



TAKING, PERFECTING AND ENFORCING SECURITY IN OMAN (Legal & Commercial Mortgages)

Al Alawi & Co
Advocates & Legal Consultants

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There are mainly five (5) types of collaterals/securities recognized by financial institutions/lenders globally, those being a charge over movable assets, charge over immovable property, assignment for security, pledge and guarantee.

In that regard, Oman's financial market offers some variation but is not fundamentally different from other developed financial markets. Generally, Oman recognizes the aforementioned collaterals/securities though in terms of nomenclature, Oman law uses the term "commercial mortgage" to designate a charge over movable assets, and "legal mortgage" to denote a charge over immoveable property.

In this note, we consider legal and commercial mortgages, while reserving our discussions of pledges, assignments and guarantees for a companion piece.

MORTGAGES

A "mortgage" is generally defined as, "a conveyance of an interest in the property as security for repayment of money borrowed". In Oman, a mortgage is commonly used to create a charge (lien) over movable assets, immovable assets and businesses (i.e. on the trade name, right to contact clients, goodwill and right to lease).

➤ ***Creating, Perfecting and Enforcing Legal Mortgages (charge over immovable property)***

A "legal mortgage" over land, buildings and usufruct rights can only be created by Omani Nationals, Companies registered in Oman, GCC Citizens and Foreign Companies (provided Omani nationals own 52% of the interest in the Foreign Company). A legal mortgage is created by executing a mortgage contract, and perfected when such contract is registered with the land registration office of the Ministry of Housing ("MOH").

Although it is possible to register more than one mortgage over the same property, to do so, the mortgagor must first obtain a "no objection certificate" from the party holding an earlier charge on the mortgaged property.

To register a legal mortgage with the MOH, both the mortgagor (through its authorized person in case of a company) and the mortgagee must be present at the MOH to sign and execute the mortgage contract along with such other documents/information as the MOH may require from time to time, which typically includes the following:

- Mortgage contract;
- Request letter from the lender to register the mortgage, which should mention the name of the borrower, details of the estate and value of the loan;
- Original title deeds of the estate;
- A copy of the latest complete set of commercial registration

- documents of the mortgagor in case the mortgagor is a company;
- Where Arabic is not the primary language of the mortgagor, the mortgagor may submit the contract for legal mortgage in dual language in side by side format;
- Valid Omani identification document or passport of the mortgagor (or authorized person in case of a company);
- A copy of the Oman Chamber of Commerce and Industry membership card in case the mortgagor is a company;
- Signatory Matrix (with their ID card/passports) in case of a company;
- Map of the estate;
- Financial statements of the company for the past 3 years audited and issued by an external auditor in case the mortgagor is a company;
- Salary certificate in case of an individual;
- Registration fee of 0.5% of the value of the mortgage which is capped at OMR 100,000.

To enforce any legal mortgage – i.e. in case the borrower defaults on its payments obligations, the mortgagor must (i) submit an application to the judge of execution at the primary court to obtain an order for sale of the mortgaged property, and (ii) seek permission to sell all or part of the mortgaged property by way of public auction.

Generally, the court will order that the property be appraised by experts in the real estate area in order to ascertain the reserve price of the mortgaged property and report thereof be issued to the judge. Upon receipt of the valuation report, the judge shall pass an order for conducting the public auction which order shall inter alia contain instructions for advertising the place of the auction, auction date and reserve price for the benefit of the public.

➤ ***Creating, Perfecting and Enforcing of Commercial Mortgage (charge over movable property)***

A “commercial mortgage” can be created by commercial concerns in Oman over movable property by signing and executing a contract for commercial mortgage, which should at least include a statement from the mortgagor as to whether the mortgagee will have a lien over the commercial concern and the name of the insurance company which has insured the premises for fire.

The law further provides that the commercial mortgage contract should clearly define the subject matter of the commercial mortgage and in case the subject matter has not been clearly defined, then the mortgage would be considered to apply only to the trade name, the right to lease, the right to contact clients and goodwill of the commercial concern.

Once the commercial mortgage contract is executed it must be registered in the Commercial Mortgage Register maintained by the Ministry of Commerce and Industries (“MOCI”), in order to perfect the charge.

As is the case with respect to legal mortgages, it is possible to have more than one commercial mortgage registered over the same assets, provided (like in the case of the legal mortgage), the mortgagor must first obtain a “no objection certificate” from the party holding an earlier charge on the subject assets.

To register the commercial mortgage with the MOCI, the mortgagor (through its authorized person) and the mortgagee must be present together at the MOCI to register the contract for commercial mortgage within thirty (30) days of execution of the commercial mortgage contract. The MOCI will require certain other documents / information as well, including but not limited to:

- Notarized copy of the Commercial Mortgage Contract;
- A copy of the latest complete set of commercial registration documents of the mortgagor;
- Valuation certificate of the assets being mortgaged issued by the banks (mortgagees) approved valuator;
- Minutes of the Partners Meeting (in case of an LLC);
- Minutes of the Board of Directors meeting in case of an SAOC or SAOG;
- Amendment to the Constitutive Contract in case of mortgage of the commercial concern;
- Original and copy of Omani identification card or passport of the authorized signatory of the mortgagor;
- A copy of the Oman Chamber of Commerce and Industry membership card;
- Request letter to MOCI from the lender for registration of mortgage charge;
- Signatory Matrix (with their ID card/passports);
- Financial statements of the company for the past 3 years audited and issued by an external auditor;
- Where Arabic is not the primary language of the mortgagor, the mortgagor can submit the contract for commercial mortgage in dual language in side by side format;
- Registration fee of OMR 30/- and OMR 100/- payable as the document attestation fee.

Registration of a commercial mortgage is initially for a period of five (5) years and should the mortgagee require an extension, then the mortgagee must submit a request letter along with the requisite fee of OMR 30/- for extending the period by another five (5) years.

Moreover, it should be noted that different registration requirements

exist for different types of assets being mortgaged e.g., any mortgage over vehicles is required to be registered over the title deeds of the vehicles (Mulkiya) with the Royal Oman Police, and in the event no authority exist, then the charge must be registered with the MOCI.

To enforce any commercial mortgage i.e. in case the borrower defaults on its obligations payments on the due date, the mortgagee may upon serving a eight (8) days formal notice to the mortgagor who is in possession of the subject matter of the commercial mortgage, submit an application to the court, seeking permission to sell all or part of the subject matter of the commercial mortgage by way of public auction.

➤ ***Multiple Mortgage Charges Over One Asset/Priority of Mortgage Charges***

It is possible to register more than one mortgage over the same asset/property in case of commercial mortgage or legal mortgage; however, the respective mortgagor must obtain a prior "no objection" certificate from the party holding a prior charge on the subject matter of the mortgage i.e. assets or property.

The priority of the registered charge will be established according to the date of the registration of the charge with the relevant authority and in case the charges are registered on the same date, the priority will be established by noting the time of the charge registration.

Moreover, it is also possible to register parri passu charges i.e. charges having equal rights, in favour of multiple lenders, where the lenders are part of one syndicated financing transaction or otherwise or in case the lenders agree with each other that the mortgage charge will be held on a parri passu basis.

By: Arsalan Tariq Buriro and
Zahir Al Sulaimani

Al Alawi & Co., Advocates & Legal Consultants

Al Alawi Law Firm Building, Bldg No. 785, Way No. 2708, Qurum 29, P.O.Box 3746, P.C. 112, Muscat, Sultanate of Oman.

T: +968 24699761/2; 24699757

F: +969 24699763

E: banking@alalawico.com

www.alalawico.com