



Flash Alert

The Securing Rights on Movable Assets Law and amendments to the Commercial Pledge Law

Introduction

Earlier this year, the legal framework pertaining to the creation, perfection and enforcement of the security on movable assets in the Kingdom of Saudi Arabia was altered in a number of ways, through the issuance of the following:

- the Securing Rights on Moveable Assets Law issued by Royal Decree No. M/94 dated 15/08/1441H (corresponding to 8 April 2020G) (the “**M/94 Decree**”) and published in the official gazette on 17/08/1441H (corresponding to 10 April 2020G) (the “**SRMAL**”) and its implementing regulations issued by the resolution of the Minister of Commerce No. 00312 dated 19/08/1441H (corresponding to 12 April 2020G) (the “**Implementing Regulations**”); and
- amendments to the Commercial Pledge Law (which was earlier issued pursuant to Royal Decree No. M/86 dated 08/08/1439H (corresponding to 24 April 2018G)) (the “**CPL**”), implemented through the M/94 Decree.

Here are some of the key provisions of the SRMAL and the important amendments introduced to the CPL:

Scope of the SRMAL

The SRMAL applies to any contract or transaction creating a security interest on a movable asset and covers the following:

- commercial pledges;
- sale of movable assets with a condition for their recovery or repurchase (i.e. repurchase arrangements);
- transfer of ownership on movable assets for security purposes;
- sale of movable assets on the condition that the transfer of its ownership is deferred until the price is paid (i.e. title retention arrangements);

- assignment of rights by way of security; and
- sale of rights in receivables.

Pursuant to Article 3 of the SRMAL, security interest can be created on any movable asset, whether tangible or intangible, current or future, and includes the following:

- rights of third parties, whether currently due or deferred, including receivables;
- credit accounts at banks and other financial institutions, including deposit and current accounts;
- instruments transferable by delivery or endorsement evidencing entitlement to payment or ownership of goods, including commercial papers, bank certificates of deposit and bills of lading;
- vehicles and the like;
- equipment;
- inventory;
- animals and products thereof;
- agricultural crops;
- assets attached as immovable fixtures; and
- trees, even before cutting them, and minerals, even before extracting them.

The SRMAL does not apply to security interests created over the following assets¹:

- ships and aircrafts;
- securities listed in capital markets;
- goods deposited in public warehouses, unless the security interest is granted before such deposit;
- trademarks;

¹ Ships, aircrafts, securities listed in capital markets and trademarks have their own specific ownership registers wherein security interests can be recorded. However, there are no specific ownership registers for recording security interests over goods deposited in public warehouses and investment accounts. It is currently unclear as to how security interests over such assets could be recorded.

- investment accounts; and
- assets which have specific ownership registers wherein security interests are recorded.

Creation of a security interest

For a security interest to be created under the SRMAL and in order to ensure its validity and enforceability amongst the parties, the following requirements of Article 6 of the SRMAL must be satisfied:

- the security interest is written², either in a separate contract (i.e. a pledge or an assignment agreement) or in another contract (i.e. security clauses incorporated in a financing agreement);
- the security provider is entitled to create the relevant security interest;
- the secured obligation is described in a general or specific manner, including stipulation of the maximum secured amount;
- the secured asset is described in a general or specific manner that reasonably allows its identification. This can be a description indicating that the secured asset includes all of the security provider's property, or a specific or a generic category or type of the security provider's property; and
- the secured party performs, or commits to perform, its obligations in consideration of the secured obligation.

Perfection requirements

In order for a security interest to be perfected under the SRMAL, the relevant security interest should be registered with the URRMA (defined below) or possession (actual or constructive) of the secured assets should be transferred to the secured party.

Under the Implementing Regulations, security interest over certain assets can be perfected by way of transfer of possession only and registration of such security interest alone would not suffice. Such assets are:

- instruments transferable by delivery or endorsement;
- credit accounts at banks and other financial institutions, including deposit, current and saving accounts; and
- cash (excluding proceeds derived from security interest perfected under the SRMAL).

Registration of security interest

The SRMAL provides for the establishment of a new registry, the Unified Registry of Rights on Moveable Assets (the "URRMA"). The URRMA is currently operational and has superseded the previous registry, which was the Unified Register of Commercial Pledges (the "URCP") established under the CPL.

Security interest under the SRMAL is registered electronically by the secured party submitting an online application on the URRMA's website. Such application is required to include the following information:

- details of the security provider, including its / his or her name, identification, and Iqama number or commercial registration number, as applicable;
- name, address and contact details of the secured party;
- description of the security interest as per the requirements of the SRMAL; and
- date of expiry of the registration.

Priority of security interest

Under the SRMAL, the security provider can create multiple security interests over the same secured asset³.

Article 19(2) of the SRMAL provides the following rules for determination of priority amongst the secured parties:

- a registered security interest will have priority over an unregistered security interest;
- a registered security interest will have priority over a security interest effective by transfer of possession;
- if there are several registered security interests, priority will be given to the secured party whose registration has occurred prior to the other(s);
- if there are several security interests effective by transfer of possession, priority will be given to the secured party whose possession has occurred prior to the other(s); and
- for security interests that were not perfected / registered, priority will be given to the secured party whose security interest was created prior to the other(s).

² We recommend that the security interest is written in Arabic or bilingual (Arabic and English) language for admissibility in evidence and ease of enforcement before the courts of the Kingdom of Saudi Arabia.

³ This is beneficial for both the security providers and the creditors / financiers. Security providers not having many types of assets but having enough cushion available in the limited types of assets they own, can create multiple security interests over such limited types of assets. The same way, creditors / financiers can utilize the limited types of assets owned by the security providers by taking multiple security interests thereon, subject to sufficient cushion being available in such assets.

Enforcement of security interest

Pursuant to Article 23(1) of the SRMAL, the security provider and the secured party can agree for the non-judicial enforcement of the security interest by the secured party (i.e. self-help remedy) upon default in the performance of the secured obligation, provided that the exercise of such enforcement by the secured party is clearly specified in the relevant security document. Such self-help remedy includes selling of the secured asset by auction or by direct sale which allows for the purchase of the secured asset by the secured party in satisfaction of the secured obligation.

If the proceeds of enforcement are not enough to satisfy the rights of all secured parties, then such proceeds are required to be applied according to the following order stipulated in Article 26(1) of the SRMAL:

- in payment of expenses incurred in repairing, improving and preparing the secured asset for sale;
- in payment of enforcement expenses; and
- in payment of the secured obligations due to the secured party(ies), as per the priority rules stipulated in the SRMAL (discussed above).

Any excess enforcement proceeds, in case of non-judicial enforcement are required to be returned to the security provider.

Key amendments under the SRMAL

Under the SRMAL, there is no longer the requirement for the pledge agreement to state the condition and value of the pledged assets, which were previously required under the CPL.

Another notable change is that security interests created by way of assignments can now be registered under the SRMAL – it was not possible to register such security interests under the CPL.

Amendments to the CPL

The following important amendments have been made to the CPL:

- The term “economic debt” has been deleted, thereby expanding the scope of the amended CPL. The amended CPL is now applicable to all debts (i.e. commercial as well as consumer debts).
- The floating charge concept has been deleted and as a result of which, it is now necessary to specify all of the assets that are pledged under the amended CPL.
- Article 36(1) of the CPL pertaining to pledge over bank accounts and investment accounts, has been deleted. Although pledge over bank accounts can now be created under the SRMAL, pledge over investment accounts has been excluded altogether.
- Article 37(1) of the CPL pertaining to pledge over shares of an unlisted company (i.e. limited liability / closed joint stock company), has been deleted. Pledge over such shares is not explicitly included within the scope of the SRMAL either.
- Matters pertaining to perfection, priority and enforcement of security interests are now dealt with in accordance with the SRMAL.
- The URCP established under the CPL has been replaced with the URRMA, established under the SRMAL.

Conclusion

The new SRMAL and amendments to the CPL have considerably broadened the options available to financiers and creditors when it comes to taking security over movable assets. More importantly, under the URRMA, offshore financiers and creditors can now register the relevant security interest in their own names without having the need to appoint an onshore security agent for such purpose which was not previously possible under the URCP.

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