

The New Saudi Finance Laws

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On July 2012, the Saudi Council of Ministers issued 5 new laws in relation to the finance industry, with more focus to real estate financing, as well as the execution/enforcement mechanism.

These laws are the Execution/Enforcement Law; the Registered Real Estate Mortgage Law; the Real Estate Financing Law; the Law on Supervision of Financing Companies and; the Finance Lease Law. It is expected that these laws will have an enormous impact upon the mortgage and finance markets.

With the exception of the Registered Real Estate Mortgage Law, the implementing regulations of these laws should be issued within the coming months by the relevant authorities.

This article presents a general overview of the content of these laws:

1) The Execution Law (EL)

Under the EL, execution and execution procedures will be carried out by specialized Execution/Enforcement Judges (EJ) in the general courts in the main cities and districts. Specifically, the EJ would be in charge of enforcing any judicial resolution issued by the competent courts, judicial authorities, arbitration tribunal, as well as, judgments and arbitration awards issued outside the Kingdom. Additionally, the EJ will be entrusted with the authority to seek police support in relation to enforcement.

The EL provides that there will be certain documents that can be enforced without the resort of the judicial channels, for example, Negotiable Instruments, Reconciliation Statements and Authenticated Contracts.

Further, the EL introduces several provisions in considerable detail related to the method of enforcement attachments, protective attachments and selling of assets through auctions or any other methods depending on the type of asset.

More discussion about the EL will be subject to another article to be published in the coming months.

2) The Registered Real Estate Mortgage Law (RREML)

The mortgage under the RREML refers to a contract where the mortgagee obtains rights on a certain real estate, pursuant to which the mortgagee may seek settlement of the debt owed to it. The RREML provides that the mortgage will be registered, as per the rules of the Realty in Kind Registration Law (RKRL), or the recordation of the mortgage will be by way of indication at the competent court or notary public if the RKRL is not applied.

The mortgagor may dispose of its mortgaged property if the mortgage is recorded as per the RKRL, otherwise, the mortgagor shall have no right to dispose of its mortgaged property unless an agreement is concluded otherwise. The mortgagee may assign its right in settlement of the debt along with the guarantee of the mortgage to others.

Under the relevant Council of Ministers resolution, it was indicated that the Ministry of Commerce, in coordination with the Capital Market Authority, should review the Commercial Mortgage Law in line to the new provisions stipulated under the RREML. Some observers are of the view that the

registration of a real estate mortgage would include registration of movables as well, for example, cars, vessels or planes.

3) The Real Estate Financing Law (REFL)

The REFL provides that the Saudi Arabian Monetary Agency (SAMA) would be responsible for the supervising the real estate financing practice in the Kingdom. The REFL were issued in 15 articles and SAMA will issue the implementing regulations of the REFL within 90 days from the issuance of the REFL, however, delays are likely.

Under the REFL, the real estate finance companies should be licensed by SAMA in accordance with REFL and the Law on Supervision of the Financing Companies. Also, it would be permissible to incorporate joint stock companies to refinance the real estate financing, as well as being possible to cover the risks related to real estate financing through insurance companies licensed by SAMA in accordance with the Cooperative Insurance Law.

More importantly, the REFL has introduced that the real estate financing companies may refinance through securitization in accordance with the Capital Market Regulations.

SAMA will issue the benchmarks and procedures for the real estate financing and for reviewing the financing forms and contracts. SAMA is to publish the data for the real estate funding and sponsoring development of financing techniques including facilitation of cash flows between the primary and secondary markets.

It is also indicated that under the REFL, the Real Estate Development Fund plays the role of government supporter by allocating a part of its budget as guarantees and support for the real estate development to the entities which are entitled to the support. The government guarantees fulfillment of the financial obligations against the Fund's guarantees

4) The Law on Supervision of Financing Companies (LSFC)

Similar to the real estate financing companies, SAMA will be the regulatory body to license finance companies in the Kingdom. The LSFC provides that the finance company will be in the form of a joint stock company and that a certain percentage of the finance company must be offered through a public offering after two financial years. SAMA will also determine the maximum foreign ownership allowance in the finance company.

The LSFC provides that each finance company must carry out its financing practice in accordance with Shari'ah principles as per the decisions of the Shari'ah committees that should be formed within the financing companies itself. The finance company may carry out financing in one or more activities; for example real estate financing, lease financing, credit card financing ..etc, each of which will need to be licensed by SAMA.

The LSFC stipulates that the finance company would be obligated to allow its customers early repayment in exchange for deductions from the financing as per a certain formula that should be available to the customers before contracting take place.

5) Finance Lease Law (FLL)

The FLL is intended to regulate the large market in finance leasing currently being practiced throughout the Kingdom. Under the FLL, a lessor, under a lease contract, may lease the assets or utilities in his capacity as the owner of these assets, or owner of interests arising from these assets.

Through the lease contract, the lessor is obligated to use the leased asset for the purpose agreed upon and will be responsible for the operational maintenance versus the basic/main maintenance which is typically the responsibility of the lessor.

The FLL provides that it would be permissible to issue negotiable deeds against the leased assets pursuant to the rules issued by the Capital Market Authority. Furthermore, it is indicated that one or more joint stock companies can be incorporated to be responsible for the registration of lease financing contracts. Such joint stock company must be licensed by SAMA. A new judicial committee should be established under the name “the Financing Disputes and Violations Resolution Committee” to resolve any dispute arising from application of the LSFC and the Finance Lease Law.

The above was an overview of the “New Finance Laws”. It was stipulated that the laws will take effect after 90 days of the publication of the laws in the official gazette, with the exception of the EL, which will come into force after 180 days of the publication of the law in the official gazette, however, to date none of these laws have been published. Further, we are of the view that the full picture on how these laws will be applicable and that the full enforceability of the laws will take some time, perhaps years.