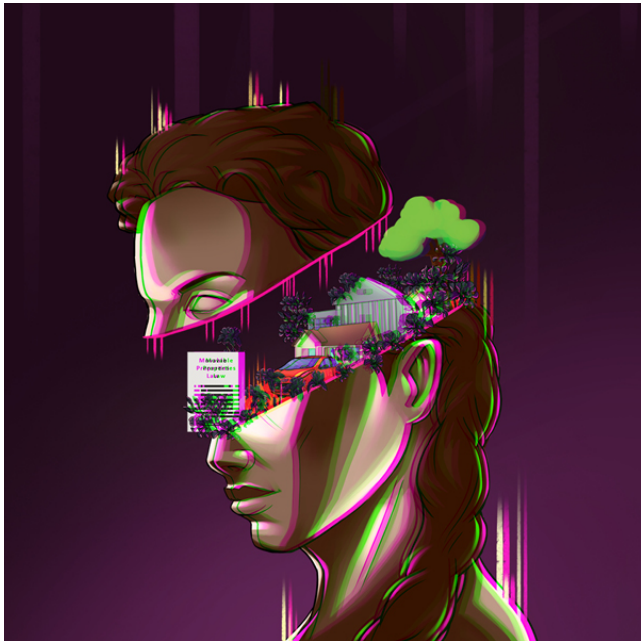


The New Movable Properties Law: the start of a new regime

Dana Abduljaleel - Partner - Banking and Finance / Projects
d.abduljaleel@tamimi.com - Amman

Nadeen Haddadin
N.Haddadin@tamimi.com - Jordan



The Jordanian Government issued The Law of Security of Rights in Movable Properties number 20 for the year 2018 ('Movable Properties Law') which provides a legislative structure for registering, perfecting and enforcing security over moveable assets in Jordan. Pursuant to the Movable Properties Law, Regulation number 125 for the year 2018 on the Regulation of the Registry of Interests of Movable Properties ('Movable Properties Regulation') was issued to regulate the publication of movable properties and came into force in November 2018.

The new regime established a publicly accessible electronic registry, managed by the Directorate of Central Trade Registration at the Ministry of Industry, Trade and Supply ('Registry'). The Movable Properties Law provides a mechanism to secure a creditor's priority over movable assets via its publication in the Registry. The priority of the pledger will be determined as of the time and date of such publication in the Registry. The Registry also offers future lenders the security and assurance before entering into loan agreements as the publicly searchable Registry makes for an easier due diligence assessment on the borrower's past pledged assets.

The objective of the Movable Properties Law is to ensure priority over any security that is published on the Registry. It has caused radical shifts in many industries and has provided a sense of surety and assurance to lenders who have registrable rights over movable assets. Prior to the enactment of the Movable Properties Law, lenders did not have a proper guarantee on any pledged movable assets that were not in their physical possession. The Jordanian Civil Code number 43 for the year 1976 (the 'Civil Code') previously was the only law that provided for a security process over movable assets by way of a possessory pledge. This mechanism required either the lender or a custodian (the 'Adel') to take physical possession of the pledgor's secured movable property until such time as the debt may be settled. It is important to note that the Movable Properties Law offers various developments to the existing law, however, it does not repeal nor replace possessory pledges under the Civil Code.

The old security regime

The old security regime had its shortcomings as in many industries such as the construction industry and the energy industry, parties may wish to allow the debtor to retain possession of the pledged assets in order to carry out the business for which the debt was procured. In such cases, it became common practice for the below structure of a constructive possession to take place in order for the lender to attempt to secure their movable properties to the extent possible:

1. the debtor (i.e. the mortgagor) enters into a possessive mortgage agreement with a mortgagee, the security agent (commonly a bank) on behalf of the lender and any other secured party in the loan agreement. Such agreement provides for the appointment of an Adel where the mortgagor agrees to enter into what is called a "Adel Appointment Agreement".
2. The Adel Appointment Agreement is executed between the mortgagor, the mortgagee and the Adel. The mortgagor acknowledges that he or she has handed the possession of the mortgaged property to the Adel, and the Adel consequently acknowledges that he or she has handed back the mortgaged property to the mortgagor on an *la'arah* basis (leasing without compensation). This allows the mortgagor to retain possession of the pledged assets (such as machinery).

The aforementioned mechanism provided for a complicated method of creating a security that, at best under Jordanian law, is uncertain in effectiveness and lacked practical enforcement procedures. Moreover, under the Civil Code a pledged security must be identifiable or fixed, therefore, future assets did not fall under the creation of security under the Civil Code.

The new security regime

Many industries welcomed the law together with its regulation as it specified the logistics relating to what a registrable moveable property is and what procedures need to be taken in order for a security interest to be registered and published in the Registry.

February 24 2020 marked a crucial date for both the Movable Properties Law and the Registry, as this was the deadline date for all existing, yet previously pledged assets to be published in order to establish their priority as an existing security. This date marked the difference between what constitutes a new or existing security. In order for any security pledged under old security regime to establish its priority it needed to be registered as an existing security and published by the February 24 2020 on the Registry. Any creditor that failed to register his or her rights over movable assets on that date risked losing their priority if another creditor published his or her rights over the same security by this deadline as no further existing security may be published. Subsequently, any security interest created after the deadline date would constitute a new security under the Registry.

What constitutes a registrable movable property?

The Movable Properties Law provides for a wide-ranging list of assets that constitute registrable movable assets. The law includes transactions and contracts that include a guarantee to perform an obligation via the creation of a collateral right over a debt, right or movable asset of the following:

1. mortgages other than possessory mortgages;
2. the sale of a movable property provided that the transfer of this property is deferred until the price is paid; and
3. the sale of a movable property subject to a refund or repurchase thereof, when the obligation is fulfilled.

The subject of the guarantee may be any movable money whether material or proprietary, debts or rights, existing or future, whether they are owned or due for warranty or its content, which includes the following:

1. debts, whether due or deferred;
2. bank accounts, including a deposit account and a current account;
3. written transferrable instruments upon delivery or endorsement that prove the entitlement to an amount or ownership of goods, including commercial papers, certificates of deposit, shipping documents and depository receipts over merchandise; and
4. trees prior to cutting them and minerals prior to extracting them.

The right of a security arises to guarantee one or more obligations, whether it was prior to the date the security right was created, bound with it, or later on it, and the obligation may be specific or identifiable. Thus, the Movable Properties Law tried to resolve the shortcomings of the Civil Code as it included the ability to pledge future assets which under the Civil Code were not available and was restrictive in that it only encompassed assets that are fixed and identifiable. Whilst the Movable Properties Law, as provided above, expressly contemplates security over present and future assets, debts, and rights; the Movable Properties Law further provides that, in respect of the creation of the security interest, reference shall be had to the laws establishing said security i.e. the Civil Code and the Trade Law. Therefore, it remains to be seen how the publication of security interests over future assets, debts and rights will be treated in light of the Moveable Properties Law.

The Movable Properties Law does not apply to any of the following transactions and contracts:

1. assignment of rights for the purposes of debt collection;
2. creating rights in order to guarantee obligations on material or proprietary movable property that require registration under other legislation; and
3. purchase of debts that are part of a project ownership transaction.

Under the Movable Properties Law, it is not permissible to create a security right for any of the following:

1. movable assets owned by banks, with the exception of the equipment needed to finance its purchase;
2. useable objects intended for personal or household purposes except to finance their purchase;
3. public funds, endowment funds, funds of foreign embassies, and entities that enjoy immunity;
4. privileges and licenses granted by the state;
5. the dues of the insured or the beneficiary under an insurance contract, unless these dues are the returns of the guarantee; and
6. alimony, wages, salaries, and labour compensation.

Requirement for publication

The Movable Properties Law establishes certain key requirements in order to create and enforce the right of a security between its parties, the following need to be present in order for a right to be established:

1. Parties must enter into a written guarantee in the form of a regular or official bond or an electronic agreement or to have a condition in the contract that establishes a secured obligation.
2. The guarantor must be entitled to establish a right over the security.
3. The security agreement must include a general or specific description of the secured obligation, and the obligation may be described by setting the upper limit for the obligation or the secured amount.
4. The security agreement should include a general description or a specific description of the warranty, provided that the description is specific if the warranty is used for personal or household purposes.
5. The beneficiary (lender) to pay the obligation required or adhere to it.

In order for a party to secure their rights over a movable property, such right must first be published in the

Registry. In order to publish any rights over assets the guarantor's written consent is required, as the guarantor may instructor authorize the lender or an agent of the lender to publish such a right on the Registry. Publication shall take place once a completed electronic form is present in the Registry is filled, provided that it includes the following basic information:

1. the guarantor's information which includes his or her name according to official documents and his or her national number. If the guarantor is a Jordanian person, his or her passport number and its expiration date is required. If the guarantor is a non-Jordanian, then his or her assigned unified personal number if any is required. If the guarantor is a Jordanian legal entity, then the registration number and the national number of the establishment is required. If the guarantor is a non-Jordanian legal entity, then the registration number of the entity is required;
2. the name of the beneficiary, his or her information and address;
3. description of the guarantee; and
4. the period of validity of the security interest (expiration date of the guarantee).

Asserting a security against third parties under the Movable Properties Law

Once a right is created and registered under the Movable Properties Law it shall become effective against third parties; no subsequent security rights over the published property shall be established except by publishing such rights in the Registry.

Enforceability

Perhaps one of the main improvements that the Movable Properties Law has established is the enforcement mechanism over published securities. Prior to the enactment of the Movable Properties Law the enforcement of possessory pledges had their own procedures, whereby they had to be sanctioned by the court and then sold via public auction; self-help remedies were not a viable option under Jordanian Law.

The Movable Properties Law introduced new procedures for enforcement of security over movable assets. These include the ability to contractually agree to the direct and voluntary execution as against the security. Such contractual rights further include: (i) rights of set-off in cases where the account bank is the holder of the security or a right to make demands against a third party bank holding the pledged account; (ii) rights to cash amounts or possess the goods subject to a guaranteed tradable instrument; and (iii) the collection of debts (including expenses) from third parties. Further, the Movable Properties Law includes the option to apply for an order to repossess and sell the assets privately.

As mentioned above the Movable Properties Law is new and untested, therefore it is still unclear how its enforcement options will be applied and interpreted. However, the law does provide for more secured options on enforcement.

Conclusion

The Movable Properties Law brings Jordan one step closer to a more efficient and progressive system of ensuring secured rights over movable assets which now brings it more into line with other sophisticated legal systems.

The Movable Properties Law, together with the creation of the Registry, shall provide lenders with more comfort and security in understanding the mechanism of ensuring their security interest, as they now

appraised of which movable assets may be registered, the method in which their interest in movable properties may be secured. The Movable Properties Law offers lenders a sense of transparency regarding their priority over pledged assets as this information is easily accessible in the public Registry which clearly stipulates which assets the borrower has previously pledged. This shall hopefully make it easier for Jordanian companies and individuals to procure financing and enhance the progression of Jordan's lending market.

Moreover, it has introduced many new concepts that have built and improved on the existing law, and has commendably provided a method to ensure security interest over pledged assets without the need for a lender to hold physical possession of the property.

However, the Movable Properties Law is not without its deficiencies; it is still unclear as to what treatment shall be bestowed on pledges over future assets. Although, it expressly considers security over future assets and rights, it continues to stipulate that the creation of the security interest shall be established by the old regime. Therefore, it remains to be seen how the publication of security interests over future assets, debts and rights will be treated in light of the Movable Properties Law.

The Movable Properties Law also establishes certain self-help remedies that may hopefully accelerate and ensure the enforcement of published securities. With that said and keeping in mind that the Movable Properties Law is still new and untested, we will still need to await and see how it will be implemented in Jordanian Courts and how it will be employed in practice as enforcement remains unclear under the Movable Properties Law. Therefore, it could be a while until we experience how this new security regime shall actually be reflected in practice.

For further information, please contact [Dana Abduljaleel \(d.abduljaleel@tamimi.com\)](mailto:d.abduljaleel@tamimi.com).