

Platis - Anastassiadis & Associates

The associate law firm of EY Greece

Modernization of the legislative framework for pledges and the establishment of a Unified Electronic Registry of Pledges on movables, claims, and other rights.

Law 5123/2024

■ ■ ■ The better the question. The better the answer. The better the world works.

I. Introduction

The newly established law 5123/2024 'Modernization of the legislative framework for pledges and the establishment of a Unified Electronic Registry of pledges on movables, claims, and other rights' (Government Gazzette A 109/19.7.2024) (The "Law") amends the existing legislative framework for the establishment and execution of pledges on movables without delivery, claims, and other rights, and establishes the Unified Central Electronic Registry of Pledges on movables, claims, and other rights (the "Registry") and the mandatory registration of pledge agreements and other registrable acts therein.

The purpose of the Law is the harmonization of the legislative framework that governs the security interest of pledge, in order to adapt to the new technological and economic standards.

The provisions of the Law apply to the securing of monetary and non-monetary claims, as well as claims

arising from contracts governed by private law involving the Greek State, the General Government entities, and public law legal entities that are not included among the latter.

The essential innovations of the Law are highlighted as follows:

A. Pledge over claims or rights

i. Establishment

The pledge over claims or rights is established by agreement between the pledgor and the pledgee either with a private document of certain date or with an electronic document (e.g., a document bearing an approved electronic signature or an approved electronic seal or issued through gov.gr) and is registered in the Registry. Registration in the Registry is not required when the subject of the pledge is a bank deposit and the pledgee is the bank where the deposit is held.

The pledge also extends to the interest pertaining to the extent of the secured claim, which becomes due after its establishment.

ii. Notification to the debtor

The agreement for the establishment of the pledge is notified to the debtor. Such notification can take place not only by a court bailiff according to the existing framework but also by electronic means that constitute a permanent medium (e.g., email). The effects of the pledge agreement come into force against the debtor from its notification and against third parties from the registration of the pledge in the Registry. In the case of pledge on a bank deposit, the effects come into force from the establishment of the pledge.

Notification to the debtor of the pledged claim is not required if the debtor is the same person as the pledgee, the collateral taker, or a party to the pledge agreement.

iii. Satisfaction of the pledgee by way of enforcement

According to the new provision, the pledgee is entitled to collect the pledged claim on its own without any procedure after the lapse of ten (10) working days from the day on which the claim against the pledgor becomes overdue, in whole or in part.

iv. Assignment of claim by way of guarantee

The Law introduces a new provision according to which the pledgee and the pledgor are entitled to include in the pledge agreement a term, according to which the pledge entails the assignment of the claim to the pledgee, from the time of its establishment with the resolutive condition of the repayment of the secured claim.

In this case, Article 39 of the legislative decree of 17.7/13.8/1923 regarding the pledging of a nominal claim is applied accordingly.

B. Pledge over registered shares

i. Establishment and formalities

Accordingly with the aforementioned, the pledge over registered shares is established with a private or electronic document and with registration in the Registry. The pledge is also entered, after its establishment, in the share register and noted on the titles, if they are in paper form. However, the Law clarifies that the entry in the share register and the annotation on the titles serve merely as proof and do not affect the establishment and validity of the pledge.

Regarding the pledge over shares listed on the Athens Stock Exchange or held in book-entry form after dematerialization or immobilization, the existing provisions continue to apply. The registration of the aforementioned pledges or shares in the Registry can be done exclusively through interoperability without any charge to the members, after a request to the Registry by anyone with a legitimate interest.

Newly issued shares are delivered to the pledgee.

In contrast to the existing framework, the Law provides that the pledgor must deliver the shares to the pledgee only if requested by them, subject to the provisions in respect of shares held in book-entry or dematerialized form. In the latter case, a certification from the issuer of the shares about the debtor's ownership of the intangible titles is attached to the document establishing the pledge.

ii. Voting rights and other non-pecuniary rights

The Law stipulates that, unless otherwise agreed in the pledge agreement, the right to vote at the General Assembly and other non-pecuniary rights are exercised by the pledgor. The articles of association may prohibit a contrary agreement. Therefore, if the pledgee wishes to exercise the voting rights at the General Assembly (and other non-pecuniary rights) itself and this is not prohibited by the articles of association, it must be expressly agreed upon in the pledge agreement.

iii. Satisfaction of the pledgee by way of enforcement

The satisfaction of the pledgee is carried out through liquidation of the movable assets, according to the provisions of the Code of Civil Procedure, with the issuance of an enforceable title. The Law clarifies that the liquidation is possible regardless of the possession of the issued shares by the pledgee.

C. Pledge over other forms of participations in legal entities

i. Establishment and notification to the legal entity

The pledge over other forms of participations in legal entities is established in the same way as for registered shares as mentioned above. In contrast to the preceding framework which required a notarial deed for the establishment of pledge over a unit of a limited liability company (EPE), the Law now provides for a private document.

The notification of the pledging to the company is the responsibility of the administrator, and to the joint venture is the responsibility of either the pledgor or the pledgee, and it can also be done via e-mail.

D. Pledge over movables without transfer of possession - notional pledge and floating charge

i. Establishment

The establishment of the pledge without transfer of possession is likewise made by agreement, with a private or electronic document, between the owner of the property and the creditor, which is registered at the initiative of any party in the Registry. Against third parties, the pledge is effective from the registration in the Registry.

ii. Satisfaction of the pledgee by way of enforcement

The pledgee is entitled, if there is a relevant term in the pledge agreement, to proceed with liquidation according to Article 40 of the legislative decree of 17.7/13.8.1923, i.e., by serving a payment order, without a prior enforceable title, provided that at the time of the establishment of the pledge, both the pledgee and the debtor are businesses or professionals and the pledge is provided for the needs of the debtor's business or profession.

E. Pledge over other types of securities

The pledging over securities or financial instruments, other than shares, as well as over units in collective investment schemes, is carried out in the same way as their transfer, with concurrent registration of the pledge in the Registry.

F. Establishment of the Electronic Registry of Pledges

The establishment of an Electronic Registry of Pledges (the "Registry"), which will be maintained and operated by the Hellenic Cadastre, is provided for. All pledge agreements on movables, claims, and other rights, as well as their amendments and changes, including their extinguishment and elimination, are registered in the Registry, with the aim of ensuring public trust and the security of transactions.

For the acts to be registered that are submitted from the start of the Registry's operation, the Protocol of Registration of Publications of the Cadastral Offices as well as the pledge registration system of the Land Registries are replaced. The existing registration systems remain in force for the acts already registered in them, and continue to be preserved by the respective services.

The Registry will become operational either from the date of issuance of a relevant decision by the Hellenic Cadastre or from 31.12.2024, whichever occurs earlier.

The Law also provides that, in addition to pledge agreements, the agreements for the transfer of securitized claims, the agreements for the assignment of management of the transferred claims, and the agreements for the transfer and management of non-performing loans, as well as their amendments and changes, including their elimination will also be registered in the Registry.

II. Final Remarks

Regarding the commencement of the Law's effectiveness, it will be determined by a decision of the Hellenic Cadastre for the start of the Registry's operation, otherwise, the commencement date of the Law's effectiveness is set for December 31, 2024.

From the entry into force of the Law, specific provisions of the existing framework are abolished, including, among others, provisions of the Civil Code (articles 1244, 1247, 1248), the legislative decree of 17.7-13.8.1923 (article 36), and Law 2844/2000 regarding notional pledges and floating charges.

Additionally, it is noted that pledges established before the commencement of the present Law, under the provisions being abolished, are maintained and governed by those provisions.

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We are an independent law office with a core team of 45 lawyers. Our office provides high quality legal services across the full range of commercial and financial transactions.

Especially in our geographical area, we have established an ongoing cooperation with the respective law firms which are associated with EY, in order to offer seamless and consistent regional services to our clients that have cross country operations.

Our experience allows us to better understand our clients' needs and offer them integrated multidisciplinary solutions in the fields of accounting, tax and financial advisory services. Platis - Anastassiadis & Associates law office is solution focused. We work closely with our clients to seek innovative and practical ways of dealing with their issues. Our priority is to help our clients meet their business objectives. Our expertise, commitment and enthusiasm has resulted in the build up of a client base which includes local and international listed, state and private sector companies and financial institutions.

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