

Client Alert: New Executive Regulations Regulating Security Interests Over Moveable Assets in Egypt

By Dahlia Zamel

Introduction

More than one year after the publication of Law No. 115 of 2015 Regulating Security Interests Over Movables (the “Secured Transaction Law” or the “Law”) in the Official Gazette, the long awaited Executive Regulations (“Executive Regulations”) were published on 15 December 2016 and came into force the following day.

The Secured Transaction Law, which came into force on 14 February 2016, was enacted in a bid to modernize the legal system and establish a framework to raise financing by way of secured debt. Many procedural aspects of the Secured Transaction Law were deferred to the Executive Regulations, the lack of which have hindered the implementation of the Secured Transaction Law.

The Executive Regulations which expand on and clarify certain provisions of the Secured Transaction Law, still do not address all shortcomings of the Secured Transaction Law and it remains to be seen how the Egyptian Financial Supervisory Authority (“EFSA”), the regulating authority, will in practice implement the Law and its Executive Regulations. Of the main clarifications contained in the Executive Regulation is the relationship between existing regulated security frameworks, which remain in force and the provisions of the Secured Transaction Law and its Executive Regulations.

Securities Register

The Securities Register to be established and maintained by EFSA or a designated operator will be fully automated and available online. The platform will enable online filing of applications, conducting searches and even payment of applicable fees. All entries, submissions and searches will be performed online. While the Egyptian government has been trying to automate many of its systems and provide online solutions, the progress has been slow in converting an existing paper system to a virtual one for most services. It is hoped that the creation of the Securities Register as an automated online system from the start will facilitate access to information.

The Executive Regulations do not address a parallel paper based register but it will be possible however to obtain certified hard copies from the Securities Register. Where the registration is based on a court ruling or in cases of liquidation, the application may be submitted in paper form to be uploaded by the operator of the Securities Register.

In line with the Law, any creditor is entitled to register his security interests in the Securities Register based on an application to be filed online containing certain required information, including a description of the secured assets, the term of the security and identification of the parties. The Executive Regulations include a clear obligation on the creditor to obtain prior written consent from the debtor or security provider as the case may be prior to registering any security rights. A signed security agreement is sufficient evidence of

the debtor / security grantor's consent. Upon submission of a duly completed form including all required information, a printable confirmation will be provided as evidence of the registration.

The scope of a registered security interest may be amended by way of an online application. The amendment may extend to the creditors, the value of the secured obligations, the term of the security interest, etc. In all cases where an amendment is not to the benefit of the debtor, the debtor must be notified of such amendments in accordance with the rules and timelines to be determined by EFSA. The ranking of any such amended security interest shall be determined from the date of registration of such amendment.

Accuracy of Information and Liability

The operator of the Securities Register is not liable for, nor does it verify, the information uploaded to the Securities Register. Article 16 of the Executive Regulations clearly states that confirmation of the registration does not constitute a confirmation or ratification of the legal basis of the security nor of the information provided. Given the ease afforded to creditors in registering their security interests, creditors are liable towards the operator of the Securities Register, any interested and third parties for any damages arising as a result of incorrect or inaccurate information provided by the secured creditor. On the other and, the operator of the Securities Register is liable for the accuracy of information which it uploads to the Securities Register based on a paper based application (i.e. any information which is upload that is not consistent with the paper based application). In general, the lack of any real bona fide protection of the Securities Register is a major weakness as it potentially carries a very high risk for secured creditors.

A debtor is entitled to object directly to the Securities Register to any information made available in the Securities Register. Such objection shall be notified to the creditor and the debtor shall be informed within one week of the procedures which have been taken. A debtor may also at any time, resort to the court and file a claim before the urgent matters judge. Any such claim shall not suspend or in any way prejudice the effectiveness of the security interests.

Rules for Specific Types of Assets

The Executive Regulations include additional specific requirements relating to certain types of movables as follows:

- *Bank accounts, time deposits and bank certificates.* This will require that the secured creditor obtain a written letter of no objection from the bank in question, and must be filed along with the application for registration. The secured creditor is also obliged to notify the bank within one week at most of the registration having been completed. Neither the Law nor the Executive Regulations require a specific form for the notification, but banks may set their own requirements for such notifications.
- *Possessory Pledge.* Creditors with an existing possessory pledge created pursuant to the provisions of the Egyptian Civil Code may now register such possessory pledge, and such registration will guarantee the creditor the same rights as having actual possession of the pledged assets under a possessory pledge. Upon registration, possession of the pledged assets should be returned to the debtor or security grantor as the case may be.
- *Commercial Pledge.* The Law and the Executive Regulations do not rescind the obligation to annotate the commercial register of the secured debtor which has granted a commercial pledge over his assets. In order to register such a pledge in the Securities Register, the creditor must also provide a recent extract of the commercial register showing the pledge. The same applies when cancelling the registration. Any registration or amendment pertaining to a commercial pledge is only reflective of the

pledge annotated in the commercial register. In the event of enforcement, the creditor must notify both the commercial register and the Securities Register.

- *Intellectual Property.* Similarly to a commercial pledge, a pledge of intellectual property (patent, trademark, industrial design) is only reflective of the registration with the competent intellectual property authority and hence the provisions of the commercial law and intellectual property law must be complied with when registering a security interest over any intellectual property.
- *Assignment of Security Interests.* Assignment of registered security interests, including ranking is permitted and effected by an application to be made online to the Security Registrar. The Assignment is valid vis-à-vis third parties from the date it is published in the Securities Register and vis-à-vis the security grantor and debtor from the date they are notified of such assignment in the form provided for in the security agreement. This means that it is no longer necessary that a notification of an assignment of a security interest be date certified or notified by any formal process unless the security agreement provides so.
- *Security over movables designated for use in production.* The Executive Regulations provide a mechanism for perfecting security over raw or primary materials which are intended to be used in the production or manufacture of a different final product. The application to register such security must include a description of the intended final product and the value of such raw or primary materials as a percentage of the finished product. To the extent there are several secured creditors in relation to the different components, each creditor is entitled to register his security rights over his pro-rata share of the value of the final product.

Direct Enforcement

Subject to the terms of a security agreement, upon the occurrence of a default, the secured creditor is entitled to take possession of, and directly, sell the encumbered assets by auction, provided that the debtor is notified of the default, and given a 5 day grace period to remedy the default.

Other registered secured creditors must also be notified of the impending sale of the encumbered assets at least 5 days prior to the sale.

Proceeds of a direct sale by the creditor must be deposited with the competent economic court along with a list of all security interests obtained from the Securities Register.

The court determines the distribution of the proceeds of the sale taking into account the Law, ranking as registered, and any objections from interested parties. Proceeds are distributed within 7 days of the final distribution schedule issued by the court.

Court-Sanctioned Enforcement

In the absence of an agreed mechanism for the direct enforcement or sale by the creditor of the secured assets, the creditor may apply to the Economic Court in Egypt for an order to sell the encumbered assets. Once such order is issued, the sale will take place at the place and time determined by the judge provided that the debtor and other secured creditors are notified of such order within no more than 5 days from its issuance. Unfortunately, neither the Law nor the Executive Regulations provide the court with a deadline to issue the ruling and therefore, given the backlog of cases before the courts, such an order may take some time.

What next?

Creation of the Securities Register and actual implementation will be challenging. It is not anticipated that the register will be available in the very near future and can take anywhere from a few months to years to have a properly functioning system. However the Secured Transaction Law as supplemented by the Executive Regulation is a huge leap in the finance sector in Egypt. The framework as a whole, and in particular the Securities Register which will be easily accessible to all lenders should result in a transparent framework for secured financing which will hopefully achieve the desired outcome of increased availability and reduced cost of credit.

If you would like more information about this topic then please contact us.

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