

On the basis of Article 88, item 2 of the Constitution of the Republic of Montenegro I hereby pass the

**ENACTMENT PROCLAIMING  
THE LAW ON SECURED TRANSACTIONS  
(Official Gazette of the Republic of Montenegro, No 38/02)**

I hereby proclaim the Law on Secured Transactions, adopted by the Parliament of the Republic of Montenegro at the fifth meeting of the first regular session in 2002, held on the 19<sup>th</sup> of July 2002.

Number: 01-2178/2  
Podgorica, 23 July 2002

President of the Republic of Montenegro  
Milo Đukanović, signed

**LAW ON SECURED TRANSACTIONS**

**CHAPTER I  
GENERAL PROVISIONS**

**Scope of the Law  
Article 1**

- (1) This Law regulates a unique system for security interest in movable property (property) in the Republic of Montenegro (hereinafter: Republic).
- (2) The present Law provides the exclusive means in the Republic by which security interests in movable property (hereinafter: Pledges) are created and become effective against third parties.
- (3) The present law applies to all transactions, regardless of form, intended to create a Pledge.
- (4) However, the present law does not apply to:
  - 1) a transfer of a claim for compensation of an employee;
  - 2) a sale of accounts as part of a sale of the business out of which they arose; or
  - 3) a mortgage on immovable property except with respect to fixtures.

## **Definitions** **Article 2**

When capitalized in the present law, the following terms shall have the meaning indicated:

“Instruments” are:

- (1) any documents evidencing a transferable beneficial interest in anything, as well as transferable documents, possession of which gives to the holder the right to receive money or goods; and
- (2) negotiable instruments.

“Inventory” means:

- 1) items of property held for sale or lease or furnished under contracts of service or sale; or
- 2) raw materials, work in process, or materials used or consumed in business.

“Execution officer” means court or police officer who, under a court order, carries out enforcement of pledges or liens in accordance with this law.

“Attachment” means that a Pledge becomes enforceable against the Pledgor with respect to the Collateral.

A “Person” for purposes of this law is any natural person, legal entity, Republic body or local self-government body.

“Immovable Property” means land and property that is inseparable from it, as well as buildings, installations, or structures firmly connected to the land.

“Fixture” means Movable Property that has become so affixed or related to Immovable Property:

- 1) that an interest in such Movable Property arises under the Applicable Law governing Immovable Property; or
- 2) that the Movable Property cannot be removed from the Immovable Property to which it is affixed without unduly damaging the Immovable Property.

“Secured Obligation” means any obligation subject to a Pledge.

“Perfection” means:

- 1) that a Pledge has attached and
- 2) that a Pledge Notification Statement has been registered under this Law or the Pledgeholder is in possession of the Collateral.

“Movable Property” is anything that can be owned, whether tangible or intangible, except Immovable Property.

“Account” means a right to payment of a monetary obligation, but excludes letters of credit, deposit accounts, and Instruments.

“Proceeds” includes whatever is received upon the sale, exchange, collection, or other disposition of Collateral; proceeds include insurance payments for loss or damage to the original collateral or its proceeds, and include cash or other negotiable instruments so long as they remain identifiable.

“Registration Office” means an office established by separate regulation to perform the registration functions set out in the present Law.

“Serial numbered goods” means the following, when not held for sale or lease in the ordinary course of business: a motor vehicle, a trailer, a mobile home, an aircraft, or a boat, as defined by administrative instruction from the registration office.

“Contract Right” means the right to any performance or payment under a contract.

A “Pledge” is an intentionally created interest in Movable Property that gives the Pledgeholder the right to take possession of such property for the purpose of satisfying or attempting to satisfy a the “Secured Obligation” in accordance with the present law.

“Pledge Agreement” is a written agreement by which a Pledgor grants a Pledgeholder a Pledge.

“Lien” means a security interest in property that arises by operation of law or court decision, without any agreement by the owner of the property, to secure payment or performance of an obligation.

A "Purchase Money Pledge" is a Pledge in which the Pledgeholder gives value to enable the Pledgor to acquire rights in or the use of the Collateral.

“Pledgor” is a Person that conveys to a Pledgeholder a Pledge in Collateral.

“Pledgeholder” is a Person in whose favor a Pledge exists.

“Collateral” is any property subject to a Pledge.

### **Collateral Article 3**

- (1) Any Movable Property that may legally be transferred pursuant to the applicable law may serve as Collateral.
- (2) Unless otherwise provided by law, minerals, other raw materials, and their extraction rights may be Collateral.
- (3) Uncut timber, unharvested produce and unborn animal may be Collateral.
- (4) Pledge may be enforced only to the extent of pledgor' s rights on the Collateral.

- (5) Movable Property that comes into possession after creation of the pledge may serve as Collateral. A Pledge extends to Collateral that becomes owned by the Pledgor after the Pledge has been created if the Collateral is identified in the Pledge Agreement and, as to third parties, if the Collateral is identified and described in the Notification Statement in accordance with this law.
- (6) If the Pledge Agreement and the Notification Statement describe the general characteristics of Pledged Inventory in a manner sufficiently capable of identifying the Inventory, the Pledge extends to all items and elements of the Inventory, whether owned by the Pledgor at the time of the creation of the Pledge or thereafter acquired. A Pledgeholder with a Pledge in Inventory need not create a new Pledge in each item or element of Inventory in which the Pledgor acquires rights, nor does such Pledgeholder need to take any action to perfect his Pledge in such items and elements of Inventory.
- (7) A Pledge also extends to any rights of the Pledgor in the Collateral that exist pursuant to any contract or agreement.
- (8) Unless the Pledge Agreement provides otherwise, property that becomes part of or attached to Collateral is subject to the Pledge.
- (9) A transaction in which a seller-lessor holds title to property and leases the property to a buyer-lessee is a Purchase Money Pledge.
- (10) A transaction in which a seller of Movable Property conveys ownership rights to the buyer, but conditions the conveyance on the buyer's payment to the seller of all or substantially all of the purchase price, constitutes a Purchase Money Pledge.

### **Obligations Secured by Pledge**

#### **Article 4**

- (1) Unless provided in the Pledge Agreement or by a written waiver, a Pledge secures the entire amount of a Secured Obligation, including unpaid principal, interest, penalties, costs of repossession, maintenance, sale, and any other obligations secured. Unless provided in the Pledge Agreement, a Pledge does not secure future advances of money that have not been advanced or committed to be advanced to the Pledgor at the time the Pledge is created. For purposes of this law, a Pledgeholder shall be deemed to have advanced money by having:
  - 1) provided funds or their equivalent to the Pledgor;
  - 2) exercised some forbearance in favor of the Pledgor; or
  - 3) otherwise given value, whether before or after, to the Pledgor in exchange for the Pledgor's granting the Pledge, unless the Pledge Agreement provides otherwise.
- (2) A Pledge may secure one or more obligations.

- (3) A Secured Obligation may be identified generally or specifically. It does not need to be in existence or owing to the Pledgeholder at the time the Pledgor grants the Pledge.

## **CHAPTER II PLEDGES AND LIENS**

### **General Provisions for Pledges and Liens Article 5**

- (1) A Pledge is created by the Pledgor and the Pledgeholder entering into a Pledge Agreement.
- (2) Pledges attach when:
  - 1) there is a valid Pledge Agreement;
  - 2) the Pledgeholder has given some "value" or actually advanced money to the Pledgor;
  - 3) the Pledgor has rights in the Collateral.
- (3) A Lien attaches to property at the moment of the Lien's creation, or otherwise as provided by applicable law.
- (4) A Lien must be perfected as set forth in this Law.
- (5) A Pledge on Collateral in the possession of a bailee may be perfected by the Pledgeholder's taking possession of
  - 1) a negotiable bill of lading issued by the bailee and covering the Collateral;
  - 2) a non-negotiable bill of lading or warehouse receipt issued by the bailee, covering the Collateral and made out to the Pledgeholder, or
  - 3) any document issued by the bailee describing the Collateral, unless contrary to other laws.

### **The Pledge Agreement Article 6**

- (1) A Pledge Agreement may relate to one or more Pledges.
- (2) A Pledge Agreement is invalid unless it is in writing and includes:
  - 1) identification of the Pledgor, the Person owing the Secured Obligation (if different from the Pledgor), and the Pledgeholder;
  - 2) specific or general description sufficient to reasonably identify the Collateral, which may include property to be acquired by the Pledgor after the date of the pledge agreement;
  - 3) the signatures by or on behalf of the Pledgor and the Pledgeholder.

- (3) A Pledge Agreement may include such other matters as the parties may agree, and it may be subsequently amended by the parties.
- (4) A Pledge Agreement is not required to be notarized unless the parties to the Pledge Agreement so agree.

### **Rights and Defenses of Pledgor and Pledgeholder** **Article 7**

- (1) A Pledge is valid and enforceable only if the Secured Obligation to which it relates is valid and enforceable.
- (2) In any proceeding in which a Pledgeholder asserts rights arising out of a Pledge, the Pledgeholder has the burden of proof regarding the creation of the Pledge. When the Pledgeholder has met that burden, the Pledgor or any other party to the proceeding has the burden of proof regarding the termination of the Pledge or any defenses.

### **Rights and Obligations Regarding Collateral** **Article 8**

- (1) Except as otherwise provided by the present law, the parties to a Pledge are free to determine their respective rights and obligations. The remedies of the parties are as set forth in the present law.
- (2) Except as otherwise provided in the present law, unless the Pledgeholder and the Pledgor expressly agree in the Pledge Agreement that the Pledge is perfected by taking into possession, the Pledgor retains the right to possess and use the Collateral and to otherwise enjoy all rights in the Collateral.
- (3) Unless otherwise provided in the Pledge Agreement, the Pledgor's rights in the Collateral include the right to combine the Collateral with any other thing or right, to apply the Collateral in any manufacturing process or other activity, to receive any Proceeds except insurance Proceeds, and, in Pledges in which the Collateral is Inventory, to sell or use it in the ordinary course of business. All these rights terminate, however, upon the commencement of an enforcement action pursuant to the present law.
- (4) The Pledgor may not sell, lease, or otherwise dispose of the Collateral except as provided in the present law or the Pledge Agreement. The Pledgor is liable to the Pledgeholder for any damages that result from a breach of this obligation.
- (5) If a Pledgor has given possession of Collateral to a Pledgeholder for purposes of perfecting Pledge by taking into possession, the Pledgor has the right, on reasonable notice to the Pledgeholder, to inspect the Collateral.

- (6) A Pledgor in possession of Collateral must refrain from abusive and destructive use of the Collateral, must prudently maintain it, and must use it in the manner in which such items of property are ordinarily used, and the Pledgor is liable to the Pledgeholder for any damages that result from a breach of this obligation. Unless the Pledge Agreement provides otherwise, the Pledgeholder has the right, on reasonable notice to the Pledgor, to inspect the Collateral.

## **CHAPTER III RIGHTS OF THIRD PARTIES**

### **Priorities Article 9**

- (1) Unless a Pledge Agreement provides otherwise, a Pledgor can grant more than one Pledge in the same Collateral.
- (2) Except as otherwise provided in this Article, the priority of different Pledges in the same Collateral is determined in accordance with the time at which the Pledges became perfected. The first perfected Pledge has priority over any subsequently perfected Pledge until and unless the first perfected Pledge becomes ineffective. Each subsequent Pledge of the same Collateral will rank in the order in which it became perfected. Unperfected Pledges rank below all perfected Pledges, and in the order in which they attached to the Collateral.
- (3) Perfected Liens rank with perfected Pledges, and unperfected Liens rank with unperfected Pledges, with the first in time being senior in each case unless otherwise specifically mandated otherwise by other applicable law.
- (4) A Pledge of Instruments perfected by taking into possession has priority over any prior Pledge or Lien.
- (5) A Purchase Money Pledge has priority over any other Pledge on the same Collateral given by the same Pledgor and over any other Lien.
- (6) A pledge in serial numbered goods shall be perfected only if a notification statement is filed containing a description of the goods by serial number. A buyer or lessee takes serial numbered goods free of a pledge in the goods only if the buyer or lessee bought or leased without knowledge of the pledge and the serial numbered goods were not correctly described by serial number in a notification statement filed under this regulation.
- (7) A pledge under this law may be created in goods that are fixtures or may continue in goods that become fixtures. No pledge exists under this law in ordinary building materials incorporated into an improvement on land. Priority with respect to fixtures is determined as follows:

- 1) A purchase money pledge in fixtures has priority over any conflicting interest of a mortgagee, lien holder, or owner of the immovable property if the mortgagee, pledgor, lienholder, or owner has a recorded interest in the immovable property or is in possession of the immovable property and the pledge is perfected by registration of a notification statement before the goods become fixtures or within 20 days thereafter. Notwithstanding the provisions of this paragraph, a pledge in fixtures is subordinate to a mortgage for the construction of a building recorded before the goods become fixtures if the goods become fixtures before the completion of the construction.
  - 2) A perfected pledge in fixtures has priority over any conflicting interest of a mortgagee, lien holder, or owner of the immovable property if the mortgagee, pledgor, lienholder, or owner has a recorded interest in the immovable property or is in possession of the immovable property and the pledge is perfected by registering a notification statement before the interest of the mortgagee, lien holder, or owner arises.
  - 3) A perfected pledge in fixtures has priority over any conflicting interest of a mortgagee, lien holder, or owner of the immovable property if the fixtures are readily removable factory or office machines, or domestic appliances that are consumer goods.
  - 4) Upon default, a pledgeholder with priority under this section may remove fixtures from immovable property. A pledgeholder that removes fixtures shall promptly reimburse a mortgagee for the cost of repair of any damage to the immovable property. The pledgeholder need not reimburse for any diminution in value caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the pledgeholder gives adequate assurance for the performance of the obligation to reimburse.
- (8) Priority in securities and bills of exchange are determined as follows:
- 1) A pledge in securities which account with the Central Depository Agency is blocked in favor of pledgeholder, has priority over any pledge or lien held by a person in whose favor securities account has not been blocked.
  - 2) If other law governing agreements between banks provides for priority in bills of exchange the priority rule of the other law will prevail. Otherwise, a pledge in a bill of exchange that is perfected by possession has priority over a conflicting pledge or lien for which a notification statement has been registered under this Law.
  - 3) In all other cases, priority among conflicting pledges and liens is governed by other applicable provisions of this law.
- (9) The priority of any Pledge may be changed at any time by written agreement signed by:
- 1) the Pledgeholder of any other Pledge that, as a result of the change, would cease to have the same priority over the reranked Pledge;
  - 2) the Pledgeholder of any other Pledge that, as a result of the change, would not acquire priority over the reranked Pledge; and

- 3) any Person who has registered notice of a Lien in accordance with this law, but only if the interest of that Person, with respect to the Collateral, would be diminished.

### **Transfer of a Secured Obligation Article 10**

- (1) An agreement by the Pledgeholder to transfer any Secured Obligation is an agreement to transfer any Collateral securing the Secured Obligation, unless otherwise provided in the Pledge Agreement or agreed between the parties to the transfer.
- (2) An agreement to transfer any Secured Obligation secured by a possessory Pledge is an agreement to transfer any Collateral in the possession of the Pledgeholder only if, at the time of the transfer of the obligation:
  - 1) the Pledgeholder transfers possession of the Collateral to the new Pledgeholder or the new Pledgeholder's agent; or
  - 2) the transferor agrees to hold the Collateral on behalf of the new Pledgeholder.
- (3) The Pledgor may assert against any new transferee-Pledgeholder any defenses available against the transferor-Pledgeholder.
- (4) If the Pledgeholder transfers only part of a Secured Obligation, the new Pledgeholder becomes entitled to the Pledge and to any transferred rights under the Pledge Agreement jointly with the transferor Pledgeholder up to the amount of the Secured Obligation that was transferred.
- (5) If a transfer of a Secured Obligation occurs by operation of law, any Pledge given with regard to that obligation is also transferred.

### **Pledge of an Account Article 11**

- (1) In a Pledge in which the Collateral is an Account, the Person owing on the Pledged Account may satisfy it in any manner agreed with the Pledgor unless the Pledgor or Pledgeholder gives written notice to that Person that the Pledge exists and that the Account can only be satisfied by payment to the Pledgeholder or to the Pledgeholder's designee. The Pledgeholder may directly seek to collect from the Person owing the Pledged Account.
- (2) Written notice given pursuant to the paragraph 1 of this Article must:
  - 1) Identify the Pledgor;
  - 2) describe the Account in a manner that enables the Person owing the Pledged debt to identify it;
  - 3) identify the Pledgeholder; and
  - 4) be delivered to the Person who owes the Account in a manner that evidences its receipt.

- (3) A Pledge of an Account can only be perfected by registration a Notification Statement.

### **Pledges of Contractual Obligations Cash and securities**

#### **Article 12**

- (1) If the Collateral Pledged is a Contract Right other than a right to payment, the Person owing the contractual obligation may satisfy it in the manner agreed with the Pledgor, unless the Person owing the contractual obligation has received notice from the Pledgor pursuant to this Law.
- (2) A Pledge of Contract Rights can only be perfected by registration a Notification Statement under this Law.
- (3) A Pledge of cash or Instruments can only be perfected by possession.

### **Acquisition of Collateral**

#### **Article 13**

- (1) Any Person who acquires title to Collateral acquires such title subordinate to any Pledge of the Collateral, except as otherwise provided in the present Law.
- (2) Notwithstanding paragraph 1 of this Article , a Person acquires title to Collateral and clear of any Pledge:
- 1) in a transaction in which the Pledgor transfers title by a sale in the ordinary course of the Pledgor' s business as described in Article 14 of this Law;
  - 2) in a transaction in which the Pledgor transfers Collateral with the written consent of all Pledgeholders having a Pledge in the Collateral; or
  - 3) in a transaction in which the Collateral that is transferred is: a share or a debt instrument quoted on a recognized market; an Instrument; or cash.

### **Ordinary Course of Business**

#### **Article 14**

- (1) A buyer of items of Inventory in the ordinary course of business, under the provision of Article 13, paragraph 2, item 1 of this Law, of the seller acquires title free of any Pledge, even if the Pledge is perfected and even if the buyer had knowledge of the Pledge.
- (2) A buyer buys in the ordinary course of business under paragraph 1 of this Article if the purchase is from a seller who is regularly engaged in selling inventory property of the type that the buyer purchases, provided that both the buyer and the seller are unrelated and act in good faith. No bulk sale of Inventory is a sale in the ordinary course of business.

- (3) A “bulk sale” is any transfer of the major part of the Inventory of a business organization or of the Inventory held at particular places of business of that business organization.

## **CHAPTER IV REGISTRATION OFFICE AND PUBLIC NOTICE OF PLEDGES**

### **Registration of Notification Statement Article 15**

- (1) To perfect a Pledge a Notification Statement must be registered unless otherwise provided in this law. Registration is effective upon the entry into the records of the Registration Office of a Notification Statement that contains information as specified in Article 16, paragraph 1 of this Law. The effective time and date of the registration shall be the time and date the Notification Statement was presented to the Registration Office.
- (2) A Notification Statement that otherwise complies with Article 16, paragraph 1 of the present Law is valid if it is registered to perfect a pledge in:
- 1) Collateral already subject to a Pledge in another jurisdiction when such Collateral is brought into the Republic or when the Pledgor' s location is moved to the Republic (such a Notification Statement must state that the Collateral was brought into the Republic or that the Pledgor' s location has moved to the Republic);
  - 2) Collateral as to which the Notification Statement has lapsed; or
  - 3) Collateral acquired after a change of name, identity, or corporate structure of the Pledgor.
- (3) Notification Statement may be amended by registration a writing signed by the Pledgeholder. An amendment does not extend the period of effectiveness of the Notification Statement. Pledgeholder must give authorization for amendment of the notification statement and amendment is effective as to the added Collateral only as of the registration date of the amendment. An amendment must appear on a Notification Statement form, and must include a description of the amendment, a statement that it is giving notice of an amendment, and a statement of the document number of the original Notification Statement. The Registration Office shall cause amendments to be registered upon:
- 1) presentation of the amendment document;
  - 2) payment of the appropriate fee; and
  - 3) verification that the amendment document contains a document number which refers to a registered Notification Statement.
- (4) A Lien may be perfected by registration a Notification Statement including:
- 1) the street address of the Lien debtor and the Lien creditor;
  - 2) a description of the Lien;

- 3) a specific or general identification of the property to which the Lien has attached;
- 4) the signature of the Lien creditor or authorized official.

### **Contents of Notification Statement Article 16**

- (1) The purpose of the Notification Statement and the registration system is to put third parties on notice of the existence or potential existence of a Pledge in property of the Pledgor. Third parties then may make further inquiry of the Pledgor or Pledgeholder if further information is necessary. A Notification Statement is sufficient if it includes:
  - 1) information including the name, street address and electronic mail address for the Pledgeholder or designee; name and street address of the Pledgor or person owing the Secured Obligation (if not the Pledgor);
  - 2) a specific or general identification of the Collateral; and
  - 3) the signature of either Pledgor or Pledgeholder.
- (2) Pledgor must give authorization for filing the notification statement. By signing a pledge agreement pledgeholder shall be deemed authorized by the pledgor for filing the notification statement on behalf of pledgor. Pledgor may give authorization in other writing as well. Notification statement may be registered before the pledge agreement has been executed.
- (3) A Notification Statement sufficiently identifies a Pledgor if the Notification Statement shows the individual, partnership, or corporate name of the Pledgor as such appears in registration documents registered pursuant to law. If the Pledgor is an individual not engaged in business, the Notification Statement sufficiently identifies the Pledgor if it shows the name, address, and corresponding number.
- (4) If a Pledgor undergoes a name change, a change in identity, or a change in business structure such that a registered Notification Statement becomes seriously misleading, the registration is not effective to perfect a Pledge in Collateral acquired by the Pledgor more than four months after the change, unless a new Notification Statement is registered before the expiration of that time.
- (5) A Notification Statement substantially complying with the requirements of the present law is effective even though it contains minor errors that are not seriously misleading.

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**Duration of Registration; Organization of Registration System**  
**Article 17**

- (1) All registrations with the Registration Office shall be deemed to be registered when presented to the Registration Office in proper form with payment of the prescribed fee.
- (2) A Notification Statement is effective for three years from the date of registration. Upon lapse, the Pledge becomes unperfected unless it is perfected by possession.
- (3) A Pledgeholder may file a continuation notice within three months prior to expiration. A continuation notice must be signed by the Pledgeholder, must identify by document number the original Notification Statement to which it applies. If a continuation notice is signed by other than the prior Pledgeholder, it must be accompanied by a statement signed by the prior Pledgeholder showing assignment of the Pledge. Successive continuation notices may be registered in the same manner. Upon timely registration of a continuation notice, the original Notification Statement to which it applies continues for three years after the last date for which the registration was effective, after which it lapses in accordance with paragraph 2 of this Article.
- (4) The Registration Office shall:
  - 1) mark each registered document with a consecutive document number, according to order of reception, and with the date and hour of registration;
  - 2) immediately hold each document or its electronic image for public inspection, arranged by document number;
  - 3) immediately index each document by name of the Pledgor, noting in the index the document number and the address of the Pledgor as set forth in the relevant document;
  - 4) make the index available for public inspection; and
  - 5) upon request, issue certified registration receipts and certified abstracts of registry entries which shall contain sufficient information to confirm the time and date of the registration.
- (5) The registration system and the index shall be centralized and maintained in only one place in the Republic, but electronic access permitting inspection from remote locations may also be provided.

**Termination of a Pledge**  
**Article 18**

- (1) If a Notification Statement is registered, the Pledgeholder shall, within one month after there is no outstanding Secured Obligation and no commitment by the Pledgeholder to make advances, to incur obligations, or to otherwise give value, file a termination statement which contains the Pledgeholder's signature and a statement that the Pledgeholder no longer claims a security interest by way of the Notification Statement, which shall be identified by

document number. A termination statement signed by a Person other than the Pledgeholder must be accompanied by a written statement of assignment signed by the Pledgeholder before it may be registered. The Registration Office shall charge a fee for the registration of a termination statement.

- (2) A Pledgeholder who fails to file a termination statement as required by the paragraph 1 of this Article shall be liable to the Pledgor for any damages caused to the Pledgor as a result of such failure.
- (3) The Registration Office shall immediately assign to a termination statement a document number and immediately note its registration in the index. The Registration Office shall ensure that all references to the Notification Statement, as well as the Notification Statement itself, also includes a reference to the Termination Statement.
- (4) A Pledge terminates when:
  - 1) the Pledgor and the Pledgeholder so agree;
  - 2) the Secured Obligation is satisfied or otherwise ceases to exist;
  - 3) a third party acquires title to Collateral pursuant to Article 13, paragraph 2 or Article 14, paragraph 1 of the present Law; or
  - 4) a third party acquires title to Collateral after its repossession (or voluntary surrender) and disposition by the Pledgeholder pursuant to Article 20 of the present Law.
- (5) In the case of a possessory Pledge, the Pledgeholder shall return the Collateral to the Pledgor upon termination of the Pledge, unless otherwise agreed between the Pledgeholder and the Pledgor.

### **Registration Office Article 19**

- (1) A Registration Office shall be established by the Government of the Republic of Montenegro to fulfill the functions specified in the present law. The Registration Office is empowered to issue administrative instructions to implement its functions as provided in the present Law.
- (2) A Registration Office is organ for registration of Pledges, Tax Liens, Court Liens and other Liens in accordance with this Law.
- (3) The Registration Office shall ensure that the index and the documents in the registration system are available for public inspection for no fewer than five hours on each day that governmental units are authorized to be open for business in the Republic.
- (4) The Department within which the Registration Office is located shall promulgate by administrative instruction a fee schedule for registrations and any additional services provided by the Registration Office related to the present law. The fees shall be fixed in amount to defray the direct and

indirect costs incurred in providing registrations and services under the present law, but shall not exceed such amount.

- (5) The Registration Office shall, as soon as practical and funds are available, implement the use of technology for such things as public access to information over the Internet, electronic registrations, computer access to records, and similar matters.

## **CHAPTER V DEFAULT AND ENFORCEMENT**

### **Rights Upon Default Article 20**

- (1) A "Default" occurs if there is a failure to perform the Secured Obligation or if there is a breach of the terms of the Pledge Agreement by the Pledgor or the Person owing the Secured Obligation.
- (2) Upon Default the Pledgeholder has the right to take possession of the Collateral.
- (3) If the Pledgeholder elects to proceed by judicial action, the Pledgeholder shall file an application for execution with the court with appropriate jurisdiction requesting an order authorizing the Collateral to be seized and delivered to the Pledgeholder. Objection against the application for execution is not allowed. A pledge agreement under which a pledge has been perfected shall have effect of an executive title with respect to collateral and proceeds covered by the pledge agreement and this Law.
- (4) On the application for execution a court shall call a hearing limited to following issues: 1) whether there is an perfected pledge, and 2) whether there has been a default.  
Upon such a showing by the pledgeholder, the burden shall be upon the pledgeholder to prove otherwise.
- (5) Pledgor has right to be notified about the hearing latest five days before the hearing, by telegram and notice board in the court. If the debtor himself or by his representative does not show up at the hearing, the court shall adopt pledgeholder' s application for execution.
- (6) Upon a finding favorable to the pledgeholder, the court shall issue an order designating a law execution officer and directing the officer to seize the collateral from the pledgor or person who is in possession of the collateral and deliver it to the pledgeholder or its authorized agent. The execution officer need not give prior notice of seizure to the pledgor or any person in possession of the collateral.

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- (7) The pledgeholder is obliged to pay advance money according to court order, and after termination of procedure to pay actual costs associated with the seizure. The decision on costs may be reviewed by the court upon the request of pledgeholder.
  - (8) Execution officer may not refuse to make or continue a seizure unless it has not been furnished with security for fees required to perform the seizure.
  - (9) The application for execution shall be adjudicated by the court no later than three business days after the date of its submission. The appeal against the execution order may be filed to the court of second instance within 8 days as of the day of receipt. Filing of appeal shall not postpone a seizure.
  - (10) If the collateral is accounts of a pledgor, the pledgeholder shall have the rights in this article in addition to other enforcement rights:
    - 1) The pledgeholder is entitled to collect on the accounts;
    - 2) Upon default, or whenever agreed by the pledgor, the pledgeholder is entitled to notify an obligor on the account to make payment to the pledgeholder.
    - 3) A pledgeholder who attempts to collect accounts must proceed in a commercially reasonable manner and may deduct the reasonable expenses of collection. Unless the pledge agreement says otherwise, the pledgeholder must account to the pledgor for any surplus and the pledgor is liable for any deficiency, all with a specification made by pledgeholder.
  - (11) A Pledgeholder, after lawfully taken possession, may sell, lease, or otherwise dispose of the Collateral. The proceeds of disposition shall be applied in the following order:
    - 1) to the reasonable expenses incurred by the Pledgeholder for taking possession of the Collateral, holding it for sale, and other reasonable expenses related to the sale;
    - 2) to the satisfaction of the Secured Obligation;
    - 3) possible outstanding amounts, after fulfilment under a) and b), pledgeholder is obliged to put into court deposit, with specification of costs associated with this procedure.
  - (12) Any remaining proceeds of disposition shall be delivered to the Pledgor after termination of the procedure.
  - (13) Disposition of the Collateral may be by public auction or by private disposition. The method, manner, time, place, and terms of the disposition must be commercially reasonable.
  - (14) The Pledgeholder shall give notice to the Pledgor of the time and place of the sale. The Pledgeholder shall also give notice to any other Pledgeholder with a Pledge on the same collateral that sends a written notice of an interest in the Collateral prior to the notification being sent to the Pledgor.

- (15) The Pledgeholder is entitled to buy the Collateral at a public sale, and at a private sale only if the Collateral is sold in a recognized market, or when there are widely distributed standard prices for the Collateral.
- (16) A Pledgeholder may offer to accept the Collateral in full or partial satisfaction of the Secured Obligation. This offer becomes binding if:
  - 1) the Pledgor agrees in writing; and
  - 2) the Pledgor, the Person owing the Secured Obligation, or any guarantor or other secondary obligor does not object in writing within eight days after the receipt of the offer.
- (17) The Pledgor, the Person owing the Secured Obligation, or any guarantor or other secondary obligor may redeem the Collateral by fulfilling all of the obligations secured by the Collateral plus the reasonable expenses set forth in paragraph 11 of this Article. The redemption can occur at any time prior to the disposition of the Collateral by the Pledgeholder, or before the Pledgeholder has accepted the Collateral in full or partial satisfaction of the Secured Obligation.
- (18) If the Pledgeholder does not comply with the provisions of the present Chapter, such as for example: undertake the activities regarding excessive damage, destruction and other, the Pledgeholder may be enjoined or restrained by an appropriate court upon the application of the Pledgor or any Person entitled to notification (including any Person whose Pledge in the same Collateral has been made known to the Pledgeholder prior to the disposition). If the disposition has already occurred, the Pledgor or any Person entitled to notification has a right to recover from the Pledgeholder any loss caused by the failure to comply with the provisions of this Chapter.

### **Judicial Review Article 21**

- (1) In any proceeding in any court against the Registration Office (the "Defendant" ) or any of its officials, employees, or agents for any action taken under the present law, the sole issue question before the Court in determining whether a Defendant acted unlawfully, wrongfully, or negligently shall be whether the Defendant clearly exceeded authority or acted in an arbitrary or capricious manner in light of all the facts and circumstances, and the provisions and intent of the present law.
- (2) No official, employee, or agent of the Registration Office shall be personally liable for damages or otherwise for acts or omissions performed in good faith.

**CHAPTER VI**  
**TRANSITIONAL AND FINAL PROVISION**

**Transitional Provision**  
**Article 22**

- (1) Any Liens, Pledges, security interests, charges, or similar items (collectively, “charges”) in existence on the effective date of the present law shall only remain valid as to third parties if the creditor files a Notification Statement within 60 days after the Registration Office is established and able to accept registrations. The Notification Statement registered under this article shall not be required to have the debtor’ s cooperation or signature.
- (2) Prior enacted laws inconsistent with the provisions of the present Law after its effective date shall not be applied.

**Final Provision**  
**Article 23**

The present Law shall enter into force on the eighth day as of the day of its publication in the Official Gazette of the Republic of Montenegro, and shall be applied as of January 1<sup>st</sup> 2003.