1. Can assets be charged, liened and/or encumbered in your jurisdiction? Please insert any exemptions, if any.

YES, assets could be charged, liened/or encumbered in our jurisdiction. There are three kinds of mortgages:

(a) Real Estate mortgage.
(b) Movable's mortgage.
(c) “Fonds de Commerce” mortgage.

- Furthermore, according to the Egyptian Civil Law, charging or liening future assets are prohibited.

The charge or lien should not breach the Egyptian Public Order.

2. In your jurisdiction, under what circumstances may security arrangements be subjected to choice of law and/or choice of forum clauses (does it matter, whether the security itself is located abroad and/or governed by foreign law [e.g. a pledged claim])? What is the market practice in your jurisdiction? Is there a treaty on this in your jurisdiction, whether bilateral or multi-lateral? Are there any requirements for enforcement in your jurisdiction?
In general, according to the Egyptian Civil Law (Civil Law), Article 19 (1) states that “contractual obligations are governed by the law of the domicile when such domicile is common to the contracting parties, and in the absence of a common domicile law, the law of the place where the contract was concluded should prevail. This provision is applicable unless the parties agree, or the circumstances indicate that it is intended to apply another law”.

Moreover, according to Article 19 (2) of the Civil Law, agreements relating to immovables are governed by the law of the place in which the immovable is situated.

- As for the choice of forum, according to the Egyptian Procedural Law (the Procedural Law), in general, the Egyptian courts would be held competent over disputes filed against Egyptian nationals even if they are not domiciled in Egypt, except for cases related to a real estate situated outside Egypt.

- Moreover, the Egyptian courts would be held competent over disputes filed against foreigners when they are domiciled in Egypt, except for cases related to real estate situated outside Egypt.

- Further, the Egyptian courts would be held competent over disputes filed against foreigners even if they are not domiciled in Egypt in certain cases, such as (a) when the foreigner has an elected domicile in Egypt; (b) when the dispute relates to assets that are situated or existed in Egypt or is related to an obligation which arises or is implemented in Egypt, or (c) when the dispute is related to bankruptcy cases in Egypt.

- Furthermore, under the laws of Egypt, the law that governs the creation and the perfection of the pledge or the mortgage on the collateral is, in case of securities, the law of the place of their issuance, in case of real property, the law of the place where the property is located, or in case of aircraft, sea vessels and “Fonds de Commerce” the law of the place of registration. This means that Egyptian law applies to mortgages on assets or properties which exist and are registered in Egypt.

- In general, as for recognition and enforcement of foreign judgments, Egyptian courts recognize and enforce foreign judgments subject to the following conditions:

  1- The foreign courts rendering the relevant judgment offer reciprocal treatment to judgments obtained in the courts of Egypt. If such reciprocal treatment is not offered by the court where judgment is obtained, then the Egyptian courts will re-examine the merits of the case in the same manner as the adopted by such courts;

  2- The courts of Egypt are not exclusively competent to hear the dispute which constituted the object of the foreign judgment while the foreign courts are shown to have been competent to hear the dispute in accordance with their own respective laws;

  3- The parties to the dispute were duly notified and properly represented in the proceedings;

  4- The foreign judgment is final and conclusive in accordance with the relevant law; and
5- The foreign judgment does not conflict with a prior Egyptian judgment in the same case and is not contrary to public order or morality in Egypt.

- Additionally, the courts of Egypt will not recognize a security interest in each type of collateral if it is not perfected in accordance with the applicable laws, in respect of collaterals subject to Egyptian Laws. As to collaterals which are not subject to Egyptian law, the courts of Egypt shall recognize security interests perfected on them, pursuant to the provisions of the applicable law.

- The security interest is valid in Egypt after completion of all necessary procedures and formalities, i.e. registration and/or legalization as the case may be. Moreover, the pledge or the mortgage agreements have to be drafted in form and substance as required under the applicable law.

Egypt has concluded some treaties with a few number of states regarding the enforcement of foreign Judgments.

3. In your jurisdiction, are floating charges or security over the overall assets of an entity accepted, and if so in what terms?

Under Egyptian Law, floating charges are not permitted but this concept is replaced by “Fonds de Commerce” Mortgage.

“Fonds de Commerce” Mortgage :

a. According to law No. 11 of 1940 regulating the Sale and Mortgage of “Fonds de Commerce”, a security interest in a "Fonds de Commerce" shall only be valid and enforceable vis-à-vis any third party provided a written legalized contract is signed. In addition, the contract should list all tangible or intangible assets of the “Fonds de Commerce” which shall be subject to the security interest. “Fonds de Commerce” mortgages may be granted only in favor of licensed banks. However, under the Banking Law No. 88 for 2003, as amended, such a mortgage may be granted in favor of foreign banks and international financial institutions, without a special license under Egyptian law.

The assets subject to a "Fonds de Commerce" mortgage are limited to the following assets:

- Trade name
- Leasing or similar rights relating to real property
- Goodwill, i.e. the right to acquire and contact clients
- Trademarks
- Licenses and permits related to the "Fonds de Commerce"
- Movables, e.g. furniture, furnishings and equipment related to activities of the “Fonds de Commerce”.

b. The following principles should be taken into account:

i If the assets of the "Fonds de Commerce" subject to the security interest were not clearly specified, the security interest shall only apply to the intangible assets which shall include (trade name, trademarks, leasing rights, the right to contact and acquire clients and goodwill).
ii The owner of the “Fonds de Commerce” is obliged to determine in the mortgage if the "Fonds de Commerce" is subject to any other security interest whatsoever.

iii Moreover, the owner of the “Fonds de Commerce” should refer to the name of the Insurance Company with which he has concluded an insurance policy covering the risk of fire or theft.

Registration of the contract with the competent Commercial Registry is a prerequisite for its validity. Such registration should be accomplished within 15 (fifteen) days from the date of signature of the contract before the notary, otherwise the contract is deemed null and void.

Such registration is valid for 5 (five) years only and should be renewed thereafter, otherwise it shall be deemed void.

Banking Law No. 88 for 2003 has set new limits for legalization fees of such a mortgage when it is made in favor of banks and international financial institutions, based on four rates, depending on the amount of the loan. A maximum of LE 25,000 for loans up to and not exceeding LE 10 million, LE 50,000 for loans up to and not exceeding LE 20 million, LE 75,000 for loans up to and not exceeding LE 30 million, LE 100,000 for loans exceeding LE 30 million. Moreover, a stamp tax applies to the underlying loan or facility at the rate of 40 basis points per annum, on the outstanding balance of the loan or credit facility granted by banks registered in Egypt. Such tax is payable by the lender quarterly in arrears and is equally borne by the borrower and the lender.

4. In relation to the following types of assets, please explain in your jurisdiction the types of security that can be created or granted, if the security requires any type of registration or perfection requirements, an estimate of cost (including applicable taxes and any other duties/ costs) and timing for granting such security, and any special considerations regarding the asset type:

(a) Aircraft; is subject to a pledge as an immovable asset under a special law.

(b) Bank Accounts; bank accounts are pledged as a movable asset and the relevant special account is registered with the relevant bank as pledged. Moreover, no governmental expenses are required. However, fees vary from a bank to another.

(c) Animals, Crops (in ground and severed) and Timber; could be pledged as movables.

(d) Equipment; may be subject to a movables' pledge and/or a “Fonds de Commerce” mortgage.

(e) Intellectual Property; may be subject to “Fonds de Commerce” mortgage provisions.

(f) Inventory; may be subject to “Fonds de Commerce” mortgage provisions.

(g) Leases; may be subject to “Fonds de Commerce” mortgage provisions.
(h) Mineral Interests, including Hydrocarbons; may be subject to movable pledge that is registered on the relevant paper itself.

(i) Promissory Notes and Chattel Paper; may be subject to movable pledge that is registered on the relevant paper itself.

(j) Real Estate; may only be subject to immovable mortgage provisions and is notarized and registered with the competent real estate office.

(k) Receivables (credit rights under contracts or invoices); may be subject to movable pledge provisions and must be accepted in writing by the obligor and date certified or officially notified to such obligor.

(l) Rights under Contracts (excluding Receivables); may be subject to pledge of movables or real estate mortgage as the case may be. However, in practice such rights are assigned and not mortgaged and the assignment must be accepted in writing by the obligor and date certified or officially notified to such an obligor.

(m) Shares (in book-entry and certificate form and other securities); may be subject to pledge as a movable asset.

(n) Vessels; may be subject to mortgage as an exception as an immovable asset under a special law.

(o) Vehicles; may be subject to pledge as a movable asset.

(p) Business as an ongoing concern;

For requirements and costs for each type of security it will depend on the type of assets pledged or charged.

However, generally, requirements and costs for each type of asset will be as follows:

A. Movables:

   i. A security interest in movables is only valid against third parties, if in addition to the delivery of the pledged movable (e.g. machines, tools and inventory) to the holder of the security or a third party trustee. The pledge is constituted by a written contract adequately setting out the amount of the secured debt and the object of pledge (i.e. the pledged movable), and having an established date. In other words, the following conditions are necessary to have an enforceable security interest in collateral over movables:

      First, the transfer of possession to the creditor.

      Second, the contract of pledge must be in writing; such contract must have an established date (obtain a "date certain") at the Notarization Office. It should be emphasized that the rank of the secured creditors will be fixed in accordance with such established date. In commercial transactions, the date certification is not a requirement.

   ii. A pledge of movables is subject to the following general principles:
Only movable collateral which can be sold independently by public auction may be the object of a pledge. Notwithstanding, some of these items may be regarded as “immovable by designation” if such movables are incorporated into immovable property (e.g. machinery fixed as part of a factory).

The amount of the debt secured, or the maximum amount which such debt may attain, must be fixed in the contract of pledge.

The pledgor (debtor) is bound to deliver the pledged property to the creditor or to a third person (trustee) chosen by the contracting parties to hold the property during the validity of the pledge.

The pledge is extinguished if the pledged property returns into the possession of the pledgor, unless the pledgee (creditor) proves that such possession was not intended to extinguish the pledge, subject always to the rights of third parties.

The pledgor guarantees the pledge and its effectiveness. He must not undertake any action which diminishes the value of the thing pledged or prevent the creditor from exercising his rights derived from the contract. The pledgee may, in case of urgency, take, at the cost of the pledgor, all necessary measures for the preservation of the pledged property.

A pledgor guarantees the property pledged against loss or deterioration when such loss or deterioration is due either to his negligence or to force majeure.

The pledgee must preserve and maintain the pledged property with care as expected from a reasonable person. He shall be responsible for its loss or deterioration unless he can show that such was due to a cause other than his fault or negligence.

If the pledged property appears to be in danger of perishing, deteriorating or diminishing in value, to such an extent that there is a danger that the value of such property would not suffice to secure the claim of the Pledgee, the Pledgor may apply for the restitution of the property in exchange for another. Alternatively either the pledgee or the pledgor may apply to the Judge for authority to sell the pledged property by public auction or at its value at the time, on the stock exchange or on the market. The Judge shall, when authorizing the same, make an order as to the deposit of the price; in such a case the right of the creditor is transferred from the thing pledged to the price (i.e. the proceeds of sale) thereof.

If a suitable occasion presents itself for the sale of the thing pledged and the sale is advantageous, the pledgor may, even before the maturity of the debt, apply to the Judge for authority to sell the pledged property. The Judge, when authorizing the sale, will fix the conditions and make an order as to the deposit of the price.

B. Immovables (Real Estate Mortgage)
i. A security interest in an immovable (e.g. land or buildings) shall only be valid and enforceable between the parties and vis-à-vis any third party if a "legalized" contract is made. This contract should be in writing. Moreover, the contract must clearly identify the borrower's ownership of the real property.

Specification of the amount of the loan secured by the mortgage and description of the collateral securing the loan are prerequisites for the validity of the mortgage.

The legalization and registration of a mortgage process takes at least three months from the date of receiving all the required documents.

Banking Law No. 88 for 2003 has set new limits for legalization fees of the real estate mortgages and the “Fonds de Commerce” mortgages in favor of banks and international finance institutions, based on four rates, depending on the amount of the loan. A maximum of LE 25,000 for loans up to and not exceeding LE 10 million, LE 50,000 for loans up to and not exceeding LE 20 million, LE 75,000 for loans up to and not exceeding LE 30 million, LE 100,000 for loans exceeding LE 30 million.

ii. The principles applicable to the Real Estate Mortgages are as follows:

- Any part of the collateral(s) may secure the whole amount of the debt, and on the other hand the collateral(s) may wholly secure any amount of the debt unless otherwise stipulated or mutually agreed upon by the parties.

- The secured debt may be conditional or a future debt, but the maximum amount of the debt should be fixed clearly in the mortgage.

- Notwithstanding any of the lender's rights thereto, the borrower may carry out any disposition on the collateral subject of the security interest, i.e. may sell or lease or grant a second ranking security interest in the property. However, the mortgage continues to be valid in all such cases. This applies unless the mortgage contract provides otherwise.

- The mortgagor guarantees the mortgage and its effectiveness. He must not undertake any action which diminishes the value of the mortgaged property or prevent the creditor from exercising his rights derived from the contract.

- A mortgagee guarantees the mortgaged property against loss or deterioration when such loss or deterioration is due either to his negligence or to force majeure.

- The mortgagee may, upon the borrower’s failure to pay the debt, apply to the Judge for authority to sell the mortgaged property by public auction.

- If the mortgaged property appears to be in danger of perishing, deteriorating or diminishing in value, to such an extent that there is a danger that its value will not suffice to secure the claim of the
mortgage, the mortgagor may apply for the restitution of the property in exchange for another. Alternatively, the mortgagee or the mortgagor may apply to the Judge for authority to sell the mortgaged by public auction. The Judge shall, when authorizing the same, make an order as to the deposit of the price; in such a case the right of the creditor is transferred from the property to the price (i.e. the proceeds of sale) thereof.

- If a suitable occasion presents itself for the sale of the property and the sale is advantageous, the mortgagor may, even before the maturity of the debt, apply to the Judge for authority to sell the mortgaged property. The Judge, when authorizing the sale, will fix the conditions and make an order as to the deposit of the price.

iii. Registration of the mortgage with the Land Registry, which is the competent real estate notarization office, is necessary for the mortgage to be valid and enforceable against any third party. The priority between secured lenders depends on the time of registration.

C. Accounts Receivable
i. To obtain a security interest in an "accounts receivable", an official notification must be served by the original creditor to the original debtor advising him of the assignment in favor of the creditor. Such notice must be either served by court bailiff, or the assignment must be accepted in writing by the original debtor. Such acceptance of the assignment must be date certified, in order to be enforceable against third parties. Date certification attracts a registration fee of 0.75% of the underlying debt if it exceeds LE 2000. However, the cost of serving notice of the assignment by court bailiff is nominal.

ii. If the account receivable is evidenced by a note or bill of exchange, the creditor must acquire possession of any such instrument, moreover, the beneficiary of such instrument should validly endorse it in favor of the creditor. Notes or bills are subject to a nominal stamp tax.

5. Please explain briefly for each type of assets the procedure for enforcement (judicial and extra-judicial). Is it possible to enforce security governed by another jurisdiction? If yes, what is the procedure?

Please refer to our reply of question 4 above. As for enforcement, please refer to the reply of question 2.

6. Can a trustee or security agent be used in your jurisdiction, or must security be granted in favour of all lenders?

Yes, a security agent can be and is often used in our jurisdiction. The security agent is usually an Egyptian bank.

7. In bankruptcy or insolvency scenarios, what are the suspect periods, is claw-back possible, and what other types of rights (tax debts, employees, etc.) have preference over security granted?
In general, a request to declare a trader bankrupt may be filed within fifteen days from the date of cessation of payment. Moreover, the court shall specify a temporary cessation of payment date in its judgment.

Suspect periods start from the date of cessation of payment till the date of the bankruptcy judgment. The suspect period is determined in the bankruptcy judgment and may not exceed two years prior to the date of bankruptcy.

Moreover, according to the Egyptian Civil Law, rights that have preference by operation of law are as follows:
(a) Costs of legal proceedings incurred, in the common interest of all the creditors, for the preservation and sale of the property of the debtor. Such costs are payable in priority to any other claim, whether privileged or secured by a mortgage, including claims of creditors for whose benefit such costs have been incurred.
(b) Sums due to the state treasury for taxes, duties and other dues of any kind are privileged or have preference in accordance with conditions laid down by laws and regulations issued in this respect.
(c) Expenses incurred for the preservation of a movable or immovable and necessary repair have the next priority.

The following claims are secured by a priority right over all of the debtor’s property, whether movable or immovable.
(a) Sums due to servants, clerks, labors and other wage earners for their wages or fees of any kind due to them for the last six months.
(b) Sums due for food stuffs, clothes supplied to the debtor or his direct dependents during the last six months.
(c) Sums due by the debtor to members of his family for the last six months.

These claims rank immediately after the costs of legal proceedings, sums due to the state treasury and expenses for the preservation of and repairs to the property.

Special privileged rights over movables

- Sums disbursed for seeds, manure other fertilizers and insecticides, and sums disbursed for cultivation and harvesting are secured by a privilege over the crop for whose production they are spent.
- House and agricultural rents for two years, or for the duration of the lease if less than two years.
- Sums due to hotel proprietors by a guest for accommodation, food and other expenses.
- Sums due to the vendor of a movable for price and accessories.
- Co-owners who have partitioned a movable have a privilege over this movable in respect of their respective remedies against each other resulting from the partition.
Special privileged rights over immovables

- The price and accessories due to the vendor of an immovable sold.

- Such privilege must be inscribed, notwithstanding the transcription of the sale, and its rank is fixed by the date of inscription.

- Sums due to contractors and architects who have been entrusted with the erection, reconstruction, repair or maintenance of buildings or other works.

- Co-owners who have partitioned an immovable have a privilege over this immovable in respect of their respective remedies against each other resulting from the partitioning.

This privilege must be inscribed its rank is determined by the date of its inscription with the competent Land Registry.

8. In your jurisdiction, can borrowers or guarantors subordinate their claims and if so in what terms?

Borrowers and guarantors can subordinate their claims by signing subordination agreements in favor of other senior lenders.

9. What are the consequences of a transfer, assignment or novation of an underlying credit in your jurisdiction (is new security necessary, is the security automatically transferred, etc.)

According to the Civil Law, the assignment of a right comprises its warranties such as securities and privileges.

Hence, an assignment of the underlying credit does not require issuing a new security so long as the security agent remains the same. In such a case, the security is automatically transferred to the assignee without the need of issuing a new security. However, if the security agent is changed, the security agreement, i.e. the pledge or the mortgage, must be amended accordingly.

10. Can you have on top of a security in your jurisdiction, another layer consisting of an assignment of the collateral concerned conditional upon default by the debtor?

In principle, under the Egyptian Commercial Code, an additional layer of security taking the form of an agreement to sell or assign the underlying collateral might be, upon default, rendered null and void pursuant to Article 129. The only exception from this rule is in the case the creditor is a bank.

11. Are step-in rights lawful in your jurisdiction or does any action to take control require the creditors to go through a court process?
In order to take control over the secured assets, creditors have to go through a court process, unless an amicable settlement has been reached. An exception to the foregoing, is the pledge of shares in favor of a bank, where the Banking Law provides for facilitated procedures to enforce the pledge of shares in case of default and allows the secured lenders to purchase such shares on the Stock Exchange, if the pledge of shares so provides.