

## RECENT AMENDMENTS ON ESTABLISHMENT OF PLEDGE RIGHTS IN COMMERCIAL TRANSACTIONS

The Regulation on Establishment of Pledge Rights in Commercial Transactions and Use of Rights Upon Default which was published in the Official Gazette dated 31 December 2016 and numbered 29935 and entered into force on 1 January 2017 (the “**Regulation**”) has been amended by the Regulation Amending the Regulation on Establishment of Pledge Rights in Commercial Transactions and Use of Rights Upon Default which was published in the Official Gazette dated 22 May 2018 and numbered 30428 (the “**Amending Regulation**”).

This Monthly Update aims to provide a brief explanation on the Regulation and highlight the amendments introduced with the Amending Regulation.

### *Scope of the Regulation*

The Regulation has been enacted as per the Law No. 6750 on Pledge of Movables in Commercial Transactions which was published in the Official Gazette dated 28 October 2016 and numbered 29871 and entered into force on 1 January 2017. The Regulation principally covers the procedures and principles pertaining to pledge agreements, establishment of pledge rights, pledge systems, registry of pledge agreements with the Pledged Movables Registry and rights and liabilities of pledgee and pledgor upon default of the debtor. As per the Regulation, pledge agreements may be executed by and between (i) financial institutions, merchants and artisans, as pledgee; and (ii) merchants, artisans, farmers, producer organizations and self employed persons, as pledgor.

The Regulation includes headings such as the establishment of pledge rights, components of pledge agreements, movables on which a pledge right may be established, registration of pledge agreements, validity and expiry of pledge rights and the use of such right upon default of debtors.

As per the Regulation, a pledge right shall be established with the following stages: (i) existence of a current or future debt that can be secured with a pledge right; (ii) a will to establish a limited real right on the movable in order to secure the fulfilment of a current or a future debt without delivering the possession of pledged movable; (iii) preparation and signing of pledge agreements as stipulated under the Regulation; and (iv) registration of pledge agreements with the Pledged Movables Registry.

### *Components of a Pledge Agreement*

The Regulation states the components that shall be included in a pledge agreement such as, among others, information about the pledgee and the pledgor, subject of the agreement, amount of the debt and guarantee, asset subject to pledge and its distinguishing characteristics, information with regard to pledge systems and, if available, valuation of the pledged movable. The Amending Regulation appends to the existing components by stating that in the event that the pledged movable does not have any distinguishing characteristics, general characteristics that shall help the identification of such movable shall be included in the pledge agreement.

### *Assets Subject to Pledge Agreements*

As per the Regulation, the pledge right is defined as a limited real right (*sınırlı ayni hak*) and is established by way of registering the relevant pledge agreement with the Pledged Movables Registry without delivering the possession of the pledged property.

**Missed an issue? Want more copies to be sent to clients or friends? Send an email to [enquiries@taboglu.av.tr](mailto:enquiries@taboglu.av.tr)**





## Contact Us

Taboglu Attorneys at Law

Levent Caddesi, No.9

1. Levent, 34330

Istanbul, Turkey

Telephone: (90) 212 339 8800

**The aim of this Monthly Updates is to give an executive summary on certain legal matters. This has been prepared for information purposes only and does not constitute any legal advice. Thus, one should not rely on it for specific advice. For further information or advice please contact Taboglu Attorneys at Law, a full-service law firm based in Istanbul.**

In addition, the Regulation enumerates the type of assets that may be subject to a pledge right. Accordingly, among others, receivables, intellectual property rights, raw materials, all types of income, rental amounts, licenses and permits, equipment, consumables, stocks, trade names and commercial enterprises may be pledged subject to the procedures and principles stated in the Regulation. However, with the Amending Regulation the *numerus clausus* principle was abandoned by stating that all similar types of movables and rights may also be subject to a pledge right. Accordingly, assets subject to pledge agreements have been expanded by the Amending Regulation.

The Amending Regulation includes another item to the provision regarding the movables subject to pledge agreements. The new item states that in the event that a whole asset group was pledged with general definition, all the movables of such asset group that exist at the time of establishment of the pledge right, shall be deemed as pledged. In line with this amendment, since assets of commercial and artisan enterprises are deemed as group assets, the provision regarding the commercial enterprise pledge has also been amended. Accordingly, while the Regulation stated that in the event a pledge right is established on the entirety of the commercial and artisan enterprises, all movable and immovable assets allocated to such businesses at the time of such pledge shall be deemed as pledged, the Amending Regulation removes the phrase “immovable”, limiting the scope of the pledge to movable assets only.

### Scope of Pledge

Another major novelty of the Amending Regulation is that it introduces a new provision regarding the scope of a pledge right. Accordingly, the Amending Regulation states that the scope of the pledge right shall automatically include all kinds of future interests, future legal yields such as insurance proceeds, natural products and substitute goods of the pledged movable. The Amending Regulation further states that, in the event that the pledged movable is insured, the pledge right of the pledgee shall also include the insurance proceeds. Moreover, in the event that an asset used during a production process is pledged, any asset replacing the pledged asset during or at the end of such production process shall be automatically deemed as pledged on the same terms and conditions with the original asset. Finally, should a pledged moveable be replaced with another asset, such new movable shall automatically be included in the scope of the pledge.

### Other Changes in the Amending Regulation

The Amending Regulation brings further amendments and removes all of the provisions regarding the merger and fusion (*birleşme ve karışma*) of pledged movables. Under the abolished provisions, if a movable asset merged with another asset, so as to become an integral part of such asset, or fused with similar assets, the pledge on the original asset would be deemed established on the entirety of the final asset. Accordingly, the pledge right would continue on the final asset in the ratio of the value of the original asset at the moment of merger and fusion to the value of the final asset. As the Amending Regulation no longer contains specific provisions regarding the merger or fusion of pledged assets, the general provisions of the Civil Code shall apply.

### Statute of Limitations

Finally, with the Amending Regulation, the provision stating that the statute of limitations shall not apply to the debt following the registration of the pledge agreement with the Pledged Movables Registry, has been removed. Upon this amendment, the Regulation no longer contains specific provisions regarding the suspension of the statute of limitations. In this respect, the general provisions of the Civil Code and the Code of Obligations shall apply.

### Conclusion

The Amending Regulation amends the provisions regarding, among others, components of pledge agreements, assets subject to pledge agreements and the scope of pledge rights for commercial transactions, while leaving merger and fusion of the pledged assets and statute of limitations to general provisions.