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Legal Glimpse – By MAS Advocates on

MOVEABLE ASSET SECURITIES LAW



Federal Law No.4 of 2020 promulgated for Securing the Rights over the Moveable Assets (“**Law**”) repealed the Federal Law No. 20 of 2016 on Mortgaging Moveable Assets as Security for Debts which was amended by UAE Federal Law 24 of 2019 (collectively referred to as “**Old Law**”).

The Law allows creation of security interest over tangible and intangible, present and future moveable assets. Pursuant to the Law, the government has under Cabinet Decision No.29/2021¹ stipulated creation of a new electronic registry (“**Register**”) to announce security interest in respect of the asset in present or future. As of date, the Register has not yet been created and the security interest over the assets under the Law continue to be registered under Emirates Moveable Collateral Registry (EMCR) created under the Old Law.

The aforesaid Cabinet Decision clarifies that pledge registered under the Old Law in Emirates Moveable Collateral Registry (EMCR) shall remain valid and effective against third parties until enforceability is terminated by virtue of the Old Law.

¹ Effective from 1st April, 2021



Assets subject to security interest under the Old Law:

Account payables, deposits at licensed banks, written bonds and documents, work equipment and tools, material and moral elements of a business concern, goods intended for sale or lease, raw materials and goods in the process of manufacturing or transformation, agricultural crops, animals and their products and fixtures.

Assets subject to security interest under the Law:

Law retains the assets subject to security interest under the Old Law and further broadens its scope enabling account receivables to be treated as a collateral for creation of security and defines it as a right over account receivables under the Law is the right to receive any amounts that the third party owes to the pledgor, excluding right to the deposits, endorsable bonds or the right to entitlement to collect securities. It further grants right to create security interest over moveable assets capable of being a subject matter of security under the UAE law. The Law further re-affirms that a “bank account” as a whole will be treated as a security instead of an “account balance”. Therefore, a bank account will not be required to be re-pledged each time the account balance varies.

Assets excluded from the Law:

The assets excluded from the ambit of the Law are (i) moveable assets which are subject to be registered in specific registries stipulated by law, viz., shares and vehicles, (ii) labour rights (salaries and compensation due to the employee), (iii) public and diplomatic properties and funds.

The Law enables parties to secure an asset (provided it is registered on the Register) without handing over possession of the same to ensure continuity of business operation and facilitate financial growth without impeding the rights of the secured party.

It is vital that the Pledgor is authorized and eligible to create a pledge over the relevant asset in consideration of advancement of facilities by the Pledgee. The Law requires the agreement creating pledge to fulfil the following requirements: (i) agreement to be in writing, (ii) signed by the parties, (iii) specify the secured liabilities with quantifying the maximum amount of secured liability, (iv) contain description of the pledged asset. The written agreement documenting the creation of pledge is not required to be in Arabic language or notarized.



Priority of Interest

The pledge will be perfected upon registration in the Register. Pursuant thereof, the Pledgee will have priority over other unsecured creditors, secured creditors (with a later registration date) and preferred creditors (such as governmental debts and employees rights). The Pledgee is entitled to trace the pledged assets even if they are transferred or sold to third parties, unless a third party has received the pledged asset in course of normal business.

The Law gives the Pledgee banks a right to set-off the outstanding facilities with the funds of the Pledgor held by the pledgee bank without a need for court order. Therefore, essentially a Pledgee bank will have a priority right over all other secured creditors.

Enforcement of Pledge

The Law enables the Pledgee to unilaterally enforce the pledge if the pledged assets belong to the following categories:

- Written Bonds
- Accounts payable at the bank
- Accounts' receivable

In the event the assets do not fall under the above category, then the Law requires the pledgee to issue a 7 days' notice under the Law to the (i) parties having registered interest in the pledged assets, (ii) party who is in possession of the pledged asset, (iii) owner of a property where the pledged assets are located.

The Pledgee has the right to enforce the Pledge via the UAE Courts. The application for enforcement will be submitted to the Magistrate of Summary Justice. Interested parties may file an objection upon being notified. The decision of the Magistrate of Summary Justice is appealable.



Key take-away:

- Upon registration of the pledge, it is recommended to mention the email address of each related person (viz., the borrower, pledgor, person who has possession of the assets, owner of the place where the pledged assets are located).
- The pledgee should also ensure that:
 - a) the person in possession of the pledged assets issues a letter to the pledgee acknowledging and confirming the pledgee's right with respect to the pledged assets, priority or exclusivity of interest in the pledged assets.
 - b) the pledged assets are adequately labelled reflecting details of the pledge and the pledgee as it will ease the process of tracing the pledged assets.
 - c) The pledgee receives a monthly inventory report of the pledged assets from storage facility / person in possession of the pledged assets.

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