

inBrief



Implementing Regulation to the new Movable Security Registration Law

By Bashir Ahmed and Rahat Dar | 4 May 2021

Since the issuance of Federal Law No. 4 of 2020 on Guaranteeing Rights Related to Movables (the **Mortgage Law**) the business community, particularly banks and financial institutions, have been eagerly awaiting the publication of the implementing regulations to the Mortgage Law, which would provide details on a number of key issues including the specific procedure for registering security on the new register; rules applicable to taking security over intangible assets; accessing information from the new security register; and the treatment of the existing security (particularly security that had been registered under the previous movables security registration regime). The implementing regulations were published in the Official Gazette as Cabinet Decision No. 29 of 2021 on the Implementing Regulations for Federal Law No. 4 of 2020 on Securing Rights Over Movable Property (the **Regulations**) on 21 March 2021 and came into effect the following day.

Whilst the Regulations do not address the creation of the security register or appointment of the registrar, (both of these issues will be clarified following the publication of the cabinet decision which will create the registry and identify the registrar), they do introduce the following key developments to the security registration regime.

How to make a registration

The registration process is relatively straightforward. Firstly, the applicant needs to establish an account with the registrar (only possible following the appointment of the registrar). The online registration must include the following information:

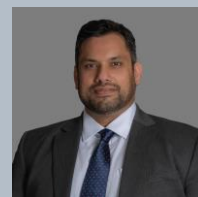
- (a) details of the (i) security provider including its name, nationality/registration number (as applicable), identity card or passport number (in case of natural person) or license (in case of a legal person) and (ii) secured party

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including the name, address and email address (together, the **Identification Information**);

- (b) 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
- (c) description of the secured obligations, whether it is a specific amount, subject to an upper limit and/or refers to all obligations owed to the secured party.

In contrast to the earlier registration procedure under Federal Law No. 20 of 2016 (the **Old Mortgage Law**), it is no longer necessary to submit a completed security agreement between the secured party and the security provider, at the time of the registration application.

The registration fees range from AED 50 to AED 200 per registration, depending on the type of security registration. The register shall issue an electronic confirmation upon the completion of the registration.

Liability for registration

The Regulations provide that whilst the registrar can reject a registration application, if it does not contain the mandatory information therein, the registrar shall not review the contents of the registration or the accuracy or completeness of any information in the registration. These provisions are accompanied by a general move towards placing a high degree of responsibility for the registration, on the applicant.

In particular, the registration only becomes effective once it has been entered into the register database in a manner that allows the declaration to appear when searching the register. Merely completing the registration exercise does not guarantee enforceability. The registration may be unenforceable if (i) there is an error in entering any of the Identification Information, which leads to an inability to retrieve the information in the registration when conducting a search of the register database or, (ii) any other information in the registration which reasonably misleads anyone conducting a search of the register database. Whilst the Mortgage Law and Regulations do not provide any guidance on what constitutes “reasonably misleads”, we believe that this will include instances where information used to conduct searches in the database, as identified in the Regulations (see below), has been entered incorrectly. Given that any errors in the application could render the registration ineffective, applicants would be well advised to seek professional advice when completing registrations.

Accessing information from the register database

A person can search the register database by entering the registration number or the Identification Information. A person may also print a search report containing information regarding the registration, including its time of creation, details of the parties on the registration, description of the secured assets, validity period and any other data requested by the registrar.

Security over intangibles

The Mortgage Law provided that the creation of a security interest, its enforcement and priority relating to intangible assets shall be subject to the law of domicile (as identified in the Regulations) of the security provider. The Regulations provide that domicile shall 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). Caution should be exercised in determining the domicile of a security provider, particularly when dealing with overseas companies / branches, or UAE companies which only have overseas operations.

Taking the secured assets without the Court’s assistance

A secured party may seize and dispose of secured assets, without the need to seek a specific court order, 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 Regulations provide that such notice should also include details of the assets that will be seized and disposed,

the method of execution, and the time and place of the disposal.

The prospect of being able to take quick unilateral action to seize and enforce a security interest may seem appealing, particularly considering the time and effort required to secure a court order. However, this will entail the secured party assuming responsibility for disposing of the assets, settling its debts (less, any reasonable execution expenses) and those of other secured parties, in order of priority. Any one of these obligations could expose the secured party to potential legal action by the security provider, underlying obligor and other secured parties, e.g., claims that the assets were sold at an undervalue or the proceeds were not correctly distributed amongst other secured parties. In any event, exercising this option will require the co-operation of other parties (e.g., third parties with possession of the secured assets) failing which the secured party will have no option but to enforce through the courts.

In relation to secured bank account, if the secured party is also the account bank, then it can exercise its security interest over the secured account, without a court order. This can also be achieved under the customary set-off provisions in most account opening documents. In the case where the secured account is held with a third party bank the security provider, secured party, account bank can enter into a side agreement to establish control and management over the secured account, in favour of the secured party. We note that such provisions are already customary in most account pledge agreements, involving third party account banks.

Existing security under the Old Mortgage Law

The Mortgage Law repealed the Old Mortgage Law in its entirety. Furthermore, all circulars, resolutions and regulations relating to the Old Mortgage remain valid (to the extent they are consistent with the Mortgage Law), until replaced by the Regulations and new resolutions and circulars. Consequently, 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 very law providing such rights had been repealed.

The Regulations have confirmed that any existing registration under the Old Mortgage Law, shall remain effective against third parties, until it is terminated in accordance with the provisions of the Mortgage Law. Whilst this implies that any existing registrations will be effective against third parties it does not address enforcement against the security provider (e.g., how would the security party enforce its right to seize and dispose of secured assets that are in the possession of the security provider?). There is also little to no guidance on how to enforce an existing registration, under the Old Mortgage Law, before the courts (e.g., would you use the enforcement procedure under the Old Mortgage Law or the Mortgage Law?). The situation is further complicated by the fact that the Old Mortgage Law was, itself, in its infancy and remained largely untested before the local courts.

In light of the above and given the relatively modest fees for registering existing security interest(s) in the new register (i.e., AED 50 per registration), secured parties would be urged to register all eligible existing security interests in the new register.

The Mortgage Law provides a period of 6 months following the issuance of the Regulations to register existing security interests in the new security register. It remains to be seen whether the new register will be established and operational before this deadline. ■

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