



Commercial pledge law in the Baltic States

In the Baltic states of Latvia, Estonia, and Lithuania, commercial pledges play an important role in insolvency proceedings, as it is a practical solution for securing claims. For companies and investors to be able to utilize this security, it is important to know the framework conditions for commercial pledges in insolvency. This article looks at the regulations in Latvia, Estonia, and Lithuania to provide companies and investors with a sound overview of this important legal instrument.

1. Estonia:

In Estonia, a commercial pledge is a specific form of registered pledge. Obtaining this pledge first requires the conclusion of a legally valid contract between the parties involved and the existence of attachable assets at the pledgor. It should be noted that the pledge does not extend to shares, securities, promissory notes or other loan documents or assets to which another registered pledge already exists under the Property Act or assets that cannot be the subject of a payment claim under the Act.

After these two aforementioned requirements have been met, the pledge must be registered in the Register of Commercial Pledges. The commercial pledge takes legal effect by signing the corresponding entry in the register.

2. Latvia:

Also as in Estonia, the legal force of the commercial pledge unfolds only after registration in the Commercial Pledge Register. It should be noted that this registration can only be made electronically. The submission of paper documents, which may be admissible in other legal contexts, is not possible for the registration of a commercial pledge.

The pledge can be provided either on (i) particular tangible or nontangible movable property, that is items (for example vehicles) or other particular property (for example, the shares or claiming right), (ii) an aggregation of the movable property of the company (either only current property, or current and any forthcoming property), or (iii) all assets of the company.

A commercial pledge agreement and a document showing the secured claim are required to register a commercial pledge. This can be, for example, a loan agreement or a copy of a court judgment if the commercial pledge arose based on such a judgment.

The Commercial Pledge Act contains detailed provisions on the type of objects that can serve as a commercial pledge and the procedure for establishing and registering a commercial pledge. It also provides other necessary information. It should be noted, however, that the provisions of the Civil Code relating to the right of pledge also apply to the commercial pledge, provided they do not conflict with the provisions of the Commercial Pledge Act.

3. Lithuania:

In Lithuania, there is no separate law regulating the commercial pledge. Rather, the conditions and effects of the commercial pledge are regulated in the Civil Code, specifically in Book 4. Since 1 January 2022 a new Register of Restrictions on Contracts and Rights has been introduced,

which took over the rights and obligations of the mortgage register, as far as it concerns the object of the newly established register, which is administered by the State Enterprise Centre of Registers and managed by the Ministry of Justice. Like in the other two Baltic states, the legal force of the commercial pledge does not unfold until it is registered.

As of 1 January 2022, the legislation allows legal persons to conclude a pledge of movable property by means of information technology. Such a transaction does not require notarization. Such a pledge must be signed by all parties to the transaction using qualified electronic signatures: the creditor(s), the debtor(s), the pledgor (owner), the third party (if the pledged item is transferred to the custody of the third party) by accessing the Customer self-service of the Centre of Registers.

The subject matter of the pledge cannot be attached to property that is not subject to execution under existing law, such as necessary clothing, nor can it include movable property pledged with immovable property. Unless the law or the pledge agreement provides otherwise, the scope of the pledge also extends to the dependencies of the pledged property and to any fruits that remain attached to it.

4. Advantages of the commercial pledge

In the event of insolvency, the commercial pledge has priority concerning the satisfaction of claims, as a claim secured by a pledge is prioritized over all other claims in relation to the pledged assets. This priority of satisfaction extends across the legal systems of Estonia, Latvia, and Lithuania.

Another significant advantage of the commercial pledge in all three countries mentioned is that the security interest is automatically recognized as soon as it is registered in the commercial register. This automatic recognition takes place without the need for anyone to object. This smooth recognition helps to simplify the legal process and thus provides an efficient way of securing business interests in the region.

Despite the highlighted similarities between the Baltic States, there are differences in the legal frameworks of the three Baltic States, which can have significant implications. To effectively protect your interests and achieve the best results in insolvency proceedings, we are at your disposal for a detailed legal analysis and cordially invite you to contact us at office.lv@klauberg.legal.

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