

THE ELEMENT OF SURPRISE

Charles Laubach and **Rahat Dar** at Afridi & Angell examine the impact of the UAE's new Movable Assets Law which took some experts in the country by surprise.

“The regime for taking security over movable assets in the UAE was recently updated by Federal Law No. 4/2020 on Guaranteeing Rights Related to Movables, which came into force on 1 June 2020,” Charles Laubach explains. “This law repeals Federal Law No. 20/2016 on the Mortgaging of Movable Property as Security for Debts which was enacted on 15 December 2016 and came into force in March 2017,” Laubach adds. “Federal Law No. 20/2016 introduced a whole new regime for registering a security

interest over movable assets located in the UAE and addressed a number of previous shortcomings in the security registration regime here,” Laubach continues. “This included the ability to create a security interest akin to a common law floating charge over future assets and dispense with the need to deliver possession of the secured asset. It also made it possible to perfect a security interest through registration and created a public register for registered security interests. At the time the introduction of the 2016 Law and the subsequent establishment of the security registry





with the Emirates Development Bank, the Emirates Movable Collateral Registry, were welcomed developments in the UAE market, particularly with local and foreign lenders. It helped bring the UAE security registration regime into line with other developed jurisdictions.”

A NEW REGISTRY

“Therefore, the introduction of Federal Law No. 4/2020 repealing this law, took some market participants by surprise,” Laubach states.

“Fortunately, Federal Law No. 4/2020 has retained most of the positive developments under Federal Law No. 20/2016 and largely replicates the previous law but it has introduced some changes. The most significant of these is the introduction of a new security registry which will be established by a Ministerial Decision and will replace the Emirates Movable Collateral Registry,” Laubach adds. “In addition, new Implementing Regulations are to be issued by the Finance Ministry which will regulate the operations of this new security registry. Federal Law No. 4/2020 states that these Regulations will be issued within six months of the publication date of the Law, so they should be issued by 2 December 2020.”

“What is not yet clear however, is whether existing registered security interests will automatically migrate to the new security register which could be significant as Federal Law No. 4/2020 states that any security interest must be registered in the new security register within six months of the Implementing Regulations being published.”

KEY CHANGES

“Despite the similarities of these two pieces of legislation there are some other key changes,” Rahat Dar states. “The first is that the list of assets which cannot be the subject to a security registration has been reduced and no longer includes objects intended for personal or home use which are necessary for an individual and their dependents, unless these are used as a mortgaged property to finance that property’s purchase.



Charles Laubach
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Entitlements of the insured or beneficiary of an insurance contract, are also no longer included unless these entitlements are considered proceeds of the security asset. Future rights entailed from inheritance or will have also now been removed from this list,” Dar adds.

“Another key change is that the definition of an accounts receivable or a right to receive money owed to the security provider by a third party now specifically excludes the rights to collect payments established in endorsable deeds, deposited in accounts payable at banks or under securities or financial instruments,” Dar continues.



Rahat Dar
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“It is also now possible to register a security interest before the conclusion of the relevant security contract or the agreement which creates that security interest, provided the security provider has given written consent to this,” Dar states.

“Under another change, a secured party may also assign their security interest in accounts receivable without the consent of the security provider and the assignment can be registered as an amendment to the original security registration. If the secured assets are sold or disposed of in the ordinary course of business, they then pass to the purchaser free from any security interest, provided the purchaser was unaware of the secured party’s interest over these assets, at the time they entered into the sale agreement. This is very different to the position under the previous law, where the goods could be disposed of, without any security interest even if the purchaser was aware of the security interest, provided the disposal was made at market price,” Dar continues.

“There are also provisions on the timing of registrations. Where the security interest relates to acquisition financing, for example, of equipment, inventory or intellectual property rights, the security interest over the financed assets must be registered in

RELATED LEGISLATION

Article 7 of Federal Law No. 4/2020

The public may access the information contained in the Register as decided by the Implementing Regulation to this Law. A request may be made to obtain a hard copy or an electronic report on the information contained in the Register. The report will have binding force as evidence of the date and time of publicity and any information published in the Register when authenticated by the Register managing authority. The Implementing Regulations to this Law will regulate the terms for obtaining the report.

(Source: Lexis Middle East Law)



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the register within seven working days of the security provider gaining possession of it.”

“It is also worth noting if multiple security interests are enforceable over the same fungible product or mass, these rights 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.”

“There are points of note too where there is a breach by the security provider or the underlying obligor. In such cases the secured party may give seven days’ written notice to the security provider and any third-party holder of the security assets if applicable, of their intention to seize, sell, lease or otherwise dispose of the assets and they must also provide the Court with details of the proposed sale, lease or disposal. In the current economic climate it is also worth noting a security interest under Federal Law No. 4/2020 will survive commencement of any bankruptcy procedures against the security provider and will remain,” states Dar.

“The security interest will also retain the priority it had before the launch of the bankruptcy procedures. Previously under Federal Law No. 20/2016, none of the execution procedures on the mortgaged property under the Law were valid, if bankruptcy procedures against the security provider had been launched. This will be of particular concern to lenders who may need enforcement of their security interest against bankrupt security providers.”

THE IMPACT

“There is currently some uncertainty on the rights of a secured party which holds a registered security interest on the Emirates Movable Collateral Registry, in line with Federal Law No. 20/2016 since the repeal of this Law, as it is not clear how the Courts will treat an application to enforce a security interest registered on the former Registry who at the time of writing are still receiving new security registrations,” Laubach states.

“This will be particularly concerning to lenders, who have registered security interests to secure financing to borrowers and should to be urgently addressed, possibly through an amendment to Federal Law No. 4/2020, to provide recognition of existing registered security rights under Federal Law No. 20/2016 until the new Implementing Regulations are issued.”

WHAT NEXT?

“There are a number of key procedural matters still to be addressed by the Implementing Regulations which are yet to be issued.”

“These include public access rights to the register, the registration of a security interest in the register, and additional priority terms associated with certain classes of security interests or assets. More detail is also needed on the law of domicile of the security grantor, which will be the law governing the creation, priority and enforcement of the security interest,” Laubach states.

“It also remains to be seen whether popular and useful features in the previous registration regime will be continued in the Implementing Regulations. However, given the similarities of the two laws, the new Implementing Regulations may also be similar to Federal Law No. 20/2016’s Implementing Regulations.”

“However, with the question whether there will be auto-migration to the new register still unanswered businesses should review their catalogue of registered security interests now, and keep an eye out for the Implementing Regulations so that they can make arrangements to register their security interests in the new security register, in line with the new Law and Implementing Regulations when these Regulations are issued.”

RELATED STORY

UAE: New Categories of Movable Assets Announced 2020-09-17_7

The UAE’s Finance Ministry has announced new categories of movable assets. There are now nine types of funds and movable assets which can be used as collateral for loans and bank financing, including fish, bees and agricultural crops. Also included is equipment and work tools, goods intended for sale or lease and raw materials and goods which are being manufactured or altered.