



TAKING,
PERFECTING AND
ENFORCING
SECURITY IN OMAN
(Pledge, Assignment
& Guarantee)

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In a companion note to this piece, we considered that there are mainly five (5) types of collaterals/securities that are used by financial institutions/lenders globally – i.e. charge over movable assets, charge over immovable property, assignment charge, pledge and guarantee.

Whereas, the prior note dealt with the types of mortgages available in Oman (i.e. legal and commercial), we now consider the other types of security interests, those being pledge, assignment and guarantee.

PLEDGE

In Oman, a pledge is the method often used to create a charge over shares, stocks and other movable assets, as security for debt which is deemed commercial in nature.

To create an effective pledge, the following conditions must be satisfied by the parties to the pledge arrangement:

- Possession of the pledged collateral must be transferred to the pledgee or third party appointed by the pledgee (usually known as the “Mucaddam”);
- Pledged collateral must be placed at the disposal of the Mucaddam in a manner that leads others to believe that the item is in the custody of the Mucaddam – e.g., banners placed at the warehouse where the goods are stored stating that the goods therein are placed under the custody of the Mucaddam and no one but the Mucaddam is allowed to exercise any authority over the movement of the goods; and

- A legal instrument must be executed by the pledgor in favour of the pledgee allowing the pledgee to appoint a Mucaddam with exclusive rights to deal with the pledged collateral – i.e. to allow the pledgor to withdraw pledged goods subject to the consent of the pledgee (usually in the form of note issued by the pledgee to hand over certain quantity of the goods to the pledgor or its representatives), take note of any incoming goods or goods being handed over to the pledgor or its nominee or to exercise such authority as is necessary for the safe custody of the pledged goods / items.

Established rights in nominal instruments which can be evidenced through a document must be pledged by way of written confirmation that such is by way of security and the same must be recorded on the books of the

party issuing such instrument and the issuing instrument must be endorsed as “Established Rights.”

Where the pledged item is commercial paper, the pledgee must take all measures required in law to establish the right in the paper e.g., registration with the Muscat Clearing & Depository Company SAOC, also known as is a Muscat Securities Market company for creation of a pledge over shares of a joint stock company.¹

The requirements for registration and redemption of a share pledge and the applicable fee are subject to change however there is a standard form that both parties need to complete in order to comply with the registration process.

Additionally, the parties to a share pledge should submit board minutes authorizing the entry into the share pledge agreement, registration of the share pledge and appointment of a signatory of the pledgor and pledgee along with the share pledge agreement and relevant identification documents.

To enforce a pledge in case the debtor defaults in its payment obligations on the due date, the pledgee may upon three days prior notice to the debtor, approach the Chief Judge of the Court seeking an order to sell all or part of the pledged item. Any order by the Chief Judge of the Court shall only be implemented upon lapse of 5 days from the date on which the order was served on the debtor.

Although Oman does not in the ordinary course recognize the concept of “floating charge”, it is possible to create a pledge which in its form is very close to the floating charge and can be utilized (for example) by financial institutions to provide pledge based working capital financing to the manufacturing sector in Oman.

ASSIGNMENT

Oman law does not specifically provide for creation of an assignment charge in favor of lenders (i.e. financial institutions), or otherwise. Therefore, an “assignment” is not regarded as true security under Oman law; hence, an assignment charge does not require registration with any authority and as such cannot be regarded to secure the rights of a creditor.

Having said that, since there are no specific provisions for the creation of an assignment charge under applicable law, an assignment charge may be created (in effect) by the concerned parties thereto by execution of a contract between them, listing the terms and conditions of the assignment. However, the following conditions must be complied them, while creating any assignment charge:

- The parties must execute a contract to assign the specific rights (e.g. receivables and/or contracts);
- The assignor must send a notice of assignment to the debtor who is liable to pay the debt to the assignor;
- The assignee must obtain an acknowledgment of the notice of assignment from the respective debtor to perfect the assignment charge and to avoid any

inconvenience at the time of enforcement of charge (if need be).

The assignment charge can be released upon satisfaction of the liabilities of the assignee towards the assignor by way of letter being issued by the assignor to the respective debtor / credit that the debtor / credit is released of its obligations provided under the respective notice of assignment which was duly acknowledged by the debtor / creditor.

To enforce any assignment charge obtained by a bank or financial institution, the bank or financial institutions as the case may be, will need to file a statement of claim / petition along with the details of the payable amount and all the documents evidencing the loan in the primary court along with the requisite court fee of 2% of the claim amount or OMR 3,000/- in case the 2% of the claim amount is in excess of OMR 3000/-. It is pertinent to note here with respect to the jurisdiction of the primary court, that if the value of the claim is less than OMR 70,000/-, the case will be heard by a single judge and in case the value of the claim is above OMR 70,000/-, it will be heard by a bench of three judges.

GUARANTEE

A guarantee is a definite obligation that provides an opportunity for a company or a person, to guarantee obligations on behalf of third parties.

It is where one undertaking to answer for payment is merged with another in the demand for performance of an obligation.

In practice, in order to perfect a guarantee, the law requires partners, managers and directors, as the case may be, of a commercial company to

¹ It should be noted here that under Oman law, it is not possible to pledge the shares of an Omani limited liability company or partnership company.

obtain prior consent of all its members to use the company's assets for their own benefit or for the benefit of third parties. This will also be the case of a joint stock company by way of acquiring an express authorization or by resolution of a general meeting to guarantee the debts of third parties (except guarantees granted in the ordinary course of the company's business).

To enforce any guarantee(s) obtained by the bank or financial institution for securing the liabilities of the borrower, the bank or financial institutions as the

case may be, will need to file a statement of claim / petition along with the details of the payable amount and all the documents evidencing the loan in the primary court along with the requisite court fee of 2% of the claim amount or OMR 3,000/- in case the 2% of the claim amount is in excess of OMR 3,000/-. It is pertinent to note here with respect to the jurisdiction of the primary court, that if the value of the claim is less than OMR 70,000/-, the case will be heard by a single judge and in case the value of the claim is above OMR 70,000/-, it will be heard by a bench of three judges.

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