formed and what powers or responsibilities do they have? May creditors pursue the estate's remedies against third parties?

There are a number of notices sent to creditors in the course of bankruptcy proceedings. Such notices include the general notice for creditors to present their claims, the notice to secured creditors allowing

them to enforce their rights against the pledged assets of the debtor, the notice sent to creditors for the appointment of the insolvency trustee and controller, etc. Among the most significant notices is the general notice for creditors in relation to the lodging of their claims, based on which the composition of creditors may or may not be approved.

Creditors can assert estate's remedies and defences against third parties and are explicitly afforded a right to claim from and pursue any third party who is indebted to their debtor.

24 Insolvency of corporate groups

In insolvency proceedings involving a corporate group, are the proceedings by the parent and its subsidiaries combined for administrative purposes? May the assets and liabilities of the companies be pooled for distribution purposes?

Egyptian law follows a strict application of the corporate veil doctrine and as such, insolvency proceedings against a parent and its subsidiary would be conducted against each legal entity separately. The assets and liabilities are not pooled into one pool, even for administrative convenience. The only instance where the corporate veil may be pierced is when the parent company has been directly involved in the neglectful management of its subsidiary, thereby causing the latter's financial distress and subsequent insolvency.

25 Modifying creditors' rights

May the court change the rank of a creditor's claim? If so, what are the grounds for doing so and how frequently does this occur?

Creditors' priority rankings are mandatory provisions under the Trade Law and bear a public order character. Therefore, these priorities can neither be contractually amended among the parties to a contract nor changed by the decision of the court.

26 Enforcement of estate's rights

If the insolvency administrator has no assets to pursue a claim, may the creditors pursue the estate's remedies? If so, to whom do the fruits of the remedies belong?

In the event the insolvency trustee cannot advance the funds needed to pursue the estate's remedies, creditors may not pursue estate's remedies from their own resources.

27 Claims and appeals

How is a creditor's claim submitted and what are the time limits?

How are claims disallowed and how does a creditor appeal? Are there provisions that deal with the transfer of claims against the debtor?

Creditors' claims are submitted before the docks of the economic court post a declaration of bankruptcy. The procedures followed are no different than any other lawsuit and creditors have 10 days to file their claim (creditors located overseas have 40 days). Claims would be disallowed if one of the conditions necessary for the declaration of bankruptcy is not satisfied. For instance, if the debt in question is not due (has not reached maturity), or if the debtor is still able to meet its financial obligations, or if the debtor is not required to keep and maintain commercial books (trade registry), then the claims would be disallowed. It is important to note that the legislation provides for no other test for insolvency, such as balance sheet insolvency.

There are no provisions under Egyptian law to regulate the transfer of claims against the debtor.

28 Priority claims

What are the major privileged and priority claims in liquidations and reorganisations? Which have priority over secured creditors?

Major privileged and priority claims under Egyptian law rank as follows:

- judicial expenses;
- public treasury claims;
- expenses related to the preservation and repairs of the bankrupt's assets;
- general privileges (which include wages of employees);
- special privileges (for instance, debts related to agricultural expenses and tools, arrears owing to lessors or hotel owners and payment due to sellers of moveables); and
- special privileges over real estate (the priority of claim for a real estate seller ranks as of the date of registration and is followed by architects, subcontractors and co-real estate owners' claims).

In reality, none of these privileges have priority over secured creditors. The holder of any given security against the debtor is not prevented from exercising his security rights. Therefore, the only risk (for secured creditors) arises when the holder of security does not enforce his rights in a timely manner and might, as a result of the actions undertaken by the insolvency trustee, see the value of his security erode in favour of other creditors.

29 Liabilities that survive insolvency proceedings

Do any liabilities of a debtor survive an insolvency or a reorganisation?

As a general rule, there are no liabilities that survive the insolvency of the debtor. Exceptionally however, the financial and criminal liability of the debtor, its directors or managers may be engaged if the insolvency of the debtor was wilfully caused in order to defraud creditors. Findings of bad faith or wilful misconduct (or both) can generally extend the debtor's liability (or its manager or directors) beyond the insolvency proceedings.

30 Distributions

How and when are distributions made to creditors in liquidations and reorganisations?

In a typical insolvency case, liquidation takes place after the declaration of bankruptcy when any alternative reorganisation plans, whether in-court or out-of-court, have not been presented or failed. Pursuant to the priority of claims described above, the liquidation trustee proceeds with the sale of the bankrupt's assets or business and distributes such proceeds accordingly. Though it is difficult to determine the time span within which payment takes place, liquidation cases in Egypt can take anywhere between one and three years. While the law prescribes a given time frame applicable to the filing of bankruptcy claims and the ensuing proceedings, judges are overworked, have too many cases and play too large of a role in connection with insolvency proceedings.

31 Transactions that may be annulled

What transactions can be annulled or set aside in bankruptcies and what are the grounds? What is the result of a transaction being annulled?

Generally, the law prohibits the debtor from entering into any transaction with the intent to defraud creditors. Special emphasis and control however, is exercised during the 'suspect period', which starts from the cessation of payments until the declaration of bankruptcy. On a more specific note, article 598 of the Trade Law prohibits certain types of agreements or acts of disposal such as

- any donation or gifts;
- the prepayment of any debt that is not due; or
- the grant of any pledge or security over its assets.

In the event that an act of disposition is made by the debtor with the intent to defraud creditors within the suspect period, such act will be annulled and shall produce no effect against the bankrupt's estate and will not be able to be used against creditors.

32 Proceedings to annul transactions

Does your country use the concept of a 'suspect period' in determining whether to annul a transaction by an insolvent debtor? May voidable transactions be attacked by creditors or only by a liquidator or trustee? May they be attacked in a reorganisation or a suspension of payments or only in a liquidation?

There is a suspect period under Egyptian law starting from the cessation of payments until the declaration of bankruptcy. Any transaction or act of disposal taking place during that period may be attacked and annulled as described above; however, the prerogative is reserved to the insolvency trustee. Differently said, creditors will only raise their concerns or share their knowledge regarding a specific act of disposal with the insolvency trustee, who shall take the necessary measures before the court to annul such acts.

33 Directors and officers

Are corporate officers and directors liable for their corporation's obligations? Are they liable for pre-bankruptcy actions by their companies? Can they be subject to sanctions for other reasons?

Article 704 of the Trade Law stipulates that in the event the assets of the bankrupt are insufficient to repay a minimum of 20 per cent of its debts, the court may hold the bankrupt's directors or board members, jointly or severally, liable to repay all the bankrupt's debt, unless such directors or board members prove to the court that they have exercised a degree of care that a prudent man – acting in like circumstances – would have exercised.

This provision establishes a rebuttable presumption of liability based on the assessment and valuation of the bankrupt's assets versus its ability to reimburse the debts at stake. The legislator inserted this provision into the law in order to assist creditors collect on their claims when it is otherwise difficult to prove or substantiate the negligent management of the bankrupt's directors or board members.

34 Creditors' enforcement

Are there processes by which some or all of the assets of a business may be seized outside of court proceedings? How are these processes carried out?

There are no such proceedings under Egyptian law. Any seizure of or execution against any assets must be properly sanctioned by a judicial process.

35 Corporate procedures

Are there corporate procedures for the liquidation or dissolution of a corporation? How do such processes contrast with bankruptcy proceedings?

There are corporate procedures pursuant to which the shareholders of any given corporation may dissolve and liquidate the corporate entity. As in the case of bankruptcy, such procedures entail certain mechanisms of notices and publications in order to alert the public that an entity will cease to exist, thereby advising that any credit holder should come forward. The liquidation process, outside of bankruptcy proceedings, is also managed by the economic court and overlaps with the involuntary liquidation process in a number of aspects. For instance, there is a liquidation trustee who will also be appointed by the court if the shareholders cannot reach an agreement on his appointment. Directors and board members will lose their powers and endowments to dispose of any corporate assets upon the appointment of the liquidation trustee. The trustee under voluntary liquidation exercises the

same powers and prerogatives he has in the course of involuntary liquidation. A number of other similarities between voluntary liquidation and bankruptcy liquidation could be found.

36 Conclusion of case

How are liquidation and reorganisation cases formally concluded?

Liquidation cases are concluded by either the full repayment of creditors' entitlements or the insufficiency of the proceeds deriving from the sale of the bankrupt's assets to repay all creditors. In either event, the liquidation trustee must, within a month of the end of the distribution process, publicise the decision to close the liquidation process so that the liquidation becomes opposable to third parties. Furthermore, the liquidation trustee must ensure that the corporate debtor or insolvent at stake is duly stricken-off the companies' registrar.

37 International cases

What recognition or relief is available concerning an insolvency proceeding in another country? How are foreign creditors dealt with in liquidations and reorganisations? Are foreign judgments or orders recognised and in what circumstances? Is your country a signatory to a treaty on international insolvency or on the recognition of foreign judgments? Has the UNCITRAL Model Law on Cross-Border Insolvency been adopted or is it under consideration in your country?

The recognition and enforcement of foreign insolvency judgments is subject to the same rules and conditions for the recognition of any

judgment. In other words, there is no special regime that applies to insolvency cases when cross-border elements are involved. Foreign and domestic creditors are dealt with in the same manner, although foreign creditors do benefit from an extended time frame in relation to certain aspects in order to respond and interact with the court and the different parties involved. Foreign insolvency judgments would be recognised in Egypt as long as such judgments do not contravene public order and policy. Although the concept of public policy is somewhat elusive and has never been defined, it is the role of the recognising court to assess whether a given foreign insolvency judgment constitutes a breach of this concept. Generally, violations of the principles or objectives pursued by the Egyptian legislator are often construed to be against public policy, and hence recognition will not be granted. As of this date, Egypt has not adopted the UNCITRAL Model Law on Cross-Border Insolvency.

38 Cross-border insolvency protocols and joint court hearings

In cross-border cases, have the courts in your country entered into cross-border insolvency protocols or other arrangements to coordinate proceedings with courts in other countries? Have courts in your country communicated or held joint hearings with courts in other countries in cross-border cases? If so, with which other countries? countries in cross-border cases? If so, with which other countries?

Courts in Egypt have not entered into cross-border insolvency protocols.

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