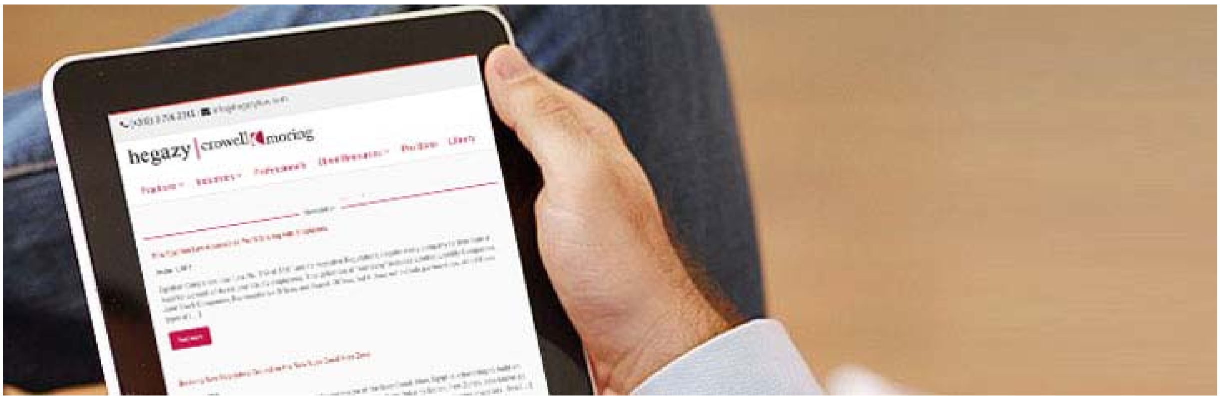

Egypt's New Movable Collaterals (Securities) Law

Dr. Mohamed Aboul-Saoud

The keystone of financial markets is this simple formula: firms need credit and banks require collateral to secure reimbursement. In that regard, immovable properties are usually accepted with ease from banks who become reluctant when it comes to movable assets. Therefore, Small and Medium Enterprises (SMEs), because most of their assets are movable, typically have limited access to loans.

Actually, lenders trust more to recover their debts when immovable assets are pledged; as they are normally registered as well as any rights thereon. So, the risk of information asymmetry is very much lower if compared to movable collaterals who had not, prior to this new law, a register. In addition, enforcement of rights is much simpler on immobile assets than it is on the movable ones.

Hence, to make the movable assets attractive as collaterals and so increase SME's access to finance, two issues should be approached: Registration and Enforcement. In this context, the law number 115 for the year 2015, regulating movable securities, provided the two advantages that have been awaited from both financials and corporates.

The law provides for the establishment of an "Electronic Registry" to register rights and liens on movable assets. The registration shall be effectuated online. Such registration will help to verify first if there are any rights already registered, then subscribe the pledge of assets, that shall be opposable to third parties, including subsequent creditors. So, the function accords priority to first registration, in time and date, on a movable asset. Creditors may also object to a registration by seeking an interim order. Additionally, the certificates issued from the Registry regarding the movable assets shall have the same legal authority as official documents. As the Executive Regulations are not yet issued, the promises regarding the facility to register and to monitor the status of the assets online, are still not tested.

The law facilitates the enforcement of rights against movable assets. It provides that the creditors may recover their debts directly if the asset is a debt owed to the borrower by a third party, negotiable assets or bank account. Also, creditors have the same rights over price, rents, compensation for damages or insurance coverage over movable collaterals. In addition, the law permits parties to agree on the right of a creditor to sell the assets directly if the debtor does not honor his obligations. Otherwise, creditors may seek a court order to sell the assets in order to recover their money.

It is worth mentioning that the Economic Courts, known for their swift rulings, have jurisdiction on the disputes that may arise from the application of the provisions of this law.

Article 1 of the law defines movable assets, subject to its application, enumerating 8 categories thereof. So, it is possible to pledge: debts, bank accounts, negotiable documents whose the ownership is transferable by delivery or endorsement, equipment and tools, inventory, trees and crops, animals and birds, minerals before extraction and IPR such as patent, trademark and copyright. But, the list is not exclusive, as the Executive Regulations may add more types of movable assets to its scope of application. The decree of issuance of the law, in its article 1, excludes certain movable assets having their own regulations via other specific laws from its application. In that regard, the law is not applicable to aircraft liens and maritime liens. Securities that are deposited centrally in the Central Registry for Securities linked to Egyptian Stok Exchange, are similarly excluded as there is already a comprehensive organization of liens on securities.

Additionally, the law allows:

- The registration of security interests on some of future movable assets;
- The registration of security interests established on movable assets prior to the entry into force of the law;
- The securities contract to be concluded as a customary document, an official document, or an electronic draft prepared according to the Electronic Signature Law; while the registration shall be through filling out an electronic form; and
- The parties of the securitization agreement to insert commercial conditions as they see fit.

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The World's Largest Unicorn? Valuing Saudi Aramco

Phil Zager

In Silicon Valley, a privately held company worth USD 1 billion is known as a "unicorn." According to *Fortune* magazine, the largest of these companies is Uber, the ride-sharing company valued at USD 51 billion.[1] Several other familiar technology start-ups, including AirBnB, Xiaomi and SpaceX are also classified as "unicorns." In introducing *Fortune*'s list of unicorns, the authors are clear to state, "the valuations of those companies are in constant flux." As a non-public company, these unicorns do not have to share their financial data with national regulators and the public at large, which makes valuing them difficult. Although most "unicorns" are new technology companies, this concept works when describing companies that have a high and opaque valuation, including state-owned companies. The biggest of these is Saudi Aramco.

Saudi Aramco was founded as "California-Arabian Standard Oil Co." in 1933 by a consortium of US oil companies. In the 1970s, the government of Saudi Arabia purchased the company gradually, attaining full control in 1980. Since then, Saudi Aramco has owned, operated, and developed all energy resources based in Saudi Arabia. It is a point of national pride, and its senior management and technology are world-class.

Saudi Aramco's position as the crown jewel in the Kingdom of Saudi Arabia changed overnight when Deputy Crown Prince Muhammad bin Salman, widely considered the key decision-maker in the royal court, told *The Economist* that the government was considering the possibility of floating shares in Saudi Aramco. The "consideration of the possibility" of floating shares in Saudi Aramco in an Initial Public Offering (IPO) sent investors and journalists into convulsions.

There is still a long way to go before the Saudi Aramco IPO, but, like the "unicorns" of Silicon Valley, valuing Saudi Aramco is a challenge. By one simple measure, it claims to hold over 261 billion barrels of oil, which is over ten times that claimed by ExxonMobil. Given that ExxonMobil, as a public company, is worth USD 350 billion according to its filings with US regulators, one could estimate Saudi Aramco's value at ten times that, or roughly USD 3.5 trillion. However, Saudi Aramco also controls 263 trillion cubic feet of natural gas, along with an integrated network of supporting infrastructure.

Before beginning to salivate at the prospect of a Saudi Aramco IPO, let's remember that the price of the asset underlying Saudi Aramco's value, oil, has dropped over 75% in the past 18 months. According to the most recent edition of *The Economist*, experts and futures markets expect oil to keep declining in value. Almost inevitably, any IPO would be for a minority of shares, and the majority of shares would remain under the control of the Saudi government.

Potentially investing in Saudi Aramco raises questions on a mythical scale.

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[1] Daniel Roberts and Andrew Nusca, *The Unicorn List*, FORTUNE, August 25, 2015, http://fortune.com/unicorns/uber-1/

The Effect of Risk Allocation in Pricing EPC Construction Contracts

Muhammad El Haggan

Unlike a traditional delivery method of a project where the engineering design of a construction project is provided by the employer, Engineer, Procure, Construct (EPC) contracts are unbalanced in terms of risk sharing between the contractor and the employer. In an EPC delivery method, the contractor is responsible for the engineering, design, procurement and construction of the project. Under such delivery method, the contractor bears almost all risks of a construction project including time for completion, costs and unforeseeable conditions.

Most standard contract forms for traditional delivery methods, such as International Federation of Consulting Engineers (FIDIC), Joint Contracts Tribunal (JCT) and New Engineering Contracts (NEC) forms, are balanced in terms of risk sharing between the contractor and the employer. The occurrence of a risk under these contract forms does not necessarily mean that the contractor shall be liable for the impact of those risks, whether the impact affects the time for completion or the contract price. If the contract clearly expresses that the employer is liable for the impact of some risks, the impact of the occurrence of such risks is not borne by the contractor. This has a significant effect on the contract price because the contractor would not add up additional sums to the contract price to cater for the occurrence of risks that are borne by the employer. This results in a lower contract price, which amounts to a better value to the employer. However, under a traditional delivery method, the contract price is subject to a higher probability of variation in case of the occurrence of one of the risks that are borne by the employer.

Although a lower price for a construction project is mostly desirable, some employers, such as government entities and employers funded by investors or development banks, are subject to restrictions regarding the certainty of the contract price. Restrictions in this regard are mostly applicable because the funding for the project requires a final price that would not be subject to variations at the occurrence of events that might affect the price. Accordingly, employers prefer a contract price that would not be subject to a higher probability of variation rather than a lower price with a higher probability of variation. This is one of the major reasons contributing to the increasing use of EPC contracts. Therefore, contractors should be accurate when assessing the risks that are shifted to their shoulders as a result of using the EPC delivery method. In case a contractor does not accurately assess a certain risk, such contractor would not be compensated for its occurrence if it was not initially part of the contract price. On the other side, the contract price becomes relatively high to employers when compared to using delivery methods that encourage risk sharing. This is to the extent that some projects become unbiddable or not commercially viable solely as a result of using the EPC delivery method.

In conclusion, it is recommended that employers limit their use of EPC contracts to cases where the certainty of the contract price is mandatory. On the other hand, when bidding for an EPC contract, contractors are advised to accurately assess the associated risks and their outcome.

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Comments on the Central Bank of Egypt's New Loan Restrictions

Lauren Williams

On 11 January 2016, the Central Bank of Egypt (CBE) issued a new regulation regarding the debt burden ratio of banks' retail portfolios. Over the past few years, many private and retail banking consumers have requested and received significant loans from banks exceeding 50-60% of their income. However, the increased value of a loan as a percentage of consumer income is directly proportional to the bank's risk ratio and the vulnerability of its assets. This new regulation is the CBE's response to what it perceives to be an unstable situation for banks.

Per the regulation, banks are no longer permitted to allow the monthly payments for certain consumer loans to exceed 35% of the client's monthly income (after taxes). The regulation applies to credit card loans, personal loans, and car financing (for personal purposes); as well as personal housing loans not subject to the 2001 Real Estate Financing Law. In the case of personal housing loans subject to the 2001 Real Estate Financing Law, the percentage is raised to 40%. On the same day, the CBE issued another regulation mandating that banks reduce the percentage of Tier I loans allocated to a single corporate customer from 20% to 15%, and from 25% to 20% for a corporate customer and its associated entities.

Only a week after the CBE's decision, Moody's hailed the regulations as "credit positive for Egyptian banks". The expectation is that reducing a client's loan as related to monthly income, will increase the likelihood that customers will be able to repay their debts, while reducing the risk to the bank should the customer default on the loan, or make a late payment. With regards to the new corporate loan structure, the aim is to reduce banks' dependence on a few large clients and diversify their Tier I credit portfolios.

The new regulations will make it significantly more difficult for individuals with limited incomes to receive bank loans for consumer purposes. As for corporations, the matter is more complicated. Larger corporations that have been loyal customers, preferring to use one bank for their credit needs, may have to take out loans from multiple banks if their credit allocation exceeds the new legal limit. Small and medium enterprises (SMEs) may benefit, as the intent is to provide smaller amounts of credit to a varied corporate clientele.

SMEs in Egypt suffer from a shortfall in capital, as private investors are more likely to commit their funds to proven, larger corporations that are less vulnerable to political and economic transitions. Meanwhile, banks find security in loans to large businesses, in which the default risk is minimum. Under these new measures, SMEs should have increased access to bank loans. The shift in focus from dependency on large corporations to incentivizing loans to SMEs is consistent with another CBE initiative, which aims to supply SMEs with at least 200 billion EGP (app. 25.5 billion USD) over the next four years. The broader goal, then, is to re-energize the Egyptian economy through accelerating SME growth, with the intent of making the country a more inviting prospect for investors.

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On the Unique Legal System of Saudi Arabia

Ahmed Khaled Radwan

The contemporary legal systems of the world are generally based on one of four basic systems: civil law, common law, statutory law, religious law or combinations of these. Saudi Arabia's legal system adopts some features of the common law such as applicability of legal precedent, but Saudi Arabia does not have a written constitution like most common law countries. It adopts some features of the civil law system such as a separate administrative judiciary.

A court cannot exclude a legal precedent adopted by the Supreme Court except after submitting the case to it to decide whether to apply or to exclude such precedent. Thus legal precedents in Saudi law are often applied.

Although legal precedents are supposed to be applied in the Saudi legal system, such precedents are not yet collected or published. This means that judges face problems while searching and applying these precedents. In 2012 the Saudi minister of Justice, Mr. Mohamed El Isa, declared that the Supreme Court was collecting legal precedents but nothing has been published yet.

Civil law in Saudi Arabia is based on sources of Islamic Sharia. Unlike most civil law countries, its civil codes are not yet codified. This creates another layer of confusion.

In conclusion, Saudi Arabia's legal system is considered unique as it does not purely adopt one of the main legal systems, so its legal system is a combination between civil law, common law and religious law. Lawyers and judges in Saudi Arabia face a lot of problems when applying the law because some fundamental laws are not codified such as the civil codes and judge-made legal precedents are applied without being codified.

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