

UAE: PLEDGE OF MOVABLES

Out with the new, in with the newer

Executive Regulations No. 29/2021 on Pledge of Rights in Moveable Assets Law (No. 4/2020)

Background

Just when creditors in the UAE got used to Law No. 20 of 2016 concerning the Pledge of Moveable Assets as Security ("**Old Pledge Law**"), and the amendment that was introduced in 2019, the winds slightly changed course when Law No. 4 of 2020 on the Pledge of Rights in Moveable Assets ("**New Pledge Law**") was introduced in May 2020.

Since then, creditors were not so sure in what direction the new breeze was taking them but now, the Executive Regulations to the New Pledge Law, which were issued on 21 March 2021 with immediate effect, have provided some clarity.

The New Pledge Law had introduced several developments in the legislative framework governing the pledge of moveable assets as security. These included *inter alia*:

1. **Adding to its scope the ability to pledge receivables** (i.e. the right to collect receivables owed to the pledger by a third party).
2. **Introducing to its remedies any creditor's out-of-court right to enforce upon the pledged asset** (i.e. without judicial recourse) subject to service of a legal notice expressing intent to practice said right, the procedural and substantive components of said notice were to be set out in the Executive Regulations.
3. **Recognizing "in-principle" / "initial" pledge agreements** without the requirement of having to execute and register a final pledge agreement within the five-day period provided for in the Old Pledge Law.

And while the New Pledge Law expressly provided its repealing effect with respect to the Old Pledge Law, it stated that the previous regulations would continue to be in effect until the new Executive Regulations recently took effect.

Click on the links to view the full Arabic text of the [New Pledge Law](#) and the [Executive Regulations](#).

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Key takeaways from the Executive Regulations

Is there a new registry?

Questions were swirling since May 2020 as to whether a new registry would be established besides the Emirates Movable Collateral Registry (EMCR) that was created by virtue of the Old Pledge Law (and which was only set up in 2018 despite the law being issued in 2016). This would have warranted pledge-holders engaging in another race to record their securities once again, similar to what happened previously. This however, is not the case today as the new Executive Regulations have not introduced a new registry and as per Article 25, declarations made under the Old Pledge Law remain recognized and in effect.

Do the same registry rules apply?

The rules governing the EMCR process are now promulgated by the new Executive Regulations that were just issued, but which remain similar to the preceding set of regulations.

However, a noteworthy provision is that the Executive Regulations expressly state under Article 3 that the registry shall not examine the content of the declarations nor of the search applications made, and that the register is not liable for the accuracy of the information provided by any applicant.

What else is new?

In relation to a creditor seeking out-of-court enforcement under Article 27 of the New Pledge Law, the new Executive Regulations finally set out the requirements that the legal notice must satisfy before out-of-court enforcement is practiced by the creditor.

The Executive Regulations also introduce the definition of a tripartite 'Control Agreement', whereby a financial institution, the pledger and the pledgee agree that the financial institution undertakes to follow the creditor's/pledgee's instructions with respect to the balance of the credit or deposit account without further consent from the pledger.

It is still allowed for foreign banking institutions to take on security pledges over moveable assets and to register it with the EMCR without the need for a Security Agent.

Expected Impact

- On the enforcement and recovery front, we envisage creditors will begin practicing the out-of-court enforcement process in numbers given the Execution Regulations have now clarified what the legal notice provided for in the New Pledge Law should include:

1. Notice of intention to take possession of the pledged asset and to enforce against it.
 2. Identification of the pledger and the pledged asset against which enforcement will be made.
 3. The method of enforcement against the pledged asset.
 4. The time and place of enforcing against the pledged asset.
- Conventional and Islamic banking lenders should particularly consider whether out-of-court enforcement would be more feasible recovery-wise than the traditional judicial sale / auctioning route.
 - On the transactional front, we expect Control Agreements to be a part of many security packages to come.

To speak to us in relation to any matters or issues relating to the New Pledge Law, please feel free to contact one of the lawyers above or your usual Baker McKenzie contacts.

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