

COMMERCIAL ENTERPRISE PLEDGE UNDER TURKISH LAW

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I- GENERAL

1.1 Description

Under Turkish law, in order to establish a pledge over moveable assets, physical possession of such assets shall be transferred to the pledgee in order to perfect the pledge. However, in the case of a commercial enterprise pledge, pursuant to Article 4 of the Commercial Enterprise Pledge Law numbered 1447 and dated July 21, 1971 (“**Law No. 1447**”) a pledge agreement shall be executed by the pledgor and pledgee. The pledge agreement is required to be notarised by a Turkish Notary Public located at the same district where the commercial enterprise subject to pledge is registered and be registered with the Trade Registry therein.

1.2 Parties to the Pledge Agreement

Article 2 of Law No. 1447 states that commercial enterprise pledge agreement can be executed by and between the credit institutions having legal entity, cooperatives and credit sale institutions having real or legal entity and the real persons or the legal entities owning the commercial enterprise subject to pledge.

1.3 Amount of the Pledge

The amount of the commercial enterprise pledge is required to be determined in the pledge agreement and it must be in Turkish Lira, regardless of the currency of the receivable owed to the pledgee. If the amount of the receivable is unspecified, the maximum amount secured by the commercial pledge should be agreed by the relevant parties and duly registered with the relevant Trade Registry.

1.4 Scope of the Pledge

Pursuant to Article 3 of Law No. 1447, a pledge registered over a commercial enterprise constitutes an encumbrance over the following:

- (i) The trade name and commercial title;

- (ii) The machinery, equipment, tools and transportation vehicles that are allocated to the operation of the commercial enterprise, as of the date of registration of the pledge; and
- (iii) Intellectual property rights, like licences, trademarks, models, drawings, etc.

However, one or more of the above mentioned elements other than the trade name, commercial title and the moveable operational equipments, can be excluded from the scope of the pledge.

A commercial enterprise pledge does not include real property on which the commercial enterprise is located. In order to establish a mortgage over the said real property, a particular mortgage agreement is required to be executed between the pledgor and the pledgee.

II- REGISTRATION OF THE PLEDGE

Pursuant to Article 4 of Law No. 1447, a pledge agreement shall be entered into between the pledgor and pledge. The pledge agreement must be prepared by a Turkish Notary Public located at the same district where the commercial enterprise is registered; the assets which are within the scope of such pledge should be listed in the pledge agreement. The pledge agreement must be registered with the relevant Trade Registry where the commercial enterprise subject to pledge is registered.

As per Article 5 of Law No. 1447, the commercial enterprise pledge shall be effective as of the date of registration with the Trade Registry.

The address and the trade name of the pledgee are registered with the relevant Trade Registry together with the amount of the receivable and the applicable interest thereon.

Following the registration of the commercial enterprise pledge with the relevant Trade Registry, such commercial enterprise pledge shall also be registered with the relevant registry offices with respect to the assets that are listed in the commercial enterprise pledge such as vehicles, trademarks, etc.

More than one pledge shall be established over the commercial enterprise of a legal entity. In this case, rights of the pledgees shall be determined in accordance with the dates of their registrations of the pledges with the relevant Trade Registry. In other words, a commercial enterprise pledge with an earlier date shall rank prior to a pledge registered at a later date.

A commercial enterprise pledge does not prevent the legal entity from performing its ordinary business. However, such legal entity is required to obtain the permission of the pledgee in order to transfer, assign to a third party, change location, grant any encumbrance over or change the commercial enterprise or any of the assets that constitutes part of the pledge. In case of any change in the assets within the scope of the pledge, such change is required to be reflected and updated in the list, which again shall be made by a Turkish Notary Public.

Pursuant to Law No. 1447, in the event of the transfer of the commercial enterprise subject to pledge to any third party, the pledgee can assert its rights arising from the commercial pledge agreement against the said third party who acquired the commercial enterprise after the registration of the pledge.

III- PENALTY

In the event that the pledgor, without the consent of the pledgee, transfers its commercial enterprise or changes the assets that form part of the pledge or assigns or grants any kind of encumbrance over the same or destroys the same and if as a result of such actions the pledgee cannot collect its receivables completely or partially, the pledgor shall be punished, depending on the amount of the loss suffered by the pledgee, with imprisonment of 1-5 years and a monetary fine upon complaint of the pledgee. Furthermore, upon request, the judge may condemn the pledgor to the payment of excess losses of the pledgee up to the amount of the receivable secured by the pledge.

IV- FORECLOSURE

Lex Commissaria Prohibition is also applicable to commercial enterprise pledges; in other words, any kind of arrangements regarding the transfer of the title of any of the assets included in the pledge is null and void.

If the pledgor does not pay its debts when due, the pledged assets shall be sold and the pledgee shall receive its receivables from the sale proceeds. Pursuant to Article 17 of Law No. 1447, the provisions of the Turkish Execution and Bankruptcy Law related to foreclosure procedures shall apply.

V- BANKRUPTCY OF THE PLEDGOR

In the case of the bankruptcy of the pledgor, the assets of the commercial enterprise shall be subject to bankruptcy proceedings. However, pursuant to Article 185 of the Turkish Execution and Bankruptcy Law, the priority right of the pledgee arising from the pledge

shall be considered and the debts secured by a pledge shall have priority over the payment of other debts that are not covered by any kind of security.