

inBrief



New Law on Registering Security over Movable Assets

By Charles Laubach and Rahat Dar | 6 September 2020

Federal Law No. 4 of 2020 on Guaranteeing Rights Related to Movables (the **New Mortgage Law**), which came into effect on 1 June 2020, has updated the regime for registering security interests over movable assets in the UAE.

The new regime

The New Mortgage Law repealed Federal Law No. 20 of 2016 on Mortgaging of Movable Property as Security for Debts (the **Old Mortgage Law**). The Old Mortgage Law had been a welcome development as it introduced a whole new regime for registering a security interest over movable assets located in the UAE and addressed a number of shortcomings inherent under the earlier security registration regime, including the ability to create a security interest akin to a common law “floating charge” over future assets, dispensing with the requirement to deliver possession of the secured asset, the ability to perfect a security interest through registration, and a public register for registered security interests.

Whilst the New Mortgage Law retains most of the positive features of the Old Mortgage Law (as discussed above), it contains some key differences (as outlined below). The most significant differences are the introduction of a new security registry, to be established by a resolution of the Council of Ministers, and new implementing regulations (the **Implementing Regulations**) to be issued by the Ministry of Finance, which will regulate the operation of the new security registry. The New Mortgage Law provides that the Implementing Regulations will be issued within six months of the publication date of the New Mortgage Law (*i.e.*, by 2 December 2020). This new security registry replaces the current Emirates Movable Collateral Registry (**EMCR**) which is operated by the Emirates Development Bank.

Key developments

Whilst the New Mortgage Law largely replicates the provisions of the Old Mortgage Law, it also introduces some other key changes

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including:

1. The list of assets that cannot be registered in the security register has been reduced and no longer includes (i) objects intended for personal or home use necessary for the person and his dependents, unless used as a mortgaged property to finance the purchase thereof, (ii) entitlements of the insured or beneficiary of an insurance contract, unless these entitlements are considered proceeds of the security asset and (iii) future rights entailed from inheritance or Will.
2. The definition of an accounts receivable (*i.e.*, a right to receive money owed to the security provider by a third party) now specifically excludes the right to collect payments established in endorsable deeds, the right to collect payments deposited in accounts payable at the banks and the right to collect payments under securities/financial instruments.
3. It is now possible to register a security interest before the conclusion of the relevant security contract (*i.e.*, the agreement creating the security interest), provided the security provider has given written consent to the same.
4. If secured assets are sold or disposed of in the ordinary course of business, then they shall pass to the purchaser free from any security interest, provided that the purchaser was unaware of the secured party's interest over the security assets, at the time that it entered into the sale agreement. This is in contrast to the position under the Old Mortgage Law, where the goods could be disposed of (without any security interest) even if the purchaser was aware of the security interest, provided that the disposal was made at market price.
5. Where the security interest relates to acquisition financing (for example, of equipment, inventory or IP rights), the security interest over the financed assets must be registered in the register within seven working days of the security provider gaining possession of the same.
6. In the event that multiple security interests are enforceable over the same fungible product or mass, these rights shall have equal priority status over the product or the mass and every secured party may claim their right from the product or the mass at the ratio of their security interest to the mass or the product at the time of integration.
7. A security interest under the provisions of the New Mortgage Law shall survive commencement of any bankruptcy procedures against the security provider and shall remain as such, and it shall retain the priority that it had prior to the commencement of the bankruptcy procedures. This is in contrast to the provisions of the Old Mortgage Law, which provided that none of the execution procedures on the mortgaged property under the Old Mortgage Law would be valid, in case of commencement of bankruptcy procedures against the security provider. This will be of particular concern to lenders who may need to enforce their security interests against bankrupt security providers.

Implementing Regulations

Like the Old Mortgage Law, the New Mortgage Law leaves a number of key procedural matters to be addressed by the Implementing Regulations. These include public access rights to the register, the requirements for registering a security interest in the security register, and additional priority terms associated with certain classes of security interests or assets. Whether the popular and useful features of the previous movable registration regime will be continued under the New Mortgage Law will be clear only once the Implementing Regulations have been issued.

Status of registered security in EMCR

Unfortunately, the New Mortgage Law makes no references to the security registered on the EMCR or the legal status of the same. The New Mortgage Law provides that any regulations, resolutions and decisions implemented under the Old Mortgage Law shall continue (until replaced by the Implementing Regulations), to

the extent they do not conflict with the provisions of the New Mortgage Law. Combined with the fact that the Old Mortgage Law has been repealed in its entirety, this means that there is currently some uncertainty regarding the rights of a secured party which holds a registered security interest on the EMCR, in accordance with the Old Mortgage Law. In particular, it is not clear how the Courts would treat an application under the Old Mortgage Law (which has been repealed) to enforce a security interest registered on the EMCR. This issue needs to be urgently addressed, possibly through an amendment to the New Mortgage Law, providing recognition of the existing registered security rights under the Old Mortgage Law.

As a worst-case scenario, secured parties could find that their EMCR registered security interest does not give them any enforceability or other benefits under the Old Mortgage Law (*e.g.*, as regards a security akin to a floating charge) or the New Mortgage Law. In this case the only option would be to enforce their contractual rights under the provisions of the relevant security agreements. This can cause additional complications for enforcement, particularly in the case of security agreements that are governed by foreign laws.

Actions by secured parties

In light of the above, parties with security interests registered on the EMCR should take urgent action, including:

- Ensuring that the all security agreements are in compliance with their governing laws.
- Remaining alert regarding further developments under the New Mortgage Law, particularly the issuance of the Implementing Regulations, so as to understand the new requirements for registering a security interest and ensure that they register any security interest with the new security registry within the six months of the Implementing Regulations coming into force (as required under the New Mortgage Law).
- Undertaking a thorough review of all security interests registered on the EMCR, to understand their enforcement risk exposure. ■

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We are continuing to monitor developments with the New Mortgage Law and will provide further updates in due course. Please feel free to contact us should you wish to discuss any of the issues raised in this InBrief.

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