

PLEDGE REGISTRY



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PLEDGE REGISTRY

I. INTRODUCTION

The right of pledge is limited real right on certain asset (pledge) which entitles its holder (pledgee) that some claims, which are not satisfied in due time, could be settled out from the value of that asset, regardless to whom the same belongs, while its current owner (pledgor) is obliged to accept it. Legal provisions relating to the right of pledge shall also apply in cases of any secured claims on the property or rights of the debtor or a third party. The right of pledge cannot be separated from the pledge so the one who on any legal basis acquires a pledge, acquired the same encumbered with the right of pledge. The right of pledge cannot be transferred from one pledge to another.

The right of pledge ensures compensation of certain monetary claims, or claims whose value is expressed in money. Determined claims are claims with identified creditor and debtor, as well as with determined legal basis and the exact amount, or at least the maximum amount, to which the claim is secured by the pledge. The right of pledge ensures not only the settlement of the main claim from the value of pledge but also secondary claims, interests, costs related to assets maintenance and costs of claims collection. During the period related to the right of pledge, the settlement of the claim is secured by the pledge as a whole, including everything related to the same. If the pledge is divided, the right of pledge continues to encumber the pledge or its parts regardless to the division. If the pledge is destroyed and instead there is a right compensating the same (the right to compensation, the right to insurance premium etc.), the right of pledge continues to exist. The right of pledge ensures compensation of certain claims as a whole from the value of pledge, so the encumbrance shall not be reduced with the reduction of the claim, if not provided differently by the law. If the right of pledge is established in a way that ensures the settlement of certain claims from the value of several real estates as one pledge (joint mortgage) the pledgor is free to decide from which real estate the claim will be compensated, unless provided differently. A debtor, which in order to compensate the creditor's claim, established the right of pledge, is not required to meet the creditor's claim until the pledged assets are returned to him/her, neither is required in that case to allow deletion of the right of pledge entered in the land registry. With the termination of the right to pledge which secure a certain claim does not end the claim itself.

A claim secured by the right of pledge, in the course of settlement from the value of the pledge, has priority over all other claims that are not secured by the right of pledge, unless provided differently by the law. If the pledge is encumbered with several rights of pledge, the priority in settlement will have the claim which is ahead of the others in the priority order. A priority order is determined by the moment of establishment of the right of pledge, unless otherwise specified in the law. Order of priority of mortgages and the conditions under which it is possible to properly assign a priority order is determined by the rules of a registered land rights.

II. SUBJECT OF A PLEDGE

The right of pledge may be established on an asset owned by the pledgor as well as on the asset to which he/she will acquire ownership only after conclusion of the pledge agreement. A pledge may

secure one or more existing or future monetary obligations. An obligation may be the liability of the pledgor or any other person.

A pledge will be established with fulfilment of the following conditions regardless to the order of fulfilment of the same:

- a) that the pledge is registered in the Pledge Registry;
- b) that persons registered as the pledgor and pledgee concluded the pledge agreement;
- c) that the person designated as the pledgor in the registration is the owner of the asset which in the pledge agreement is designated as collateral; this requirement is also fulfilled if under the contract, which creates a specific ownership right over an asset, this person is specified as a customer, tenant, assignor of claims or commission agent;
- d) that the person designated as a pledgee in the registration, or any other person in accordance with the pledge agreement or related agreement, gave or is obliged to give a loan to the person designated as a pledgor in the registration or to the third party.

Collateral must be sufficiently determined in the pledge agreement, in a way that it can be identified in case there are issues related to the validity, priority rights and enforcement of the right of pledge.

Null and void are the following provisions of the pledge agreement if the same agreed prior to the violation of obligations under this agreement by the pledgor by which:

- a) the pledgor waives his/her rights or restricts the same;
- b) It allows seizure of collateral in accordance with Article 26, paragraph 3 of the Framework Law on Pledges (Published in "Official Gazette of BiH", number 28 dated 23 June.2004; 54/04).

A pledge and special ownership rights, as well as their current priority rights with respect to collaterals, extend to the benefit from collaterals in the following cases:

- a) that the registration of that pledge and special ownership right includes a description of benefits on the basis of collaterals;
- b) that the benefit from collaterals is money or claim payable on the basis of security policy, or compensation for a loss or damage of collaterals.

III. PLEDGE REGISTRY

A Pledge Registry shall be established for the purpose of registration and obtaining information on pledges, special ownership rights, related rights, foreign rights and previously acquired rights.

"Pledge" understands a real property right established upon registration in the Pledge Registry, and acquired by the pledgee as a security instrument for one or more of existing or future claims.

"Special ownership right" understands:

- a) a right of a seller under the sale agreement with retention of the title;
- b) a right of the lessor for the long-term lease contract;
- c) a right of an acquirer (but not a pledgee) to one or more claims;
- d) a right of a client under the contract on commission, if both the commission agent and the client perform activities of trading on the basis of the contract on commission.

"Related law" understands the real right but not the ownership right, which provides obligation and which is in compliance with another law of Bosnia and Herzegovina or other government institutions.

"Foreign right" understands a right created under the law of any state other than BiH and that would include:

- a) special ownership right, created in BiH;
- b) a pledge, created and registered in accordance with the Framework Law on Pledges.

"Previously acquired right" understands the pledge, related right i.e. a special ownership right that is acquired on an asset in accordance with the laws of Bosnia and Herzegovina, or other institutions entrusted with the public authority prior to the implementation of the Framework Law on Pledges.

The Pledge Registry is managed with the Department for Registry which is to be established as an organisational unit within the Ministry of Justice of Bosnia and Herzegovina.

The Minister of Justice appoints the Chief Registrar, Deputy Chief Registrar and civil servants employed with the Pledge Registry. The Chief Registrar is the one that manages the Pledge Registry.

IV. REGISTRATION

Any registration, changes of the same, as well as a search in the pledge registry are assigned numbers indicating the time and order in which the same were made. The registration can be made before or after the fulfilment of any of the conditions necessary for the creation of a pledge. The registration of a special ownership right can be made before or after the creation of the right. After the registration, the person/entity may apply for an excerpt from the Pledge Registry in a form of the Certificate of Registration i.e. Certificate on search result. The Chief Registrar is obliged to issue the required excerpt from the Pledge Registry, if the requestor prior to or simultaneously with the application paid the fee prescribed for the issuance of the excerpt. The Pledge Registry data must be available for all interested citizens at the entity ministries of justice as regulated by the Ordinance on Pledges.

4.1 Searches of the Pledge Registry

A Certificate on search result can be issued on the basis of the following criteria:

- a) ID number of a natural person or tax number of a legal entity;
- b) Serial number of the asset in the case when the Ordinance on Pledges requires that the asset must be described with a serial number;

c) Registration number assigned by the Pledge Registry.

4.2 Validity of Registration

A registration, including changes of the same, shall be treated valid only with fulfilment of the following conditions:

a) The registration has not expired, or has not been deleted in accordance with the Framework Law on Pledges and Ordinance on Pledges;

b) It contains description of collaterals in accordance with the Ordinance on Pledges;

c) The registration can be found in the Pledge Registry through a search on the basis of the serial number unless the Ordinance on Pledges required description with serial number.

d) Can be found in the Pledge Registry by searching on the basis of the personal identification number or tax number of the legal entity identified as the pledgor in the registration, unless the Ordinance on Pledges required description with serial number.

When a person identified as a pledgor in the registration, in relation to collateral without serial number, changes the personal identification number or tax identification number of the legal entity, or carries out the transfer of ownership of collaterals to another person, the registration remains valid. However, the registration becomes invalid if the person identified in the registration as a pledgee acquires knowledge of the change of the personal identification number or tax number of the legal entity or transfer of the ownership, but does not amend the registration to include new details within 15 days from the day of acquiring the knowledge.

4.3 Proving the data entered in the Pledge Registry

Existence and content of any information entered in the Pledge Registry can be verified exclusively with appropriate excerpt issued by the Pledge Registry. Document, which shows to be issued by the Pledge Registry and in the prescribed form will be treated as issued by the Pledge Registry, and has the character and probative force of a public document, in terms of the facts contained therein, unless proved contrary.

4.4 The right to request information

A person who appears in a registration as a pledgor, or a person authorized to act on behalf of the same, has the right to request from a person who appears in the same registration as pledgee to provide:

a) A copy of the Pledge Agreement i.e. agreement on which was based the special ownership right, previously acquired right, or foreign right;

b) A written statement of the repayment terms as of the date specified in the request;

c) Approval or update of the list of collaterals as of the date specified in the request; and

d) Approval or update a statement indicating the amount of obligation secured by the pledge, i.e. the amount of debt on the basis of the agreement creating the special ownership right, previously acquired right, or foreign right as of the date specified in the request.

The person, to whom the request is addressed, is obliged to respond within 15 days from the receipt of the same. The fee for each request is specified in the Ordinance of Pledges. During any six-month period the person who submitted the request is entitled to one free- of- charge response from the person to whom the same was addressed.

If the person to whom the request is addressed, without a reasonable excuse fails to respond the same, the requestor may apply to the court requiring a decision that will order deletion of the pledge registration, special ownership right, previously acquired right, or foreign right as designated in the request. After receiving the decision, the Chief Registrar will perform deletion, as ordered by the said decision.

4.5 Deletion of registration

In the event the registration relates to an asset, used by the person identified in the registration as pledgor for personal, family or household uses, the registration must be deleted by the person identified in the registration as pledgee not later than 15 days from the day of fulfilment of all obligations to which the registration relates. A person, who fails to fulfil this obligation, must pay to the person identified as pledgor in the registration the amount specified in the Ordinance on Pledges and also have to compensate any loss.

A person who in the registration is referred to as a pledgor or any other person who is the owner of the pledge to which the registration relates, shall be entitled to send a written request to the person referred to as a pledgee in the registration to delete or change the registration if:

- a) All of the obligations to which the registration relates have been fulfilled;
- b) When description of assets contained in the registration refers to:
 - a claim that has not been transferred;
 - an asset that is not subject to the related right in favour of a person specified as a pledgee in the registration;
 - an asset that is not collateral according to the pledge agreement, agreement creating previously acquired right or agreement creating a foreign right, concluded between persons specified in that registration as pledgee and the pledgor;
 - an asset which is not the subject of an agreement creating special ownership right concluded between persons specified in the registration as the pledgee and the pledgor;
- c) When there is no pledge agreement or agreement providing for special ownership right, a previously acquired right or foreign right between persons identified as pledgor and the pledgee in the registration.

The person specified in the registration as a pledgee is required to fill the request within 15 days from the date of receipt of the request. No fee or expense shall be charged, and no amount shall be accepted, by a person for compliance with these obligations.

If despite the request the registration is not deleted or amended, the applicant may address to the court for the issuance of an appropriate decision to delete or amend the registration. The court will issue an appropriate decision within 8 days from the date of the filing of the request for the issuance of the decision. If the court issued a decision, pledgee who has not fulfilled the ordered obligation have to pay to the person who made the request to delete, where the amount is determined by the Ordinance on Pledges, as well as compensation for damages.

4.6 Refusal, amendment and deletion of registration

The Chief Registrar of the Pledge Registry may refuse the registration if, in his/her opinion, it is not in compliance with the Framework Law on Pledges or the Ordinance on Pledges. The Chief Registrar of the Pledge Registry must issue a notice to the applicant in digital form stating the reasons for which the registration is rejected.

If, in the opinion of the Chief Registrar, there are circumstances that lead to the situation that it is not purposeful that the Pledge Registry performs one or more of its activities, including carrying out the registration and searches, the Chief Registrar may temporarily suspend such activities. The temporary suspension shall continue until, according to the opinion of the Chief Registrar, last circumstances which lead to the same.

The Chief Registrar of the Pledge Registry shall carry out amendments and deletion from the Register of Pledges in the event of:

- a) the registration has expired;
- b) receipt of a valid request to amend or delete a registration;
- c) receipt of a court decision which orders amendment and deletion of registration.

V. ENFORCEMENT OF OBLIGATIONS SET OUT IN THE PLEDGE AGREEMENT

In the process of execution of the Law on pledges, the competent courts are the courts in charge of the execution of the laws of entities and Brcko District of Bosnia and Herzegovina. Enforcement proceedings shall be initiated at the request of the pledgee if the pledgor violates the obligations set out in the Pledge Agreement. The execution is only possible if the pledgee submits the pledge agreement and certificate of registration to the competent court. The said registration certificate is enforceable.

In the proposal for enforcement the pledgee must suggest the following:

- a) that the court executor should confiscates the collateral for the purpose of its sale by the pledgee, or
- b) that the court executor should confiscate and sell the collateral.

In case of violation of obligations under the pledge agreement by the pledgor, the pledgee may take the collateral in person and without the assistance of the court executor, but only after the pledgor has given written consent for such an action. For the validity of this consent it is not needed to carry out the notary processing i.e. validation or verification with the court or municipal services. When the pledgee

submits a proposal to the competent court, the court must issue a decision within 8 days of submission of the proposal. On the basis of this writ of execution the court executor will confiscate the collateral described in the pledge agreement and deliver the same to the pledgee or authorized representative of the same for the purpose of selling of the collateral. The court executor must confiscate the collateral within a period not exceeding 8 days from the date of adoption of the same, regardless of whether the remedy is filed. The court executor must submit to the pledgor a writ of execution at the time of confiscation of the collateral and the same is not required to give prior notice on the confiscation to any person including the pledgor. The court executor, in order to gain possession over the collateral, is authorized to enter into any space (indoor or outdoor) where the same is located.

No later than 8 days after the pledgee has gained possession on the collateral, he/she must provide a notice of the acquisition of the property to the pledgor, as well as to any person who is mentioned as pledgee for each registration, which refers to the same collateral, which is entered in the database of the Pledge Registry before the date of giving the said notice.

VI. RIGHTS OF CONTRACTING PARTIES TO PROTECTION

After confiscation of collaterals, the person whose rights have been involved in or the person affected by the enforcement of the right to pledge may address to the enforcement court with a request to:

- a) suspend the enforcement proceedings on the basis of the fact that the pledgor did not violate obligations under the pledge agreement, and order return of the collateral to the pledgor;
- b) temporarily or permanently revoke the right of the pledgee to sell the collateral;
- c) to provide to the pledgee instructions on any matter in connection with the execution of the right to pledge and order the same to behave in accordance with one or more procedural rules stipulated by the Law on Pledges;
- d) to free a person of any commitments to one or more of certain procedural rules specified in the mentioned law, if the compliance with these rules become irrelevant;
- e) extend any deadline that the pledgee must comply with;
- f) to require a person to compensate to another person costs which that person had due to initiation of unjustified court proceedings; or
- g) to change the distribution of money by selling the collateral in relation to the proposed distribution.

The competent executive court will issue the required decision within 8 days from submission of the request.

VII. NOTICE OF SALE, SALE OF COLLATERALS AND DISTRIBUTION AFTER THE SALE

At least 15 days before the sale of a collateral, the person, to which according to the writ of execution, is ordered to sell certain collateral must give notice of the sale to the pledgor, to any person that is

entitled to right over the collateral, as well as to any person who, prior to issuing a notice in the valid registration of sales is identified as pledgee.

Notice of the sale shall contain:

- a) a description of collateral;
- b) the unpaid amount of the obligation secured by the pledge;
- c) the amount of the related costs or, if the amount of costs is not yet known, then realistic assessment of the same;
- d) a notice of the right to redeem the collateral;
- e) a notice that the collateral will be sold if not redeemed; and
- f) the date, place and time of the sale by public auction or the venue where sealed bids for a tender have to be submitted and the deadline for the submission.

Notice of the sale is not necessary in the case of:

- a) if the collateral would significantly lose on its value if not sold immediately;
- b) if the costs associated with maintaining and storing the collateral are disproportionately high compared to its value; or
- c) if the court decides that the notice is not necessary.

Collateral may be sold as a whole or in commercial units:

- a) by a public sale, including public auction or closed tender conducted by an enforcement officer or by the pledgee; or
- b) by a private sale conducted by the pledgee when the pledge agreement provides for private sale or the same is being ordered by the court.

Unless otherwise specified by the competent court, the pledgee shall carry out the public sale or sale by direct agreement in a manner that is consistent with the generally accepted market standards for the sale of assets of the same kind as the collateral. The pledgee is not required to engage a court expert to assess the value of the collateral. The procedure for the sale of collateral through public sale or sale by direct agreement is governed by the Ordinance on Pledges. The pledgee can buy an asset, or a part of the same, only through the public sale by a court executor.

Any person who is entitled the priority right on the collateral in relation to the pledgee who is in possession of the collateral, has a prior right to take and retain the collateral and sell it, regardless of whether the enforcement is initiated.

Within 8 days from the day of selling the collateral, the pledgee or the court executor must deliver a notice to the pledgor, any person that they are aware that is entitled to this type of collateral, as well as to any person who was registered as a pledgee prior to issuing the notice. The notice must contain the following information:

- a) the amount of money received from the sale of the collateral, as well as the name and location of the bank to which the money was deposited;
- b) the amount spent for the costs covering;
- c) the manner of distribution of the money from the sale; and
- d) that, if the court is not requested to change the distribution of money received by selling the collateral in relation to the proposed distribution (this is in accordance with Article 27, paragraph 1, item g) of the Law), within 15 days of issuance of the notice, the money from the sale shall be distributed as specified in the notice.

The money has to be distributed in accordance with the provisions of the Framework Law on Pledges governing the right of priority.

If the enforcement court does not decide differently, the pledgee who does not distribute the money from the sale of collaterals in accordance with the law, will be the debtor to any person who has filed a petition with the court and who has suffered damage caused by the omission of the pledgee.

VIII. SETTLEMENT WITH RETENTION OF COLLATERAL

In case of the violation of obligations under the pledge agreement, the pledgee may offer to the person, who is entitled to a notice, to retain the collateral for satisfaction of the claim, or part of the claim, that was secured by the pledge.

If the notice of refusal is submitted to the pledgee within 15 days of receipt of the proposal, the pledgee cannot retain the collateral and shall sell it in accordance with the provisions of the law.

If no notice of refusal is submitted to the pledgee within 15 days of receipt of the proposal it shall be considered that the pledgee irrevocably decided to retain the collateral for the purpose of settlement of claims in accordance with its proposal. In this case, the pledgee acquires the right of ownership on the asset which in that way is free of any rights by persons to whom the proposal was referred.

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