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Banking & Finance

The New UAE Movables Security Law

Key issues for financiers

October 2020

The New Law (as defined below) was issued on 28 May 2020, came into effect in June 2020 and replaces the Old Law (as defined below). This memorandum is the third in a series of four memoranda and discusses the key issues for financiers. Our previous memoranda covered a summary of issues that have not changed and the positive changes brought in by the New Law. For those wanting to get into the detail, our final memorandum will cover a more detailed summary of the New Law.

Speed read

UAE federal law No.20 of 2016 in relation to the charging or pledging of movables as security for indebtedness (the **Old Law**) was a significant development in the UAE banking and finance legal landscape that gave rise to a significant change in practice on taking security over movable property in UAE banking and finance transactions.

UAE federal law No.4 of 2020 in relation to securing the rights in movables (the **New Law**) (which repeals the Old Law) continues to grant a number of welcome benefits enshrined in the Old Law (as amended by UAE federal law No.24 of 2019 (the **Old Amendment Law**)) and provides further positive changes to the Old Law (as to which, please see our second memorandum in this series). However, the New Law has included new provisions, removed existing provisions or continues to be silent on a number of issues, in each case, that financiers will want to be aware of and consider. These include:

- requiring the registration of any sale of receivables (even if a true sale) and finance leases in order to benefit from priority over other creditors – failing to do so risks a subsequent sale of the same receivables to (or finance lease with) another creditor having greater priority;
- provisions that prevent any condition in any agreement (regardless of its type) restricting the right of a security provider to grant security over receivables from impacting the validity of that security – in our view, this is a significant material adverse amendment and we expect that this will give rise to significant concern to financiers who enter into transactions knowing that they are the only secured creditor over the receivables or (on an unsecured basis) knowing that there is a strong negative pledge and disposals covenant in relation to the receivables;
- potentially removing the right of third parties to object to any registration of a security interest on the movables registry (although we will need to wait for the new regulations to see if this materialises);
- the removal of the statutory negative pledge that was included under Article 10(2) (*Effectiveness of the pledge right in relation to third parties by registration*) of the Old Law – now additional security can be taken over the secured assets, but such additional security will not be binding on third parties (and have several other benefits set out in the New Law) unless it is registered, with priority continuing to be determined by the date of registration;
- the ability for a security provider to grant a subordinate security right and for the beneficiary of that subsequent security right to enforce against that asset without consent of the primary security holder;
- weakening the protection of third party purchasers (and, therefore, the rights of the security agent) when the security agent exercises some of its self-help remedies;
- new provisions that create potential confusion on the order of priority with UAE federal law No.9 of 2016 in relation to bankruptcy (as amended) (the **Bankruptcy Law**);
- continuing to make a distinction between rights that can be subject to a security right and other contractual rights that fall outside the remit of the New Law and, therefore, still need to be assigned in order for a secured party to obtain an enforceable security interest in relation to such other contractual rights, so that it has an effective security interest over the intended security package;
- leaving open a number of questions around the ability to create and register security over non-UAE law property and, therefore, the practical benefits of doing so (which we have termed the **Foreign Asset Question**);
- leaving open the question as to how to take security in relation to financings over aircraft and their engines and component parts, especially noting the size and increasing number of carriers calling the UAE their home; and
- not including a statutory concept of a receiver in order for security agents to enforce their newly-acquired self-help remedies.

Introduction

The New Law was issued on 28 May 2020, published in the Official Gazette in June 2020 and came into force with immediate effect. The New Law replaces and repeals the Old Law, which was issued on 12 December 2016, published in the Official Gazette on 15 December 2016, came into force on 15 March 2017 and was subsequently amended by the Old Amendment Law.

On the whole, the New Law is a further step in the right direction, although there are new issues created by the New Law that finance parties will need to understand. By way of example:

- it weakens the ability to rely on negative pledges and restrictions on disposals (even in unsecured transactions);
- it potentially removes the right of third parties to object to any registration of a security interest on the movables registry (although we will need to wait for the new regulations to see if this materialises);
- it includes the ability for the beneficiary of any subordinate security right to enforce against that asset without consent of the primary security holder;
- it potentially removes the effectiveness of a security right if the movable is attached to another movable; and
- it creates potential confusion on the order of priority with the Bankruptcy Law.

We examine each of these issues below, as well as some residual issues that financiers will want to be aware of.

The need to register true sales of receivables and finance leases

At the outset, there has been a conceptual change. The Old Law used the concept of a *"Right of Pledge"*, which meant *"a security right that creates an ancillary in rem right over movable property to secure the performance of an obligation"*. The New Law uses the concept of a *"Security Right"*, which means an in rem right on a movable that is established under a security contract for securing the fulfilment of a liability, even if not explicitly described by the parties as a security right and regardless of the type of property or position of the Pledgor or the Pledgee or the nature of the secured obligation. The types of property over which a security right can be granted include:

- the right of lessor resulting from a finance leasing;
- the right of ownership of a seller to the movable property sold under contracts of sale;
- transfer of the movable for the purpose of security; and
- the right of an assignee in security by way of assignment.

Article 2.2 (*Scope of Application of the Law*) of the New Law also provides that *"for purposes of this law, the right of an assignee to sell receivables shall be considered a security right and shall be subject to the provisions of this law, save the provisions of Chapter Seven thereof."* Chapter 7 is limited to the self-help remedies under Articles 25 (*Rights of the Secured Party in possession of a Security*), 26 (*Offers to transfer ownership of the Security*) and 27 (*Right of unilateral enforcement against the secured property*) and 28 (*Execution against the Security where it is a receivable, written bond or credit Account*).

This conceptual change may not be important, as (previously) Article 11.1 of the Old Law allowed the movables registry to be used to register such rights and Article 11.3 of the Old Law provided that *"the holder of [such rights] shall be considered a [security agent] who has all the rights and obligations of a [security agent] in accordance with the provisions of [the Old Law]"*. However, defining them as a *"security right"* brings increased focus on these types of property.

As was the case under the Old Law, it remains unclear as to how the New Law works in relation to the right of ownership of a seller to the movable property sold under contracts of sale. Traditionally, such a right would have been a true sale, giving the purchaser the right to dispose and collect the receivable as it sees fit. Equally, it remains unclear as to how the New Law works in relation to finance leasing, as that too would have involved a true sale of the asset and a leaseback. The New Law potentially fetters these rights by imposing additional obligations on the purchaser of such rights and potentially allows the original beneficiary to sell those rights multiple times to multiple parties, granting them merely a priority interest in the

right according to the order of registration. It also remains unclear whether wholesale disposals of contractual rights (outside the simple disposal of the receivable generated by contractual right) are brought into the ambit of the New Law.

However, what is clear is that financiers looking to use these finance structures should seek to register their rights on the movables registry to avoid subsequent disposals potentially gaining greater priority.

The weakening of the negative pledge and disposals covenant?

Article 13 (*Provisions for Accounts Receivable*) of the New Law provides that *"no condition in an agreement restricting the right of the Pledgor in establishing a security right on accounts receivable shall affect the validity of establishing the security right on the accounts receivable or its enforcement. However, the party in whose favour the restriction is stipulated shall have right of recourse to the security provider to assert his/her rights."*

In particular and as set out above, the definition of *"security right"* includes the *"right of lessor resulting from a finance leasing, right of ownership of a seller to the movable sold under contracts of sale and transfer of the movable for the security and the right of transferee in the security by transfer"*. This means that it does not just affect the negative pledge covenant in a finance document, but also the disposals covenant too.

As a result, this is the first time that a provision in an agreement restricting the right of a security provider to grant security or dispose of its accounts receivable does not affect the validity of the security over (or disposal of) accounts receivable. By way of comparison with English law, a lender taking security over an asset subject to a negative pledge that it was aware of would give rise to the tort of inducing a breach of contract and giving remedies for the affected party.

In our view, this is potentially a significant material adverse amendment and we expect that this will give rise to significant concern to financiers who enter into transactions knowing that they are the only secured creditor. The impact of this provision means that (whilst the negative pledge and disposals covenant may be enforceable against the pledgor) the financier benefiting from the negative pledge or disposals covenant is likely only to have a damages claim against the pledgor for breach. In particular, it will not be binding on any third party (even if recorded on the register) and the financier may be unable to obtain a court order for specific performance of the pledgor's obligations. This is further aggravated by the potential removal of the right to object to any registration of a security contract (as to which, please see below). A financier who has registered a security right over the relevant assets prior to any breach may take some comfort that it has a secured claim over those assets in priority to any creditor benefiting from the pledgor's breach, although a financier lending on an unsecured basis in reliance on the negative pledge or disposals covenant may find itself subject to a competing prior claim in such circumstances.

- A similar provision was proposed to be introduced into English law recently and resulted in significant pushback. The intention behind the English legislation was to allow small and medium-sized enterprises (**SMEs**) to finance their business through trade finance and receivables financing techniques. The intention being that a provision in a commercial contract that prevented security or assignment of the SME's rights under the contract from being assigned would not prevent the assignment of the receivable to a bank in order for the SME to receive funds equal to the receivable on issuing the invoice rather than when the invoice was due and (in some cases) letting the banks rather than the SME take credit risk on the supply chain. However, the law was drafted very widely and raised concern amongst financiers who (for very good credit reasons) include such restrictions in financings (whether in limited recourse/ project financings or general corporate purpose financings). As a result of financiers' concerns, the English legislation was redrafted so as to exclude such provisions from applying when included in financing agreements.

We expect that financiers may well want to look to the English law solutions when discussing this provision with the legislators or (at the very least) taking a security contract over receivables when it would otherwise have lent on the basis of the negative pledge alone.

Potential removal of the right to object to registration

Whilst there are certain rights for third parties to object to enforcement of any security contract under the New Law (as to which, please see below), there are no express rights for third parties to object to the registration of any security right in the movables registry. Whilst that of itself would not have given cause for concern, this needs to be viewed in light of the fact that Article 13 (*Objection*) of the Old Law provided third parties with the right to object to any registration in the movables registry.

It is not immediately apparent why the right to object has been removed, although we expect the rationale is not a change to the substantive rights of parties to a security contract, but to defer such provisions to the new regulations (and in the meantime to the old regulations, which continue to apply over the right to object). However, it could instead be linked to the fact that:

- Article 13 (*Objection*) of the Old Law (which required objection within five business days) was inconsistent with the old regulations (which required objection within seven working days);
- it is possible to have subsequent ranking security rights, so there should not be any reason to object (unless a financier has not taken a security right but is relying on a strong negative pledge as is found in investment grade or bond documentation (as to which, please see our comments above));
- Article 13 (*Provisions for Accounts Receivable*) of the New Law provides that negative pledges and disposals covenants in relation to accounts receivable are not enforceable against third parties (as to which, please see our comments above), although less so, because Article 13 only applies to accounts receivable and not all assets subject to a security right; and
- the New Law also seeks to defer any objection solely to when the security right is being enforced, and (therefore) signposting that the new regulations will also remove the right to object.

Ability of subordinate security holder to enforce without consent of the senior security holder

Article 27.2 (*Right of consensual enforcement against the pledged property*) of the Old Law only permitted such enforcement if the assets were not subject to a competing pledge or if the consent of such competing secured creditor had been obtained.

Instead, the New Law has deleted these provisions and Articles 27.2-27.5 (*Right of unilateral enforcement against the secured property*) of the New Law require seven working days' notice to be given to any competing secured creditor and (instead) permits the secured asset to be transferred free from any security contract having subsequent priority, but subject to any security contract having a higher priority. The relevant new provisions then go on to say that the proceeds of such enforcement are first applied to discharge the secured liability owed to the enforcing creditor and any excess proceeds applied to discharge any liability secured under any security contract having subsequent priority, with the excess (if any) then being transferred back to the security provider. This is helpful in permitting lower ranking secured creditors to access cash and assets that would otherwise have been locked up.

However, there will undoubtedly be a concern from secured creditors that have taken security on the basis that it is required for the transaction as a whole finding out that the security provider no longer owns the rights or assets over which they have security. This may also be a concern even if their security remains in place and such rights or assets have been transferred to a person over whom they have not carried out any due diligence.

As well as there being no express right to object to any enforcement under Article 27 (*Right of unilateral enforcement against the secured property*), there is also no such express right under Article 28 (*Execution against the Security where it is a receivable, written bond or credit account*). However, there is an express right for third parties to object to enforcement of any security contract under Article 26 (*Offers to Transfer Ownership of the Security*) and Chapter 8 (*Execution through the Courts*) of the New Law, leading to the conclusion that this is deliberate intention of the draftsperson.

Removal of the statutory negative pledge

Article 10(2) (*Effectiveness of the pledge right in relation to third parties by registration) of the Old Law provided that (if the security contract has been registered in the movables registry*) no subsequent pledge right may be created in relation to the same pledged property except through its registration. This gave the benefit of a statutory negative pledge, giving financiers strong comfort that (once they had registered their interests) there could be no competing security interests over the relevant assets. This has been deleted.

Whilst on first sight this appears to be unhelpful, the provisions below in relation to priority have not changed and so (whilst a subsequent unregistered security right will be enforceable) it will not benefit from the priority provisions set out under the New Law.

Linked to this, Article 17.5 (*Effects of enforceability against third party*) of the New Law includes a new provision that was not included in the Old Law (which provides that *"the awareness of the [security agent] that there is a security right competing with his right shall not affect the security right accorded to him under provisions of this law"*) reinforcing the point set out above that a security agent can take a security interest under the New Law without registering it at the movables registry.

However, the ability to grant subordinate security may give rise to other concerns (as to which, please see below).

Potential for confusion with the order of priority under the Bankruptcy Law?

Article 17.2 (*Effects of enforceability against third party*) of the New Law provides that *"the enforcement of security right against third party shall result in priority of right of the [security agent] and his right in being ahead of the unsecured debts and privileged debts, including the debts entitled to the Pledgor employees and works and any other debts entitled to the public treasury, such as unpaid taxes."* There was no such provision under the Old Law. At first glance, this seeks to repeat the order or priority set out in the Bankruptcy Law, so we question why this was necessary as (if the Bankruptcy Law is amended) there may well need to be amendments to the New Law too.

However, Article 17.6 (*Effects of enforceability against third party*) of the New Law also provides a provision not included in the Old Law, which provides that *"it is permissible to stipulate in the [new regulation] on additional priority rules related to a kind or more of the security types."* Again, we question the need for such a provision when the Bankruptcy Law deals with such a provision and (at best) gives rise to a potential conflict.

It could be that the New Law is simply seeking to codify the position prior to any of the insolvency procedures under the Bankruptcy Law taking effect, but in such a case it is not clear why employees etc. should have any right of priority over any secured asset prior to any insolvency as such rights should typically after insolvency (i.e. under the Bankruptcy Law).

Weaker protection for third party purchasers

Under Article 18.3 (*Right of tracking*) of the Old Law, a third party purchaser was not subject to tracking where the disposition was at market value, even if the third party purchaser was aware of the security. Under Article 18.3 (*Right of tracking*) of the New Law (in addition to any disposal needing to be in accordance with the ordinary course of business of the seller), the market value test has been deleted and replaced with the protection from tracking only if the purchaser was not aware at the time of concluding the sale agreement that the sale breached the rights of the security agent under the security contract.

This is likely to adversely affect the enforcement rights of the security agent as (rather than the third party purchaser being comfortable that the purchase price represented market value) the third party purchaser may be nervous that the registration of the security contract in the movables registry is sufficient to put him on notice that he was aware of any breach of the security contract, inviting third party purchasers to require the consent of the security provider prior to the security agent being able to exercise its self-help remedy. Such a position is something that would provide a security provider with an extra card to play in any enforcement negotiations and is, therefore, potentially detrimental.

Removal of security right if attached to another movable?

Article 17.2 (*Effects of enforceability against third party*) of the Old Law provided that *"the right of pledge shall remain effective against third parties if the subject of the pledge is attached to another movable in a separable way"*. Further, Article 23.2 (*Right of Pledge over fungibles*) of the Old Law provided that *"a Right of Pledge over fungibles may be created after they are commingled with other fungibles if they are separable."* Both of these provisions have been deleted in the New Law and (again) it is not immediately apparent why.

The removal could be because Article 23.1 (*Security right on interchangeable items*) of the New Law (and a similar provision under the Old Law) provided that *"a security right may be established on the interchangeable items before merging into their counterparts so as the security right remains enforced thereon after merging."* However, Article 23.1 of the New Law and the Old Law applied to movables that were commingled and so not specifically identifiable, but Article 17.2 of the Old Law related to movables that were specifically identifiable but just attached to other movables.

The likely concern for financiers here is that:

- whilst they may have a security interest over a movable upon registration of the security contract, that security interest could be extinguished by the actions of the security provider (whether in the ordinary use of the movable or otherwise); and
- it may no longer be possible to create a security interest over a movable after commingling that movable with other movables.

To grant or not to grant and the need for an addendum

The New Law defines a security right as *"a right in rem over a movable asset, created under a security contract for the purpose of securing the performance of an obligation, even if the parties have not expressly described it as a "security interest" and regardless of the type of asset, the status of the security provider or the secured party, or the nature of the secured obligation."* At first glance, this brings anything typically described as an *"absolute assignment"* within the ambit of the New Law.

However (and as was the case under the Old Law), (in relation to contractual rights) only the right to the proceeds or receivables of a contract and the right to claim the proceeds or receivables appear to be capable of being subject of a security right under Article 3 (*Property that may be subject of a security right*) of the New Law. Other contractual rights appear to be outside the scope of the New Law.

- For example, the right to the receivables under a contract may not be particularly useful if the receivables only become due and payable upon a certain event (such as termination) and the right to terminate the contract is not also subject to the security package of the security agent.
- Equally, on an insolvency of a project company in a limited recourse project financing, secured parties may wish to set up a new project company and transfer the old project company's rights to the new project company through an enforcement of the security over the project contracts in order for the project to be able to continue.

As a result, we consider that security agents will want to ensure that they also continue to take absolute assignments over all material UAE law contractual rights (other than the rights that can be subject of a security right under the New Law) in order to ensure that they have all of the tools at their disposal in order to obtain as effective security as they currently enjoy, as they have generally done in relation to material contracts since the Old Law came into force.

In our view, there continues to be no reason why such an assignment cannot be set out in the same security contract for ease of execution. However, (as any such assignment would be outside the New Law and as was the case under the Old Law) the benefits of the New Law (e.g. the self-help remedies) would not be enjoyed in relation to the assigned rights. That being said, as such assignments under UAE law are typically structured (a) as absolute assignments with an obligation to re-assign the contractual rights to the security provider upon discharge of the secured obligations and (b) with a right of the security provider to continue to exercise the rights as if they were its own prior to any enforcement, there is likely to be little practical difference.

If the above is followed, the security contract will require addenda and the requirement for the security provider to send a notice (and obtain an

acknowledgment) in order to grant an effective assignment over future-acquired contractual rights that are not capable of being secured under the New Law.

The Foreign Asset Question?

The New Law continues to be silent as to whether foreign property may be subject to a security right under the New Law. So, for example, is a foreign law security right over property located in another jurisdiction capable of being (or must be) registered at the movables registry in order to grant effective security?

Primarily, we think that answering the Foreign Asset Question will be important in order to determine the scope of work of the parties' respective legal teams, as well as the costs and timing of completion of transactions.

To answer the Foreign Asset Question, the starting point is Articles 3 (*Property that may be subject of a security right*) and 4 (*Property excluded from provisions of the law*) of the New Law. There is nothing to suggest that property located in another jurisdiction subject to a foreign law security cannot be subject to a security right under the New Law or registered at the movables registry, although the removal of the word *"licensed"* in relation to banks holding accounts that can be subject to a security contract adds fuel to the argument that foreign bank accounts can be secured (as to which, please see our previous memorandum).

At first glance, it appears to be beneficial to register such a foreign law security at the movables registry for all of the benefits that the registration provides (as set out above). And, indeed, we understand from government briefings on the subject prior to the Old Law that this was indeed the intention.

However, in order for the foreign law security at the movables registry to be correctly registered in the movables registry, it cannot simply be registered in its usual form. This is because the New Law requires that security rights under the New Law must include certain provisions and (whilst the more onerous of these have been clarified or removed under the New Law) a number of requirements still remain.

One alternative to amending the foreign law security to make it registrable at the movables registry is to execute a *"shadow"* UAE law security contract in a format that is compliant with the New Law. A further alternative is to amend the foreign law security document to make it compliant with the New Law (the **Hybrid Approach**). However, the Hybrid Approach may result in security agents having to explain to foreign law counsel why the amendments to their security documents are required (and risk making the foreign law security unenforceable under their foreign law in the process).

In addition, we note that:

- Article 18(1) (*The application of the law in relation to a place*) of UAE federal law No.5 of 1985 (as amended) (the **Civil Code**) states that *lex situs* shall govern the law of the state applicable to real property and the law of the state in which movable property is located shall govern that property. As a result, on a conflict of laws analysis (which is outside the scope of these memoranda), if there is an enforcement of the foreign law security, it is likely that the foreign courts will accept jurisdiction. Even if a UAE court accepts jurisdiction and seeks to apply foreign law, that UAE court judgment would need to be enforced in that foreign jurisdiction and (although it is a question of foreign law, which again is outside the scope of these memoranda) a foreign court could simply ignore the UAE court order on the grounds that it is exclusively a foreign law issue and seek to retry the merits of the enforcement for itself. This appears to provide little benefit to any party.
- A new Article 42 (*The Law Applicable to Security Interests on Intangible Assets*) has been added to the New Law (which provides that *"as specified in the [new regulations], the law of domicile of the Security Provider shall apply to the creation of the Security Interest, its enforceability against Third Parties, priority, and execution of Security Interests against the Security, if it is an intangible immovable asset."*) and (therefore) potentially permits foreign laws to prejudice the ability of a non-UAE person to grant a security interest under the New Law. However, it remains to be seen how this would work in practice, as one assumes that not all foreign law will have equivalent provisions.
- Whilst (like the Old Law) the New Law provides some positive legal developments, there are also potential obligations that need to be taken into consideration. For example:
    - Article 28 (*Right to enforce where the secured property is a receivable, written bond or account in credit*) of the New Law requires the

security agent to notify the security provider of the execution against the secured property;

- Article 38 (*Stay of execution*) of the New Law grants the security provider the right to request the judge to order the suspension of the execution against any secured property;
- (probably more importantly) there are potential liabilities for the security agent, as:
    - Article 40 (*Compensation of Pledgor and Pledged Person*) of the New Law provides that the security agent must compensate the security provider, the secured person (i.e. the borrower) and the holder of any right in the secured property against any damages or loss of profit resulting in breach of the execution procedures set out in the New Law; and
    - Article 44(1) (*Penalties for offences*) of the New Law provides that (amongst other things) "*The Security Provider, Secured Party, Principal Debtor, or possessor of a Security shall be punished by imprisonment and/or a fine of not more than sixty thousand Dirhams (AED 60,000) if … [there is any] wilful declaration of a Security Interest that is false, or in a manner contrary to the provisions of this Law…*"; and
- there is nothing in the New Law that provides that foreign courts have the right to determine the enforcement of the security contract and so it could be questioned (or at least open to a claim for an injunction from an interested party looking to delay enforcement) whether the parties have actually agreed not to have the right to enforce the foreign law security before the foreign courts but only before the UAE courts under the New Law.

The benefit of registering security over foreign law property in other jurisdictions (like the UK or the Abu Dhabi Global Market) is that a failure to register means that the security may be void as against a liquidator, administrator or other third parties. However, the New Law does not contain similar provisions. Accordingly, as a result and taking into account the potential options, on balance, we do not consider that (in most cases) the foreign law question will result in any foreign law property needing to be registered at the movables registry.

To fly or not to fly?

Like the Old Law, Article 4 (*Property excluded from provisions of the law*) of the New Law provides that movables that are registrable in special registries are outside the scope of the New Law. In the context of aircraft financings, it is now a relatively settled position that this means that a mortgage granted in relation to a UAE registered airframe does not also need to be registered with the movables registry. This is on the basis that airframes are required to be registered in the registry maintained by the UAE General Civil Aviation Authority (the **GCAA**). Such registry should therefore constitute a special registry for the purposes of Article 4 (*Property excluded from provisions of the law*) of the New Law.

The position is not so clear in relation to engines. This is because the GCAA does not maintain a separate engine register. However, the UAE has ratified the Convention on International Interests in Mobile Equipment and its Protocol on Matters specific to Aircraft Equipment (the **Cape Town Convention**). The Cape Town Convention allows security interests relating to (amongst other things) airframes and engines to be registered at an international registry. Accordingly, we are of the view that the international registry should also constitute a special registry for the purposes of Article 4 (*Property excluded from provisions of the law*) of the New Law, meaning that no separate registrations are required under the New Law. However, it would have been helpful if the New Law had clearly set out the asset classes not intended to be covered.

It is also very common in aircraft financings that a separate English law assignment by way of security is taken over the insurances relating to airframes and engines. The New Law now makes it clear that it is possible to take security over insurance proceeds. Unlike with airframes and engines, there is no separate register maintained by the GCAA or pursuant to the Cape Town Convention that permits security interests to be registered in relation to insurances. This means that the exclusion set out in Article 4 (*Property excluded from provisions of the law*) of the New Law will not apply, meaning that such security will fall within the ambit of the New Law. Whilst there is no settled market practice at present, we expect that security agents will adopt the Hybrid Approach referred to above, with English law assignments by way of security continuing to be used but modified so as to permit registration pursuant to the New Law.

The receiver

As set out in our previous memoranda and consistent with the Old Law, Articles 26 (*Offer to vest ownership of the secured property*), 27 (*Right of [security agent] to execute on security right unilaterally*) and 28 (*Right to enforce where the secured property is a receivable, written bond or account in credit*) of the New Law provide a self-help remedy in relation to qualifying property, generally for the first time under UAE law.

By comparison to English law, a security agent exercising a self-help remedy (where available) would have the benefit of a statutory right to appoint a receiver. Such a receiver (notwithstanding its appointment and remuneration being agreed by the security agent to the exclusion of the security provider) is an agent of the security provider. As was the case under the Old Law, there is no such concept of a receiver under the New Law.

However (as was the case under the Old Law), security agents are likely to be nervous about exercising their self-help remedies other than the right of set-off (especially in light of Articles 40 (*Compensation of security provider and secured person*) and 44 (*Penalties for offences*) of the New Law) and are unlikely to have the requisite knowledge and expertise to agree the terms on which any self-help remedy should be exercised (or (at the very least) unlikely to want to take the associated risk and liabilities of the same, notwithstanding any counter-indemnities they may receive from financiers).

As a result, we consider that security agents will want to include the concept of a receiver under any security contract in order to set out its rights and powers. In so doing, the receiver will be an agent of the security agent (rather than the security provider) and such an arrangement will give rise to contractual (rather that statutory) rights. This should provide significant potential benefit to security agents, as they will be able to sub-contract their enforcement rights to those consultancies or insolvency practitioners that immerse themselves in enforcement of security on a day-to-day basis.

Please do contact us if you would like to discuss any of the issues raised in this memorandum or in relation to the New Law generally.

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