

Getting a grip on movables

The Federal Law No. 20 of 2016 introduces a whole new regime for registering a security interest over movable assets in the UAE.

Federal Law No. 20 of 2016 (the New Law) on Mortgaging Movable Property as Surety for Debts (which was enacted on December 15, 2016 and is due to come into effect 90 days after enactment) introduces a whole new regime for registering a security interest over movable assets in the UAE. The New Law addresses some of the shortcomings inherent under the existing UAE laws on taking security over movable assets, including the limitations on the types of movable assets that can be given as security and the requirement to take possession (actual or constructive) of the secured assets.

The New Law will provide greater certainty for lenders and bring the UAE security registration regime in line with other developed jurisdictions, where security interests can be recorded in the corporate records of the borrower and/or with the local companies' registrar.

THE KEY NEW FEATURES

Currently, the options for taking security

over movable assets in the UAE are relatively limited. Under the UAE Civil Code, Federal Law No. 5 of 1985 (as amended), in order to perfect a security interest in movable assets, a secured lender is required to take possession of the secured assets. This is not always desirable or practical, particularly in cases where the relevant assets are located in different locations or being utilised by third parties. Whilst it is possible to perfect a security interest over the movable assets of a commercial business (generally a limited liability company in the UAE) through a commercial mortgage under the UAE Commercial Code, Federal Law No. 18 of 1993 (as amended), this would require the secured lender to be a UAE licensed bank, as a commercial mortgage agreement would need to be notarised and the UAE notaries will (as per their internal practices) only notarise a commercial mortgage agreement where the mortgagee is a UAE licensed bank. Consequently, a non-bank or overseas lender would need to appoint a local bank as its agent, in order to take advantage of

the commercial mortgage option. Under the New Law it will not be necessary for a lender to take possession of secured assets, in order to perfect their security interest, as they can simply perfect their security interest through registration.

When looking at security options available in the UAE, overseas banks are often surprised and shocked by the limited ability to perfect their security interests (particularly in connection with movable assets) through registration, as is the norm in most developed jurisdictions. The ability



to perfect a security interest over movable assets through registration is another key innovation under the New Law. Currently, pledge or assignment agreements relating to movable assets, which account for the majority of security interests over movable assets, simply create a contractual right, which would need to be enforced by the UAE civil courts. Enforcement of such agreements is a costly and time consuming exercise. In contrast, if the borrower fails to perform its obligations under the registered mortgage contract, the secured lender may, subject to certain conditions, request the sale of the secured asset at market value. Alternatively, the secured lender may apply to the UAE courts for a summary judgement to exercise its rights over the secured assets. A registered mortgage over movable assets would also give the secured lender priority over third parties, as registration will be deemed notice to all third parties.

Another key feature of the New Law is the proposal to make certain information relating to the registered mortgage available to the public. Details of the type of information that may be disclosed and the procedure for requesting such information will be outlined in the executive resolutions, which will be issued by the UAE Cabinet within six months of the effective date of the New Law (the “Executive Resolutions”).

WHAT ASSETS ARE COVERED?

The New Law covers a broad category of movable assets, including bank accounts, commercial paper, raw material and fungible assets, tangible and intangible assets (currently intangible assets can only be mortgaged under a registered commercial mortgage) and future assets (currently this is not possible in the UAE as it would create a floating charge, which is currently not recognised under UAE law). The ability to create a security interest akin to a floating charge would be particularly helpful in the context of pledges over bank accounts and would avoid the current need to periodically update account pledges, in order to capture any new sums deposited into the secured account.

Whilst the New Law is intended to have a broad application, it will not apply to movable assets that can only be pledged by taking possession or where UAE laws require an interest over such assets to be registered under a specific registration regime (e.g. vessels, cars and planes).

Furthermore, it will not be possible to register a mortgage over certain categories of assets including future inheritance and any public properties.

REGISTRATION

In order to register a mortgage under the New Law, the parties must conclude a mortgage contract, which must include details of the secured asset and a declaration from the mortgagor confirming his right to mortgage the secured asset. Although the New Law provides some helpful guidance on the type of assets that can be registered and the effects of the mortgage registration, the key administrative details regarding the administration of the mortgage registration regime will be outlined in the Executive Resolutions.

CONCLUSION

Whilst the New Law significantly enhances a bank’s ability to take a registered security interest over movable assets, the popularity of the new regime will largely depend on the practical registration requirements that will be outlined in the Executive Resolutions. Nonetheless, the concept of a mortgage register for movable assets is another welcomed step (along with the introduction of the share pledge register under the UAE Companies Law) towards providing greater certainty and protection for lenders and bringing the UAE security regime into line with international standards. 🏠

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