

## Commercial Pledge EXPLAINED IN 2 MINUTES

### What Is A Commercial Pledge?

A commercial pledge is a non-possessory pledge that allows the pledgor to remain in possession of the pledged items. Among other uses, it allows business owners to secure their receivables.

### Why Should The Commercial Pledge Be Used?

Commonly used retention of title and assignment of receivables are often not recognized by insolvency administrators, trustees or other creditors, and therefore enforcing collateral in an emergency is risky. Bank collateral, on the other hand, is costly.

The commercial pledge is a practical solution to secure receivables in the Baltic States. One advantage is that the pledge may be extended to other items, if necessary even to the entire assets of the contracting party, while the latter may keep the items and dispose of them.

The commercial pledge is entered in a publicly accessible register, and therefore the pledge must be recognized by other parties. In the register the creditor can also see which assets of the debtor have already been pledged.

### Which Objects May Be Pledged With The Commercial Pledge?

All movable items (not real estate) may be pledged, including shares in companies, and also the entire assets or a stock of goods owned by a company (including future movable property and property rights).

However, in between the Baltic countries there are some differences in the objects/rights that may be attached:

- In Latvia and Lithuania, intangible rights may also be attached.
- In Lithuania, securities, money in bank accounts, rights in rem and personal rights arising from a written agreement can also be attached. This is not the case in Estonia and partly in Latvia.

In addition, there are differences in the items that are exempt from pledging (e.g. ships, checks, necessary clothing and furnishings and household items).

### Do Pledged Stocks Remain Tradable?

Yes, pledged stocks may be resold within the regular course of business. If inventory is pledged, parts of that inventory may be resold and repurchased without changing the pledge. Therefore, if a debtor has pledged a stock of goods with a commercial pledge, he or she nevertheless remains capable of acting to carry out his business. He or she may sell items from the inventory, with the consequence that the pledge on them expires. Conversely, however, a new pledge arises on items newly added to the inventory. The pledgor must ensure that the minimum value of the inventory is maintained.

### What Are The Formal Requirements For Registration?

In Estonia and Lithuania the application for registration of a commercial pledge or the agreement on the creation of the commercial pledge must be certified and signed by a notary. Exceptions to this exist if the pledged item is to come into the possession of the creditor.

In Latvia, notarization is no longer required. If the documents are not signed by the managing directors in all countries, in some cases the powers of attorney must be notarized beforehand.

### Am I Covered If The Item Is Destroyed, Damaged or Lost?

If the pledged item has been insured and an insured event occurs, the pledge either extends to the payment claim against the insurance company or the pledgee has a priority right to satisfaction of the claim over other creditors. It should therefore be agreed that the pledged property will be insured, if possible.

## How And When Can I Realize The Value Of The Pledge?

In principle, the seized items may only be seized when the contractual partner is in default with his payments or is insolvent. The exact procedure is regulated differently in the individual countries and ranges from taking possession and personal sale by the creditor to applying for compulsory enforcement proceedings and the subsequent compulsory auction.

## What Costs Are Incurred For The Registration Of A Commercial Pledge?

If the commercial pledge agreement has to be notarized, notary fees will be incurred, based on the amount of the claim that is to be secured by the commercial pledge. In Lithuania, this cost coupling is limited to a maximum amount of 120 euros. However, there may be other smaller notary costs on top of this.

Furthermore, costs are incurred for the entry in the registers as well as for other administrative tasks, in the range of EUR 100.

## What Happens If The Debtor Files For Insolvency?

As the holder of the commercial pledge, the creditor has priority protection over other creditors. The pledged items are sold or auctioned. The proceeds are used first and foremost to satisfy the pledge creditor.

## When Does The Pledge Terminate?

When the pledge expires is regulated differently in the individual countries. If the parties wish to terminate the pledge of their own accord, a written agreement or consent to the deletion from the register is usually sufficient, although notarization may be required in this case. As a rule, the pledge is also extinguished if the pledged item is lost or destroyed, the pledgor loses his ownership of the items, the claim expires or is assigned without the pledge.

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