

# United Arab Emirates

Amjad Ali Khan, Afridi & Angell

[www.practicallaw.com/7-501-0123](http://www.practicallaw.com/7-501-0123)

## THE SECURED LENDING MARKET

### 1. Please give a brief overview of the main trends and important developments in the secured lending market in your jurisdiction in the last 12 months.

The creation of security interests in the United Arab Emirates (UAE) (outside all free zones) is mainly governed by the:

- UAE Federal Law No. 5 of 1985 relating to the law of Civil Transactions (Civil Code).
- UAE Federal Law No. 18 of 1993 relating to the law of Commercial Transactions (Commercial Code).

There are several free zones in the UAE and each free zone has its own regulations for creating security interests by entities licensed within that zone and/or over property located within it. However, aside from the creation and enforcement of security interests in the UAE, this chapter is restricted to security interests in the Dubai International Financial Centre (DIFC) and in the Jebel Ali Free Zone Authority (JAFZA), the first free zones in the UAE around which the laws of most other free zones are modelled.

For security interests created in the DIFC, see box, *Taking security over assets in the DIFC*.

Following the financial crisis of September 2008, the number of secured lending transactions dropped substantially in the UAE. However, transactions which were ongoing at the beginning of the crisis have been completed, except for a few cases in which the borrower could not satisfy conditions of closing or went into default before the facilities were fully disbursed.

## REAL ESTATE

### 2. Please briefly state what is considered real estate in your jurisdiction. What are the most common forms of security granted over it? How are they created and perfected (that is, made valid and enforceable)?

#### Real estate

Real estate constitutes land and permanent structure on land that cannot be moved without suffering damage or alteration. Real estate does not include fixtures on land (even if the fixture cannot be moved or detached without damaging it).

The most common categories of real estate and real estate interests over which security can be granted are:

- Freehold land.

- Buildings and constructions on freehold land.
- Leasehold interests in land.
- Buildings and constructions on leasehold land.
- *Usufruct* (that is, the right to use, enjoy and occupy land or property belonging to another person for a fixed term, not exceeding 99 years).

#### Mortgage

There are three types of mortgage over real estate in the UAE:

- Mortgage over land and buildings.
- Mortgage over a leasehold interest in real property.
- Mortgage over a building constructed on leased land.

A mortgage is defined in the Civil Code as a contract by which a creditor acquires the right to be satisfied from the proceeds of the sale of the mortgaged real estate in priority to unsecured creditors and other secured creditors of the debtor. To have effect, a mortgage must be registered. The time of registration of the mortgage determines priority among mortgages over the same real estate.

The mortgagor must be the owner of the mortgaged property. It is not essential that the mortgagor be the principal obligor of the debt that is secured by the mortgage; the mortgagor can be a guarantor of the debt.

Until recently in the UAE, mortgages over freehold properties could only be created over properties owned by UAE nationals. However, legislation has recently been introduced in Dubai which, among other things, governs the registration of property and security interests by expatriates in certain demarcated zones. The Dubai Land Department has exclusive jurisdiction to register the following three types of title in the name of foreign nationals and foreign-owned companies in certain demarcated areas (*Law No. 7 of 2006 on Registration of Real Property in the Emirate of Dubai and its implementing regulations*):

- Freehold.
- Long-term lease (99 years).
- *Usufruct (musataha)*, to receive the benefit from the property (up to 50 years).

The developer must register any disposition of an off-plan property in the Interim Register, which is maintained by the Land Department (*Law No. 13 of 2008 regulating Initial Property Registration in the Emirate of Dubai*). The disposition of a completed property must be registered in the Real Property Register, also maintained by the Land Department. It is unclear, however, which party is responsible for registration. Both parties must attend the Land Department to complete registration. A

disposition that is not registered in the Interim Register or the Real Property Register is invalid.

Each unit owner (defined as a person who is registered with the Land Department as the owner, including the tenant under a long term lease, of a flat, villa, house or other real estate) can create a mortgage over that unit in favour of a bank or financial institution (*Law No. 27 of 2007 concerning the Ownership of Joint Properties (Condominiums) in the Emirate of Dubai*).

Security interests relating to real estate in demarcated zones in the Emirate of Abu Dhabi can also be registered. The following are permitted (*Law No. 19 of 2005 concerning Property Ownership in the Emirate of Abu Dhabi*):

- For UAE nationals: to own freehold title to land anywhere in the Abu Dhabi.
- For nationals of the Gulf Co-operation Council (GCC): to own freehold title to land in certain demarcated areas.

This Law was amended in February 2007 to permit non-UAE nationals to:

- Own buildings in certain demarcated areas (but not the underlying land).
- Enter into a long-term lease agreement (up to 99 years) for real property in those demarcated areas under agreements
- Enjoy *usufruct* rights over real property under agreements of up to 50 years. Holders of *usufruct* rights in excess of ten years can sell or mortgage their interests without seeking the permission of the land owner.

In the Jebel Ali Free Zone (JAFZ), a mortgage can be created over a building constructed on leased land.

### Creation and perfection

Mortgages over real property must be both:

- In writing.
- Registered with the appropriate real estate authority in each Emirate. The registered mortgage deeds are generally pre-printed documents prescribed by the relevant authorities (for example, the JAFZA in relation to mortgages constructed on leased land).

### Assignment of lease rights in the JAFZA

In the JAFZA, all land is owned by the government of Dubai and the JAFZA leases land for construction of office premises and warehouses. Under the provisions of the standard lease agreement between the JAFZA and a lessee, the lessee can assign its rights under the lease in favour of a lender. All assignments of lease rights must be registered (using prescribed forms) with JAFZA.

### Taking security over assets in the DIFC

See box, *Taking security over assets in the DIFC*.

## TANGIBLE MOVABLE PROPERTY

**3. Please briefly state what is considered tangible movable property in your jurisdiction, for example, machinery, trading stock (inventory), aircraft and ships? What are the most common forms of security granted over it? How are they created and perfected?**

All property that is not classified as immovable is considered to be movable property. Tangible property includes goods, inventory, stores and machinery.

The Commercial Code provides for the creation of the following types of security interests over tangible (and intangible) movable property.

### Business mortgage

A business mortgage is a mortgage of movable assets of an entity. It can only be created in favour of banks or other financial institutions.

A business mortgage covers (*Commercial Code*):

- All of a company's tangible movable property comprising:
  - goods;
  - stores;
  - machinery; and
  - tools.
- All of a company's intangible movable property, such as:
  - contract rights;
  - goodwill;
  - trade name;
  - intellectual property; and
  - licence rights.

The mortgaged assets must be described in as much detail as possible. If they are not, only the following intangible property is deemed mortgaged (*Commercial Code*):

- Trade name.
- Contract rights.
- Goodwill.

Real estate owned by the business is not covered by a business mortgage. However, the landlord of the premises has a lien over the mortgaged assets in the leased premises for unpaid rent (subject to a maximum of two years' rent) in priority to the mortgagee's rights (*Commercial Code*).

To be valid and effective, a business mortgage must be:

- In writing.
- Executed before a public notary.
- Registered in the Commercial Register. Once registered, the mortgage is valid for five years.

Notice of the mortgage must be published in an Arabic daily newspaper two weeks before registration.

### Security over movables in the JAFZ

A business mortgage can be created by a JAFZA-licensed entity over its business under the Regulatory Decision for the creation of a Register to Record Commercial Business Mortgages in the Free Zone and the Clarification of the Registration Process.

### Commercial pledge

A commercial pledge is a pledge over movable property. A commercial pledge can be created over:

- Stock in trade or inventory.
- Movable plant and machinery.
- Receivables (*see Question 5*).
- Negotiable instruments (*see Question 4*).

To create a commercial pledge, possession of the pledged asset must be transferred to the pledgee or a third party, who must retain possession until either:

- The debt is satisfied.
- The asset is placed in common possession to prevent the pledgor from disposing of the pledged asset without the pledgee's consent.

The transfer of possession can be actual or constructive.

#### Trust receipt

A trust receipt is a document under which a bank releases to its customer documents of title to goods financed by the bank, in trust and on two conditions:

- The customer sells the goods as the bank's agent.
- The customer pays the proceeds of sale to the bank.

The bank retains ownership of the goods and sale proceeds and the customer has possession of the specified goods and sale proceeds as the bank's trustee. The bank can repossess the goods or sale proceeds if the trust goods or sale proceeds are identifiable and not intermingled with the other goods or funds of the customer.

A trust receipt must be in writing.

#### Banker's lien

Banks have a lien under which the credit balance in a customer's deposit account can be used to set off any debit due and payable by that customer to the bank (*Commercial Code*).

That lien is not available in relation to funds in an investment account.

#### Other security interests

In addition to the above, mortgages can be granted over:

- Vehicles.
- Vessels.
- Aircraft.

A vehicle mortgage is registered with the local traffic police and a notation is made in the title deed of the vehicle.

A mortgage over a vessel can be created by a notarised instrument that must be registered in the register of ships.

A mortgage over an aircraft, registered in the UAE, can be created by submitting a copy of the executed aircraft mortgage agreement to the UAE General Civil Aviation Authority. However, the UAE Federal Act No. 20 of 1991 promulgating the Civil Aviation Law (Civil Aviation Law) does not specify the formalities for the creation and registration of mortgages over the UAE-registered

### TAKING SECURITY OVER ASSETS IN THE DIFC

The DIFC is unique among the free zones as it has an entirely separate body of laws and regulations. The relevant security laws include the:

- Law of Security (*DIFC Law 8 of 2005, as amended*), which, subject to certain exclusions, applies to all transactions, regardless of their form, that create a security interest in personal or real property by contract.
- Real Property Law (*DIFC Law 4 of 2007*), which specifically covers mortgages over land.
- DIFC Security Regulations.

Account holders can pledge eligible securities held in the Central Securities Depository (CSD) of the Dubai International Financial Exchange (DIFX) by submitting a pledge instruction to the CSD in favour of a pledgee. The CSD designates pledged eligible securities as being held to the order of and controlled by the pledgee. The DIFX will not accept any instructions from the account holder unless otherwise instructed by the pledgee.

To perfect a security interest in the DIFC, it must be filed in the Security Registry. If the security holder is a natural person, he must submit the following information to the registrar:

- His identity.
- His residence and domicile.
- Any other information required under the Security Regulations, for example, a financing statement (Form 1).

The fee for filing Form 1 is US\$1 (about EUR0.7) per million US dollars of the perfected security's value, subject to a minimum fee of US\$250 (about EUR165) and a maximum fee of US\$5,000 (about EUR3,310).

The Security Regulations also govern attachment, perfection and enforcement of a security interest in financial property.

aircraft. However, noting a mortgagee's interest over a UAE-registered aircraft by the UAE General Civil Aviation Authority is done in practice.

The UAE is a signatory to the (*Federal Decree No. 32 of 2006*):

- Convention on International Interests in Mobile Equipment (Cape Town, 2001) (Convention).
- Protocol to the Convention on Matters Specific to Mobile Equipment (Cape Town, 2001) (Protocol).

However, no mortgage over a UAE-registered aircraft has been enforced, including under the Convention or the Protocol, through the UAE courts, or otherwise.

#### Taking security over assets in the DIFC

See box, *Taking security over assets in the DIFC*.

## SHARES AND FINANCIAL INSTRUMENTS

### 4. What are the most common forms of security granted over financial instruments, such as shares and other securities (both in certificated and dematerialised form)? How are they created and perfected?

The following security interests can be created over shares and financial instruments.

#### Commercial pledge

A commercial pledge can be granted over both (*Commercial Code*):

- Negotiable instruments.
- Nominative instruments (that is, documents with specified obligees).

(See *Question 3, Commercial pledge*.)

A pledge is created by endorsing the relevant instrument indicating that the instrument has been pledged and perfected by delivery of the relevant instrument to the pledgee.

#### Security over shares under the Companies Law

The UAE Federal Law No. 8 of 1984, as amended regarding commercial companies (*Companies Law*), regulates the creation of mortgages and pledges over shares of public shareholding and private shareholding companies.

Shares can be mortgaged by delivering them to the mortgagee (*Article 164, Companies Law*). This is subject to the following conditions (*Article 162, Companies Law*):

- Ownership of shares is transferred on entry of the disposition in the Commercial Register (maintained by the UAE Ministry of Economy).
- The entry of the disposition must be endorsed on the shares.
- The disposition becomes effective against the company or third parties only from the date of its entry in the register.

It is also possible to grant a pledge over shares of public shareholding and private shareholding companies. A pledge over shares of a public shareholding company must be:

- In writing.
- Registered with the stock exchange where the shares are traded, if the shares are in a dematerialised form.

A pledge over shares of a private shareholding company requires:

- A pledge deed in writing.
- Depositing the original share certificates with the pledgee.

#### Pledge over shares in the JAFZ

The Implementing Regulations No.1/92 (Free Zone Establishment Regulations) and Implementing Regulations No. 1/99 (Free Zone Company Regulations) provide for the creation of a pledge over shares of Free Zone establishments and companies respectively.

A valid pledge over shares of a Free Zone establishment or company requires:

- Execution of certain forms, prescribed by the JAFZA, by the pledgor, pledgee and the company whose shares are being pledged.
- Filing executed documents with the JAFZA to register the pledge.

#### Taking security over assets in the DIFC

See box, *Taking security over assets in the DIFC*.

## CLAIMS AND RECEIVABLES

### 5. What are the most common forms of security granted over claims and receivables (such as debts or rights under contracts)? How are they created and perfected?

The following forms of security interest can be granted over claims and receivables.

#### Assignment of receivables

An assignment of receivables is a commonly used form of security and enables the bank to take title to the underlying asset. Receivables can be transferred by notice to the debtor.

#### Business mortgage

See *Question 3, Business mortgage*.

#### Commercial pledge

A commercial pledge (see *Question 3, Commercial pledge*) can be granted over receivables under the Commercial Code. It is created by a written instrument pledging the receivables in favour of the pledgee and delivering the instrument to the pledgee. To perfect a pledge, notice of the pledge must be served on the underlying debtor.

#### Security over claims and receivables in the JAFZ

See *Question 3, Security over movables in the JAFZ*.

#### Taking security over assets in the DIFC

See box, *Taking security over assets in the DIFC*.

## INTELLECTUAL PROPERTY

### 6. What are the most common forms of security granted over registered and unregistered intellectual property (such as patents, trade marks, copyright and designs)? How are they created and perfected?

It is possible to grant a business mortgage over intellectual property rights (see *Question 3, Business mortgage*). Business mortgages can also be granted over intellectual property in the JAFZ by JAFZA-licensed entities (see *Question 3, Security over movables in the JAFZ*). In relation to the DIFC, see box, *Taking security over assets in the DIFC*.

## PROBLEM ASSETS

7. Are there types of assets over which security cannot be granted or is difficult to grant? Consider the following and give brief details of any additional requirements:

- Future assets.
- Fungible assets (a pool of assets indistinguishable from each other that may change over time).
- Other assets.

### Future assets

Security can be granted over future assets, provided they are described with an adequate degree of certainty.

### Fungible assets

Fungible assets can be pledged, provided that:

- They can be identified and are in the pledgee's direct, or indirect, control.
- The relevant assets are not mixed with unsecured items of the same sort.

### Other assets

Restrictions on foreign ownership of real estate and certain equities limit the debtor's ability to grant a security interest over such assets. In addition, it is not possible to grant a pledge over interests in a limited liability company under UAE laws.

## COMMERCIAL SECURITY

8. What types of commercial or quasi-security (that is, legal structures used instead of taking security) are common in your jurisdiction? Is there a risk of such structures being recharacterised as a security interest? Consider the following and give brief details:

- Sale and leaseback.
- Factoring.
- Hire purchase.
- Retention of title.
- Other structures.

In the UAE, a significant number of recent financings have been structured according to Islamic Sharia law. Islamic financing structures rely heavily on the above-listed quasi-securities.

Ijarah financings are similar to conventional sale and leasebacks. The sale forms the basis of the Ijarah transaction and, for certain assets (typically land), is often not registered to avoid the transfer charges.

Factoring, hire purchase, retention of title and other forms of quasi-security are used in the UAE.

The UAE courts respect the parties' decision regarding the form of the transaction. Therefore, the risk of such structures being recharacterised as a security interest is low.

## RISK AREAS

9. Do company law rules affect taking security? In particular:

- Financial assistance rules. For example, if a company grants security to secure debt used to purchase its own shares (or the shares of its holding company), does this breach such rules?
- Corporate benefit rules. For example, if a subsidiary grants security relating to a loan to its parent, does this breach such rules?
- Other rules?

### Unlawful financial assistance

The Companies Law does not prohibit financial assistance and the concept of corporate benefit is not well developed.

### Corporate benefit rules

A parent company can guarantee, or grant a security in respect of, a loan given to a related company (that is, a company in the same corporate group), subject to two conditions:

- The parent company's constitutional documents contemplate a grant of this type of security.
- Necessary corporate approvals (that is, board resolution and, where necessary, shareholders' resolution) are obtained.

A subsidiary can also guarantee, or grant a security in respect of, a loan to its parent, subject to the conditions above.

10. Can a lender holding or enforcing security over land be liable under environmental laws, even if it did not cause any pollution of the land?

There has been no reported case where a lender holding or enforcing security over land was held liable under environmental laws.

However, a lender who holds or enforces security over a vessel may be liable for environmental damage caused by that vessel.

## STRUCTURING ISSUES

11. Is contractual subordination of debt possible and common? If so, how can it be achieved, for example by an inter-creditor agreement between senior, mezzanine and junior creditors? Is structural subordination possible?

Subordination of debt is possible under UAE law. It is usually achieved by a subordination agreement between the senior and junior creditors.

Structural subordination of loans is not common. However, banks regularly require shareholders to enter into agreements to subordinate their loans to the banks' loans to their corporate entities.



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**12. Is secured debt traded in your jurisdiction? If so, what transfer mechanisms are used? How do buyers ensure that they obtain the benefit of the security associated with the transferred debt?**

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Secured debt can be transferred through participation agreements. Under a participation agreement, a pledgee or registered mortgagee continues as the pledgee or registered mortgagee but transfers all or part of the loan, on a funded or unfunded basis. Participation may be disclosed or undisclosed, depending on the terms of the participation agreement.

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**13. Is the trust concept recognised in your jurisdiction? If not:**

- Is a trust created under the law of another country recognised in your jurisdiction?
  - Can a security trustee enforce its rights in the courts in your jurisdiction?
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The UAE is a civil law jurisdiction that does not recognise a common law trust.

The concept of a local security agent, holding security for the benefit of third parties, is recognised. A trustee under a trust arrangement in another jurisdiction would be recognised as the equivalent of a security agent. Therefore, a security trustee could enforce its rights in the UAE courts.

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**14. Do the different types of security in your jurisdiction need to be documented separately or does your jurisdiction allow a single security document?**

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A single security document is possible. However, separate documents are recommended, considering there are multiple jurisdictions within the UAE and mandatory application forms for the creation of certain security interests.

## ENFORCEMENT AND INSOLVENCY

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**15. Please briefly state the circumstances in which a secured creditor can enforce its security, for example, when an event of default occurs? What requirements must the creditor comply with?**

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Generally, a secured creditor can enforce its security after both:

- An event of default has occurred.
  - A UAE court has granted an enforcement order. (Only a pledge of cash can be enforced without a court order.)
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**16. How are the main types of security interest usually enforced? What requirements must a creditor comply with (for example, a mandatory public sale of the secured asset through the courts)?**

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All security interests, with the exception of pledges over cash, can only be enforced through a court. The concept of self-help (or

extra-judicial enforcement) is not recognised. The security must be enforced by a sale of the secured asset in a public auction.

Enforcement of a mortgage over real property is time consuming. As a matter of policy, mortgages over property, owned and occupied by a UAE national as his personal residence, generally cannot be enforced. Further, in the Emirate of Abu Dhabi, enforcement of a mortgage over real estate requires governmental approval and approval has not been given in over two decades. However, this is expected to change in view of the Abu Dhabi and Dubai governments' support for the ownership of freehold and leasehold property by foreign nationals.

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**17. Are company rescue or reorganisation procedures (outside of insolvency proceedings) available in your jurisdiction? If yes, please give brief details, including voting requirements to approve such procedures. How do they affect a secured creditor's rights to enforce its security?**

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No company rescue or reorganisation procedures, outside of insolvency proceedings, are available in the UAE.

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**18. How does the start of insolvency procedures affect a secured creditor's rights to enforce its security?**

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Legal actions cannot be brought by, or pursued against, the insolvent debtor after the pronouncement of the bankruptcy judgment, except for actions (*Commercial Code*):

- Connected with assets, rights and disposals that are specifically exempt from any distraint (that is, seizure of property for security or satisfaction of a debt) on administration or disposal under the Commercial Code.
- That the law permits the insolvent debtor to bring in connection with the bankruptcy proceedings.
- Under criminal law.
- Preparing for a judgment to close proceedings.

After the bankruptcy judgment is pronounced, all creditors (including those who are secured) must deliver to the trustee in bankruptcy:

- The documents relating to their debts.
- A statement of the debts and security interests granted in relation to them (where applicable).

Creditors who fail to submit their claims within the stipulated times are not entitled to participate in any current distribution. These creditors can file an objection to the current distributions. However, objections do not stop the current distributions ordered by the judge, supervising the insolvent debtor's estate. Rather, they entitle the creditors to participate in any further distributions.

The bankruptcy rules were enacted by the Commercial Code in 1993. In practice, these provisions remain largely untested as most bankruptcy petitions brought before the UAE courts to date have been rejected or settled outside court.

**19. What transactions granting security can be made void if the entity that granted the security becomes insolvent? Please briefly state the time limits that apply and the conditions that must be met for the security to be made void.**

Transactions entered into by the insolvent debtor during the “preference” or “suspect” period (under the Commercial Code) before the announcement of bankruptcy can be set aside by the court or trustee in bankruptcy. The duration of the preference period, however, is unclear.

The Commercial Code refers to the suspension of payments date, which is a notional date before the court’s declaration of bankruptcy. Transactions by the insolvent debtor after this date can be challenged. The Commercial Code does not specify the date of suspension of payments and appears to leave determination of this date to the bankruptcy court. Therefore, a bankruptcy court determines the date on a case-by-case basis, subject to the following basic conditions (*Articles 658 and 659, Commercial Code*):

- If the bankruptcy judgment does not specify the date of suspension of payments, the date of the bankruptcy judgment is deemed to be the date of suspension of payments (*Article 658(1)*).
- If the debtor has died, gone out of business or lost his legal capacity before pronouncement of the bankruptcy judgment, the date of the debtor’s death, going out of business or loss of legal capacity is deemed to be the provisional date of suspension of payments (*Article 658(2)*).
- The court can amend the provisional date for suspension of payments to a date “ten days after the date on which the verified list of debts is deposited with the court clerk’s office” (*Article 659(1)*).
- The cut-off date (that is, the date of suspension of payments) cannot precede the date of the bankruptcy judgment by more than two years (*Article 659(2)*).

However, it should be noted that the critical date is the date of the “bankruptcy judgment”. Bankruptcy judgment appears to mean the court’s determination that the relevant party meets the statutory bankruptcy criteria (set out in Article 645(1) of the Commercial Code), as opposed to the final decision regarding the distribution of assets to creditors.

In the bankruptcy judgment, a civil court must state that the relevant party “fails to pay his commercial debts by their due dates because his financial status has deteriorated and his credit undermined” (*Article 645(1), Commercial Code*). Considering the nature of civil court proceedings in the UAE, this statement will take a substantial amount of time after the filing of a voluntary or involuntary bankruptcy petition. Interested parties (that is, creditors) will therefore have the opportunity to present evidence regarding:

- The substantive question as to whether the relevant party should be declared bankrupt.
- The date of suspension of payments.

A bankruptcy court in the UAE therefore appears to have discretion to set aside certain actions by a grantor of security during

a period of up to two years before the declaration of bankruptcy under the circumstances set out in Article 696 of the Commercial Code or if the court determines that both:

- Such actions were harmful to the creditors of the grantor of security.
- The lenders were aware at the time that the grantor of the security was insolvent.

However, the following actions are not binding on the insolvent debtor’s creditors if they are taken during the suspect period (*Article 696, Commercial Code*):

- Donations, with the exception of small customary gifts.
- Payment of any term facilities before the due date.
- Payment of immediate debts other than in the form agreed.
- Granting a mortgage or any other charge on the insolvent debtor’s assets to secure a prior debt.

Further, an insolvent debtor’s transaction (subject to Article 696) during the suspect period can be ruled as unenforceable against the creditors if the following requirements are met (*Article 697, Commercial Code*):

- The transaction is harmful to the creditors.
- The party to whom the disposal was made was aware, at the time, of the debtor’s insolvency. An insolvent person is someone who “uses extraordinary or illegal means to settle his debts, thus indicating that his financial situation is bad” (*Article 645(2), Commercial Code*).

**20. Please list the order in which creditors are paid on the borrower’s insolvency, assuming the security interests have been validly perfected. Consider:**

- **The secured creditors considered in Questions 2 to 6 (please set out any order of priority applying between the security interests).**
- **Statutory claims (such as tax or other government claims, expenses of the insolvency proceedings and employee claims).**
- **Unsecured creditors.**
- **Subordinated creditors.**

On the borrower’s insolvency, the following priority of claims applies:

- Statutory and mandatory claims preferred by law. These are:
  - wages and salaries due to the employees of the insolvent debtor for the 30-day period before the declaration of bankruptcy;
  - tax claims for the two-year period preceding the bankruptcy judgment.
- Secured creditors’ claims. Secured creditors are entitled to receive the proceeds from the sale of the secured asset to satisfy their claim, provided that:
  - all formalities required to perfect that security interest have been complied with;

- the creditor has lodged his claim when called for by the trustee in bankruptcy;
- the claim is uncontested.

If a secured creditor's claim cannot be satisfied in full, he becomes an unsecured creditor for the purpose of the outstanding balance. (He will be paid a pro rata share of the remaining funds of the insolvent estate.)

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**21. If more than one creditor holds the same security interest over the same asset, how is priority between them determined? Please briefly set out any specific ranking rules that apply.**

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Security is generally created by transfer of possession of the secured asset or registration of the security. The time of registration of a security interest over the same property determines priority among those interests.

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**22. If a security interest has not been validly perfected, where does the security holder rank on the borrower's insolvency?**

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If a security interest has not been validly perfected, the creditor ranks as an unsecured creditor on insolvency.

## CROSS-BORDER ISSUES

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**23. Are there restrictions on granting security (over all forms of property) to foreign lenders? If yes, please give brief details, for example registration requirements.**

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Security over immovable property cannot be granted to foreign banks unless they have a commercial banking licence in the particular Emirate where the immovable property is located, with the exception of the DIFC (*see below*). In practice, however, foreign banks lending to UAE borrowers normally appoint a local security agent to hold the UAE-located security on their behalf.

Security over movable property can be granted to non-resident foreign banks, except in the following cases:

- A business mortgage, whether under the Commercial Code or in relation to assets in the JAFZ, can only be granted to banks or financial institutions with a commercial banking license.
- A pledge over funds in a bank account can only be granted to the account-holding bank.

In practice, foreign non-resident banks normally appoint an onshore security agent to hold the security on their behalf.

Foreign lenders can hold security in the DIFC.

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**24. Are there exchange controls that restrict payments to a foreign lender under a security document or loan agreement?**

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There are no exchange controls restricting payments to foreign lenders. The UAE Dirham (AED) is fully convertible and there are no restrictions on the movement of funds (denominated in Dirhams, US dollars or otherwise) into or out of the UAE.

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**25. Is a foreign choice of law clause in a security document recognised and applied by the courts in your jurisdiction? Does local law always apply in certain circumstances?**

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UAE courts will recognise a choice of foreign law if they believe that there is an appropriate link between the relevant contract and the foreign law, subject to public policy, order and morals in the UAE. However, if a security agreement with a foreign choice of law provision is filed in the UAE court, that court is likely to apply UAE law for the UAE-located secured assets.

A UAE court is unlikely to dismiss the proceedings solely on the basis of a foreign choice of law clause if the dispute has some link with the UAE.

## TAX AND FEES

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**26. Are taxes or fees paid on the granting and enforcement of security? Consider the following and state the tax rates and fee amounts, if they are more than a nominal amount:**

- Documentary taxes (for example, stamp duty).
- Registration fees.
- Notaries' fees.

Notarial fees for documents required to be notarised are 0.25% of the secured amount, up to a maximum of AED10,000 (about US\$2,720).

In addition, fees are payable to the local Emirate authority to register the security. Fees vary, depending on the authority, and form a percentage of the secured amount (for example, 1% for a mortgage over land and 0.2% for mortgage over shares). These fees can be costly.

Enforcement of a security interest triggers court fees, prescribed by the relevant courts. If a secured asset is sold by public auction, a public auction fee is also payable.

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**27. If such taxes and fees make granting security too expensive, are there strategies to minimise costs?**

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There are no strategies available to minimise costs.

## REFORM

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**28. Please summarise any proposals for reform and state whether they are likely to come into force and, if so, when.**

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No major reforms are anticipated in the area of security.

### CONTRIBUTOR DETAILS

**Amjad Ali Khan**  
**Afridi & Angell**  
 T +971 4 330 3900  
 F +971 4 330 3800  
 E [dubai@afриди-angell.com](mailto:dubai@afриди-angell.com)  
 W [www.afриди-angell.com](http://www.afриди-angell.com)



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Emirates Towers - Level 35, Sheikh Zayed Road,  
P.O. Box 9371, Dubai, United Arab Emirates

TEL: +971-4-330-3900 FAX: +971-4-330-3800

E-MAIL: [dubai@afриди-angell.com](mailto:dubai@afриди-angell.com) WEBSITE: [www.afриди-angell.com](http://www.afриди-angell.com)

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