

# New UAE moveable assets security law: Implications for Islamic finance transactions

On the 1<sup>st</sup> June 2020, Federal Law No 4 of 2020 on Securing Rights over Moveable Assets (New Law) of the UAE came into effect, repealing the previous Federal Law No 20 of 2016 on Mortgaging Moveable Assets as Security for Debts (Old Law). HAMED AFZAL and SAHAR ABAS write.



*Hamed Afzal is counsel at Akin Gump in Dubai. He can be contacted at*

*hafzal@akingump.com. Sahar Abas is an associate at Akin Gump in Dubai. She can be contacted at sahar.abas@akingump.com.*

**While 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 moveable assets), there are also notable differences.**

The Old Law was widely used in the context of secured Islamic finance transactions in the UAE, particularly in the syndicated finance market. Going forward, when structuring Islamic finance transactions in the UAE, parties must now turn to the New Law to determine the formality and registration requirements for security interests, the possible enforcement mechanisms and priority rights for creditors.

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 Moveable 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 specific requirements for registering a security interest in the new register.

As was the case with the Old Law, the New Law helpfully retains the possibility of taking security over assets without taking possession, broadly applying to any contract creating a security interest over tangible or intangible moveable assets, whether present or future, and

applying to both commercial and civil transactions, thereby encompassing Islamic finance transactions.

The New Law provides that a wide range of moveable assets may be subject to a security interest, including accounts receivables, deposits at licensed banks, written bonds and documents and goods intended for sale or lease (Article 3 of the New Law).

In order to ensure that a security interest granted pursuant to an Islamic finance transaction is enforceable against third parties, the New Law requires that the security be registered on the new register (or, alternatively, that the possessory pledge be delivered to the pledgee or the pledgee acquires control of the pledge). The New Law provides that a cabinet resolution shall be issued to establish the new register and to determine the authority that will manage it (Article 6 of the New Law).

Where pledgors or obligors in Islamic finance transactions breach obligations under underlying security agreements, secured creditors have recourse to the enforcement mechanisms provided for under the New Law (in Articles 27 and 28), which provide recourse to the UAE courts and, importantly, a self-help remedy in prescribed circumstances.

Significantly, 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 been repealed in its entirety, this gives rise to ambiguity for those holding a registered security interest on the EMCR. Given the widespread use of the Old Law when

granting security interests in Islamic finance transactions, this gives rise to ambiguity and, 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.

Moving forward, parties may register security rights resulting from any Islamic finance transactions made prior to the issuance and effectiveness of the implementing regulations without the need to seek approval from the pledgor (no such right previously existed under the Old Law); these security rights 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 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).

While 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 the 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, while these should be further clarified upon the issuance of the implementing regulation(s), transaction parties should seek the advice of experienced legal counsels to help them navigate such issues. ☹️