

Regional Secured Transactions Assessment – Egypt

Security over immovable assets

The following table relates to security over immovable assets (hypothecation). The survey is best understood if read in conjunction with the EBRD Core Principles, which specify the basic criteria for a modern mortgage law. The Explanatory Notes describe the methodological approach to the survey.

A	Mortgage - Scope	Grading
1.	Can anyone grant a mortgage?	3
2.	Can anyone take a mortgage?	3
3.	Can the mortgage cover all types of immovable property?	3
4.	Can debts of any type be secured by mortgage?	3
5.	Can existing title to property be established with sufficient certainty?	1
6.	Is the mortgage creditor protected from subsequent claims which may adversely affect the mortgagor's title to the property?	0
7.	Can parties agree on how the mortgaged property can be used?	3

B	Mortgage - Creation and Registration	Grading
8.	Are mortgages registered?	3
9.	Can a third party determine whether property is encumbered?	1
10.	Is the data from the register available on line?	0

C	Mortgage - Enforcement	Grading
11.	Are the manners of starting enforcement and the enforcement procedure clearly established?	3
12.	Does commencement of enforcement have to be publicised?	3
13.	Is out of court realisation of assets permitted?	1
14.	Can the mortgage creditor decide on the way the realisation will be done?	0
15.	Can the mortgage creditor exercise control over the realisation process?	0

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16.	Is enforcement rapid?	0
17.	Is the purchaser protected?	3
18.	Is mortgage creditor protected against mortgagor's obstruction?	0
19.	Is the mortgage creditor right protected in case of third party initiated enforcement against the asset?	3

D	Mortgage – Corporate Finance Specifics	Grading
20.	Are subsequent mortgages permitted over same property?	3
21.	Can the mortgage creditor dispose of its priority position?	2
22.	In case of transfer of secured claim does the mortgage follow automatically?	2
23.	Does the mortgage cover rents collected under commercial or residential leases?	1

E	Mortgage – Land Development Projects Specifics	Grading
24.	Does the mortgaged property include subsequent constructions and additions?	3
25.	Can the mortgage creditor release specific units in developed residential building?	3

Remarks

A5	In practice many properties are not registered and searching for title can be complicated and time-consuming.
B9	This can be confirmed through a search at the relevant real estate notary office. However, the search is likely to be time consuming and complications arise in practice due to the fact that many properties are not formally registered.
C13	Theoretically out-of-court realisation is not permitted. However, in practice, in order to avoid lengthy court enforcement procedures, lenders typically require the borrower to provide, in addition to the security interest, a power of attorney which allows the lender both to register the property/mortgage and also allows them to dispose of the property in the event of default. Unless the creditor is a bank, such an arrangement remains under threat of being struck down by court if it is seen as an attempt to evade mandatory sale provisions.
D21	Re-registration is necessary but not seen as a new mortgage.
D22	Re-registration is necessary but not seen as a new mortgage.
D23	The parties can agree contractually to extend the mortgage to the rents as well.