

# LAW ON PLEDGE

The parliament adopts this organic law:

## Chapter I GENERAL PROVISIONS

### Article 1. Definition of Pledge

1. Pledge is a real security on the basis of which a pledgee may levy execution upon the pledged asset, having priority to other creditors, including the state, in satisfying the secured claim.
2. Pledge validity depends on the validity of the obligation secured by the pledge.

### Article 2. Pledger

1. The pledger is a natural person or legal entity that has right of ownership to the pledged asset.
2. Both the obligor of a secured obligation and a third party may be a pledger.
3. Assets in common ownership may only be pledged by consent of all co-owners.
4. Commercial companies and enterprises pledge their assets in conformity with their incorporation documents.
5. A share of assets in common shared ownership may be pledged without the other co-owners' consent.
6. Assets owned by persons with limited ability to perform and minors may only be pledged by consent of their guardianship or custody authority.

### Article 3. Pledgee

Pledgee is an entity for the benefit of which a pledge is established.

### Article 4. Pledge Types

1. Pledge is established with regard to a movable or real asset or a body of movable or real assets.
2. Pledge of real assets is called mortgage.
3. Movable assets are encumbered with pledge with or without their disposition.
4. Pledge of a movable asset with its disposition is called pawn.

**Article 5. Indivisible Pledge**

Pledge shall be indivisible even if the pledged asset or obligation is divisible.

**Chapter II  
PLEDGE RISE AND REGISTRATION****Article 6. Grounds for, and Moment of, Rise of Pledge**

1. Pledge only arises on the conditions and in the forms set forth by this Law.
2. Pledge is conventional or legal.
3. Mortgage and pledge of movable assets without their disposition arise at the moment of their registration in the respective registry.
4. Pawn arises at the moment of acquiring possession of the asset.

**Article 7. Registration of Pledge Without Disposition**

Pledge of assets without their disposition shall be registered in:

- a) Real Estate Registry – in the event of mortgage;
- b) Registered Securities Registry – in the event of pledge of registered securities;
- c) Government Securities Registry – in the event of pledge of government securities;
- d) Intellectual Property Registry – in the event of pledge of intellectual property rights; and
- e) Pledged Movable Assets Registry – in the event of pledge of other movable assets.

**Chapter III  
PLEDGED ITEMS AND SCOPE OF PLEDGE****Article 8. General Provisions**

1. Any tangible or intangible asset or a body of assets may be pledged, except for inalienable assets or assets on which execution may not be levied. Any property right or money claim, including the pledger's right of claim to the pledgee, may be pledged.

2. For purposes of this Law, a body of assets means an entirety of assets: movable or real, current or future, tangible or intangible, generally described, the pledge of which is registered in the same registry in accordance with Article 7. The description shall allow to identify category, type, or specific feature of the pledged asset and determine its affiliation with the body of assets.
3. The right of pledge also extends to the accessories of the pledged asset, provided the agreement does not say otherwise.
4. The pledge extends to any asset united with the pledged asset by accession.
5. Rights directly related to the pledger's personality or rights the concession of which is prohibited by law may not be pledged.
6. Assets which under the law may not be disposed of separately may not be pledged separately.

#### **Article 9. Indemnification**

The pledgee is entitled to priority indemnification for destruction, loss, or damage of the pledged asset, regardless of in whose favor the pledged asset was insured, only provided the pledgee is not to blame for such destruction, loss, or damage or provided the pledge agreement does not say otherwise.

#### **Article 10. Products**

Fruits, revenue, and products of a pledged asset shall be pledged in the events expressly envisioned by an agreement.

#### **Article 11. Pledge of Future Assets**

Pledge of assets which will become the pledger's ownership in the future, including pledge of future assets, does not encumber such assets until the pledger becomes the holder of the pledged rights. The degree of priority of the pledge is established in accordance with provisions of Article 57(1).

#### **Article 12. Transformation of Assets**

The pledge extends to a new movable asset resulting from the transformation of a pledged asset. The pledge also extends to the assets resulting from combination or merger of several movable assets of which some were pledged. A person that acquires right of ownership to the new asset, in particular under the standards of accession of movable assets, is held by such a pledge.

**Chapter IV**  
**CONVENTIONAL PLEDGE**  
**Section I**  
**ESTABLISHMENT OF PLEDGE**

**Article 13. Pledge Agreement**

1. The pledge agreement is concluded in writing, In the event of failure to comply with the established format the agreement shall be deemed null and void.
2. In the event of pledge of the assets the sale of which requires notarization, the pledge agreement shall also be notarized. The parties may agree to notarize any pledge agreement.
3. Any amendment or addition to the pledge agreement is made in the form envisioned for pledge agreement conclusion.
4. The pledge agreement shall include the following:
  - a) parties' first and last name (name);
  - b) parties' residence (location);
  - c) pledger's express consent to establish a pledge for the pledgee's benefit;
  - d) description of the pledged asset;
  - e) nature and due date of the claim secured by the pledge and its maximum value without interest and expenses; and
  - f) type of pledge.
5. The parties may include other clauses in the pledge agreement.
6. A pledge clause may be included in the agreement under which the pledge-secured obligation arises.
7. Clause whereby the pledgee acquires right of ownership to the pledged asset in the event of failure to fulfill or improper fulfillment of the obligation secured by the pledge is null and void.

**Section II**  
**OBLIGATION SECURED BY PLEDGE**

**Article 14. Secured Obligation**

1. One or several obligations may be secured by a pledge. The secured obligation may be future or contingent.

2. A pledge is valid only if the obligation secured thereby is expressed in lei or foreign currency, in the monetary units of account or any combination thereof.
3. The pledge secures the obligation per se, interest, expenses on levying execution, and maintenance expenses on the pledged asset. The parties may establish under an agreement that the security should extend to the penalties and damage caused by default or improper performance.
4. The pledge may secure an obligation which arises following the conclusion of the pledge agreement provided this is expressly envisaged by such agreement.

#### **Article 15. Pledge Established to Secure Payment of an Amount of Money**

Pledge established to secure payment of an amount of money is valid even if at the moment of its establishment the pledger has not yet received, or received a portion of, the performance for which it assumes an obligation. This rule applies, in a particular, to making loans or issuance of bonds or other debt instruments.

#### **Article 16. Consequences of Refusal to Transfer Amount of Money**

In the event of the pledgee's ungrounded refusal to transfer the amounts of money which it undertook to lend and for the security of which it holds a pledge, the pledger may obtain, at the pledgee's expense, a reduction in, except for mortgage, or cancellation of, the pledge and in the latter event only pay the outstanding amount.

### **Section III MORTGAGE**

#### **Article 17. Mortgaged Items**

1. Real estate may be encumbered with mortgage.
2. Pledge of current and future rent payments for real estate also constitutes mortgage. Such mortgage shall be registered in the real estate cadastre.

#### **Article 18. Validity**

A mortgage is valid only if the mortgaged asset is expressly determined.

#### **Article 19. Mortgage Extension**

1. Mortgage of a land plot also extends to capital structures located thereon provided the agreement does not envisage otherwise.
2. Mortgage of capital structures, apartments, or stand-alone premises located on a land plot owned by a third party extends to the right of enjoyment or lease of the land plot or its respective ideal share.

3. Mortgage extends to all improvements to the pledged asset.
4. Construction in progress may also be encumbered with mortgage in the event that the land plot does not belong as of right of ownership to the person that performs the construction if at the moment of the mortgage establishment the pledger has superficies (building leasehold) to the land plot on which the construction is located.

## **Section IV PLEDGE OF MOVABLE ASSETS**

### **§ 1. SPECIFIC FEATURES OF PAWN**

#### **Article 20. Establishment of Pawn**

1. A pawn is established by handing over an asset or title to such asset to the pledgee or a third party acting on the pledgee's behalf or, if the asset is already held by the pledgee, by maintaining its possession on the basis of the pledger's consent with a view to securing the pledgee's claim.
2. Conclusion of a written agreement is not required for pawn to arise.
3. The pawn is made public through the exercise of possession of the asset or title thereto by the pledgee and remains public only if the possession is continuous. The publicity determines the degree of priority of the pawn in accordance with Article 57(1).

#### **Article 21. Preservation of the Right of Pawn**

1. The pawn continues in effect if a third party impedes the exercise of possession without the pledgee's consent.
2. The pawn also continues in effect if the exercise of possession is temporarily interrupted by handing over the asset or title to the pledger or a third party for evaluation, repair, transformation, or improvement.
3. By the pledger's consent, the pledgee may exercise possession through a third party, which shall be informed about the asset title.

#### **Article 22. Pawn of Negotiable Securities**

1. Pawn that encumbers an asset represented by a bill of lading or another negotiable security arises at the moment the performance is carried out by the pledgee provided the security is handed over thereto within the following ten days.
2. If the security is negotiable by endorsement and delivery or by delivery only, it shall be handed over to the pledgee by endorsement and delivery or by delivery only.

#### **Article 23. Receipt for Secured Obligation**

The pledgee shall issue, at the pledger's request, a receipt on the nature and, to the extent possible, size of the obligation the fulfillment of which is secured by the pawned asset.

## **§ 2. SPECIFIC FEATURES OF PLEDGE OF A BODY OF ASSETS**

### **Article 24. Pledge of a Body of Assets**

1. If a body of assets is pledged, no individualization of its constituent components is required. All assets, which based on their specific features specified in the agreement can be attributed to the body of assets, are deemed pledged to the extent set forth in the agreement.
2. Pledge of a body of assets continues in effect for, and extends, to a similar asset replacing the sold one in the course of day-to-day activities.
3. If no other asset replaces the sold one within the time-frame set by the pledgee, pledge of the sold asset does not continue and only extends to proceeds from sale of the pledged assets provided such proceeds are identifiable.
4. Pledge of a body of assets continues in effect if the assets were lost provided the pledger replaces them within a reasonable time-frame taking into account the nature of such assets.

## **§ 3. SPECIFIC FEATURES OF CLAIM PLEDGE**

### **Article 25. Required Registration**

A pledge that encumbers a body of claims shall be registered in the respective registry even if it is established by title transfer to the pledgee.

### **Article 26. Encumbrance of a Secured Claim**

A pledge that encumbers a claim secured by a registered pledge which the pledger holds to a third party shall be registered. The pledgee shall provide to the obligor of the pledged claim a copy of the registration receipt.

**Section V**  
**SPECIFIC FEATURES OF ENTERPRISE PLEDGE**

**Article 27. Enterprise Pledge Concept**

1. Pledge of an enterprise as a property complex extends to all assets necessary for the enterprise operation or to a portion of its assets which would allow the buyer to ensure its operation as a going concern.
2. For the period of validity of the enterprise pledge, the pledge agreement may envisage restrictions on the exercise of the pledger's right to dispose of the assets which are a part of the pledged assets.

**Article 28. Pledgee's Right of Option**

1. The pledgee that intends to exercise its/his/her right of pledge with regard to the enterprise on the basis of Article 61 is authorized to:
  - a) act in accordance with provisions of Chapter VIII, without taking into account specific norms of taking into possession for administration stipulated in Articles 29-31; or
  - b) act in the manner envisaged by Articles 29-31.
2. If the pledgee decides to waive the right of possession for administration, prior to the exercise of the right of sale of assets it shall register a notice of sale of assets in the respective registries. Article 67(5) applies accordingly.

**Article 29. Notice**

1. The pledgee that intends to exercise its/his/her right of possession for administration shall notify of this fact by notice the pledger and, as the case may be, third party holding the pledged asset. The notice together with the evidence of the pledger notification shall be submitted to all registries, in which the enterprise pledge is registered. The notice shall be registered in the respective registry without delay.
2. The notice shall specify the size of the secured claim, describe pledged assets, and, as the case may be, contain information about the administrator, and summon the pledger to transfer the pledged asset within the deadline set by the pledgee. The pledgee shall sign the notice.

**Article 30. Taking into Possession for Administration**

1. Pledgee of an enterprise assets may take the pledged assets into temporary possession for administration or delegate the administration of such assets to a third party. In this event the pledgee or the third party acts as a fiduciary administrator.
2. Fiduciary administration begins on the expiry date of the notice deadline if the pledger failed to fulfill or improperly fulfilled the secured obligation.

3. The pledger's management bodies shall transfer to the fiduciary administrator all documents, materials, and information necessary for the performance of its/his/her functions. A body which, after the pledged assets were taken into possession for administration, continues to perform its former functions with regard to such assets without the fiduciary administrator's consent is held liable for the damage caused by its actions.
4. Taking into possession for administration does not interfere with the lessee's rights.
5. Possession for administration ceases subject to the same conditions on which fiduciary administration ceases, except when possession ceases together with the satisfaction of the pledgee's secured claim or when the pledgee waives the right of pledge, or when it notified of the exercise of the right to sell the pledged asset. The pledger's bankruptcy does not terminate possession.
6. Upon cessation of possession the pledgee shall be responsible for asset administration and return of the assets to the pledger or its/his/her successor to a previously agreed-upon place or, in absence of such agreement, at the asset's location. The pledgee shall submit a notice of return of the pledged asset to the respective registry.
7. The pledgee that receives settlement of its/his/her debt shall hand over to the pledger, in addition to the pledged assets, any surplus remaining after the debt settlement and payment of administrative expenses and expenses related to the exercise of asset possession.

### **Article 31. Fiduciary Administrator's Rights and Duties**

1. In addition to the powers envisaged by the fiduciary administration norms, the administrator is authorized to:
  - a) collect the pledger's accounts receivable without modifying the conditions of the contract concluded thereby;
  - b) manage amounts of money generated as a result of the pledged item administration;
  - c) manage pledged assets, including by establishing by common consent of other pledger's creditors a procedure for executing the agreements concluded thereby.
2. In addition to the powers envisaged by the fiduciary administration norms, the administrator is obliged to:
  - a) maintain the enterprise as a going concern;
  - b) submit a report upon completion of fiduciary administration.

3. The fiduciary administrator's actions with regard to the pledged assets' management shall be aimed at maximum recovery of the pledgee's and other creditors' claims.

## **Chapter V LEGAL PLEDGE**

### **Article 32. Claims That May Give Rise to Legal Pledge**

1. Only the following claims may give rise to legal pledge:
  - a) state claims for amounts due in accordance with fiscal legislation;
  - b) claims resulting from judicial decisions.
2. Legal pledge may encumber movable assets and real estate.

### **Article 33. Legal Pledge Securing Fiscal Claims**

In the event of state claims arising under fiscal legislation, legal pledge is deemed established only if it is registered in conformity with Article 7. The registration application represents a notice specifying the assets the pledgee intends to use as well as cause and value of its/his/her claim. The pledgee shall familiarize the pledger with the registered notice.

### **Article 34. Legal Pledge Established Based on Judicial Decision**

1. A creditor, in whose favor a judicial decision was issued to collect an amount of money, may obtain a legal pledge of its debtor's asset, movable or immovable.
2. Legal pledge is established by registering a notice specifying the pledged asset, size of the claim, and, in the event of a pension or alimony, the amount of regular payments and indexing ratio. A notarized copy of the judicial decision and evidence of the debtor's familiarization with the notice shall be attached to the notice.

### **Article 35. Legal Pledge Reduction, Replacement, or Cancellation**

At the request of the owner of assets encumbered with a legal pledge, the court determines assets which could be pledged, it can reduce the number of such assets or allow the plaintiff to replace legal pledge with another security adequate to satisfy the claim. In this event the court may decide to cancel legal pledge registration.

### **Article 36. Exercise of the Right of Pledge**

Creditor which registered its legal pledge is authorized to levy execution upon the pledged asset on the conditions envisaged by Chapter VIII.

## **Chapter VI**

## MOVABLE ASSET PLEDGE REGISTRATION

### Article 37. Movable Assets Pledge Registry

The movable assets pledge registry (hereinafter “Pledge Registry”) is maintained by the Ministry of Justice.

### Article 38. Basis for Pledge Registration

A pledge is registered in the Pledge Registry based on the registration application.

### Article 39. Registration Procedure

1. The pledge registration procedure begins with filing a registration request with any notary connected to the Pledge Registry.
2. The registration request shall include:
  - a) identification information about the pledger and the pledgee: for natural person – first and last name, home address, and identification document information; for legal entity – full name, location, and registration information;
  - b) identification information about pledge administrator, if appointed: for natural person – first and last name, home address, and identification document information; for legal entity – full name, location, and registration information;
  - c) pledger’s express consent to establish a pledge in favor of the obligee under secured obligation;
  - d) pledged asset description;
  - e) nature, amount, and due date of the obligation secured by the pledge, its maximum amount without interest and expenses;
  - f) pledge type;
  - g) ban, if agreed upon between the parties, on subsequent pledge of the same asset;
  - h) request date; and

- i) pledger's and pledgee's or their representatives' signatures.
3. Immediately upon receipt of the registration request the notary fills out a registration application form on its basis, the model for which is approved by the Ministry of Justice. The form shall include columns for entering the information envisaged in paragraph 2, which shall be registered in the Pledge Registry.
4. The notary may decline the registration application form filling-out only if the registration request does not include all information specified in paragraph 2 and shall immediately inform of the decline and its cause the pledger. The notary shall accept the information envisaged by paragraphs 2(c)-(g) as it was presented for registration, and the contracting parties shall be responsible for its accuracy.
5. The notary presents the filled out registration application form to the pledger for verification. The pledger shall sign the application form.
6. A copy of the pledger's identification document/registration certificate and evidence of the registration fee payment shall be attached to the registration application; should they be missing the notary shall decline the application.
7. Upon receipt of the registration application the notary shall assign a unique registration number thereto and make an entry in the Pledge Registry without delay.
8. Immediately following the confirmation of registration of the registration application information in the Pledge Registry the notary shall sign a copy of such confirmation and hand it over to the pledger. Another copy of the confirmation shall be maintained by the notary for record-keeping purposes. The confirmation shall include information from the registration application and the moment of registration (year, date, hour, and minute).

#### **Article 40. Registration Fee and Information Fee**

A fee in the amount established by the State Tax Law or the budget law for respective year shall be levied on pledge registration or issuance of an extract from the Pledge Registry or any other registration information.

#### **Article 41. Changing or Correcting Pledge Information**

1. A request for registration of changes or corrections in the pledge information shall be signed by the pledger and the pledgee. Provisions of Article 39 apply accordingly to the registration of changes or corrections in the pledge information.
2. Introduction of changes or corrections to the pledge information is treated from the procedural viewpoint as a new registration of the pledge.
3. Initial registration is retained and specified in the Pledge Registry in a manner which would allow to keep track of changes or corrections in the pledge information.

**Article 42. Increase in, or Replenishment of, Pledged Item or Secured Claim**

The pledged item or claim secured thereby shall be increased or replenished as agreed by the parties by amending current pledge agreement or concluding a new pledge agreement with pledge registration in this event in accordance with norms established for the Pledge Registry.

**Article 43. Exclusion of Pledge Information from the Pledge Registry**

1. Upon pledge cessation the pledge information shall be excluded from the Pledge Registry.
2. The following parties may request exclusion of the pledge information:
  - a) pledgee;
  - b) pledger, based of the request signed by both parties, creditor's written statement on the waiver of pledge, or judicial decision;
  - c) third party that acquired the pledged item, based on the pledgee's written statement on the pledge exclusion from the Pledge Registry, certificate issued by a marshal confirming that the asset was acquired under enforced execution, certificate issued by court examining the bankruptcy case certifying that the asset was acquired under bankruptcy proceedings, or a judicial decision on the pledge expiration.
3. In the event of exclusion of the pledge information from the Pledge Registry provisions of Article 39 apply accordingly. Pledge cessation is identical to pledge registration from the procedural viewpoint.
4. Information about pledge cessation is kept in the Pledge Registry data base for twenty-five years. The pledgee shall ensure the registration of the pledge cessation immediately after satisfaction of the obligation secured by the pledge.

**Article 44. Registration Consequences**

1. The fact that the information is registered in the Pledge Registry does not constitute legal presumption of its reliability.
2. Registration in the Pledge Registry does not validate an invalid pledge.
3. From the moment of registration of a pledge no one may invoke negligence of the information registered in the Pledge Registry.
4. In relations with bona fide third parties the pledger or the pledgee may not invoke inaccuracy of the information included in the Pledge Registry.

5. Interested person is authorized to appeal in court decline of the pledge registration (re-registration) application, unlawful registration, untimely presentation of, or refusal to provide, required pledge registration information.

#### **Article 45. Passive Access to Pledge Registry**

1. Any person may consult the Pledge Registry and obtain an extract therefrom. The extract shall be signed by the notary and issued within not more than 24 hours after the moment of request.
2. The Ministry of Justice may allow interested parties continued passive access to the Pledge Registry on a contract basis.

#### **Article 46. No Access to Pledge Information for Third Parties**

1. The pledger may request a ban on the third parties' access to the Pledge Registry information about pledge of its/his/her assets.
2. Based on the pledger's written request, the notary shall make a standard entry in the Pledge Registry on the third parties' ban on access to the Pledge Registry information about the assets it pledged. In this event it is presumed that all pledger's assets are encumbered with a pledge.

#### **Article 47. Registration in Registries Other Than Pledge Registry**

Without prejudice to provisions of Article 67, pledged items are registered in the registries envisaged by Article 7 in conformity with the legislation governing the operation of respective registries.

### **Chapter VII CONSEQUENCES OF PLEDGE**

#### **Article 48. Obligation of Diligence**

1. Neither the pledger nor the owner of the pledged asset may destroy or damage the pledged asset or decrease its value unless this happens as a result of normal wear and tear or as necessary.
2. In the event of threat of destruction or damage of the pledged asset the party that holds it shall immediately inform the other party, which is authorized to examine the pledged asset.

#### **Article 49. Pledgee's Rights in the Event of Pledged Asset Loss or Damage**

1. In the event of loss or damage of the pledged asset, in addition to other rights envisaged by law, the pledgee is entitled to claim damages up to the amount of its/his/her claim based on the same pledge title even if its/his/her claim is not due.

2. If as a result of damage the pledged asset may not be used as directly designated, the pledgee is authorized to request its replacement or replenishment or payment of its value by the pledger as set forth in the agreement.
3. If the pledger refuses to replace the pledge or cannot replace it within a reasonable time-frame provided by the pledgee, it/he/she shall enter information about loss of its/his/her pledge in the respective registry. This information is registered based on the unilateral request of the pledgee. Provisions of Chapter VI apply accordingly.

#### **Article 50. Action in Recognition of Pledge**

The pledgee may bring legal action in accordance with law in order to have its/his/her pledge (mortgage) recognized and limitation interrupted even if its/his/her claim is not due.

#### **Article 51. Duties of Pledgee Holding Pledged Asset**

1. The pledgee shall take every action necessary to ensure safety of the asset it holds. The pledger shall reimburse the pledgee for expenses it incurred to ensure asset safety.
2. The pledgee may not use the pledged asset without the pledger's permission.
3. In the event of use of the pledged asset the pledgee shall submit a statement to the pledger. If it is not envisioned otherwise, the pledgee hands over to the pledger fruit it received as a result of use of the pledged asset and uses generated income to cover the expenses, then pay interest, and only thereafter to pay the obligation proper.
4. The pledgee is not responsible for loss of the pledged asset as a result of force majeure or asset ripening, perishable nature, or normal and authorized use.
5. The pledgee shall hand over the pledged asset to the pledger at the moment of repayment of the secured obligation.
6. The pledgee which is obliged to return the asset under a judicial decision thus forfeits its/his/her right of pledge.
7. The pledgee's heirs are joint and several pledgees only within the limits of the actual value of inheritable assets which passed on to them.

#### **Article 52. Pledger's Rights and Duties**

1. The pledge does not deprive the pledger or the pledged asset holder of the rights they have to the pledged asset. The pledger or the pledged asset holder exercise their rights without prejudice to the pledgee's rights if the agreement does not envision otherwise.

2. The pledger is authorized to use the pledged item as designated and acquire its products if the agreement does not envision otherwise.
3. The pledger is prohibited from disposing of the pledged asset for or without a fee if the agreement does not envision otherwise, with the provisions of Article 60(2) remaining unchanged.
4. The pledger is prohibited from leasing out the pledged item or transferring it into free use if the agreement does not envision otherwise.
5. Clause limiting the pledger's right to bequeath the pledged assets is null and void.
6. The pledger's heirs are joint and several pledgers only within the limits of the actual value of inheritable assets which passed on to them.

### **Article 53. Pawnshop Obligation to Insure the Pawn**

1. The pawnshop shall insure at its own expense the assets accepted into pledge.
2. Clause excluding the insurance obligation is null and void.
3. The insurance is provided for the entire value of the pledged asset in accordance with the valuation made by the parties' consent at the asset transfer into pledge.

### **Article 54. Pledged Item Replacement and Substitution**

The parties may agree on the conditions of replacement or substitution of the pledged item. Replacement and substitution of the pledged item represent a new pledge.

### **Article 55. Pledge Administrator**

The pledgee may appoint a pledge administrator acting on its/his/her behalf and taking any action with regard to the pledged asset within the limits of its/his/her rights, except for the right to cede the claim secured by the pledge. The pledger or a third party holding the asset shall follow the pledge administrator's instructions.

### **Article 56. Subsequent Pledge**

1. Pledge of a pledged asset is allowed provided this is not prohibited by preceding pledge agreements.
2. If ban on subsequent pledge is registered, failure to observe the ban entails nullity of subsequent pledge agreements and the pledger's obligation to recover the damage caused to the pledgees.

### **Article 57. Degrees of Priority of Pledges**

1. The degrees of priority of pledges of the same asset is established depending on the moment of registration. Lower-priority pledgee's claim shall only be satisfied following the complete satisfaction of a higher-priority pledgee's claim.
2. Lower-priority pledgee may satisfy its/his/her claim at the expense of the pledged asset before higher-priority pledgees only by written consent of each higher-priority pledgee.
3. Degrees of priority of pledges may be changed by consent of each higher-priority pledgee. The consent become valid only following its registration in conformity with provisions of Article 41.
4. The pledgees may agree on each pledgee's share in the proceeds from sale of the pledged asset.
5. Provisions of this Article also apply to the public claims secured by a pledge.

#### **Article 58. Assignment of Claim or Debt Secured by a Pledge**

1. In the event of assignment of a claim secured by a pledge the new pledgee acquires the right of pledge in the volume in which the assignor had it. The pledger shall remain obliged to the obligee assignee.
2. In the event of assignment of a portion of the claim secured by a pledge the new pledgee acquires the right of pledge in proportion to the portion of the claim provided the pledge agreement does not envision otherwise.
3. The pledgee replacement is registered in accordance with Article 41. The preceding registration shall remain valid until the new pledge registration.
4. In the event of assignment of a debt the pledge shall terminate if the pledger did not agree to provide a security for a new debtor.

#### **Article 59. Acquisition of Pledged Assets**

1. In the event of the pledged asset disposition by the pledger or a third party holding the pledged asset the pledge does not terminate.
2. In derogation of paragraph (1) an asset shall be acquired free of pledge if:
  - a) the buyer believes in good faith that the asset is not encumbered with a pledge;
  - b) the pledgee allowed, as envisaged by Article 58, disposition of the pledged asset having expressly mentioned that it is not encumbered with a pledge;

- c) the asset is acquired from an entity that disposes of it in the course of its day-to-day activities.
3. Entity that acquires:
- a) assets which are a part a body of assets pledged in the course of the pledger's day-to-day commercial activities;
  - b) assets the auctioning of which was announced in mass media;
  - c) negotiable securities, bills of lading, joint stock companies' shares and bonds, notes, and contracts listed at an authorized exchange or regularly traded at an exchange –

is deemed to act in good faith.

### **Article 60. Permission to Sell Assets Free of Pledge**

1. The pledgee may allow the pledger to sell an asset free of pledge, except for pawn.
2. In the event of pledge of a body of assets the components of which may vary in time, the pledger may dispose of its components by selling them in the course of its day-to-day commercial activities on the condition that the disposition does not reduce the value of the pledge.
3. The permission to sell an asset free of pledge shall be suspended beginning from the registration date of the notice of levying execution on the pledged asset and cease at the date of exclusion of such notice.
4. The permission to sell an asset free of pledge shall cease at the moment of transformation of the registered pledge into a pawn.
5. If the pledger intends to sell a real estate free of pledge, it shall obtain a preliminary consent of the pledgee.

## **Chapter VIII**

### **EXERCISE OF THE RIGHT OF PLEDGE**

#### **Section I**

#### **General Conditions for Exercise of the Right of Pledge**

### **Article 61. General Provisions**

1. The pledgee may only exercise the rights of pledge envisaged by this Chapter and Articles 29-31 if the pledger failed to fulfill or improperly fulfilled the secured obligation or a portion thereof under the agreement and in other events envisaged by the agreement.

2. Subject to conditions of this Chapter the pledgee may exercise the following rights: independently sell pledged assets, sell them under judicial control, or take them into possession for administration.
3. The pledgee shall exercise its/his/her right of pledge regardless of which party holds the pledged asset.

#### **Article 62. Time Frame for Exercise of Right of Pledge**

The pledgee may not exercise its/his/her rights of pledge prior to the expiration of the time-frame envisaged for asset transfer in conformity with Article 67(5), except for the event envisaged by Article 65(7) and Article 71(3).

#### **Article 63. Priority of the Exercise of Rights**

1. Higher-priority pledgee shall have a priority in the exercise of its/his/her rights of pledge over lower-priority pledgees. Article 57 applies accordingly.
2. Higher-priority pledgee shall cover the costs incurred by lower-priority pledgee if, being aware of the exercise of the right of pledge by such pledgee, it/he/she failed to invoke the priority of its/his/her rights within a reasonable time-frame.

#### **Article 64. Usufruct of Pledged Asset**

When an asset encumbered with a pledge subsequently becomes subject of a usufruct, the rights of pledge shall be exercised concurrently against the nominee owner and against the usufructuary or the party with respect to which the rights of pledge have not yet been exercised shall be notified thereof.

#### **Article 65. Exercise of the Right of Pledge for Several Assets**

The pledgee whose right of pledge encumbers several assets may exercise its/his/her right of pledge with respect to the assets it chooses in a concurrent or successive manner.

#### **Article 66. Exercise of the Right of Pledge in the Event of Pawned Shares**

Holder of a pawn of a legal entity's shares is not obliged to notify the share issuer of its/his/her right. However, the exercise of the right of pledge is subject to legal and contractual provisions on transfer of pledged shares.

**Section II**  
**PRELIMINARY MEASURES FOR EXERCISE**  
**OF THE RIGHT OF PLEDGE**  
**§ 1. NOTICE**

**Article 67. Notification. Notice Registration**

1. The pledgee that intends to exercise its/his/her right of pledge shall notify thereof the obligor of a secured obligation and, as the case may be, the pledger and the third party holding the pledged asset.
2. Following the notification the pledgee shall submit to the registry in which the pledge is registered the notice with attached evidence of the pledger's notification.
3. The registrar shall register the notice in the respective registry without delay.
4. The notice shall specify the amount of the secured claim, grounds for beginning the levying of execution, right the pledgee intends to exercise, and description of the pledged asset and summon the pledger to surrender the pledged asset within the deadline set by the pledgee. The pledgee shall sign the notice.
5. The deadline set by the pledgee for the asset transfer shall be at least ten days for a movable asset, twenty days for real estate, and ten days for asset taken into possession for administration, from the notice registration date.
6. Within three days after issuance of the ruling on bankruptcy proceedings initiation, the court shall submit the ruling to the registry in which the pledge is registered. The ruling on the bankruptcy proceedings initiation shall be registered in the registry by the pledger's name or, in the event of mortgage, by the pledged asset.
7. Professional participants in the securities market which hold the pledger's pledged securities as creditors may take them into possession or sell such securities without notice or without observing the deadline envisaged by paragraph (5), provided this is not prohibited by special norms and is set forth in the agreement concluded with the pledger.
8. Voluntary disposition of the pledged asset following the registration by the pledgee of the notice of exercise of the right of pledge shall be non-opposable for the pledgee, except for the event when the buyer by the pledgee's consent personally assumed the debt or an amount was deposited in the pledgee's account adequate to cover the secured claim in the amount envisaged by Article 14(3).

**Article 68. Pledger's Rights**

1. The pledger may oppose the pledgee's levying of execution upon the pledged asset by satisfying the secured claim or, as the case may be, removing the violations specified in the notice and subsequent violations, paying in both events the notice registration expenses.

2. The pledger may exercise the right envisaged by paragraph (1) until the moment of sale of the asset taken into possession by the pledgee.
3. The pledgee that submitted a notice of levying execution upon the pledged asset may not demand compensation other than payments envisaged by Article 14(3) and notice registration expenses.

## **§ 2. PLEDGED ASSET TRANSFER**

### **Article 69. Manner of Pledged Asset Transfer to Pledgee**

1. The pledged asset shall be transferred into the pledgee's possession in the manner envisaged by paragraph (2) in order to be sold on the conditions envisaged by this Chapter.
2. Transfer of the pledged asset into the pledgee's possession may be voluntary or enforced.
3. The pledgee that received the pledged asset into possession may only exercise the right of its administration until the moment of its sale.

### **Article 70. Voluntary Transfer into Possession**

1. Transfer into possession is voluntary if prior to the expiration of the deadline specified in the notice the pledger actually transferred the pledged asset into the pledgee's possession or expressed in writing its/his/her consent certified by a notary to provide such asset in its/his/her disposal at an agreed upon moment.
2. Deed of voluntary transfer into possession shall be executed in the format established for disposition of the respective asset.

### **Article 71. Enforced Transfer into Possession**

1. Enforced transfer takes place following the expiration of the deadline specified in the notice based on judicial decision.
2. The court examines the application without citation of the parties and only establishes the existence of the documents (contracts), from which the secured obligation and the right of pledge result, the amount of the secured claim, the fact of the pledger's notification of the exercise of the right of pledge, and the fact of notice registration in the respective registry.
3. The pledgee may request that the court order the transfer into possession prior to the expiration of the deadline set in the notice if its/his/her claim could not be satisfied without this measure or if the asset is subject to destruction or rapid depreciation. In the event of threat of destruction or rapid depreciation the pledgee may exercise its/his/her right of levying execution without delay.

4. The court shall decide on the immediate enforced transfer following the filing of the application for transfer and not later than within three days. The court shall forward its decision on enforced transfer to the pledgee and the person demanding the transfer of the pledged asset within three business days.
5. In its decision on enforced transfer of real estate, the court shall decide on the forced eviction of individuals and removal of assets from such real estate. The pledger shall be notified thereof in writing at his/her latest home address, of which he/she informed the creditor or court.
6. It is not required to bring the application for enforced transfer to the notice of the person that shall transfer the pledged asset. However, this person shall be informed of judicial decision on enforced transfer on a compulsory basis.
7. Based on its decision the court issues a writ of execution to the pledgee without delay.

#### **Article 72. Contesting the Decision on Pledged Asset Transfer**

1. The party that shall transfer the asset is authorized to file an appeal within five days following the pronouncement of the judicial decision on enforced transfer. The appeal shall not suspend execution of the decision on enforced transfer into possession.
2. In the event of subsequent cancellation of the decision on enforced transfer, the pledgee shall return the asset or repay its selling price and recover the damage caused.

#### **Article 73. Transfer into Possession of a Pledged Asset Held by a Third Party**

1. A third party that holds the pledged asset and is not obliged to pay the secured claim shall bear personal responsibility for failure to meet the transfer into possession deadline set by court and consequences of the delay in the asset transfer.
2. The third party holds a priority claim based on its/his/her right to foreclose the pledged movable asset is obliged to transfer such asset encumbered with its/his/her priority right.
3. Third party holding the pledged asset may demand, in the event that it received the asset as payment for its/his/her claim, priority and/or secured, prior to the one specified in the notice, or in the event that it paid priority and/or previously secured claims, that the pledgee sell the asset itself or under judicial supervision. However, the third party is not obliged to transfer the asset into possession if the pledgee failed to present a guarantee, real or personal, that the asset will be sold at a price high enough to fully cover its/his/her priority and/or previously secured claims.

#### **Article 74. Restoration of Non-canceled Real Rights**

Real rights the pledger had to the asset at the moment of its acquisition or which expired during its possession shall restore after the transfer provided they were not canceled.

### **Section III PLEGGED ASSET SALE BY PLEDGEE**

#### **Article 75. Conditions for Asset Sale by Pledgee**

1. Once the pledged asset is taken into the pledgee's possession, the pledgee is authorized to proceed to sale of the pledged asset by direct negotiations, tender, or public auction provided it entered a notice in the registry in the manner envisaged by Article 67(2).
2. The pledgee shall sell the asset without any unjustified delays at a reasonable commercial price and in the pledger's best interest.
3. If there are several assets the pledgee may sell them together or separately.
4. The pledgee selling the asset acts on the owner's behalf and shall inform the buyer about its/his/her status at the moment of sale.
5. In the event of the pledged asset sale by tender the pledgee shall announce the tender through mass media or by invitations. The tender announcement shall include adequate information to allow an interested person to make tender offers within the deadline and at the announced location.
6. The pledgee shall accept the largest offer except when the conditions accompanying the offer make it less favorable than a smaller offer or the offered price is not commercially reasonable.
7. The pledgee selling the asset by a public auction shall sell it on a date, time, and in location specified in the sale notice, which shall be brought to the notice of the pledger, a third party holding the asset, and, as the case may be, fiduciary administrator, as well as all pledgees which included a notice of levying execution upon the pledged asset in the respective registry. The pledgee shall also inform any interested party which makes a request.
8. The pledgee is authorized to appeal to a marshal in order to take possession of the asset.

#### **Article 76. Proceeds from Sale of Pledged Asset**

1. From proceeds from sale of a pledged asset the pledgee shall pay selling expenses, then claims which are prior to its/his/her rights, and then its/his/her own claims.
2. Should there be other claims subject to payment from proceeds from sale of the pledged asset, the pledgee that sold the asset shall file a statement of proceeds from sale of the pledged asset with court competent with regard to the sale and transfer

thereto the amount remaining after the payment. Otherwise within ten days following the asset sale the pledgee shall submit a statement to the owner of the sold asset and hand it over the surplus, if any. The statement may be contested in the manner set forth by the Civil Code of Practice.

3. If proceeds from sale of the asset is not adequate to pay its/his/her claims and costs, the pledgee shall preserve the non-priority claim to the difference due from its debtor.

#### **Article 77. Asset Acquired from the Pledgee**

1. The buyer shall acquire the asset encumbered with real rights existing at the moment of notice registration in the respective registry without the right of pledge of the pledgee that sold the asset and without claims prior to such pledgee's right.
2. Real rights established following the notice registration may not be opposed to the buyer without its approval.

#### **Article 78. Encumbrance Termination Decision**

In the event that the buyer of the asset sends to the court, the circumscription of which covers the entirety or most of the pledged assets, evidence that the sale was carried out in compliance with legal provisions and the price was fully paid, the court shall issue a decision on cessation and cancellation of pledges, sequesters, and real rights specified in Article 77(2).

### **Section IV PLEGDED ASSET SALE UNDER JUDICIAL CONTROL**

#### **Article 79. Selling Conditions**

1. A pledged asset is sold under judicial control if it appoints a person that will sell the pledged asset, determines conditions and goals of sale, specifies whether the sale may be carried out by direct negotiations, tender, or public auction, and, as the case may be, sets the price following the expert evaluation of the asset.
2. The pledgee may not request that the asset be sold encumbered with its/his/her pledge.
3. The appointed person shall inform interested parties at their request about the actions he/she undertakes to sell the pledged asset.
4. The appointed person acts on the owner's behalf and shall inform the buyer thereof.
5. Sale carried out according to this Article exempts real rights from pledge.
6. A pledged item may only be sold under judicial control if:

- a) one more person's approval or permission is missing, which is necessary for validity of the concluded pledge agreement;
- b) pledged items are assets of historic, artistic, or cultural value;
- c) the pledger is missing and its/his/her location is unidentifiable.

## **Chapter IX PLEDGE CESSATION AND REMEDIES**

### **Article 80. Pledge Cessation**

1. A pledge ceases as a result of destruction of the pledged asset, its withdrawal from civil circulation, or expropriation, provided these events affect the entire asset.
2. Pledge of a movable asset incorporated into real estate shall continue in effect as mortgage provided it is registered in the Real Estate Registry even if the nature of the movable asset changed. This pledge shall have a degree of priority set in accordance with a previous registration.
3. A pledge shall cease as a result of repayment of the obligation the fulfillment of which it secured.
4. A pawn shall cease together with termination of possession.
5. A mortgage shall cease within thirty years following its registration date or renewed registration date.
6. Pledge shall also cease on other grounds envisaged by law.

### **Article 81. Remedies**

A third party whose right was violated or which has a lawful interest may contest in court the validity of the pledge or levying of execution on the pledged asset.

## **Chapter X FINAL AND INTERIM PROVISIONS**

### **Article 82. Effectiveness**

1. This Law shall take effect within thirty days following its publication date, except for Chapter VI which shall take effect three months following its publication date.
2. Pledge Law No. 838-XIII of May 23, 1996 shall be abrogated on the effective date of this Law.
3. Within three months the Government shall:

- submit to Parliament proposals on additions to Article 11 regarding mortgage of future real estate and on bringing current legislation into line with this Law;
- and
- bring its normative acts into line with this Law.

Chairperson of Parliament

Eugenia Ostapciuc

Chisinau, July 30, 2001  
No. 449-XV