

A PLEDGE IN PRACTICE

Although a new UAE law governing the pledges of movable assets was issued back in 2016, as **Charles Laubach**, Partner at Afridi & Angell explains it is only now with the issue of its implementing regulations the impact of this new regime can actually be seen.

WHAT IS A 'MOVABLE ASSET'?

 A 'movable asset' is any type of property which is not real estate. In other words, any item of movable property," Charles Laubach explains.

WHAT'S HAPPENED?

"In March 2017, a new regime for registering pledges over movable assets was introduced by Federal Law No. 20/2016 (the Pledge Law). Under this law, security can be created without the need to deliver possession of the secured asset," Laubach adds. "In addition, the law allows for the perfection of a security interest through registration with a searchable electronic, public registry."

"This registry has been established by the Emirates Development Bank and is known as the Emirates Movable Collateral Registry," Laubach continues. "Upon registering with the Registry, a security becomes effective against third parties and priority is determined according to the time and date of registration, unless the parties agree otherwise."

WHAT IS COVERED?

"Under the Pledge Law, a wide range of current or future movable assets can be subject to a mortgage, including accounts payable, accounts and deposits with banks and other licensed financial institutions, bonds and similar financial instruments. Equipment and other tangible commercial assets, raw materials or

work in progress, agricultural assets, fixtures which can be separated from real estate without causing damage, and any other assets stipulated as capable of being pledged under law are also covered," Laubach explains.

"However, Federal Law No. 20/2016, does not apply to movable assets which can only be pledged by taking possession or in cases where UAE law requires an interest over the assets to be registered under a specific registration regime as is the case for vessels, cars and planes. It is also not possible to register a mortgage over certain categories of assets, including future rights arising out of inheritance or wills," Laubach notes.



Charles Laubach
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IMPLEMENTING REGULATIONS

"Although Federal Law No. 20/2016 came into effect in 2017, registration of security interests was subject to the issuing of implementing regulations."

"However, it wasn't until the issuing of Cabinet Decision No. 5/2018 on 1 March 2018, that the Pledge Law's Implementing Regulations were issued," Laubach states.

"In addition, supplemental regulations have also been issued under Cabinet Decision No. 6/2018 establishing the Registry, and Ministerial Decision No. 42/2018, provides additional administrative regulations which relate to the Registry itself."

"These regulations had to be issued because the Pledge Law itself only introduced the framework for



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the new pledge regime, and its applicability depended on these later regulations.”

THE REGISTRY

“The public may search the Registry’s database using its website to access basic registration information,” Laubach states. “The Registry will also issue either electronic or paper reports containing the information which is available in its database.”

THE REGISTRATION PROCESS

“Parties registering a mortgage are required to create a customer account on the Registry’s website,” Laubach states. “A declaration or registration form must be completed in either Arabic or English, which includes a number of pieces of ‘basic information’ which need to be included in addition to the information which is referred to in the Pledge Law.”

“These pieces of information include each mortgagor and mortgagee’s identity, i.e. their name, physical address, email address and if the mortgagor and/or mortgagee is an individual, the Emirates ID number if they are a UAE national or resident, or passport number if they are a non-resident.”

“In addition, if the mortgagor and/or mortgagee is a legal entity, the name of the individual who is authorised to register and the entity’s registration and license number if it is registered in the UAE or the nationality and registration number if its registered outside of the UAE are needed,” Laubach adds.

RELATED LEGISLATION

Article 8 of Cabinet Decision No. 5/2018

The rights in Article 11 of Federal Law No. 20/2016 will be registered in line with the conditions and procedures set out in this Decision.

(Source: Lexis Middle East Law)

“There should also be a description of the mortgaged property, including information required by Article 4 of Cabinet Decision No. 5/2018,” Laubach notes. “It is also necessary to state if any rights have been granted under Article 11 of Federal Law No. 20/2016 (i.e. the rights of a lessor on assets leased under an operating lease where the contract is at least one year or more, the rights of an owner of goods placed for sale and the rights of a lessor in a financing lease).”

“In addition, if the mortgaged property is an accessory to immovable property, a description of this designated property is needed and if it is attached to another movable asset, then a description of this movable asset is also required.”

“It is also necessary to state the duration of the mortgage period and any additional information which may be required on the registration form,” Laubach says.

“The mortgagee must also take into account the content of the mortgage contract on the limits of information which may be declared in the Registry’s database.”

RELATED STORY

Launch of the Registry of Security over Movables
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Egypt Law No. 115/2015 regulating security over movable assets and its Executive Regulations were passed over 16 months ago. The Law mandated the Financial Regulatory Authority to supervise the creation and operation of a registry for registering and publishing all security rights over movable assets in line with the Law.

“The Registry will accept registration of a pledge once the registration form has been completed and all conditions under the law have been met,” Laubach notes. “Upon registration, a notice is issued containing the date, time and registration number and all other pieces of basic information which are contained in the registration form.”

MORTGAGE CONTRACTS

“There are also a number of provisions on mortgage contracts,” Laubach adds. “A written mortgage contract must be executed between the mortgagee and mortgagor by either a formal or informal instrument. A mortgage contract

concluded in the form of letters exchanged by fax, email or any other means of communication will satisfy the requirement for it to be written,” Laubach continues. “In addition, written approval must be obtained by the mortgagor by express statement in the mortgage contract or another document. However, the Implementing Regulations do not state the mortgage contract should be notarised.”

“Article 4 of Cabinet Decision No. 5/2018 requires mortgage contracts to cover a number of details, including a description of the nature of the mortgaged property (e.g. specific quantity, piece, type, class or category) and an expression indicating the creation of a lien over all current or future movable properties belonging to the mortgagor. There must also be an expression indicating the creation of a lien over all movable properties belonging to the mortgagor, with the exception of movable properties determined exclusively and an expression indicating the creation of a lien over a specific category or type of movable properties, whether these are current or future, e.g. ‘all equipment’ or ‘all current or future receivables’. Finally if the mortgaged property is an object for personal or household use which is necessary for the mortgagor and their dependents, which was mortgaged to finance its purchase, the mortgage contract must include a detailed description of the mortgaged property distinguishing it from other similar objects,” Laubach explains.

“In addition, if the lien relates to the creation of a particular obligation, whether a financial obligation or performance obligation, this should be specified in the mortgage contract along with a general or specific description of the obligation.”

ENFORCEMENT

“Registrations are considered enforceable if they include the information required by Federal Law No. 20/2016 and its Implementing Regulations, unless

they contain errors on the mortgagor’s identity or description of the property,” Laubach adds. “They will also become enforceable immediately upon the Registry’s confirmation of its acceptance and the appearance of the lien in its database. The Registry informs both the mortgagor and mortgagee by email of the enforceability of the registration.”

AMENDMENTS, OBJECTIONS AND TERMINATION

“Registrations can be amended if the mortgagee has accepted the amendment,” Laubach states. “However, no new mortgaged property or mortgagor may be added by amendment. A mortgagee may also extend the duration of the registration of a lien by completing a Registry form, and this extension is considered enforceable on the mortgagees who have accepted the extension.”

“In addition, a mortgagor, mortgagee or a principal may object to the registration of a lien by filing a declaration form with the Court of Appeal within seven business days from the date of registration.”

“A mortgagee may also cancel a registration by completing a form which includes the registration number of the mortgaged property and acceptance by the mortgagee and mortgagor of the termination declaration.”

FEES

“The fees will vary depending on the service, but vary between 100 to 200 AED per declaration for a majority of the services provided,” Laubach notes. “For example, the fee for initial acceptance by the parties to registration is 100 AED for each registration.”

THE IMPACT

“Federal Law No. 20/2016 and its Implementing Regulations should provide greater certainty for both lenders and borrowers, and will bring the UAE security regime in line with other developed jurisdictions,” Laubach states. “Lenders will also have more comfort as to which assets may be secured, the process for securing them and there will be greater transparency on the priority of liens.”

“Companies in the UAE, especially small and medium sized enterprises, should also find it easier to secure financing and pledge movable assets as these can now be pledged without requiring delivery.”

“Since these regulations were only issued recently, it may take some time before we see larger numbers using this Registry, and as the new pledge regime begins to be applied in practice, there may be a need for additional clarifying regulations to be issued. For example, it currently appears movable property located in the UAE’s free zones are outside the Registry’s remit so additional clarifying regulations may be needed on securities taken over these kinds of assets,” Laubach concludes.