

The Law of the Republic of Kazakhstan On registration of pledge of movable property

This Law shall establish rules for registration of pledges of movable property with the purpose of exercising and protecting the rights of physical and legal entities who have legitimate interests in such property.

Section 1. General Provisions

Article 1. Basic Concepts Used in this Law

The following basic concepts shall be used in this Law:

movable property - vehicles, goods in turnover, securities, money, interests in property, including right to future products, and other property that is not attributed to real estate by legislative acts;

registration of pledges of movable property - the procedure for keeping records on pledges of movable property by the registration office, that is a cumulative act of entities participating in relations arising in the course of registration of pledge of movable property with regard to: 1) making entries into the registry of pledge of movable property from the pledge agreement or other contract containing conditions on pledge (application on registration of the pledge);, 2) issuing the certificate of registration of pledge of movable property; and 3) [committing] other acts by registration offices in accordance with the procedures established by this Law and other legislative acts;

registered pledge - a pledge of movable property that has been registered in accordance with the procedures established by this Law;

applicant - an entity filing an application for registration of pledge with the registration office; upon the agreement between the parties under the pledge obligation both a pledgor and a pledgeholder may act as applicants;

agencies for registration of pledge of movable property (registration offices) - organizations operating under the jurisdiction of the Ministry of Justice of the Republic of Kazakhstan that register movable property pledges created by legal entities and physical persons, as well as other state agencies and legal entities authorized by legislative acts to register certain types of movable property subject to state registration and pledges of such property;

Registry of Pledge of Movable Property (Registry of Pledges) a system of record keeping and maintenance of information handled by registration offices in the procedure established by legislation; and

certificate of registration of pledge of movable property - a document which is issued to the applicant by the registration office and confirms the fact of registration of pledge of movable property.

Article 2. Legislation of the Republic of Kazakhstan on Registration of Pledges of Movable Property

Legislation of the Republic of Kazakhstan on registration of pledges of movable property shall be based on the Constitution of the Republic of Kazakhstan, norms of international treaties ratified by the Republic of Kazakhstan and shall be comprised of this Law and other normative legal acts of the Republic of Kazakhstan.

Article 3. Participants of the Relations Arising in the Course of Registration of Pledges of Movable Property

1. The following shall be the participants of the relations arising in the course of registration of a pledge of movable property:

1. pledgor, pledgeholder;
2. registration offices; and
3. third parties.

2. General management and oversight of the activities of registration offices shall be carried out by the Ministry of Justice of the Republic of Kazakhstan and by other government agencies; the oversight over the activities of legal entities that register pledges of certain types of movable property shall be exercised by the government agency authorized to do so by legislation.

Article 4. Registration of Pledges of Movable Property Subject to Mandatory Official Registration

1. Registration of a pledge of movable property which [the property] is subject to mandatory official registration, shall be performed in accordance with a legislative agency authorized to register such property.

2. The procedure for registration of pledge of movable property subject to mandatory official registration shall be established by the Government of the Republic of Kazakhstan.

3.Types of property, ownership rights, and other interests pledges of which are subject to mandatory registration, as well as the agencies carrying out the registration thereof shall be determined by legislative acts of the Republic of Kazakhstan.

Article 5. Registration of Pledges of Movable Property Which Property is Not Subject to Mandatory Official Registration

1.Pledges of movable property that is not subject to mandatory official registration must be registered:

1) upon request of one of the parties to the pledge agreement or to other contract containing conditions on pledge;

2) in the case the pledge agreement or other contract containing a condition on pledge prohibits a subsequent pledge (re-pledge) of the pledged property.

2.Registration of a pledge of movable property which is not subject to mandatory official registration shall be performed:

1) at the place of registration of the legal entity - when the pledgor is a legal entity;

2) at the place of registration [of the entity] as a taxpayer - when the pledgor is a physical person, including the cases when the pledgor is an individual entrepreneur.

3.A registration office shall be obligated to maintain the registry of registered pledges of movable property.

4.The Ministry of Justice of the Republic of Kazakhstan as well as governmental agencies authorized to register certain types of pledge of movable property shall have the right to issue, within the authorities granted by Law, departmental normative acts establishing rules and procedures for conducting registration of pledges of movable property.

Article 6. Peculiarities of Registration of Pledges of Certain Types of Movable Property

1.Registration of pledge of securities shall be performed in accordance with the legislative acts of the Republic of Kazakhstan on registration of transactions with securities. The rules described in Article 8 of this Law shall be applied to registration of pledges of securities performed in accordance with legislative acts of the Republic of Kazakhstan.

2.Registration of pledges of property that have a significant historical (including archeological), artistic, or other cultural value for the community shall be performed in accordance with the legislation.

Article 7. Rights of Individual Entrepreneurs, Physical and Legal Entities to Register Pledges of Movable Property

With regard to pledges of movable property an individual entrepreneur, any physical or legal entity may register a pledge as both a pledgor and a pledgeholder.

Article 8. Legal Significance of Registration of Pledges of Movable Property

1.Registration of a pledge of movable property shall establish the priority order (date) for satisfying the claims of the pledgeholder versus the claims of other pledgeholders who lay claims against this property of the pledgor, in accordance with provisions of the Civil Code of the Republic of Kazakhstan and other legislative acts.

Every earlier registered pledgeholder shall have a priority for getting his/her claim satisfied over all subsequently registered pledgeholders, as well as over all non-registered pledgeholders of such property.

2.The secured interest in the movable property which is subject to mandatory official registration shall arise upon registration of the pledge of such property with the agency authorized to register this type of property, unless a later term is provided for by either pledge agreement (or other contracts containing pledge conditions) or by legislative acts.

Section 2. Procedure for Registering Pledges of Movable Property

Article 9. Application for Registration of Pledge of Movable Property

1. In order to register a pledge of movable property an applicant personally or through his representative shall submit to the registration office a filled application form.

2.The application must contain as follows:

1.official name of the registration office;

2. commercial name and location (in case of a legal entity) or last/first/patronymic name and place of residence (in case of a physical person) of the pledgor and pledgeholder;
3. date and place of conclusion of the pledge agreement or other contract containing conditions on pledge;
4. a list and description of the property which is subject of the pledge (information on the pledged item);
5. pecuniary equivalent of the obligation secured by pledge;
6. the term of life of the obligation secured by pledge; and
7. signature of the applicant or his representative, and the seal (for legal entities);
8. indication with regard to which party holds the pledge property, allowance to use the property, and information on the re-pledge.

An applicant must present his/her identity papers; the representative of an entity must present a document confirming his/her authorities, as well as his/her identity papers.

3. The pledge agreement or other contract containing pledge conditions shall be submitted together with the application, and this agreement or contract shall be returned to the applicant with the mark of registration after the registration office checks the data specified in the application.

4. An application for registration of pledge of movable property which property is not subject to mandatory official registration must contain data on official registration of the legal entity which serves as a pledgor.

5. Registration offices shall charge fees for registering pledges of movable property, issuing certificates of registration of pledge of movable property and duplicates thereof, correcting mistakes in registration papers made through the applicant's fault, as well as for rendering information services; the amount of such fees and the procedure for charging thereof shall be established by the Government of the Republic of Kazakhstan.

6. It shall be prohibited to require documents and data other than those provided for by this Law.

Article 10. Obligations of Registration Office

1. As soon as a registration office receives necessary documents it must:

1. issue a filing receipt certifying the receipt of the submitted documents with indication of the date, time (hours and minutes);

2. enter the information contained in the application for pledge registration into the registry of pledges of movable property (as well as into the computer database);

3. issue a certificate of registration of pledge of movable property and give it to the person who has filed the application.

2. A pledge of movable property must be registered within two days except for cases provided for by Article 11 of this Law.

3. The registration office shall use only formal criteria to check the conformity of the submitted agreement on pledge of movable property to Article 307 of the Civil Code (General Provisions) of the Republic of Kazakhstan.

Article 11. Denial in Registration of Pledges of Movable Property

1. A registration office may refuse to register pledge in cases when:

1. the pledge agreement or other contract containing pledge conditions does not comply with the requirements set forth in article 307 of the Civil Code of the Republic of Kazakhstan (General Provisions);

2. the application for registration does not comply with the requirements set forth in Article 9 of this Law;

3. inappropriate entity applies for registration; and

4. a fee for registering the pledge of movable property has not been paid.

2. In the event of denial in registration, the registration office shall forward a written grounded explanation with a reference to the violated requirements of the legislation to the applicant within five business days after it has accepted the documents.

3. Denial in registration of the pledge of movable property or evasion of registration may be challenged by a concerned party with the court.

4. In case of denial in registration of the pledge of movable property 50% of the registration fee shall be refundable to the applicant.

Article 12. Registry of Registered Pledges of Movable Property

1. The Registry of Registered Pledges of Movable Property must include the following data on pledges of movable property and parties to pledge agreements:

1. date, time (hours and minutes) of registration of the pledge of movable property;

2. data on the pledgor and pledgeholder, their addresses (essentials);

3. registration numbers of the documents;

4. information about the document on the basis of which pledge legal relations arose;

5. date and place of conclusion of the pledge agreement or other contract containing pledge conditions;

6. a list and description of the pledged item(s);

- 7.pecuniary equivalent of the obligation secured by pledge; and
- 8.maturity date of the obligation secured by pledge.
2. The Registry of Pledges of Movable Property may also include other data on the pledge.

Article 13. Certificate of Registration of Pledge of Movable Property

1.Registration of a pledge of movable property shall be certified by a registration certificate which must contain as follows:

- 1.official name of the registration office;
- 2.commercial name and location (for a legal entity) or last/first/patronymic name and place of residence (for a physical person) of the pledgor and pledgeholder;
- 3.date and place of conclusion of the pledge agreement or other contract containing a condition on pledge and the number thereof;
- 4.pecuniary equivalent of the obligation secured by pledge;
- 5.information about the pledged item;
- 6.registration number of the pledge of movable property given by the registration office; and
- 7.the date of registration of the pledge of movable property.

2.The certificate on registration of pledge shall be signed by an authorized officer and verified with the seal of the registration office. 3.Upon application of the pledgor or pledgholder the registration office shall issue, within 7 days, a duplicate of the certificate of registration of pledge of movable property in replacement of the lost one.

4.The certificate on registration of pledge may be deemed invalid through judicial procedure, should the requirements of the legislation of the Republic of Kazakhstan be violated.

Article 14. Validity Term of a Registered Pledge of Movable Property

1.Registration of a pledge of movable property shall be valid until the termination of the pledge.

2.The pledgor who has performed the obligation secured by pledge may require the annulment of the entry about pledge in the Registry on Pledges of Movable Property.

If requested by the pledgor, the pledgeholder must submit to the registration office a written application form and necessary documents certifying that the pledgor has fulfilled the obligations secured by pledge. In the event of the failure to perform or undue performance of such duties by the pledgeholder the pledgor may claim the indemnification of the losses caused to him.

Article 15. Correction of Mistakes Made during Registration

1.Correction of technical mistakes made during registration shall be conducted upon an application of a concerned party through making an additional entry to the Registry of Pledges of Movable Property and to the certificate of pledge registration.

2.Should the mistake be made through the registration office's fault, no fee shall be charged for correcting the mistake and issuing a new certificate of registration of pledge of movable property.

Article 16. Procedure for Registering Changes and Additions to and Termination of Registered Pledge

An applicant shall register changes and additions to (including the transfer of the ownership right to another person, cession of the claim etc.) and termination of the validity of the registered pledge by filing an appropriate application with the registration office.

The procedure for registration of changes and additions shall be established by legislation.

Article 17. Application for Registration of Changes and Additions to and Termination of the Registered Pledge

1.An application for registration of changes and additions to and termination of the registered pledge of movable property must contain reference to the previously registered pledge, description of changes and additions to the pledge agreement (transfer of the ownership right to another person, cession of the claim etc.), grounds for termination of the registered pledge.

2.An application for registration of changes and additions must contain, in addition to the information specified in point 1 of this article, the following data:

- 1.the date of ratification of the agreement on changes and additions to the terms of pledge;
- 2.the registration number of a pledge of movable property given by the registration office;

- 3.description of changes and additions to be made; and
- 4.signatures of the pledgor and pledgeholder (representatives thereof).

An application for registration of cession of the claim, in addition to the information specified in point 1 of this article, must contain the date of ratification of the cession agreement, the consent to cession of the claim signed by the pledgeholder, the name (commercial name) and address of the new pledgeholder.

3.The agreement on changes and additions (including the transfer of the ownership right to other person, cession of the claim etc.) must be submitted together with the application; after checking the data contained in the application by the registration office such agreement shall be returned to the applicant with a mark of registration.

Article 18. Availability of Data regarding Registration of Pledges of Movable Property

1.Information regarding registration of a pledge of movable property shall be made available to all legal and physical entities, unless otherwise provided for by legislative acts of the Republic of Kazakhstan.

2.Upon application filed by any person, the registration office must provide information in a form of an extract from the Registry on Registration of Pledges of Movable Property which extract must:

- 1.indicate that the information on pledges is accurate up to the end of the business day which precedes the day on which the extract was issued;

- 2.be signed by an authorized officer of the registration office and be certified by the seal of the registration office.

- 3.If there are no pledge entries with regard to certain movable property, the extract must indicate as such.

- 4.A fee shall be charged for issuing the extract; the amount of such a fee shall be determined by the Government of the Republic of Kazakhstan.

- 5.No fee shall be charged for an extract from the Registry on Pledges issued upon requests coming from courts, inquiry and investigation offices with regard to cases in charge, as well as from governmental agencies authorized to oversee the registration of pledges of movable property, and from other persons who have the right to receive such an extract free of charge as granted by legislative acts of the Republic of Kazakhstan

Article 19. Termination of Registration of Pledge by Court Decision

A concerned entity may file an application with the registration office to cancel registration of the pledge on the basis of the judicial decision to invalidate the pledge itself or registration thereof.

Section 3. Resolution of Disputes and Liability for Violations of the Registration Procedure

Article 20. Dispute Resolution Procedure

Disputes related to registration and rendering information on registration of pledges of movable property shall be resolved by court.

Article 21. Liability for Violations of the Registration Procedure and the Procedure for Rendering Information on Registration

1.A registration office shall be held liable in accordance with the procedures established by legislation for:

- 1.the failure to comply with the rules for registration of pledges of movable property;

- 2.including incorrect or partial information on pledge, misrepresenting information on pledge of movable property provided to it for purposes of registering and making an entry into the Registry of Pledges of Movable Property;

- 3.unlawful denial in providing extracts from the Registry of Pledges of Movable Property upon request of concerned parties;

- 4.violations of the procedure for keeping documents and information provided to it for registration as well as data entered into the Registry of Pledges of Movable Property; and

- 5.disclosure of information constituting a trade secret.

2.Any losses suffered as the result of violation of the registration procedure or procedure for rendering information or misrepresentation of information shall be compensated by the registration office.

Any intended misrepresentation of information and other actions encouraging concealment of information which legally may and should have been disclosed shall be prosecuted in accordance with the procedures established by law.

Section 4. Concluding and Transitional Provisions

Article 22. Effectuation of the Law

1. This Law shall come into effect upon its official publication and shall apply to legal relations that arise after it comes into effect with consideration of the provisions of Article 23 of this Law.

Article 23. Transitional Provisions

1. Within the next 60 days after this Law comes into effect, the priorities with regard to one and the same to-be-registered pledge of movable property which property is not subject to mandatory official registration shall be granted only to those pledgeholders who entered into pledge agreements prior to the date this Law comes into legal effect. Registration of such pledges shall be carried out in accordance with the provisions of this Law.

Priority with regard to pledges registered in accordance with this article shall be determined depending upon the date of the pledge agreement.

President
of the Republic of Kazakhstan N. Nazarbaev