

Trust Receipts - Law and Practice in Qatar

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The Use of Trust Receipts

Trust receipts assist importers in refinancing their payment obligations upon the maturity of a letter of credit (“LC”). Following payment of the purchase price by the LC issuing bank (or after an agreed period), the importer is required to reimburse the issuing bank. Until such time as the importer reimburses the LC issuing bank, the documents of title relating to the goods imported (e.g. bills of lading) are retained by the bank and this will prevent the importer from on-selling the goods. Law No 27 of 2006 (the “Commercial Code”) states that the LC issuing bank has a lien over the bills of lading until such time as the importer (being the LC issuing bank’s customer) reimburses the LC issuing bank for payments made towards purchase of the goods that have been imported.

The key issue here is one of cash flow management for the importer. The importer will prefer to first sell the goods imported before settling its payment obligations to the LC issuing bank. The trust receipt arrangement allows the LC issuing bank to release the documents of title relating to the imported goods to the importer while retaining its ownership interest in the said goods.

Trust Receipts Generally

The trust receipt arrangement provides the bank with a form of quasi-security by virtue of the bills of lading relating to the imported goods being made to the order of the bank. The bank releases the bills of lading to the importer and permits the importer to sell the goods on the condition that the proceeds of sale are used to repay the bank.

The following are the typical steps in a trust receipt transaction:

- The LC issuing bank (the “Bank”) issues an LC to the exporter at the request of the importer (i.e. the customer of the Bank (the “Customer”).
- The exporter will provide shipping documents including a bill of lading to the order of the Bank to comply with the terms of the LC.
- Once the complying documents under the LC are provided to the Bank, the Bank makes payment to the exporter and the Customer is required to reimburse the Bank for the payments made to the exporter (the “LC Reimbursement Amount”).
- At this stage, the LC Reimbursement Amount will be treated as a short-term loan from the Bank to the Customer.
- The bills of lading will be released to the Customer after the Customer signs a Trust Receipt.

Under the trust receipt, the bank is the owner of the goods and the Customer undertakes to deal with the goods represented by the bills of lading as the agent of the Bank. The proceeds of the sale of such goods

are to be deposited by the Customer with the Bank and used to repay the LC Reimbursement Amount. The trust receipt ensures that the Bank retains its title in the goods while releasing the right to deal in the goods to the Customer.

Trust Receipts under Qatar Law

Trust receipts are not defined under the laws of Qatar, however they are used in Qatar as a method of import financing.

At the outset it is pertinent to consider the status of a bill of lading under Law No 15 of 1980 (the "Maritime Code"). Under Article 146 of the Maritime Code a bill of lading can be negotiated by endorsement (unless the bill of lading restricts negotiation). The holder of a bill of lading is entitled to take possession of the goods represented by the bill of lading. Further, Article 970 of the Civil Code (Law No 22 of 2004) states that possession of a moveable object or a negotiable instrument representing the moveable object creates a presumption of ownership.

Under trust receipt arrangements, the bill of lading is either endorsed to the Bank or made to the order of the Bank. Therefore, there is a presumption of ownership of the goods (underlying the bill of lading) in favour of the Bank. The Bank can then deal with the goods by appointing the Customer as its agent to sell the goods on its behalf.

Under the trust receipt, the relationship of the Customer and the Bank is one of principal and agent. Article 716 of the Civil Code defines an agency as a contract by which an agent undertakes to perform a legal action for the principal. The agent should not exceed the limits of the scope of the agency unless it is impossible to obtain the consent of the principal for the overreaching of the scope (Article 722).

Article 362 of the Penal Code states that with respect to breach of trust "a penalty of not more than three years in prison and a fine of not more than ten thousand Riyals [USD 2,800] shall apply to a person who misappropriates, uses, or misuses amounts of money, bonds or any other moveable properties to harm the holders or the possessors whenever delivered under a contract of trust, rent, mortgage or a proxy".

The Qatari Court of Cassation, in judgment No. 70 of 2005, also confirmed that there are five types of "trust" or "Amana" contracts in light of Article 362 of the Penal Code. These are:

1. Trust;
2. Lease;
3. Use without consideration "E'ara"
4. Pledge; and
5. Agency.

Therefore, the breach of any of the trust receipt arrangements (being a form of agency) would constitute a breach of trust which is subject to a penalty under Article 362 of the Penal Code.

Re-Characterization Risk

Under other GCC laws (such as the UAE Commercial Code) there is a clear reference to the trust receipt structure described above. However, in Qatar while there is a legal basis to establish the trust receipt arrangement, there are no specific provisions in the Commercial Code governing the same. There is therefore a risk that a Qatari court may treat the trust receipt arrangement as a simple loan and security arrangement and not accept the presumption of ownership in favour of the Bank.

To counter this, in addition to endorsement of the bill of lading in favour of the Bank, the rights under the sale contract or invoice relating to ownership of the goods should also be transferred to the Bank. The court may then construe this as a security under Article 234 of the Commercial Code where possession of the goods has been transferred to the Bank as security such that the ownership of the goods is vested in

the Bank and not the Customer.

Tracing and Comparison with position in the UAE

From the Bank's perspective, if the Customer fails to deposit the sale proceeds from the goods with the Bank, the Bank will want recourse to such proceeds. The Commercial Code in Qatar does not have a specific provision that gives the Bank recourse to the proceeds of sale. The position in other GCC states is different. In the UAE the situation is covered by Article 439(5) of the UAE Commercial Transactions Law (UAE Law No 18 of 1993), which states that the Bank will have recourse to the goods as well as the proceeds of sale of the goods under a trust receipt arrangement. In Qatar, the Bank will rely upon the rules of agency to have such recourse. That said, there are some inherent practical difficulties with this arrangement as the control over the goods will ultimately remain with the Customer.

Conclusion

Although Qatar does not have a specific law addressing the use of trust receipts, their use remains common and is likely to remain so. Nonetheless, it would give users of trust receipts more confidence and clarify a number of issues if Qatar adopted the legislative measures taken in other GCC states, in particular the UAE.