

New UAE Moveable Assets Security Law

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On 1 June 2020, Federal Law No. 4 of 2020 on Securing Rights over Moveable Assets (the “**New Law**”) of the United Arab Emirates (the “**UAE**”) came into effect, repealing the previous Federal Law No. 20 of 2016 on Mortgaging Movable Assets as Security for Debts (the “**Old Law**”). Whilst the New Law retains certain pertinent features of the Old Law (which itself was relatively recently introduced and had substantially overhauled the previous regime for taking, perfecting and enforcing security interests over movable assets), there are also notable differences (outlined further below). Within six months of the effective date of the New Law, new implementing regulations are due to be issued by the Ministry of Finance to regulate the creation of a new security register, replacing the existing Emirates Movable Collateral Registry (“**EMCR**”); the implementing regulations are, in the New Law, expressed to provide further detail as to certain procedural matters, such as public access rights to the register and the requirements for registering a security interest in the new register. We outline below the implications of the New Law for those with existing security interests currently registered on the EMCR, and those seeking to create new security interests, together with the key changes under the New Law.

I. Implications for Existing Security Interests in the UAE

The New Law does not address the implications for, or legal status of, security interests currently registered on the EMCR. Instead, the New Law provides that until the new implementing regulations are issued, regulations, decisions and circulars relating to the Old Law shall remain applicable to the extent that they do not conflict with the provisions of the New Law (Article 49 of the New Law). As the Old Law has itself been repealed in its entirety, this gives rise to ambiguity for those holding a registered security interest on the EMCR. As a result, counterparties with security interests currently registered on the EMCR should further continue to monitor developments surrounding the New Law, especially the implementing regulations due later this year.

Going forward, parties may register security interests granted in the context of transactions entered into prior to the issuance and effectiveness of the implementing regulations without the need to seek approval from the pledgor; these security interests must be registered within six months of the date of effectiveness of the implementing regulations (Articles 48(1) and (2) of the New Law). The priority of rights

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registered within this six month period shall be determined by the date upon which they become enforceable against third parties, or, otherwise, from the date of registration (Article 48(3) of the New Law).

II. Comparison of key provisions in the Old Law and the New Law

We have, in the table below, compared some of the key provisions of the Old Law and the New Law:

Feature	Old Law	New Law
Scope	The Old Law applied to any contract creating a security interest over tangible or intangible movable assets, whether present or future, and was applicable to both commercial and civil transactions (Article 2 and 3).	The New Law broadly retains the scope of the Old Law, with the addition that the rights of a transferee in the context of a sale of accounts receivables shall also be deemed a security right subject to the New Law (Article 2).
Formalities	The Old Law required certain formalities to be met in order to create a valid security, including requiring the security contract to be in writing, to include a description of the secured assets and a declaration by the pledgor as to the rights of any third parties. Where the secured asset was not in the possession of the pledgor, the owner of the asset must be notified and the lender must pay the requisite fee (Article 8).	The formalities required to create a valid security under the New Law are broadly the same as those under the Old Law, with the new clarification that any security right shall automatically extend to the returns and proceeds of the secured assets and their replacements, unless the parties agree otherwise (Article 8).
Types of Assets	The Old Law permitted a wide range of movable assets to be subject to a security interest, including all tangible and intangible movable assets, present and future, broadly including: receivables (being accounts payable owed to the pledgor), 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	The New Law broadly retains the range of movable assets that may be subject to a security interest, and, in addition, includes a new definition of accounts receivable as the right to receive amounts owed to the pledgor by a third party and confirms that such rights shall not include payments established in endorsable bonds, rights attaching to deposits in accounts held with banks, or the right to collect payments under securities instruments (Article 3).

	products, fixtures and any other movable property deemed by the UAE to be valid to be subject to security under the Old Law (Article 3).	
Excluded Assets	<p>The Old Law did not apply to movables for which existing laws already required registration or for which a separate registry relevant to that specific movable asset existed (Article 2(3)).</p> <p>In addition to the specific carve-out in Article 2(3), under the Old Law, the following five assets could not be registered: (i) objects intended for personal or home use essential for the individual and their dependents, unless used as secured property to finance the purchase thereof; (ii) entitlements of the insured or beneficiary under an insurance contract, unless such entitlements are considered proceeds of the secured property; (iii) costs, wages, salaries and workers' compensations; (iv) public funds, endowment funds and funds of diplomatic and consular missions and international government organisations; and (v) future rights entailed from inheritance or will (Article 4). The New Law specifically removes (i), (ii) and (v) above from its scope.</p>	<p>The New Law has a narrower list of three assets excluded from the scope of the law, namely: (i) movables required by law to be registered as security rights in special registries (mirroring the provisions of Article 2(3) of the Old Law); (ii) expenses, wages, salaries and workers' compensations; and (iii) public funds, endowment funds and funds of diplomatic and consular missions and international government organisations (Article 4).</p>
Public access	<p>The Old Law provided a public right of access to "basic information" contained on the register, while permitting parties to keep certain information confidential (Article 7).</p>	<p>The New Law similarly provides that the public may access information provided in the register, as determined by the implementing regulations (which are to be published), and may request a paper-based or electronic report of the information therein (Article 7). There is no explicit reference in the New Law to parties withholding confidential information but this will</p>

		likely be captured by the implementing regulations.
Priority	The Old Law provided that the registration of a security interest resulted in the pledgee's priority over other creditors, with such priority based on the date and time of registration (Article 17).	The New Law broadly retains the features of the Old Law and adds that: (i) the priority of the security shall be extended to all secured liabilities (including liabilities arising after the security becomes enforceable); (ii) knowledge by the pledgee that there is a security right competing with its right shall not affect the security right established under the New Law; and (iii) additional priority rules may be stipulated under the implementing regulations relating to particular types of pledge (Article 17).
Perfection	<p>The Old Law established the Emirates Movable Collateral Registry (Article 6), operated by the Emirates Development Bank.</p> <p>Although registration on the online registry was not necessary to create a valid security interest, it was required to perfect the security and ensure it was effective against third parties (Article 10). No subsequent security could be granted over the same assets without prior notice of the first security in the pledgor's declaration (Article 10(2)).</p> <p>Under the Old Law, where a contract had not yet been formed, parties' agreement to create a security right over existing or future property could be registered, having all the effects of a security right between the parties and third parties, provided the contract was entered into and registered within five days of receipt of the secured assets by the mortgagor (Article 10(3)).</p>	<p>The New Law provides that a Cabinet resolution shall be issued to establish a new register for registering security rights; this resolution shall determine the authority that will manage the register. Registration of security interests on the register shall be in accordance with the procedures determined by the implementing regulations (Article 6).</p> <p>The New Law further provides that three methods may be used to ensure the security right is enforceable against third parties: (i) registering the security on the register pursuant to the New Law, (ii) delivery of a possessory pledge to the pledgee, or (iii) control of the pledge by the pledgee (Article 10(1)).</p> <p>Extending the provisions in the Old Law for parties to register their 'in-principle' agreement to create a security interest over existing or future property, the New Law enables parties to now register a security interest prior to establishing the security right or concluding any agreement creating the security interest, provided only that the pledgor provides written</p>

	<p>The pledgor, pledgee or principal debtor could object to registration within five business days of notification of registration and, within 10 days of such objection, the UAE courts must make a final determination as to whether the security had been properly registered (Article 13).</p>	<p>consent (Article 10(3)). There is no reference in the New Law to a requirement to enter into the contract within five days of receipt of the secured assets.</p> <p>Under the New Law, where a security interest pertains to acquisition financing in respect of equipment, IP rights and inventory, the security right over the financed assets must be registered within seven working days from the possession of the assets by the pledgor. There were no equivalent provisions in respect of acquisition financing under the Old Law (Article 19).</p>
<p>Enforcement</p>	<p>The Old Law provided for two enforcement mechanisms:</p> <p><u>Self-Help:</u> For the first time, the Old Law introduced self-help remedies, although two distinct provisions applied depending on whether the moveable assets related to bank accounts or bonds (Articles 27 and 28).</p> <p>In relation to <u>bonds and bank accounts</u>, Article 28 provided that self-help remedies were only available where the pledgor or principal debtor had violated obligations under the security contract. Where the secured property was monies in a bank account and the pledgee was also the account bank, they may set-off the balance of any account against the relevant secured obligation. Where the account bank was a third party, the Old law permitted the pledgee to claim the balance. Where the secured property were bonds or written documents for which ownership is transferred by means of delivery or endorsement, the</p>	<p>The New Law retains the two enforcement mechanisms provided for under the Old Law with a few distinctions:</p> <p><u>Self-Help:</u> The New Law continues to distinguish between self-help for moveable assets generally (Article 27) and for movable assets relating to accounts receivable, written bond or banks accounts.</p> <p>In relation to <u>bonds and bank accounts and accounts receivable</u>, Article 28 similarly provides that self-help remedies are only available where the pledgor breaches their obligations under the security contract and mirrors the language in the Old Law in relation to bank accounts and written bonds or documents. Where the secured property are accounts receivable, the New Law now provides that the pledgee shall have the right to fulfil any of the payments from the debt prior to a breach if this agreed by the pledgor and, where there is a sale of the accounts receivable, the pledgee shall have recourse to the accounts receivable at any time.</p>

	<p>pledgee was permitted to take delivery of such property where their value was equivalent to the outstanding obligations.</p> <p>In relation to <u>other moveable assets</u>, Article 27 provided that where the pledgor or principal debtor failed to perform their obligations under the contract, or the underlying contract itself was not implemented for another reason, the pledgee could (after providing written notification to the pledgor and principal debtor of the breach) seize the secured assets and sell them at market value within 10 days of being notified by the pledgor being in breach of the security contract. This right was only available in certain defined circumstances, namely where there was an agreement between the parties that self-help was available in this manner, where the secured assets was not otherwise encumbered by another security right (or, if it was, where the consent of all pledgees was provided), where the owner of the secured assets had been notified if the secured property is in the possession of a third party, and where the secured asset is a fixture and the owner of the real estate upon which the fixture is attached, any pledgee of the real estate, the holder of the movable and the owner of the movable to which the property is attached have all been notified.</p> <p><u>Enforcement through the Courts:</u> Pledgees could request and obtain an order of seizure and execution against the secured property before the Magistrate of Summary Justice. Where the</p>	<p>Under the New Law, the pledgee and pledgor may agree in writing that the pledgor waives the right to being notified of the enforcement procedures exercised under Article 28 in relation to the pledge.</p> <p>In relation to <u>other moveable assets</u>, Article 27 of the New Law restricts the ability to use the self-help measures to only instances where the pledgor or principal debtor has breached its obligations under the security contract (i.e., removing the ability to rely on Article 27 where the contract was not implemented for another reason). Article 27 requires notification to other holders of security rights over the assets registered in the register, the acquirer of the pledge if it is a third party and the owner of the pledge, pledgee, owner of the movable to which the pledge is attached and the acquirer of such movable. The aforementioned notices must be submitted at least seven working days prior to the sale, or other disposal and must include the information stipulated in the implementing regulation. Upon disposal of the pledge, the executing pledgee may use the proceeds of execution to satisfy the obligations (after deducting reasonable expenses for execution) and return any surplus from the proceeds of the execution to any person with a right over the security lower in priority who has notified the pledgee conducting the execution of his claim prior to the distribution of proceeds.</p> <p><u>Enforcement through the Courts:</u> The New Law mirrors the features of the Old Law but adds that each interested party may object to the</p>
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	request was upheld, the Court could authorise the sale of the secured assets (Article 29).	application by the pledgee within five working days from the date of being informed of the request (Article 29(4)).
Set-Off	Save for Article 27 (discussed above) which provided that, where the secured property was monies in a bank account and the pledgee was the also the account bank, they may set-off the balance of any account against the relevant secured obligation, there were no other express provisions in the Old Law concerning set-off.	The New Law states that the rights of banks and financial institutions licensed to keep deposits in conducting set-off for liabilities owed to them by the pledgor, and the right of the pledgor to receive the cash amounts deposited in his account with the bank, shall have priority over any other security right established on the accounts they keep (Article 21).

III. Conclusion

Whilst the introduction of the New Law was a largely unexpected development, particularly given that the Old Law itself was relatively recently introduced, transaction parties would be well advised to (a) review all existing security interests they have registered on EMCR; and (b) closely monitor further developments in this area, particularly the publication of the implementing regulation(s) in respect of the New Law. Furthermore, a number of uncertainties and issues of interpretation exist with respect to the New Law and, whilst these should be further clarified upon the issues of the implementing regulation(s), transaction parties should seek the advice of experienced legal counsel to help them navigate such issues.

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