

KHOSHAIM & ASSOCIATES

Saudi Arabia: The Ministry of Commerce and Investments launches the Unified Register for Commercial Pledges and publishes its procedural rules

Thursday, 21st of March 2019



Introduction

Pursuant to the new commercial pledge law issued pursuant to Royal Decree No. M/86 dated 08/08/1439H (corresponding to 24 April 2018) (the **CPL**) and its implementing regulations issued pursuant to the resolution of the Minister of Commerce and Investments dated 11/8/1439H (corresponding to 27 April 2018) (the **Implementing Regulations**), the Saudi Arabian Ministry of Commerce and Investments (**MCI**) has published in the Official Gazette (*Umm Al Qoura'a*) on Sunday 08/07/1440H (corresponding to 17 March 2019) the procedural rules (the **Procedural Rules**) for registering commercial pledges over movable and future asset with the Unified Register for Commercial Pledges (**URCP**). MCI has also announced that the URCP is now accepting registration of commercial pledges electronically.

To whom does it apply?

Pursuant to the CPL and the Implementing Regulations, a secured creditor can only have a recognised priority security interest over a moveable asset or right which is governed by the CPL as against third parties by either:

- (a) taking possession of the asset that is the subject of the security; or
 - (b) registering the security with the URCP in accordance with the Procedural Rules.
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What are the Procedural Rules for the URCP?

Registration

1. All registrations must be made electronically and any person seeking to register a pledge must first create an electronic account with the URCP.

2. Information and details must be provided in Arabic and may additionally be provided in any other language where necessary.
3. The pledgor must submit a registration request to the URCP along with a copy of any relevant documents and the underlying pledge agreement, which must be compliant with the requirements set out in Article 2 of the CPL, which includes:
 - (a) the details of the pledge arrangement – including the name and details of the pledgor, the pledgee, the debtor (if different from the pledgor), the security agent (if applicable) and the holder of the asset, and the addresses and means of communication with each such party;
 - (b) the value of the secured asset – including the description of the pledged asset, its condition and its value (to the extent available, otherwise its approximate value) at the date of the relevant security document and in respect of any future asset (including receivables), provided that such future asset will be in the possession of the pledgor prior to the expiry of the pledge agreement, a description of the expected future asset, the approximate date in which such asset would come into existence and the approximate value of such asset;
 - (c) the value of the secured liabilities – including a general description of the secured debt, its value (to the extent available, otherwise its approximate value), or the maximum amount it is capped at, as applicable;
 - (d) the date of the security agreement; and
 - (e) the maturity date of the secured debt or the expected date of maturity of the debt owed by the debtor.
4. The URCP, following submission of the registration request via the online portal, notifies the pledgor of the pledgee's request for registration. The pledgor then has seven days from the date of the notification to raise any objections to the registration request. If the pledgor raises any such objection (within seven days of receiving the notification) then the URCP will reject the pledgee's registration request. In that respect a new registration would be required.

5. The URCP shall progress the pledgee's registration request following either the pledgor's confirmation of the registration request or after the lapse of seven days after the URCP's notification of the registration request (to the extent no objection was raised by the pledgor during such period).
6. If the asset being the subject of the pledge is an asset which must be registered in accordance with any other regulations (for example, vehicles must be registered with the General Department of Traffic at the Ministry of Interior), then, once the pledge is registered with the URCP, as per the steps outlined above, the URCP shall provide the relevant specialised registry in charge of such assets with the pledge details so that the asset being the subject of the pledge is marked as pledged in the relevant register. However, if the URCP has been notified by the specialised registry that it is not possible to mark the asset as pledged, then the pledgee's request for registration is cancelled.¹
7. The following documents and information are required to be provided or uploaded on to the online portal of the URCP for the purpose of registering a pledge:
 - (a) the estimated value of the asset being the subject of the pledge;
 - (b) the value of the secured debt;
 - (c) the termination date of the pledge agreement;
 - (d) the agreed enforcement mechanism (direct enforcement or enforcement before the enforcement court);
 - (e) the status of the asset being the subject of the pledge (current or future);
 - (f) the type of the asset being the subject of the pledge:
 - (i) if the assets are shares, then, the details of the shares must be provided and a copy of the share certificate or a letter from the company which issued the shares, confirming the details of the shares that are to be uploaded;

¹ We understand, following an unofficial verbal conversation with the URCP, that if the specialised registry refused to mark the asset being the subject of the pledge as pledged then the pledgor must contact the relevant registry to resolve any issues before the pledgee attempts to register the pledge with the URCP again.

- (ii) if the assets are bank accounts, then the details of the bank account(s) must be provided along with a copy of a confirmation letter from the bank with which the account(s) is/are held, confirming the details of the account(s);
- (iii) if the assets are bank deposits, then the bank deposit details, including their reference number, must be provided along with a letter from the bank with which the deposits are held, confirming such details; and
- (iv) if the assets are vehicles, then their registration details must be provided;
- (g) a copy of the document authorising the user of the online portal to register the security on behalf of the pledgee (e.g. the articles of association authorising the chairman of the board of managers to register security in favour of the pledgee or a power of attorney from the pledgee authorising such user to register the pledge in favour of the pledgee);
- (h) a copy of the articles of association of the pledgee or its bylaws (if the pledgee is a legal person);
- (i) the type of the pledgor (e.g. legal person or natural person);
- (j) the capacity of the pledgor (e.g. personal or as the owner of an establishment);
- (k) the pledgor's national ID number and date of birth (if the pledgor is a natural person) or the commercial registration number (if the pledgor is a legal person); and
- (l) a copy of the pledge agreement and any relevant agreements or documents.

Priority

1. A pledgee secures its priority over the pledged asset against third parties:
 - (a) immediately upon the completion of the registration process with the URCP (for the applicable asset that is not otherwise required to be pledged in accordance with any other applicable regulations (for example, ships)); and
 - (b) immediately upon the completion of the registration process with the specialised registry if the asset, being the subject of the pledge, is required to be pledged in accordance with any other applicable regulations.

2. The order of priority for different pledgees over the same asset may be changed upon the request of the pledgor and subject to the approval of the applicable pledgees.

Amending the registration

If the subject of the pledge is a future asset, then, without the need for the pledgee's approval, the pledgor is obliged to submit an amendment request to the URCP to change the status of the pledge asset from future to current as soon as such an asset materialises or comes to the possession of the pledgor. If the future asset, being the subject of the pledge, must be pledged in accordance with any other applicable regulations, then once the previous amendment request is processed by the URCP, the URCP shall provide the specialised registry with the updated details to reflect the same. Once the amendment is completed, the pledgor and the pledgee will be notified by the URCP.

The end of the registration

1. The pledge registration comes to an end upon:
 - (a) its cancellation by the pledgee or a judicial order;
 - (b) subject to point (c) below, the expiry of the duration of pledge (which must be entered on the online portal of the URCP at the time of registration); or
 - (c) the expiry of sixty days from the issuance of an enforcement document. The URCP may, however, extend this period by another sixty days upon the request of the pledgee or the enforcement agent. The pledge may not come to an end before the expiry of such periods.
2. The pledgee is required to cancel the registration of the pledge with the URCP within three days from the termination of the pledge agreement (whosoever arising, including its expiry) or following the enforcement on the pledged asset.

Searches

1. While the pledgor and the pledgee may request all the details of a registered pledge from the URCP, other members of the public may only request the URCP to confirm if an asset is already the subject of a registered pledge. The URCP should not charge any fees for such requests.
2. A member of the public may request specific details of a registered pledge from the URCP for a charge and only with the pledgor's approval. Such approval must include the following:
 - (a) the name of the member of the public who may request the details of the pledge; and
 - (b) the specific details or data that members of the public may be provided with.

Obtaining an enforcement document

1. The pledgee or the enforcement agent may request an enforcement document from the URCP as soon as the pledgee has the right to enforce its rights over the pledged asset pursuant to the pledge agreement.
2. Enforcement documents may only be obtained:
 - (a) during the period the pledge is registered with the URCP; and
 - (b) for a future asset, only once the status of the asset is changed to being current.
3. Where there is more than one pledgee in respect of an asset and the right to enforce on the pledge arises in respect of any of the pledgees, any pledgee seeking to enforce its pledge over the applicable asset must first identify the asset being the subject of the pledge that he/it is seeking to enforce against. Then, if an enforcement agent had not been appointed at the time of registration with the URCP, he/it must appoint an enforcement agent and provide the details of that agent to the URCP.

The obligations of the URCP and its users

According to the Procedural Rules, the party requesting the registration of a pledge or any amendments thereto, or utilising any other services of the URCP, shall be responsible for the accuracy of the information and the authenticity of the documents provided to the URCP. The URCP shall not be responsible for the accuracy of the information and the authenticity of the documents in the registrar unless such is due to its fault. If any of the details or information are incorrect or if the Procedural Rules are not followed correctly, an aggrieved party may make a complaint to the relevant authority or bring a claim before the courts of competent jurisdiction.

Charges

Any party submitting a request to the URCP shall bear its own costs, which are currently as follows:

Service details	Cost
Registering a new pledge	SAR 200
Amending the registration details of a pledge	SAR 100
Cancelling the registration from the URCP	SAR 100
Requesting specific details of a pledge (by a member of the public)	SAR 50

Requesting the details of all pledges registered over a certain pledgor (by a member of the public)	SAR 100
Requesting for an enforcement document extract to be issued	SAR 400
Requesting an extension of the enforcement period for an enforcement document	SAR 100

Pledges Registered with the Unified Centre for Lien Registration

The CPL, the Implementing Regulations and the Procedural Rules are silent as to whether commercial pledges that were registered with the Unified Centre for Lien Registration (**UCLR**) at SAGIA pursuant to the old commercial pledge law would be automatically registered at the URCP. However, the CPL and the Implementing Regulations state that a secured interest could only be effective as against third parties if it is in compliance with the CPL and the Implementing Regulations, which stipulates that any security must be registered with the URCP (or otherwise possession is required).

Based on an unofficial verbal confirmation from the URCP, we understand that all pledges that were previously registered with the UCLR would need to be registered separately with the URCP (and that there will be no automatic transfer of the registrations from the UCLR to the URCP).

Effective date

The Procedural Rules are effective from the date of their publication (being Sunday 08/07/1440H (corresponding to 17 March 2019)).

URCP clarifications

Based on an unofficial verbal conversation with the URCP, we understand that:

- (a) the URCP will be accepting registrations for different types of pledges in different stages and that currently only pledges over the following assets are registerable:
 - (i) current shares in limited liability companies;
 - (ii) vehicles;
 - (iii) bank accounts; and
 - (iv) bank deposits;
- (b) the next stages will allow the registration of pledges over floating assets, future assets, receivables and the other assets referenced in the CPL;
- (c) pledges which must also be registered in accordance with any other applicable regulations (e.g. ships) shall continue to be registered with the specialised registry and that such specialised registries will be automatically linked to the URCP in the near future;
- (d) pledgees that are not registered in the Kingdom of Saudi Arabia will not be able to register with the URCP, rather an onshore security agent would need to be appointed to hold the Saudi security on behalf of such creditors;
- (e) it appears that pledges (that would be governed by the CPL) over the Saudi assets of pledgors that do not have presence in Saudi Arabia cannot be registered with the URCP;
- (f) only a Saudi security can be registered with the URCP;
- (g) if the parties to a pledge agreement agree to direct enforcement for the purpose of enforcing the pledge, such must clearly be stipulated in the pledge agreement with reference to the relevant provisions in the CPL; and
- (h) the pledge agreement is required to be in Arabic in order to be filed with the URCP.

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 team consists of 25+ lawyer led by Zeyad Khoshaim – the managing partner of the practice with over fifteen years of experience across the United States and Saudi Arabia. Zeyad sat as a member of the Capital Market Authority Advisory Committee advising the CMA board. He is considered as an expert on M&A, corporate governance, dispute resolution and capital markets.

Our 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, 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.

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