

# Commercial MORTGAGES

## for SMEs

Commercial mortgages in the United Arab Emirates are governed by the UAE Commercial Code and are a type of security registered over business premises in the UAE in relation to the tangible and intangible assets of a business necessary for commercial activity. Independent financial advisor Greg Pogonowski lists the things to keep in mind.



As far as business finance in UAE is concerned, there are many financial institutions that can provide financial support to small and medium enterprises. These loans are provided for start up businesses as well as for the expansion of small businesses. Apart from this, a small business can also use venture capital and angel investors.

### The ABCs

Commercial property finance is only available to UAE-established businesses. Loans, however, are granted at the discretion of the lending institution. There are around a dozen banks or finance companies that specialise in lending in this area.

Working capital finance is also available to various small business enterprises, as discussed in depth from pages 18 - 21. Such advances are given for financing day-to-day needs and to bridge the gap between payments and receipts.

Lastly, there are angel (or private) investors in the UAE that can also provide a source of finance for SMEs. However, these investors require to be fully convinced before they agree to make investments in small business projects, and may want to take a stake in the company.

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### Commercial mortgage

A commercial mortgage will be registered over a business premises which must include all assets (tangible and intangible) that are required for commercial activity. Tangible assets are specified in the Commercial Code and cover items such as goods, equipment or machinery; and intangible assets such as customers, goodwill, trade name,

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right to let, patents and licences, and so on. At the very minimum, UAE law requires that a commercial mortgage should cover the trade name, the leased premises, customer contact details and goodwill.

Commercial mortgages can only be mortgaged to banks and finance companies, and only as a form of security that can be registered. They must be notarised and registered to be "perfected" (completed). Perfection is done by way of registration in the Commercial Register of the relevant Emirate (for example the Commercial Mortgage Register is maintained by the Department of Economic Development in Dubai and Abu Dhabi or the Fujairah Municipality in Fujairah. All parties' contractual and legal obligations under a commercial mortgage are continuous, and both parties should be aware of their ongoing obligations to ensure the mortgage is fully perfected and enforceable according to the terms of the financing documentation.

So one can say that commercial mortgages can generally be viewed as an umbrella mortgage under which various types of moveable assets can be mortgaged. Unlike in other jurisdictions, a floating charge over all and any assets, current or future, is not possible under UAE law. Instead, piecemeal security over specific assets has to be taken.

## Terms and conditions

Because all parties' contractual and legal obligations under a commercial mortgage are continuous and do not end upon a successful registration, a commercial mortgage is intended to cover the term of the loan and, in order to remain a perfected and enforceable security it must be renewed and upgraded throughout its life span. The Commercial Code provides that a commercial mortgage, once registered, shall only secure a priority right for five years. Registration in the Commercial Register must be renewed before the expiry of the fifth anniversary or the priority provided by this form of security is lost and the mortgage will be deemed to have been cancelled. Renewal in the Commercial Register is normally negotiated between the parties at the outset and provision can be made whereby the bank can opt to renew the mortgage without notice to the company.

Regardless of which party effects the renewal, all parties should be aware of the consequences of non-renewal. Failure to maintain a properly perfected security is normally deemed to be a breach of the financing documentation and the company risks a default should it fail to keep its commercial mortgage registrations up to date. The banks also have some responsibility in keeping an eye on the registration dates of its commercial mortgages to ensure that the security is duly perfected at all times and is enforceable for the full term of the loan.

Under a commercial mortgage the borrower is required to mortgage all its existing identifiable moveable assets. Where the company acquires further assets during the period of lending, it will be required to execute, notarise and register these additions and for these to be filed with the commercial mortgage and the Commercial Register, itemising the additional assets and their values.

The mechanics of filing additions are usually set out in the initial commercial mortgage

documentation and negotiated between the parties. It is usual to have a provision whereby additional assets are required to be filed on a regular basis where certain assets are higher than an agreed threshold value (from date of inception).

In order to avoid the filing becoming an administrative burden for companies, there should be threshold asset values agreed at the outset and parties so as to not have to be forced to obtain waivers with regard to filing requirements.

Payment of a fee is required (on a percentage basis) of the new asset value to be secured. Often, the payment of fees is negotiated with the authority at the outset and a lump sum fee can be agreed to cover a percentage of the full value of the loan upon filing the initial commercial mortgage and this can include any subsequent additions.

A commercial mortgage is not quick and easy to enter into and all parties should be aware of their ongoing obligations to ensure the mortgage is fully perfected and enforceable according to the terms of the financing documentation.

## Top seven tips to make sure your commercial mortgage goes smoothly:

- 1) Make a note of the renewal date. Registration is only valid for five years. Commercial mortgages can be renewed by application to the relevant authority within the relevant Emirate. Each authority will have its own procedures and will require sight of the original commercial mortgage and the original commercial mortgage registration certificate.
- 2) Make a note of the agreed dates relating to the filing of additional



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assets. Failure to do so can result in a technical default. Agree registration fees up front with the relevant registering authority or be prepared to pay additional fees on each subsequent filing. If possible, agree to cap fees as the rules vary from Emirate to Emirate. If registration fees are uncapped, a direct exemption should be sought from the local authority concerned to avoid borrowers having to pay higher additional and future fees that may render the whole mortgage uneconomic.

- 3) Additional filing should be registered in the same form as the original commercial mortgage. It is vital that it should be translated into Arabic and notarised. In order to notarise any additions, the Notary Public will require sight of a copy of the original notarised commercial mortgage and the original mortgage registration certificate.
- 4) Additional filings should contain a full list of assets, clearly itemising each asset and its individual value.
- 5) One matter that is sometimes overlooked is that such filing should include confirmation that any new assets are insured and the details of the insurer should be given.
- 6) It is always useful to pre-check with the relevant filing authority before attempting to register any additions as there may be a publishing requirement prior to it being registered having been implemented since the date of the original loan.
- 7) Check whether the commercial mortgage requires any other filings or notifications to be made upon the registration of these additions, especially if needed by other regulatory bodies.

## ABOUT:

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