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Developments in Relation to Taking Security in Saudi Arabia

BACKGROUND

Earlier this month, the framework for the grant, perfection and enforcement of security interests over movable assets in the Kingdom of Saudi Arabia was once again substantially transformed with the issuance of: (a) the Law on Securing Rights with Moveable Assets (نظام ضمان الحقوق بالأموال المنقولة)¹, (b) amendments to the Commercial Pledge Law², and (c) the implementing regulations to the Law on Securing Rights with Moveable Assets³. This note will provide a high-level overview of certain of the changes made to the framework.

LAW ON SECURING RIGHTS WITH MOVEABLE ASSETS AND IMPLEMENTING REGULATIONS

Salient features of this new law and the implementing regulations include the following:

- **Application.** The law applies to agreements or transactions involving the creation of a security interest over moveable assets including in particular: (a) commercial pledges; (b) the sale of moveable assets that are subject to a repurchase or reclamation right; (c) the transfer of title to moveable assets as security; (d) the sale of moveable assets where the transfer of title vests following payment of the full purchase price; (e) security assignments or transfers of rights; and (f) the sale of receivables.

The law does not apply to security assignments or transfers of rights for purposes of debt collection, or the purchase of debt as part of an agreement to own a project.

- **Moveable Assets.** For purposes of the law, moveable assets include tangible, intangible, present and future rights and asset (including, subject to certain conditions, assets that may be physically located outside of Saudi Arabia). The law does not apply to security interests over ships and aircraft, securities listed in the capital market, trademarks, investment accounts and assets for which an ownership register where the security interest may be recorded does exist.

- Creation of Security Interest. The law sets out various conditions in order for a security interest to be valid and effective as between the grantor of the security interest and the secured party. These include that the grant must: (a) be in writing, (b) describe the secured obligation (including specifying the maximum amount secured), and (c) describe the collateral so that the same may be identified. The law indicates that a description of the collateral as all of the movable assets of the grantor of the security would be possible.
- Unified Register for Rights Over Moveable Assets. Under the law, a new register, the Unified Register for Rights Over Moveable Assets (السجل الموحد للحقوق على الأموال المنقولة) (the **New Register**), will be established by the Ministry of Commerce. It does not appear that a specific timeline for the establishment of the New Register has been specified. The services of the New Register will be provided electronically and the New Register will be available for public searches. While information will be registered with the New Register in the Arabic language, when required, information may be registered in the English language.
- Perfection. In order for a security interest over certain collateral to be perfected (i.e., enforceable against third parties), either: (a) the security interest must be “published” by means of registering the same in the New Register; or (b) possession of the collateral must be transferred to the secured party. Interestingly, the law provides that the transfer of possession may be actual or constructive. In the case of certain collateral (such as deposit, checking and saving accounts with banks), possession is the sole means of perfection.
- Registration. Registration of a security interest requires the completion of an electronic form after obtaining the written consent of the grantor of the security. Upon the expiry of the security interest, the secured party is required to terminate the registering of the security interest with the New Register within fifteen days. Registration of a security interest prior to the execution of the agreement creating the relevant security interest is permitted.
- Security Assignment or Transfer of Rights. In the case of a security assignment or transfer of rights, the security interest will be enforceable against the third party that is the obligor in relation to the assigned or transferred rights from the date the third party-obligor is notified of the creation of the security interest.
- Priority. The law sets out detailed provisions for priority of security interests as between secured parties. The law expressly provides that a perfected security interest will have priority over other debts, including workers’ wages and amounts owed to the government.
- Enforcement. The law permits parties to agree in writing that a secured party may resort to self-help (i.e., non-judicial remedies and enforcement) in the event that the secured obligations are not discharged. Self-help includes in this context a direct sale of the collateral, a public auctioning of the collateral and the secured party becoming the owner of the collateral in discharge of the secured obligations. Any self-help is subject to: (a) providing notice to the grantor of the security in accordance with the agreement between the grantor and the secured party, and (b) any sale of the collateral being at a fair price.
- Effectiveness. Both the law and the implementing regulations are stated to take effective as of the date of publication in the official gazette (being 24/8/1441H (corresponding to 17 April 2020G)).



AMENDMENTS TO THE COMMERCIAL PLEDGE LAW

Key amendments to the Commercial Pledge Law include the following:

- URCP. The Unified Register for Commercial Pledges (the **URCP**), the register established in connection with the Commercial Pledge Law, has now been replaced with the New Register. While pledges presently registered with the URCP will continue to be valid, these security interests: (a) will be subject to the Law on Securing Rights with Moveable Assets for certain purposes including, critically, priority; and (b) must be registered with the New Register within 6 months from the effective date of the Law on Securing Rights with Moveable Assets.
- Perfection and Priority. The rules relating to perfection and priority of security interests will now be in accordance with the Law on Securing Rights with Moveable Assets.
- Enforcement. The rules relating to enforcing commercial pledges will now also follow those set out in the Law on Securing Rights with Moveable Assets.

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¹ Issued by Royal Decree No. M/94 dated 15/8/1441H (corresponding to 8 April 2020G).

² The amendments were also issued pursuant to Royal Decree No. M/94 dated 15/8/1441H (corresponding to 8 April 2020G). The Commercial Pledge Law was originally issued by Royal Decree no. M/86 dated 8/8/1439H (corresponding to 24 April 2018G), and amended by Royal Decree no. M/19 dated 9/2/1441H (corresponding to 8 October 2019G).

³ Issued by the Resolution of the Minister of Commerce No. 00312 dated 19/8/1441H (corresponding to 12 April 2020G).