

AMENDMENTS TO THE REGISTERED PLEDGES ACTS

LENA BORISLAVOVA
Attorney at law



STRUCTURE

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INTRODUCTION

The registered pledge: importance for the business

1. **Physical possession over the pledged asset remains with the pledger** – no obstruction of the pledger's business activity
2. Right of the pledgee to receive *with priority* the value of the asset – **no court proceedings**



Useful vocabulary:

Registered pledges act - Закон за особените залози

Pledger - Залогодател

Pledge creditor/ Pledgee - Заложен кредитор

Pledged asset/property – заложено имущество

Regulatory framework: the Registered pledges Act

Available in English at:

<http://lawdocuments.brra.bg/DisplayHtmlFile.aspx>

Last amendments introduced with State Gazette, issue 105 of

December 30, 2016

Amendments regarding the establishment of a registered pledge and the entry into the Special register

1. The Central register – a centralized electronic database

- contains facts and document for every pledger in individual files in electronic form
- To be fully implemented in September 2018

2. Constitutive effect of the entry into the Register

Constitutive effect of the entry into the Register



Better review on the lawfulness of the registered pledge (Chapter VI of the RPA)

Amendments regarding the establishment of a registered pledge and the entry into the Special register

3. Information, subject to entry into the Register:



- The **text of the contract**, in which the registered pledge has been agreed on – to be provided in Bulgarian language
- The **explicit consent of the pledge creditor** under Art. 8, para 3 RPA
- **Commencement of the execution**

NB: prohibition for the pledger to dispose of the asset once the creditor has directed the enforcement towards the pledged asset

Amendments with regard to enforcement proceedings

Better protection at the cost of the rights of subsequent pledge creditors?

1. **Consent of the pledge creditor**
2. **The new position of the first pledge creditor**
 - 2.1. Consent required for subsequent pledges
 - 2.2. no 6-month-deadline to sale the pledged asset

3. Enhanced publicity:

- Art. 37 RPA, para. 4:
The announcement of the sale must contain:
 1. information about the pledger;
 2. description of the property on sale;
 3. the minimum price at which bids are accepted – may not be lower than the assessed tax value;
 4. the procedure and manner of sale;
 5. the place and day of the sale;
 6. the deadline for receipt of bids for the purchase of the pledged property.
- Publication in the special bulletin of the Ministry of Economy no less than 14 days before the expiration of the deadline for the sale.

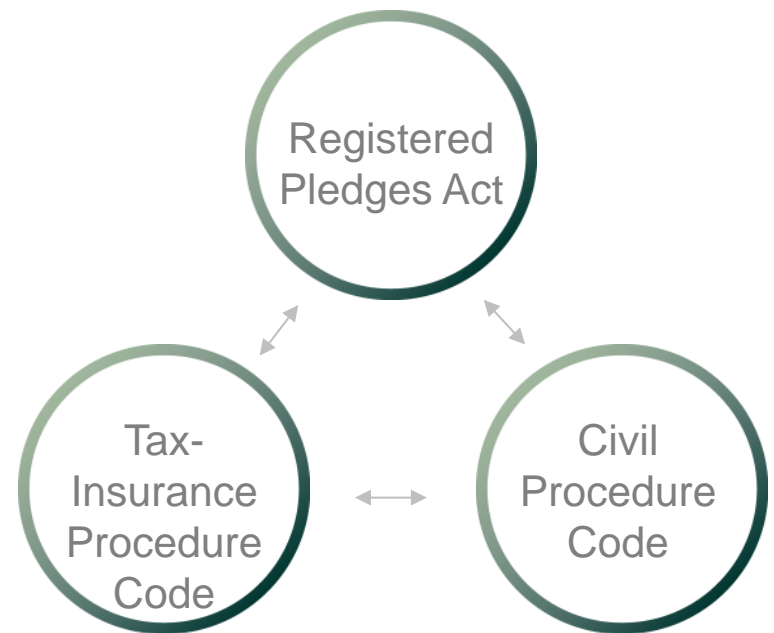
Competition between creditors and different proceedings

Question: if the same asset is subject to enforcement under the RPA and concurrently under the Civil Procedure code or the Tax insurance procedure code, which procedure should be observed?

Answer: Art. 32 RPA:

“the enforcement continues under the procedure which has been initiated first.”

According to the new art. 10, para 3 RPA the pledge creditor shall be deemed joint claimant by law in the enforcement proceedings under the Civil Procedure Code and the Tax Insurance Procedure Code.



TAKE-AWAY

1. General advice, applicable for both parties:

- ✓ contracts providing for registered pledges must be executed in Bulgarian language or be subsequently translated
- ✓ the entry into the Central Register is a prerequisite for establishing the pledge, not for its opposability
- ✓ many more entries into the Register and notarized documents are required;
- ✓ describing explicitly the elements of the commercial enterprise in the pledge contract will not make the pledge right over those elements, for which no additional registers exist, opposable to third persons;
- ✓ in case of enforcement over a pledged property the minimum starting price has to be...

2. For the pledge creditor:

- ✓ always check the Central Register for previously entered registered pledges;
- ✓ commencement of execution under RPA must be announced in the Central register first and it must be specified what form of enforcement has been chosen by the creditor;

3. For the pledger /debtor/:

- ✓ the consent of the first pledge creditor is required to dispose of the asset if outside the scope of the regular business activity; for the establishment of a subsequent pledge, for the reorganization of the company;
- ✓ the disposal of the asset outside the scope of the regular business activity without the consent of the pledge creditor transfers the pledge rights to the acquirer;