

Qatar: Assignment of rights and Obligations under the Qatari Civil Code

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Once such receivables are assigned to the lenders, these receivables are 'ring fenced' thereby securing the cash flows from the asset for servicing the payments under the loan provided in connection with the asset.

Generally, an assignment is a process of transferring rights and/or obligations held by one party—the assignor to another party—the assignee. Assignment agreements relating to assignment of rights (or receivables) are typically bilateral agreements between the assignor and the assignee with a notification sent to the debtor. The assignment agreement, relating to an assignment of obligations in general is a tri-party agreement, between the debtor, the creditor and the assignee.

There are two types of assignments; an assignment of rights and an assignment of debt also known as an assignment of obligations. Under the assignment of rights, the assignee is a third party who assumes the rights to collect the receivables accruing to the creditor, while under the assignment of debt; the assignee replaces the debtor and the debtor's obligations to repay its debt to a creditor.

Although assignments are permitted under the Qatari Civil Code, Law No. 22 of 2004 (the "Civil Code"), some contracts may include a clause stipulating that "assignments are not permitted" or that "any assignment is subject to the consent of all the parties to the agreement". Where such a restriction is included in the contract and a contracting party attempts to assign the contract such an assignment will not only be ineffective, but also, the assigning party will be in breach of the relevant contract. However, where a contractual restriction relating to assignment is present and all the contracting parties accept the assignment, the assignment will be deemed effective and enforceable.

The Civil Code sets out the process by which an assignment can be executed. The law differentiates between the assignment of rights and the assignment of debts. Article 324 to Article 336 of the Civil Code relates to assignment of rights, while Article 337 to Article 353 regulates the assignment of debts.

Process

The procedures to effect an assignment of rights is different from that of the assignment of debts. Assignment of rights does not require the debtor's approval, however, the debtor must be notified and the debtor's acknowledgement is required. If the acknowledgment is signed by the debtor, it should be date certified from the Ministry of Justice in Qatar, as opposed to the notary's office in some legal systems. In the event the debtor refuses to sign the acknowledgment, an official court notification can be served upon the debtor, which shall be deemed an "acknowledgment" under the law. The court notification in many civil law jurisdictions is made through a court bailiff. However, since court bailiffs do not exist in Qatar, the court undertakes the notification process through an internal postal system.

According to the Civil Code, an assignment of rights can include the rights under the corresponding security provided by the debtor to secure payments and other related rights. Having said that, it is advisable to clearly specify the security being assigned to the assignee.

Another significant factor is that the contracts being assigned must be identified. In other words, it is not permitted to assign the rights or receivables from an asset generally. The assignment agreement must include a description of the contracts and receivables that are being assigned by the assignor to the assignee.

An assignment of debt requires the prior approval of the creditor, and not merely acknowledgment of the creditor. If the creditor received a notification of the assignment of debt and does not respond within the deadline stipulated under the notification, the assignment will be deemed rejected by the creditor. However, the assignment shall be effective between the original debtor and the assignee, even if the creditor rejected the assignment, hence, the assignee shall be obliged to pay the debt, when due, to the creditor.

The creditor does not guarantee the solvency of the debtor at the time of the assignment of rights while the debtor must guarantee the solvency of the assignee at the time of the assignment of debt, unless otherwise agreed.

The Civil Code does not recognize the concept of “assignment as a security”, the assignment under the Civil Code is an absolute assignment. However, in practice, assignment of rights is typically used as security, where the bank has no right to enforce the assigned rights except in case of the occurrence of a default by the creditor.

In general, there are some assets that may not be subject of an assignment. Those types of assets are:

- (a) Real Estate, as there are certain laws which provide for specific formal procedures and registration requirements to assign title relating to real estate assets;
- (b) Movables, in respect of which a mortgage or pledge over movables is created by following specific formal procedures with the relevant competent authorities, depending on each type of asset; and
- (c) A business enterprise or “Fonds de Commerce”, where a security interest shall only be valid and enforceable vis-à-vis any third party provided the procedures set out under Qatar Commercial Code No. 27 for 2006 are followed.

It is also recommended that the assignee takes possession of the assigned rights to facilitate enforcement if the assignment is taken as a security. For example, where the assignment relates to receivables, the receivables can flow into an account pledged to the assignee.

Assignment and Novation

The Civil Code recognizes two ways of transfer of rights or obligations, one is by assignment, which has been explained above and the other is by novation.

Articles 381 to 386 of the Civil Code deal with the novation. Novation is defined under the law as “a change of the debt when the two parties agree to substitute a new obligation for the original obligation. The new obligation differs from the original obligation in respect of its object or as regards its source by a change of the debtor, when a creditor and a third party agree that such third party shall take the place of the original debtor and that the original debtor shall be released of the debt without his consent being necessary, or when the debtor has procured the consent of the creditor to substitute the debtor by a third party who consents to be the new debtor; also by a change of the creditor, when the creditor, the debtor and a third party agree that his third party shall be the new creditor.”

It is recommended to advise banks to obtain assignment as a security rather than novation, as the significant difference between assignment and novation under the Civil Code is that the security associated with the debt is not automatically transferred under novation, unlike the assignment, where security is automatically transferred to the assignee.

Conclusion

While assignment of receivables is a very popular form of security among lenders in the region, it is essential to ensure that the nuances relating to creation of such security are diligently followed.

Lenders should pay special attention to the transferability of collateral associated with the rights or obligations being assigned. Specifically, lenders should consider the benefits of an assignment or rights over a novation. This is especially significant as under an assignment of rights there may not be a need to re-execute security documents.

Lenders should also be aware that when assigning receivables, the receivables should be identifiable and quantifiable at the time of executing the assignment agreement.