

## New Movable Guarantees Act

On May 20, 2015 comes into force a new law called Movable Guarantees Act, which aims to provide loans secured against property other than real estate. This way it is possible to pledge specific or generic goods or rights such as:

- a. Enforcement of rights of contracts,
- b. Contracts with economic value as rent, construction contracts, tourism bookings and similar,
- c. Accounts receivables,
- d. Crops and agricultural products,
- e. Shares representing capital stock on corporations.

As for goods not required to be listed in the National Registry (such as cars and boats are), the warranty can be granted to whoever has possession of the property. This is in the case of goods such as jewelry, paintings, watches and the like. To register all kinds of movable guarantees a Special Registry of the National Registry will be created. The guarantees shall be recorded using electronic forms for which surely will use a Digital Signature in order to speed up the registration process.

Electronic forms contain the data necessary to identify the creditor, the debtor and the collateral. Such information shall be publicly accessible. It is also possible to stipulate that the collateral will remain in the possession of the debtor, the creditor or a third party acting as depository. The warranty period shall be for the term agreed by the parties or, failing that, for a period of four years. Upon registration of the form the guaranteed credit takes precedence over any other debt.

In case of default in payment by the debtor, the execution can be performed by a stockbroker, a notary or a trustee pursuant to which the parties have agreed upon, otherwise it will be mandatory to go thru the Court Collection System. To start the execution it is necessary to grant 5 days to debtor to prove full payment, otherwise a notice is published in a newspaper and then the lender may proceed to make the public auction of the assets. If there are no bidders the collateral is awarded to the creditor.

The parties may agree that once the auction is made

there is a repossession procedure by which the creditor can get the collateral back. In the case of vehicles is very likely that banks or other creditors establish a clause that allows them to maintain possession of a set of the car keys and in case of default the bank can send a person to open the car and take it back to the bank or the establishment of the creditor. This is very similar to the procedures used in other countries such as the United States.

Another possibility set by this new law is that the debtor may authorize the creditor to have access to bank accounts of the debtor, in order that the creditor can keep track of income and expenses obtained by the debtor. That is called Right of Control. If the warranty are shares of corporations or securities such as certificates of deposit if the parties do not stipulate anything about it, then any dividends generated by the shares or interests of certificates belong to the creditor.

An important question to ask is whether this new law affects the Real Estate market? The answer is YES. This is because a person or company could purchase a building or a house without knowing that certain goods such as air conditioners, furniture or lamps could have been pledged in favor of another party, and if the debt is not paid the creditor could collect such goods. This involves checking that the seller does not appear with credits registered in the new guarantees system still to be created.

It is also important that the lessors of premises, buildings and houses add a new clause in the rental agreements stating that the tenant cannot give the lease as collateral without prior permission of the lessor. Otherwise if the tenant takes a loan using his contract as collateral in case of default the creditor is entitled to become the new tenant, may be a person who is not liked by the lessor or causes unwanted problems. This is particularly relevant in the case of commercial property with excellent location.

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