PROPERTY & MORTGAGE IN UAE

The Federal Mortgage Law, which was established based on a suggestion made by the Minister of Finance, establishes the framework for a new type of non-possessory registered mortgage in the United Arab Emirates (the UAE). UAE Federal on December 15, 2016, the Mortgage Law No. (20) of 2016 on the Mortgage of Movable Property to Secure Debt (the Mortgage Law) became effective in the UAE official gazette (Issue 609), and it took effect on March 15, 2017. A mortgage, according to the Mortgage Law, can be formed over certain asset categories of "movable" property and will be perfected against third parties after registration in a centralized and publicly accessible register. It is hoped that this will be a step toward more verifiable security packages with greater assurance on enforcement procedures for movable assets in the UAE. The efficacy of the Mortgage Law, on the other hand, will ultimately be determined by the mechanisms put in place to enforce it.

The Mortgage Law, on the other hand, will ultimately be determined by whether or not its measures are implemented in practice. The UAE's legislature has yet to approve a law defining and regulating the registration system. The Implementing Regulations, which will provide detailed information on how the register will be run, the registration process, the essential information to be recorded on the register, and applicable fees, are anticipated to be published within six months after the law goes into effect (the Implementing Regulations). Before a complete analysis of the effects of the Mortgage Law may be offered, there are numerous outstanding questions to answer, as well as pragmatic actions that must be taken.

This technical briefing note investigates the current security-over-temporary-moveable-assets regime in the UAE and its key features, as well as what the prospective new legislation might provide to those who want to use it. It also identifies some areas of uncertainty that will require further clarifications from the relevant authorities in the future, as well as interim recommendations for additional action. It will be important for parties to stay vigilant throughout the months ahead, knowing that increasingly time-sensitive actions, many of which have yet to be clarified, will need to be taken in relation to existing security arrangements regarding movable assets as part of the adjustment mechanisms set forth in the Mortgage Law.

WHAT ARE THE MAJOR CHARACTERISTICS OF THE PRESENT REGIME FOR SECURING MOVABLES?

To date, movable security in the United Arab Emirates has been provided by way of a possessory pledge under the UAE Civil Code (the Federal Law 5 of 1985 (as amended)), which is supplemented by the UAE Commercial Code (Federal Law 18 of 1993 (as amended)) (the Commercial Code). A possessory pledge is formed when the pledgor takes possession of the movable property. In practice, courts have treated bank accounts as if they were a chattel, and in statutory language, "movable" includes chattels, debts, and cash. For each sort of asset, the creation and perfection standards are generally different, and there have been a number of key difficulties in taking a pledge, particularly because the physical transfer of possession is such an important part of the security's inception. For example:

Possession that is constructive

It's not unusual for the parties to a secured transaction to want pledgor to keep possession of the secured property, especially if losing possession would harm the pledgor's ability to conduct business. The goal of these efforts has been to establish commercial pledges, such as machinery or receivables/debts, where the pledgor keeps the equipment or the instrument representing or evidencing the debt "on behalf of" the pledgee rather than having actual possession. It's also been typical for lenders to delegate responsibility for assets to a pledgor by naming them as a "bailee." The UAE courts' approach to these types of agreements under UAE law is unclear.

Future property

Until recently, it has been difficult to obtain effective security interests over future property under UAE law. This has been a major roadblock for local legal security solutions, particularly in terms of the ability to secure bank accounts with a changing balance or fluctuating pool of business assets. For example, the current system recognizes a security interest as a pledge of specified money in the bank account at the time of the pledge rather than a "floating" charge overall money in the bank account from time to time, or a security interest over future monies credited to the account (other than interest or any income earned on the pledged cash) The pledge, in other words, has to be updated if additional cash is credited to the account in order for the security to apply to this new property. This may put a strain on pledgers, especially bank accounts that change on a regular basis.

Enforcement approved by the court

A possessory pledge must generally be authorized by the court, usually, after the pledgor/borrower applies to the court for permission to sell the secured property, which may be done seven days after being notified of the pledger’s intention to enforce payment. Self-help measures, such as a reduction in the amount of the secured debt or an allocation of the asset to satisfy it, are generally regarded as not permitted under UAE law.

Registered mortgages on certain asset classes, such as aircraft, ships, and cars, are one way to secure movables. In the certain UAE Emirates, commercial mortgages (otherwise known as "Article 49 mortgages," owing to the Commercial Code's relevant provision) in favor of banks and financial institutions licensed in the UAE can be registered on the commercial register for some companies' tangible and intangible assets, but it is time-consuming and costly to do so in practice. Because the future property has not been permitted to be the subject of security under UAE law, commercial mortgages frequently require an "addendum" to be completed and registered by the mortgagor when substantial further assets are added to the mortgaged firm. Notarization, publication, and registration of each addendum take time, effort, and money. Furthermore, all such loans are subject to a five-year re-registration renewal period. In light of the difficulties described above, the Mortgage Law includes a number of ideas that are likely to improve local law security packages and, with effective implementation of the register, offer useful answers to some current problems. However, there are still a number of critical issues with the Mortgage Law that need to be addressed in the future. Please see below for further information (For further remarks, see below.)

WHAT KIND OF SECURITY DOES THE MORTGAGE LAW PROMISE?

A new type of non-possessory registered security over movable assets was created by the Mortgage Law. A general form of registered mortgage to be established over movable property is set out in the

Mortgage Law, while a pledge is formed by the conveyance of possession and other existing forms of registered mortgage. Translations of the Mortgage Law use the same words "mortgage" and "pledge," but there is no distinction between these two terms in the Arab language, which uses the phrase "رهن."

Key aspects

The Mortgage Law considers the following topics:

- A new approach for documenting mortgages on movable assets has been introduced.
- A comprehensive register (but yet to be established) will be created to verify secure valuables and the priority of security.
- In addition, there have been major changes in the legal system, including expanded enforcement capabilities like the sale of mortgaged assets with agreement.

WHAT TYPES OF “MOVABLE ASSETS” ARE COVERED BY THE MORTGAGE LAW?

The term "movable" assets are defined and appear to include a wide range of assets (Article 3). The Mortgage Law has a broad definition of the many sorts of tangible and intangible "moveable" property that may be subjected to mortgages under the Mortgage Law. The list, which is not intended to be complete, includes the following:

- ✓ The Receivable is composed of cash amounts due immediately or in the future to the mortgagor as a consequence of conducting business.
- ✓ Accounts and other receivables and deposits are held by licensed banks and financial institutions, such as current and deposit accounts.
- ✓ Ownership of real property is the transferable right to a number of goods, such as commercial papers, certificates of deposit, bills of lading, and warehouse bonds.
- ✓ Tools and work equipment
- ✓ Financial and ethical aspects of a company, as well as the possibility of a commercial mortgage on such assets under the Commercial Code and the UAE Trademarks Law, are considered.
- ✓ raw materials and goods in the process of production or transformation, as well as finished products for sale or lease
- ✓ products that are made from grains, livestock products, and fish or bees
- ✓ If the fixtures are to be installed, make sure they can be taken apart from the property without being harmed.
- ✓ "Movable" property, in the view of applicable laws in the UAE, is considered by them to be lawfully subject to a mortgage according to the terms of the Mortgage Law.

Furthermore, the Mortgage Law states that a mortgage may be taken over any existing or future movable property. This is a significant development because, although it has long been commonplace to put down a "pledge and assignment" for housing in the future - most notably over changing deposit balances in current bank accounts - up until now there hasn't been a legal basis under UAE legislation recognizing such contracted "assignments" over future property as a security interest. The older requirement to sign a new pledge for any additional property, such as cash credited to the account, has been time-consuming. These difficulties appear to be, at least in part, going away with the new Mortgage Law. However, issues such as whether it will be feasible to register and enforce forms of security agreements that purport to establish a floating charge for the time being persist.

WHAT OTHER RIGHTS MIGHT BE REGISTERED?

Other rights, which may be recorded on the register in accordance with the procedure set out in the Mortgage Law and within the confines of the Implementing Regulations, are:

- ✓ A lessor's rights on assets leased under an operating lease contract for one year or more are set out in Article 11. If the agreement is for a year or longer, the lessor's rights to terminate and reclaim property generally apply (Article 11(1)(a)).
- ✓ The rights of a vendor of goods put up for sale (Article 11(1)(b))
- ✓ The lessor's rights under a financing lease (Article 11(1)(c)) are also referred to as the obligation of consideration and warranty for a period.

The rules in Article 14 apply to international instruments. These measures will, without a doubt, be beneficial in particular for project financing transactions and other arrangements involving assets where operating and finance leases are frequently utilized.

ARE THERE ANY ASSETS THAT ARE EXPERSSLY EXCLUDED FROM THE MORTGAGE LAW?

Mortgage rights resulting solely from possession (Article 2(2))

The Mortgage Law does not apply to possessory pledges, which are specifically excluded by the relevant laws (the Civil Code and the Commercial Code). However, the Mortgage Law appears to suggest that possessory pledges must be registered in order to have priority as opposed to registered mortgages into the future (Article 44). Parties with existing security packages will need to obtain further information on the connection between unregistered possessory pledges and registered mortgages, especially given the registration deadlines for previous security set out in Article 44(1). Please see the section below (What action will need to be taken with respect to pre-existing possessory pledges?) for further comments on this subject.

The following movable assets are excluded from dispositions registered in a separate register (Article 2(3))

The Mortgage Law does not apply to movable property that is subject to registrations in a "special register" under current legislation. However, because no further information has been provided, it is difficult to say what a "special register" will include. One possible meaning of Article 2(3) is that it refers to asset classes such as ships or shares for which there are established registration systems in place to register pledges. In due time, guidance will be required from the competent registration authority regarding exactly which categories of assets Article 2(3) is intended to exclude. Clarity is also required, for example, in relation to real estate registered on separate security registers within the UAE's free zones, especially where such free zones have not established supporting security rules.

Specific categories of movables, including "public assets," are not covered (Article 4)

Although there are a few exceptions, the law will not apply to other sorts of property in most cases. These include:

- ✓ Personal property or home-used property
- ✓ The rights and payouts of an insured or a beneficiary under a policy
- ✓ The expenses of labour and vocation are absorbed.
- ✓ Assets of state, endowment assets, property of foreign diplomatic and consular offices, and government international organization assets
- ✓ The second category, salvage rights, includes future rights arising from inheritance or a will. It's too soon to know how widely some of the exclusions to the law will be interpreted in practice. For example, the phrase "public assets" is vague and might include properties owned by both completely and partially government agencies, which may be excluded under the Mortgage Law's framework. This matter will require further discussion with the competent authority.

CHECK OUT “EXCLUDED ASSETS” AND ENFORCEMENT PROCEDURES

As one of the most important features of the Mortgage Law is to create a searchable register for mortgaged assets, it's reasonable to exclude movable belongings in order to avoid duplicate registration demands. However, given that the ultimate objective of the Mortgage Law is to provide a more expedient enforcement procedure with certain timescales, the further benefit might be obtained by consulting or by following the Implementing Regulations from the competent body that just restricts Article 2(3) exemption to those provisions covered by the Mortgage Law's registration procedures. The goal of these rules is to provide uniformity across all types of pledges and mortgages – regardless of the public register on which they are registered - by allowing for timeframes that are consistent across jurisdictions. In our view, clarity on this issue would significantly increase international interest in liquidity injections into the UAE in connection with margin lending and structured financing instruments on UAE dematerialized securities (such as shares, bonds, or Sukuk).

WHAT ARE THE NECESSARY PREREQUISITES FOR OBTAINING A MORTGAGE?

To establish a mortgage, the following items are required:

- ✓ By written instrument, a mortgage must be established (as defined by the Implementing Regulations) by a mortgagor who is competent to sell the mortgaged property or a mortgagor who is authorized to establish a mortgage (Article 8(1) and Article 8(2))
- ✓ The mortgage must contain a description of the mortgaged property as required by the Implementing Regulations (Article 8(3))
- ✓ In this case, the contract must include a notice from the mortgagor that he or she is aware of rights of others in relation to the mortgaged property (Article 8(4)).
- ✓ The person who holds the mortgage, principal debtor, or mortgagee must notify the owner of the mortgaged property specified in the mortgage contract (where the mortgaged property is not in the possession of the mortgagor) (Article 8(5))
- ✓ Furthermore, the mortgagee is required to pay the charge stipulated in the mortgage contract or guarantee to pay it (Article 8(6)).

The Implementing Regulations are expected to clarify how to establish a mortgage, including any notarization requirements for the contract.

WHEN WILL A MORTGAGE BE PROTECTED AGAINST THIRD-PARTY CLAIMS?

A mortgage will be enforceable against third parties once it has been registered in a register that hasn't yet been established by the UAE Council of Ministers (Article 6 and 10). No subsequent mortgage right over the same property may be created except through registration after the secured right is established and registered in accordance with the Mortgage Law. A registered mortgage right, in general, confers a secured right over the proceeds of the mortgaged property and precedence on those proceeds according to the order of priority (as established in the Mortgage Law) unless otherwise specified by the parties (Article 19). However, a mortgage cannot be ranked above security that is not registered, according to Article 24 (which states that parties can agree to second-ranking forms of registered securities). A 'in principle' acceptance to establish a mortgage right over current or future property may also be registered by the parties to a mortgage. In this situation, the parties may finish and register the mortgage contract within five working days following the mortgagor's or principal debtor's acquisition of title to the property. This time period can be extended for no more than 30 days (Article 10(3)).

HOW ARE MORTGAGES REGISTERED?

A mortgage shall be filed and registered with the proper authority, as required by Article 12 (a registration form must be submitted). The 'basics' of the mortgage agreement will be specified in the Implementing Regulations, in addition to any information that may be found on the public register.

DO THIRD PARTIES NEED TO BE NOTIFIED ABOUT YOUR REGISTRATION?

No third-party proprietors of mortgaged property who are not in possession of the mortgagee should be notified until after registration (Article 8(5)). Written consent from relevant individuals to be notified shall be sought by electronic means if possible, but notification may also be delivered by courier or registered mail if written consent cannot be obtained. An effective legal notification is given to those who accepted the notification by registration after they have been entered into the register.

IS IT POSSIBLE FOR SOMEONE TO OBJECT TO THE REGISTRATION OF A MORTGAGE?

Any person named as a mortgagee, principal debtor, or mortgagor may "object" to the mortgage before the court within five working days of being notified and may do so in accordance with the Implementing Regulations. The cancellation of a mortgage right to third parties will not have an impact on its validity as long as the court decides to reject or delete the declaration (Article 13(1)). A protest can be filed in a court within five days of notification or the date of registration of the mortgage contract, whichever comes later if the mortgagor owns an unregistered right on the same property. The court may make a decision to determine who is considered the property's proprietor (Article 13(2)).

IS IT POSSIBLE FOR ANYBODY TO SERACH THE MORTGAGE REGISTER?

The Mortgage Law stipulates that the register must be established by a resolution of the UAE Council of Ministers (Article 6). The parties to a mortgage contract may provide in their agreement that the register's information should be available to the public, but in all cases, the register's 'fundamental information' will be accessible to the general public and they will be able to obtain a report in hard or soft copy (Article 7). In reality, the procedures for registration and the register's usefulness as a publicly available resource will be determined by the level of "basic information" included on it and the search conditions to be established in the Implementing Regulations.

HOW CAN A REGISTERED MORTGAGE BE LAWFULLY ENFORCED?

The new Mortgage Law's enforcement procedures appear to contradict the previous position that enforcement of security over movable property may generally only be done via a court-approved asset sale. Until recently, this has meant that "self-help" enforcement options such as a sale at the behest of the secured party or allocation of the asset to repay the loan are generally not available in the UAE.

There are now two primary enforcement alternatives for assets pledged under the Mortgage Law, either by agreement or through summary execution in court. The treatment of bank accounts, bonds, and other assets is handled differently.

The following is a brief description of each alternative -

(Article 27) Discharge of mortgaged asset with agreement (other than bank accounts or bonds)

If the mortgagor (or principal debtor) fails to carry out his or her duties under the mortgage agreement, or if the contract is not implemented for any reason, the mortgagee has the right to sell the asset separately from other property and request its sale at not less than its "market value" within 10 days after giving prior notice. However, there are no provisions in the Mortgage Law that spell out how to separate the property or how to value it on the market. The right of sale is also subject to numerous limitations, including that the parties must "agree" to the execution without using the courts. Whether or not this implies that the parties can negotiate ahead of time within the confines of the mortgage contract or whether they must do so at the time of execution, regardless of the terms of the contract, is unclear from Mortgage Law. The person in possession of the asset must be notified that enforcement is to begin, and if applicable, the owner of real property. A mortgagee or other third-party interest in an identical asset (and, if such third-party rights exist, written consent from all mortgagees) must also be notified.

(Article 28) The sale of mortgaged assets for bonds or bank accounts

In contrast to the preceding example, the right of sale of a mortgaged asset without recourse to the courts is expressed differently in relation to bank accounts and written instruments that transfer ownership through delivery or endorsement. This only applies if the mortgagor or principal debtor fails to fulfill its obligations under the contract. The aim of enforcement in this instance is to have the mortgaged account offset by the account bank against amounts owing to the mortgagee (if the mortgagee is the account bank) or money from the account bank may be taken. If the value of a bond or document transferring ownership by delivery or endorsement is equivalent to the mortgage right, it shall be delivered or endorsed. The position where the bonds or written instruments exceed the debt's value is not addressed in the legislation, but presumably, an application must be made to the Court for enforcement in such circumstances. Unless the goods are equivalent to the mortgage right, documents requiring summary execution through the judiciary (see below) shall be signed or delivered by way of summary execution through the judiciary. The mortgagee may enforce the contract's requirements against the property directly where the mortgagor or guarantor fails to perform. If a mortgagee fails to notify the mortgagor in accordance with this requirement, the mortgagee must inform the mortgagor and may expressly agree to do so in the mortgage contract or a separate written agreement between the mortgagee and the mortgagor. In contrast to Article 27, which does not address the question of property rights for other sorts of movable assets, this provision may be seen in light

The court system (Articles 29-40)

The mortgagee may also request the Magistrate of Summary Justice to render a summary judgment in which the mortgaged property is seized and sold, as well as other measures authorized by the Mortgage Law. This may necessitate putting the mortgaged property in the hands of a third party at the expense of the mortgagor or principal debtor, as well as preparation for and execution against the mortgage and sale of the property according to rules under the Mortgage Law. The court will allow the mortgagee to take possession of the property and sell it at market value or attach conditions for the sale of the asset, such as a sale method and minimum sales price if it approves the application within the time limits stipulated. Furthermore, the mortgagee must take "reasonable care" to ensure that the sale price of the property is not less than market value. The mortgagee must transfer the sale proceeds from the asset to the court's treasury in accordance with the sale procedure set out in the Implementing Regulations.

Bankruptcy of Mortgagee (Article 39)

In the event of commencement of preventative conciliation or bankruptcy procedures against the mortgagor, none of the execution methods on the mortgage property shall be valid, and they will not affect provisions dealing with set off under the UAE Bankruptcy Law (Federal Law 9 of 2016) and secured creditors' enforcement without court approval.

When does a mortgage become invalid?

A registered mortgage is ineffective (vis-a-vis third parties) and must be annulled by the mortgagee in the following situations:

- ✓ If the mortgagee and the mortgagor agree that the mortgage should be removed from the register,
- ✓ If the mortgage's obligations are settled before the expiration of the period stated in the register,
- ✓ If the mortgage has not been registered in accordance with Article 10(3) of the Mortgage Law within five days of possession of the mortgaged property by the mortgagor or debtor, it may be extended for up to 30 days;
- ✓ If the mortgagee fails to fulfill his obligations after the registration of the mortgage contract,
- ✓ A mortgage is struck off the register when a court orders it.

IS IT TRUE THAT THE MORTGAGE LAW INCLUDES FINE FOR NONCOMPLIANCE OR CERTAIN BEHAVIOURS?

There are several severe penalties and fines outlined in the Mortgage Law for non-compliance, as well as certain activities covered by Articles 41, 42, and 43. If a party breaches the Mortgage Law, it may be imprisoned or fined not less than AED 30,000.

- ✓ The mortgaged right is intentionally registered falsely or in violation of the Mortgage Law's restrictions.
- ✓ damages the property in any manner or disposes of it in breach of the contract;
- ✓ When the value or rights of the mortgagee are diminished, or when any actions are taken that result in the mortgagee being unable to collect proceeds or execution proceeds,
- ✓ Under the rules of the Mortgage Law, it is also permitted to take any action that inhibits or impairs the execution of a foreclosure lawsuit, including selling the property at auction, distributing profits or proceeds of execution as laid out in the Mortgage Law.

If a company's board of directors, board of managers, joint partners, or employees engage in any of these acts without their knowledge or consent, they will face stiff penalties. Unless they can show that they were unaware of the behavior or did not participate in the decision-making process that led to the violation of law, they will be penalized. Any penalties set out in the Mortgage Law do not invalidate any more severe penalties imposed by any other legislation.

IS IT POSSIBLE TO SELL MY MORTGAGE RIGHTS?

Mortgage rights can be assigned expressly by the mortgagee without the mortgagor's consent under Article 14 of the Mortgage Law, according to which they may be transferred freely. The mortgagee or assignee may register the assignment as an amendment to the prior registration, but the non-registration of the assignment will not affect third-party mortgage rights. This is a beneficial provision since it appears to resolve some of the earlier ambiguities surrounding the assignment of rights in this instance (in light of the Civil Code's silence on the subject)

WHAT MEASURES WILL HAVE TO BE TAKEN REGARDING EXISTING POSSESSORY PLEDGES?

The Mortgage Law stipulates those mortgagees must search the register to ensure the existence of any additional interests in the security and priority, before accepting a right of pledge by possession only going forward. Unless otherwise agreed between the parties, the registration of a mortgage gives a mortgagee an unsecured right to receive all or part of the proceeds of the mortgaged property and precedence over other creditors (as set out in the Mortgage Law) unless there is another arrangement (Article 19). The date and time of the mortgage right's registration will be used to determine priority (Article 17), after which it will be determined based on when such rights were first created (Article 44(3)) as opposed to the date of registration. The status and priority of unregistered possessory pledges (which are not covered by the Mortgage Law) versus registered rights are not addressed in the Mortgage Law. However, if the owner of the mortgaged property has an unregistered right to it, he or she may object to court within five working days from the date of notification of the mortgage or the date on which the mortgage contract is registered, whichever comes later. In certain cases, the court may rule that the priority of the property's owner in the mortgage declaration be decided. Importantly, purchasers will have one year from the date of enforcement of this Law to register pre-existing possessory pledges if they meet certain requirements (Article 44(1)). Given that applications to register mortgages are not expected to be feasible for some time, it is uncertain how and whether this period will be prolonged to account for the time lapse between the law's enforcement date and the date when the register is in practice. In practice, the register's efficient operation will be crucial for parties to be in a position to follow the time limits set out in the Mortgage Law. This will undoubtedly be a concern for creditors and borrowers with existing security arrangements, as well as an important consideration once this has been investigated by the competent registration authority.

There are still a few things to be clarified –

- ✓ The date and procedure for registration
- ✓ Treatment of current security and priority vis a vis registered right.
- ✓ The preferred method of protection for future property
- ✓ Excluded movable property is divided into categories.
- ✓ How will the new enforcement options function in practice?

WHAT AREAS OF THE LAW STILL NEED TO BE CLARIFIED?

There are a number of crucial elements regarding the Mortgage Law that have yet to be determined, and more information will be needed before a clear view on its impact can be taken.

The following are some of the challenges you may encounter:

The content of the implementing regulations and how the register will be handled

It's unclear what the registration process for mortgages on movables will look like until further guidance is released and a competent registration body is established. The levels of information that the public will be able to access on the register, as well as relevant administrative procedures such as time limits, notarization, and registration costs, are also unknown.

The new administration's success is thus contingent on the contents of the Implementing Regulations and the administrative procedures established by the registry's competent authority.

Current security packages and preference

It's uncertain how outstanding possessory pledges that aren't registered by March 15, 2018 (within one year of the Mortgage Law's implementation) will be compared to registered mortgages and pledges. It is also debatable whether the time periods established by the Mortgage Law will be extended to allow for the lapse of time between enforcement of the Mortgage Law (on March 15, 2017) and the date on which the register is established. In our view, the registration of existing security arrangements on movable assets is likely to necessitate early action from both creditors and borrowers, resulting in a flood of applications at the registry. In reality, the registration department that will be dealing with requests from launch onwards must also be prepared and able to handle them as soon as they emerge.

Property security in the future

It is unclear, however, whether a floating charge that crystallizes over a changing pool of assets can be registered. It's not clear if security for future property will have to take the form of a more specific legal entity. For example, a pledge agreement that includes a particular list or addendum of future assets.

The Mortgage Law does not apply to movable items, which must be registered in a "special register" set up by the laws currently in force. No further information has been given on what "special registers" the clause refers to, or how broadly the requirement for all transactions to be recorded will be interpreted. Clarity will be needed in areas such as pledges and mortgages over shares, and particularly listed securities in dematerialized form.

How the Mortgage Law Is Applied to Real Property in Non-Financial Free Zones

In theory, the Mortgage Law should apply prima facie to movable property in a UAE free zone (outside of the Dubai International Financial Centre and Abu Dhabi Global Market), unless a separate code of security is established. However, where a free zone operates a mandatory free-standing security registration system but does not have its own law governing the security, further confirmation may be required as to how the Mortgage Law will impact upon security taken over movable property located or owned by firms incorporated in the free zones. It's possible that property recorded on a "special register" will be seen as exempt from the Mortgage Law's scope by virtue of being registered on it, but we note that it is probable that firms with security over free zone property would want to be able to utilize the new enforcement tools established in the Mortgage Law going forward.

Non-UAE companies, branches of foreign firms, and Central Bank licenses

Other questions that require further explanation include whether foreign firms or other types of non-UAE entities will be allowed to issue mortgages under the new system and if UAE firm assets located outside the country can be registered as mortgage collateral.

The answer to this question will come from the Central Bank's implementing regulations, which are yet to be published. If secured creditors under the Mortgage Law are regulated by legislation, then they will have to hold a license with the Central Bank.

Security for public assets

The Mortgage Law states that no mortgages may be registered on public assets. There is no definition of "public assets" in the new legislation, leaving it to be seen whether it will strengthen current limitations on wholly and partly owned government entities from mortgaging their property.

What methods of enforcement are available, and how will they be implemented in practice?

Despite the fact that Mortgage Law enforcement techniques appear to be useful, there are a number of concerns surrounding their practical application that will require further study. What are the rules on net assets? on what basis are assets valued, and how are they priced? How are assets valued when they're sold? Is it true that if you sell an asset without a sale agreement, you can't get paid until the buyer actually purchases the property? It is also apparent that the judiciary will need to be informed and competent in understanding the regulations and tight deadlines stipulated in the Mortgage Law for these new methods to function effectively in practice.

Other

There are, of course, several other aspects of the Mortgage Law that will need to be evaluated in further detail as time goes on, particularly with regard to the interpretation of the provisions we describe in this technical briefing, as the official position becomes clear.

Concluding remarks and recommendations for future action

The New Mortgage Law provides a framework that may assist parties in the UAE in developing strong local asset security packages on movable assets. Importantly, if the register is implemented as it appears to be planned under the Mortgage Law, many of the problems associated with transferring physical assets of movable property and safeguarding future assets will be avoided or addressed. Given that the register will be, to a certain extent, publicly searchable, enforcement procedures may be more rapid and transparent compliance and transactional due diligence over movable assets may be improved.

However, the Implementing Regulations that layout the new registration system in action will be most essential, and there are many outstanding issues to be answered before a thorough assessment of the impact of the Mortgage Law can be given. The issues raised by the transition period for existing security programs will have to be thoroughly evaluated in light of the time limits under the Mortgage Law and, presently, the fact that there is no recognized register. We look forward to receiving notification from the competent registration body about the necessary procedures for file submission.

It will be essential to consider, going forward, whether any security being established may be registered in due course and, in light of the forthcoming time limits, if any possessory pledges or other types of existing security over movables need to be registered as adjustments to the new system. It will also be crucial to include appropriate further assurance clauses in any documents seeking to establish the Contract Law's ability to register contracts, ensuring, for example, that the parties follow through with any additional steps necessary to give effect to, and register, the contract under the new regime and obtain any such acts by third parties where required.