

Ways to create security over assets in the UAE

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As the economy of the United Arab Emirates continues to recover from the 2008 financial crisis, the market is starting to see a steady increase in lending.

The creating of security interests in the UAE (outside the designated “free zones”, which are governed by their own regulations) is principally governed by the UAE’s Civil Code and Commercial Code. In addition, security over certain classes of assets can be created under special laws. Some of the nuances of UAE law that foreign lenders should be aware of when attempting to take security over assets in the UAE are discussed below.

Key restrictions

Unlike common law, UAE law does not allow creditors to resort to self-help to enforce their security interests. Lenders that hold security over particular assets must petition the UAE courts to order the sale of the secured assets to recover their dues. Although remedies are available in principle, enforcement in practice can sometimes take a long time and court decisions can be unpredictable.

With limited exceptions, foreign lenders are not permitted to register a direct security over assets in the UAE. This difficulty is typically overcome by the appointment of a local security agent, which must be a bank or other financial institution licensed in the UAE. The bank or financial institution must be willing to act as required and the terms of appointment must be agreed.

Future assets

Under UAE law, security can only be created over assets that are in existence or can be clearly identified at the time of creating the security. This means that it is not possible to create a floating charge over assets. The closest security

to a floating charge is a commercial or business mortgage over the business assets of a UAE company, which can be registered with the local department of economic development. However, such registration usually involves a detailed listing of the charged assets, which must be periodically updated since any new or replacement assets will not be automatically covered. Because of these factors, such a charge is often replaced or supplemented by a pledge over the shares of a company.

Moreover, it is not possible to assign future unidentified receivables as security. Whereas future receivables from an existing and identifiable source may be assigned, those arising in the future from an unknown source and of an uncertain value cannot be assigned. Such receivables must instead be assigned periodically as and when their source is identified.

Real estate mortgages

The UAE does not have a uniform real property law. Instead, each emirate has its own laws in this area. A real estate mortgage can therefore have a different commercial value depending on the emirate where it is registered. Foreign lenders must understand the differences across the various emirates and ensure that a mortgage will be enforceable in practice.

Emirates such as Dubai allow foreign nationals to own freehold interest over real property in certain designated areas of the emirate. In Dubai, freehold interest can be mortgaged and the security registered with the Dubai Land Department. Dubai also has special laws allowing speedy enforcement of land mortgages.

Emirates such as Sharjah restrict foreign ownership to certain Arab nationalities. Abu Dhabi allows foreign ownership in certain designated zones but not all nationalities can own an interest in the

underlying land (only UAE nationals and nationals of the Gulf Cooperation Council states are allowed to own full freehold title).

Abu Dhabi has yet to implement the necessary procedures to complete mortgage registration formalities in the designated zones, and therefore such mortgages remain largely unregistered. The enforceability of these mortgages against third parties may be doubted.

Public searches

The UAE has a plethora of commercial registers where security interests may be recorded depending on the type of asset or entity against which the charge is recorded. There is no centralized system to search for a registered charge over an asset or against any person or entity. Furthermore, the authorities do not allow general public searches of the available registers and such information is only provided to the grantor of the charge. Lenders must rely primarily on the borrower’s warranties.

Of late, the UAE has created a credit bureau which will allow lenders to obtain credit information on UAE companies and individuals. It remains to be seen what type of information will be available in the credit information report and whether such information will be reliable and regularly updated.

The peculiarities of UAE law are not insurmountable barriers for foreign lenders wishing to do business in the UAE. For the most part, a lender is able to create an effective and enforceable security interest so long as it determines that the security interest suits its requirements and is properly created.

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