

# KHOSHAIM & ASSOCIATES

## Saudi Arabia: Securing Rights on Movable Assets Law and the recent amendments to the Commercial Pledge Law

---

Sunday, 6<sup>th</sup> of June 2020



## Introduction

The Securing Rights on Movable Assets Law (the **SRMAL**), issued pursuant to Royal Decree No. M/94 dated 15/8/1441H (corresponding to 8 April 2020) (the **M/94 Decree**), came into effect on 17/8/1441H (corresponding to 10 April 2020) following its publication in the Official Gazette. Its implementing regulations (the **Implementing Regulations** and, together with the SRMAL, the **New Law**), issued by the Minister of Commerce on 19/8/1441H (corresponding to 12 April 2020), came into effect on 24/8/1441H (corresponding to 17 April 2020) following their publication in the Official Gazette.

The M/94 Decree also implemented a number of amendments to the Commercial Pledge Law (issued pursuant to Royal Decree No. M/85 dated 8/8/1439H (corresponding to 24 April 2018)) (the **CPL**).

This note provides an overview of some of the key provisions of the New Law, and a brief summary of the notable changes to the CPL.

## Executive Summary – Key Takeaways

Enhanced framework under which creditors are able to secure and protect their rights ahead of certain other creditors.

The obligations against which security may be granted are no longer limited to economic debts and may now also include other obligations, and not just monetary obligations.

Expands the type of rights that may be secured, such as rights under a repo transaction and retention of title over moveable assets.

Recognition of self-help remedies in terms of enforcement, including the taking of ownership over the secured moveable asset.

Permits commercial pledges to be granted and the granting of security over an economic enterprise as well as over all of the moveable assets of a person.

A new registry (the Unified Registry of Rights on Movable Assets) is now in operation and is the relevant registry for the recording (publication) of the secured rights.

Registration in the new registry would suffice to perfect the security, unless possession is mandated by the New Law.

Existing security that was registered with the previous (now defunct) registry (the Unified Register of Commercial Pledges) are required to be re-registered with the new registry before October 2020 in order that any priority rights are maintained.

Existing security documents may now need to be revised in order to accommodate the requirements of the New Law and amendment to the CPL.

## **Scope of the SRMAL**

The SRMAL applies to any contract or transaction creating a security over a movable asset and includes the following:

- (a) commercial pledges;
- (b) sale of movable assets with a right of recovering or repurchasing such assets (repurchase agreements);
- (c) transfer of ownership of movable assets for the purpose of security;
- (d) sale of movable assets with the condition to delay the transfer of ownership until the price is fully paid (retention of title);
- (e) assignment of rights by way of security; and
- (f) sale of rights to receivables.

The Implementing Regulations elaborate on the meaning of security under the SRMAL and expressly mention that the New Law also applies to tangible movable assets that are not located in the Kingdom of Saudi Arabia at the time the security is granted where: (a) such assets are headed or intended to be moved to the Kingdom of Saudi Arabia; or (b) the grantor resides in the Kingdom of Saudi Arabia.

On that basis we note that the New Law would be applicable in respect of such security, even if governed by laws other than the laws and regulations of the Kingdom of Saudi Arabia, and we would recommend that such security be perfected in accordance with the requirements of the New Law.

The SRMAL is stated not to apply in relation to transfers for purpose of debt collection, and the acquisition of debt that is part of a project purchase agreement.

### Which assets and rights?

The SRMAL states that security can be granted over any movable asset, whether tangible or intangible, current or future, and whether they are current or future rights, including the following:

- (a) rights against third parties (whether currently due or deferred), including receivables – noting that there is a requirement to notify such third party of the grant of any security thereon, which results in the security then being enforceable against such third party from the date of such notification;
- (b) debit accounts at banks and financial institutions, including deposit and checking accounts;
- (c) instruments convertible by delivery or endorsement that demonstrate entitlement of payment or ownership to goods, including commercial papers, bank deposit certificates and bills of lading;
- (d) vehicles and the like;
- (e) equipment;
- (f) stock (which we understand would include stored raw materials and inventory);
- (g) animal and animal products;
- (h) agricultural crops;
- (i) immovable assets due to attachment; and
- (j) trees, even before they are cut down, and minerals, even before they are extracted.

The SRMAL specifically excludes the following assets from its remit:

- (a) ships and aircraft;
- (b) securities listed in the capital markets;
- (c) goods in public storage, unless the security right is established prior to being stored therein;
- (d) trademarks;
- (e) investment accounts (such as portfolio accounts held with an authorised person licensed by the Capital Market Authority); and
- (f) assets that have specific ownership registers where a security right could be registered.<sup>1</sup>

---

<sup>1</sup> This may possibly also cover shares in closed joint-stock companies if such companies contract with the Securities Depository Centre to maintain their shareholders' register.

## **What Are the Perfection Requirements Under the SRMAL?**

Under the SRMAL, a person would have a perfected security interest or right to the extent that: (i) registration<sup>2</sup> has been effected; or (ii) transfer of possession occurs, whether actual or constructive (as detailed further below).

In order for a secured right to be effective and valid among the parties, the following conditions must be satisfied:

- it is documented in writing, whether in a separate security agreement or among provisions of another agreement;
- the grantor is duly authorized to create the applicable security right;
- the secured obligations are sufficiently described, whether such description is generic or specific (this includes specifying the maximum thereof);
- the secured right is described in a manner that is sufficient to identify it, and such may specify that it encompasses all the assets of the grantor, or a specific or general category or specific or general type of the grantor's assets; and
- the secured party must perform, or commit to perform, its obligations in exchange for the secured obligations.

---

<sup>2</sup>The SRMAL and the CPL use the term 'publication' which signifies the registration of the security with the URRMA (see below).

## **Registration**

The SRMAL requires the establishment of a new registry, the Unified Registry of Rights on Movable Assets<sup>3</sup> (the **URRMA**), which is now up and running. The previous registry, the Unified Register of Commercial Pledges (the **URCP**) under the CPL, is now superseded by the URRMA which is now the competent entity where secured rights over movable assets are required to be registered.<sup>4</sup>

For secured rights currently registered with the URCP, paragraph 3 of the M/94 Decree provides that such rights shall enjoy their priority right of registration provided that they are (re)registered with the URRMA within six months from the date on which the SRMAL came into effect.<sup>5</sup>

The SRMAL requires that the grantor's consent to the registration be obtained before any registration is made. Such specific consent could be included within the security document or applicable agreement under which the right arises.

The registration is effected by the secured party by submission of an electronic application on the online portal, and such application must include the following information:

- (a) the grantor's information, including its/his name, identification card number or registration;<sup>6</sup>
- (b) the secured party's name, address and contact information;
- (c) the description of the security/right as per article 6(1)(d) of the SRMAL;<sup>7</sup> and
- (d) the date on which the registration expires (if security right expires before the expiration of registration, the secured party is required to terminate the registration within fifteen (15) days, failure of which may result in damages being due and payable to the grantor).

Accordingly, security documents or other applicable document should contain relevant registration provisions in order to allow for the required registration specified above.

## **Possession**

The New Law specifies that certain security may only be perfected by virtue of possession and registration of such security alone would not be sufficient. Such assets are: (a) instruments convertible by delivery or endorsement; (b) debit accounts at banks and financial institutions, including deposit, checking and savings accounts; and (c) cash (excluding proceeds derived from a secured right perfected under the requirements of the New Law).

---

<sup>3</sup> The link to the registry is at: <https://scr.bc.gov.sa/>.

<sup>4</sup> There are other special registries for certain movable assets, such as aircraft, vessels and listed shares, which require separate registration (and are not within the scope of the New Law).

<sup>5</sup> Such date being no later than 6 October 2020.

<sup>6</sup> Article 8 of the Implementing Regulations clarify this as follows: (a) Saudi national identification number if the guarantor is a Saudi national or an owner of an establishment; (b) the Iqama number if the guarantor is a resident non-Saudi; (c) passport number and the country of nationality if the guarantor is a non-Saudi residing outside the Kingdom of Saudi Arabia; (d) commercial registration number if the guarantor is a Saudi legal person; and (e) name in English if the guarantor is non-Saudi legal person.

<sup>7</sup> Article 6(1)(d) of the SRMAL requires a security to be described in a manner that allows its identification (whether the description is specific or generic). It permits the description of the security as 'all the guarantor's assets', or specifying a category or type of the guarantor's assets. Proceeds are defined under the SRMAL to include revenues, in-kind or cash allowances obtained from the disposal of, or benefit from, the security, including products, development and compensation for depreciation in value or damage or any other compensation. Proceeds do not include enforcement proceeds under the SRMAL.

## Security Rights and Priority Rules

Similar to the CPL, the SRMAL permits several pledges being granted (or rights being recognised) over the same moveable asset or right. The priorities afforded to such secured rights is stipulated for in the SRMAL and is summarised below. Notwithstanding the ranking of priorities, a secured creditor may waive in writing its priority (and thus contractual subordination among secured creditors would be effective against the creditors and third parties).

The priority of a secured right is determined as follows:

- a secured right which is effectively granted (an **Effective Secured Right**) would have priority over other secured rights (for example, a contractual security arrangement which is otherwise not in compliance with the law and so not effectively granted or established (a **Contractual Security Arrangement**));
- an Effective Secured Right which is registered in accordance with the New Law (a **Registered Secured Right**) would have priority over any other Effective Secured Right;
- a Registered Secured Right would rank ahead of a subsequent Registered Secured Right (i.e. priority among Registered Secured Rights is determined according to the date and time of registration);
- priority between different Effective Secured Rights perfected by possession is determined according to the date and time of possession (noting that possession could be actual or constructive possession); and
- priority between different Contractual Security Arrangements is determined according to the date and time such arrangements were created.

An Effective Secured Right also has priority in payment over other debts, including any labour and government dues.

## Proceeds

The New Law provides certain specific rules governing proceeds, which are defined to include revenues and in-kind or cash consideration derived from the disposal of, use or replacement of the secured asset or right and other returns and compensation received in connection therewith (but excluding any enforcement proceeds). Any proceeds derived from a perfected secured right are automatically included within the secured right and shall be effective against third parties for 15 days from such time as the proceeds are received by the grantor (unless the parties agree to exclude such proceeds from the security).

## **Disposal and Tracing of Secured Assets**

The grantor is prohibited from transferring the ownership of a secured movable assets unless (a) the grantor has obtained consent from the secured party; or (b) the transfer is made in the ordinary course of business. If such a transfer is made in violation of the prohibition, the secured party may trace the security and enforce its secured rights against the third party. As such, it is recommended that a purchaser of an applicable moveable asset carries out a search under the URRMA to verify if such asset is encumbered before proceeding with any purchase.

## **Enforcement of Secured Rights Under the SRMAL**

The SRMAL provides that the secured party and the grantor may agree to enforcement over the security without resorting to a court driven process. Such self-help remedy (labelled as a non-judicial enforcement under the New Law) includes the sale of security by way of a public auction or a direct sale and permits acquiring ownership of the asset in satisfaction of the secured debt. To benefit from such self-help remedies, the documents governing the security arrangement must clearly provide for the exercise of such enforcement mechanism. Notwithstanding the foregoing, the New Law requires the secured party to notify the grantor of the breach or default prior to exercising any such remedy, and to ensure that the asset is sold for 'fair' value (such term is not defined within the New Law but presumably would indicate the price needs to be aligned with a market price or within a price that is fair to both parties in the circumstances, it may be prudent to seek agree a mechanism for determining the price at the outset with certain flexibility).

If the enforcement proceeds are not sufficient to satisfy the rights of the secured party, the enforcement proceeds are required to be distributed in the following stipulated order:

- any expenses required to be incurred in order to repair, enhance and prepare the secured asset for sale;
- any enforcement expenses; and
- the secured obligations due to the secured parties, in accordance with the priority rules set out under the SRMAL and as briefly set out above.

Any excess enforcement proceeds are payable to the grantor.

## **Retention of Title**

One of the notable additions under the New Law is the recognition that a seller of moveable assets governed by the SRMAL may retain title over moveable assets being sold on a deferred payment or instalment basis, and that such right is registerable and effective against third parties. Potentially such provision provides the seller of the moveable assets priority over secured and unsecured creditors of the purchaser if the purchaser fails to pay for the goods because it is insolvent.

In order for manufacturers and suppliers to benefit from such development it is important that they review their sale contracts and include such retention of title provisions within their contracts and to include for an acknowledgment by their customers (the purchasers) to the registration of such right with the URRMA (as detailed above). However, in addition, the seller would require an ability to reclaim possession of the assets, and, therefore, also have a right to enter premises of the purchaser and repossess the assets. In such circumstances the assets would need to be identifiable and, to the extent attached, they are able to be removed without causing any damage to any property of the purchaser. The right to any proceeds (as referenced earlier above) of the sale of the movable assets are potentially part of secured rights to the extent such has been registered.

## About the Firm

Khoshaim & Associates is a full-service Saudi Arabian law firm with international reach that delivers first class, efficient and multidisciplinary legal services.

Our 55+ member firm includes a team of veteran Saudi Arabian and internationally qualified lawyers who advise on a wide range of practice areas, including equity and debt capital markets, local and cross-border M&A, litigation and arbitration, regulatory, corporate, projects, privatization, banking and Islamic finance transactions.

The Khoshaim & Associates' team has an unparalleled understanding of the Saudi Arabian commercial landscape, legal framework and cultural issues, and routinely handles all aspects of sophisticated transactions and litigation.

The firm and its partners have consistently been ranked as Band 1 and Tier 1 for their practice areas by Chambers Global, IFLR1000 and Legal 500.

*“My first choice in Saudi Arabia’.”*

CHAMBERS GLOBAL, SAUDI ARABIA

*“This firm goes from strength to strength, rising to the top of the rankings after another successful year.”*

CHAMBERS GLOBAL, SAUDI ARABIA

*Chambers Global  
Saudi Arabia 2020*

Finance & Projects – Band 1  
Capital Markets – Band 1  
Corporate/Regulatory – Band 1  
Dispute Resolution – Band 2

*Legal 500  
Saudi Arabia 2020*

Corporate/Regulatory/M&A – Band 1  
Banking & Finance – Band 1  
Dispute Resolution – Band 1  
Capital Markets – Band 1

*IFLR 1000  
Saudi Arabia 2020*

Project Finance – Tier 1  
Banking – Tier 1  
Capital Markets – Tier 1  
M&A – Tier 1  
Project Development – Tier 1

FOR MORE DETAILS ABOUT THIS BULLETIN, PLEASE CONTACT THE AUTHOR BELOW

---

**Karim Wali**

Partner  
karim.wali@khoshaim.com  
Tel: +966 11 461 8724

**Zeyad Khoshaim**

Managing Partner  
zeyad@khoshaim.com  
Tel: +966 554377944

**Riyadh**

17th Floor, Tower B Olaya Towers  
Olaya District  
Riyadh, Post Code 11321  
Kingdom of Saudi Arabia

**Jeddah**

Suite 803, 8th Floor,  
Zahran Business Centre (Building No. 7051),  
Prince Sultan Road  
Jeddah, Post Code 23525  
Kingdom of Saudi Arabia

**Disclaimer:** This bulletin is for information purposes only, and does not include, or purport to include, all provisions covered in any law or regulation. The information contained in this bulletin is not legal advice and it should not be relied upon in any way. The information contained in this bulletin is based on our understanding of the laws and regulations referenced herein as of the date of this bulletin. This bulletin is not intended to be construed as reflecting the views and motives of the Saudi Arabian government in relation to the subject matter thereof. Unless otherwise stated, all information contained in this bulletin shall not be reproduced, in whole or in part, without the specific written permission of Khoshaim & Associates. Khoshaim & Associates makes no warranty, representation or undertaking whether express or implied, nor does it assume any legal liability, whether direct or indirect, or responsibility for the accuracy, completeness, or usefulness of any information that is contained in this bulletin. It is not the intention of the publication to be used or deemed as recommendation, opinion or advice (including legal advice) for any action(s) that may take place in future.

---

Khoshaim & Associates is the law office of Zeyad S. Khoshaim, a sole proprietorship licensed to practice in Saudi Arabia under Ministry of Justice license number (29/90), registered with the Chamber of Commerce under registration number (253904), and operates from the 17th Floor, Tower B, Olaya Towers, Olaya District, Post Office Box 230667, Riyadh, Post Code 11321, Kingdom of Saudi Arabia.