

A QUESTION OF SECURITY

The 2020 UAE movable assets law raised questions, some of which have now been answered by its Implementing Regulations as Rahat Dar of Afridi & Angell explains.

“Ever since Federal Law No. 4/2020 ushered in a new regime for the registration of security interests over movables last year, market participants, particularly banks and financial institutions, have been eagerly awaiting this Law’s Regulations,” Rahat Dar states.

“The Regulations, recently issued under Cabinet Decision No. 29/2021, have fleshed out the specific procedure for registering a security interest on the new register, the rules which apply to taking security over intangible assets and the treatment of existing security, particularly security which had been registered under the previous movables security registration regime, Federal Law No. 20/2016,” Dar adds.

“The concept and framework for an electronic security register for movable assets was first introduced under Federal Law No. 20/2016, which was repealed by and largely replicated under Federal Law No. 4/2020. Federal Law No. 20/2016 introduced a number of innovations including the ability to conveniently perfect security interests over a broad class of movable tangible and intangible assets without the need to take possession or control over these assets,” Dar explains.

“Other innovations were the introduction of new



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classes of security including those akin to a floating charge and the ability to enforce security interests without having to resort to the local courts,” states Dar. “These were welcome developments, particularly by overseas financial institutions who appreciated being able to register security over a diverse class of assets in a single security register, as is the case in most other developed jurisdictions, and being able to dispense with the need to have to appoint local security agents to hold security over certain types of assets.”

NATURE OF THE CHANGE

“Indeed, the positive reception of Federal Law No. 20/2016 combined with the fact that the new Law and Regulations largely replicate the previous framework and associated regulations, has led some to speculate the new Law has less to do with any seismic shift in the security registration regime and more to do with a possible change in the security registrar,” Dar adds. “This issue should be clarified following the publication of the Cabinet Decision which will create the registry and identify the registrar.”

“Although the new Law has repealed the 2016



Law in its entirety, all the circulars, resolutions and regulations relating to Federal Law No. 20/2016 remained valid, to the extent they were consistent with the new Law until they were replaced by the Regulations and new resolutions and circulars," Dar notes. "Unfortunately, this caused a considerable amount of confusion among banks and financial institutions who are holding the lion's share of registrations on the existing security register," Dar continues. "Critically, it was not clear how a secured party, with a registration on the existing register, would exercise its rights to request the courts to seize and dispose of secured assets, when the Law providing those rights had been repealed."

"However, the Regulations have confirmed any existing registration in line with Federal Law No. 20/2016 will remain effective against third parties, until it is terminated in line with the provisions of the new Law," Dar adds. "While this implies any existing registrations will be effective against third parties, it fails to address enforcement against the security provider, for example how a secured party would enforce its rights to seize and dispose of secured assets which are in the possession of the security provider."

"There is also little to no guidance on how to

RELATED LEGISLATION

Article 26 of Cabinet Decision No. 29/2021

In return for the services provided by the authority in charge of the register and specified in the table attached to this Decision, the fees indicated next to each of them will be collected in a way determined by the Ministry.

(Source: Lexis Middle East Law)

enforce an existing registration, which was registered under Federal Law No. 20/2016, before the courts. For example, would you use the enforcement procedure under the 2016 Law or the new Law?" Dar adds. "The situation is further complicated by the fact Federal Law No. 20/2016 was, itself, in its infancy and had remained largely untested before the local courts before it was repealed. Further clarity will be required in connection with these outstanding issues."

REGISTRATION

"Fortunately, the registration process is relatively straightforward," Dar states. "Firstly, an applicant needs to establish an account with the registrar although this will only be possible after the appointment of the registrar."

"The online registration must include the details

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Since the issuing of Federal Law No. 4/2020 on Guaranteeing Rights Related to Movables the business community, particularly banks and financial institutions, have been eagerly awaiting the publication of the Implementing Regulations to the Mortgage Law, to provide details on a number of key issues including the specific procedure for registering security on the new register, the rules which apply to taking security over intangible assets, accessing information from the new register and the treatment of an existing security, particularly security which was registered under the previous movables security registration regime.

of the security provider including their name, nationality or registration number, identity card or passport number for natural persons or license for legal persons, and the secured party's name, address and email address," Dar continues. "The registration process must also include a description of the security assets including the specific type and class of assets and confirmation of whether the assets are existing or future assets, and finally a description of the secured obligations and whether it is a specific amount, subject to an upper limit and/or refers to all obligations owed to the secured party. Registration fees for each registration will be between 50 and 200 AED."

"The registrar may not demand proof of the security provider's consent to the registration," Dar adds. "The Regulations clarify the registrar will not review the contents of the registration and will not be responsible for the accuracy or completeness of any information in the registration. While this abdication of responsibility for the contents of the registration may surprise some, it has, to some extent, been balanced

by the high degree of responsibility placed on the applicant."

"In particular, it should be noted the registration only becomes effective from the time and date it is entered into the register database in a way which allows the declaration to appear when searching the register" Dar states.

"Therefore, merely completing the registration exercise does not, in itself, guarantee enforceability. A registration may be unenforceable if there is an error in entering any of the key identification information highlighted under the Regulations, which leads to an inability to retrieve the record of the registration when conducting a database search."

"A registration may also be unenforceable if any other information in the registration reasonably misleads anyone conducting a search of the register," states Dar. "While the new Law and the Regulations do not provide any guidance on what constitutes 'reasonably misleading', this is likely to include instances where information used to conduct searches in the database, as identified in the Regulations, has been entered incorrectly. Therefore, applicants are advised to seek professional advice when completing registrations, as any incorrect information could compromise the effectiveness of the registration."

INTANGIBLE ASSETS

"In the case of intangible assets, the new Law provides the creation of a security interest, its enforcement and priority will be subject to the law of domicile of the security provider," Dar adds. "The Regulations provide the domicile will be determined by looking to the country in which the security provider's workplace is located or the country in which its head office is located, if it has operations in more than one country. Lenders should take care to determine the domicile of a security provider, particularly when dealing with overseas companies or branches or UAE companies which only have overseas operations."

SEIZING ASSETS

"The new Law permits a secured party to seize and dispose of secured assets, without having to seek a specific court order," Dar states. "This can be achieved by sending a notice to exercise its right to seize and dispose of the assets to the security provider, the underlying obligor, other parties with a security interest in the relevant assets and other interested parties. The notice should also include details of the secured assets which will be seized and disposed of, the method of execution and the time and place of the disposal."

"While the option to take unilateral action to seize and enforce a security interest may seem appealing, particularly considering the time and effort required to secure a court order, a secured party should exercise caution given it will be assuming responsibility for disposing of the assets, settling its debts minus any reasonable execution expenses and those of other secured parties, in order of priority," adds Dar.

"Any of these obligations could expose the secured party to complaints by the security provider, underlying obligor and other secured parties such as claims that the assets were sold undervalue or the proceeds were not correctly distributed among other secured parties."

"Exercising this option will also require the cooperation of other parties, for example third parties with possession of the secured assets. Failing this, the secured party will have no option but to enforce through the courts."

WHAT'S NEXT?

"Given the relatively modest fees for registering an existing security interest in the new register, we urge secured parties to register all eligible existing security interests in the new register as soon as registration is possible," states Dar.

"The new Law provides a grace period of six months following the issuing of the Regulations to register existing security interests in the new security register. However, it still remains to be seen whether the new register will be established and operational before this deadline."