



CHATTEL MORTGAGE AND NON-POSSESSORY PLEDGE ACT OF 16 DECEMBER 1954

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**CHATTEL MORTGAGE AND NON-POSSESSORY
PLEDGE ACT OF 16 DECEMBER 1954**

**LEY DE 16 DE DICIEMBRE DE 1954, SOBRE HIPOTECA
MOBILIARIA Y PRENDA SIN DESPLAZAMIENTO DE
POSESIÓN**

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CHattel MORTGAGE AND NON-POSSESSORY PLEDGE ACT OF 16 DECEMBER 1954

This Act governs a regulation on the tangible security which has important precedents in our and other countries. However, said regulation is not strictly subject to the classic patterns and said precedents when applied. The regulation differs from them in many cases, therefore, it can be said that this Act entails important and analysed legislative developments. Said developments are reflected in the technical configuration accepted for chattel mortgage and non-possessionary pledge on the property subject to said securities; the scope of the same in some cases; the registration and formal regulation of the new legal concept, which entails the creation of a Public Registry for these encumbrances; the development of the right in rem before its exercise; its obliged effect on third parties; in its procedural development; and in the determination of the preferential and pursuit rights characteristic of any right in rem which complexity in this security has been an obstacle, unsurpassed until this moment, for the perfect efficacy of the legislative attempts relating to this matter.

Said considerations, together with the necessity to adopt, in some occasions, solutions imposed by the practices and techniques, oblige to explain and based the development given to this Chattel Mortgage and Non-possessionary Pledge Act.

The need for reform

The traditional configuration of the rights in rem of the pledge and mortgage, together with their limitation towards movable or immovable property and its characteristic of possession and non-possession is, without any doubt, insufficient for satisfying all the necessities of the tangible security. The scientific doctrine highlighted the great inconvenience of depriving the debtor of the possession of the pledge, specifically in movable property of great value used for agricultural and industrial purposes. Moving the possession is detrimental to the debtor, as said transferring deprives the same of the adequate properties; to the national economy, as it paralyses the work and production elements as well as the sources of wealth; and to the creditor even, as it reduces the economic capacity of the debtor and the possibility to deal with his obligations normally. The experience proved that the pledge was reduced to just sumptuary things, as it was ineffective towards the necessary things for human work. When the need obliged to pledge the last ones, the negative practical results of the security proved the need of a new legal concept to avoid the issues that arise from said practice.



On the other hand, the importance acquired by movable things due to the industrial development and the emergence of new types of property in the legal sense, which were hardly classified as movable or immovable property, gave as a result the creation of non-possessory pledge and chattel mortgage as instruments for the tangible security to be viable in this property which, due to its value or nature, cannot be adapted to the classical types.

The legislation usually resolved the problem partially and dealt with the different objects which may be subject to security. The non-possessory pledge and the chattel mortgage were accepted by a great number of countries in the form of agricultural, rural or agrarian, livestock, hotel, motoring or enterprise pledges.

In our Law, the same criteria were followed and the following pledges were subject to regulation: agricultural and livestock pledge (Royal Decree of 22 September of 1917), oil pledge (Decree of 29 November 1935), and industrial pledge (Act of 16 May of 1940). Afterwards, the Act of 5 December 1941, which added Articles 1863 bis to 1873 bis to the Civil Code, was inspired by a more comprehensive criterion, trying to introduce a more general regulation. However, in the practice and due to several circumstances, the same has not been developed and applied as the legislator would have wished.

Nature of the security

The first issue to be resolved is the legal nature to be assigned to this new type of tangible security. It could be followed the criterion of comparing said security with the mortgage, as the ship mortgage, by changing through a legal provision the nature of the property subject to be encumbered or by clearly introducing the method of the real property mortgage. The criterion of assimilating said security with the pledge pursuant to the nature of the property could also be followed. For such purpose, the requirement of transferring the possession should be removed by the concept of the non-possessory pledge. All these systems have precedents in the scientific doctrine and legislation. In our Law, the system prevailing, with no doubt, was the pledge.

Firstly, the Ship Mortgage Act, neither in theory nor in practice, resolved anything by considering immovable the property that is movable by nature for the only purpose of being able to be mortgaged. At the present stage of jurisprudence, using the fiction has been not been considered necessary.

Therefore, it was necessary to adopt one of the two other systems. For said purpose, it has been taking into account, specifically, the substantive characteristics of the pledge and the mortgage.

The action in rem has always had, as indispensable element, the identity of the thing; therefore, theoretically, it has not been possible to build perfect rights in rem on generic or future things. The level of perfection relating to the identity of the thing and its reflection in the documentation and Public Registries led the Commission to distinguish between two types of property. The first one is the property which identification is similar to the immovable property, and therefore, is subject to mortgage. The second one is the property which identification is less perfect and therefore, its right is more difficult to be achieved. The same is considered to be inside the classical type of

pledge, being the requirement of transferring of possession replaced by its publicity through the Mercantile Registry. The aim of this Act is not to establish two new legal concepts. The aim is to assimilate certain movable property, due its economical purpose and identification, to the regulations governing the mortgage on immovable property, which has a technical and economic development of great importance in Spain. All the aforementioned is based on the same nature and characteristics of movable things without forcing the same to be considered as immovable.

The determination of the property which may be subject to each type of security could not be interpreted freely. As this is a new regulation, a complete and accurate list of which property is subject to chattel mortgage and which property is subject to non-possessory pledge has been considered essential. Therefore, business establishments, cars and motoring vehicles, wagons and trams, aircrafts, industrial machinery, and the intellectual and industrial property are subject to chattel mortgage as said property is easy to identify and, in most of the cases, subject to be pursued with no limitation by the action in rem. Fruits, harvest, forest products, animals, certain machinery, tools and products of animal or agricultural holdings, goods and raw materials stored, paintings, sculptures, porcelains, books and other objects of artistic and historic value are subject to pledge as their identification is quite complex due to their specific characteristics. Therefore, as said property can disappear or be transformed or confused easily, the enforcement proceedings shall immediately provide the possession in favour of the creditor by converting the non-possessory pledge into possessory pledge through the proceeding.

Common Provisions

This Act starts with regulations of common application to chattel mortgage and non-possessory pledge in order to avoid unnecessary repetitions. The corresponding Titles identify which property shall be subject to one or the other legal concept. It has been considered convenient to do not admit the possibility of mortgage or non-possessory pledge on the property that is in a special legal situation, even if it could be mortgaged or pledged due to its nature. This is the case of the property that has been already mortgaged, pledged or seized and as well as the case of the undivided shares corresponding to the same. Although, at first, there is not a theoretical inconvenience to admit said legal concepts, the same shall be considered, from a practical point of view, as incompatible in order to give the maximum simplicity and security to the new institution, avoiding situations that could lead to the collision of the rights and that could create, at moment of the execution, confusion in detriment of the correct development of both legal concepts. Perhaps, and it has been taking into account, the possibilities for credit will be limited; therefore, it could be advisable to eliminate these prohibitions from former legislative amendments. However, nowadays, it is preferable to establish said prohibitions to guarantee the success of the institution.

Following the aforementioned criterion, the sub-mortgage is forbidden as well as the non-possessory pledge on property which may be subject to chattel mortgage, which is further mentioned in this Act.

In order for the property to be subject to mortgage or non-possessory pledge, it is a special requirement that the purchase price, if any, has been paid completely, unless

the mortgage or pledge are granted as security for the deferred price. This requirement is established considering that the hire-purchase, which is very common on normal circumstances, could be drawn out, being detrimental for the establishment, if the seller had a well-founded fear that his credit could be adversely affected by granting a security on the property sold. Giving preference to the credit by deferred price over the mortgage or pledge would have been contrary to the nature each right. Demanding the seller, in order to be duly secured, to always resort to the mortgage or pledge would be a heavier burden to the purchaser and contrary to the usual practice on these types of sales. In addition, it is avoided in this way the issues arisen from the several agreements that usually these types of hire-purchase entail, specially the condition subsequent and reservation of title.

Thereafter, the general regulations which govern the mortgage and the pledge are established and developed in accordance with regulations established for the mortgage on real estate regarding the grant, scope to the compensation, guarantee by interest, assignment of the credit guaranteed and rights of pursuit and preference.

However, some digressions which have been considered necessary and are imposed by the nature of the things subject of security exist. For example, the provision that prohibits the debtor to sell the property mortgaged or pledged without the consent of the creditor. This provision is based on the consideration that a third holder of the movable property is not indifferent for the creditor, as said property requires a special care, which is much higher than the one required by immovable property, in order to guarantee its conservation and the maintenance of its value.

In addition, the provisions which govern the preferential right and the prescription of mortgage and pledge foreclosure are also considered as special. In relation to the first, it was advisable to compare the mortgage and non-possessory pledge with common pledge, as in our Civil Code and Commercial Code the priority of debts is carefully distinguished depending if it refers to movable or immovable property.

In order to give a greater flexibility to these Institutions and taking into account the precedent provided in Article 1868 bis of the Civil Code, Associated Stockbrokers are authorised to intervene, together with the intervention of the Notaries Public, in banking transactions within the scope provided in Article 93 of the Commerce Code on the intervention of the aforementioned.

Mortgage General Regulation

First of all, it is determined the property which may be subject to chattel mortgaged, based on the idea that only the property liable to be identified in the Registry and which duly gain the corresponding publicity through the same shall be subject to chattel mortgage. The requirements to be complied by the property subject to be mortgaged are examined below.

This regulation has a particular interest in establishing the property that is not subject to chattel mortgage: the property that is not included in the numbers provided in Article 12. In order for said property to be excluded for being mortgaged, it has been considered, as fundamental reason, that outside the property provided in said Article

do not exist a property that can be duly adapted to the system of the Registry and henceforth, being mortgaged.

Mortgage on business establishment

The diverse terminology used by the scientific doctrine to name the enterprise, property, house or business establishment; the different theoretical constructions of the enterprise, from the ones which consider the enterprise as a single legal entity, as universal, to the negatives ones which neither accept the concept of enterprise as a single legal entity nor the special nature of the things or elements which form the same, are issues which have been subject to a carefully study due to their evident significance for the development of the mortgage.

Therefore, it has been considered that the establishment shall receive a special attention as physical basis of the enterprise, as a permanent element of the same and as property, which in our real life, is by itself subject to be transferred, having an intrinsic and objective value which, in certain sense, is independent to the activity of the merchant and other elements of the company. For said reasons, and in view of the precedents of Comparative Law and the project of the Code of 1926, the establishment is the fundamental and direct subject of the mortgage. The characteristic of the establishment for being mortgaged is not a result of being part of the elements of the enterprise and subject to be encumbered as the other elements. Said characteristic is the basis of the rights in rem: the establishment is the objective support of the mortgage that, being supported by the same, can be extended to other elements of the enterprise.

In order for the establishment to be subject to mortgage, two requirements are needed: the mortgagor shall be the holder of the establishment – owner or lessee- and his authority to transfer shall not be limited. The most common ownership of the establishment is the lease. However, it has been considered convenient to allow the owner who operate his own industrial or business establishment to embrace this type of security, as the condition of the industrialist or merchant who develops his activity in building of his own shall not be worse that the condition of the industrialist or merchant who develops his activity in leased establishment. The mortgaged granted by the owner of the establishment shall be completely independent from the mortgage granted on a building of his own. Therefore, it is established that the person who acquires a mortgaged establishment, pursuant to foreclosure, shall be considered as lessee of the establishment in accordance with the terms provided in the Mortgage Deed. Accordingly, two types of securities are offered to person who develops an industrial or commercial activity in his own establishment: mortgage on real estate or chattel mortgage.

The second requirement is a simple application of the general precept which establishes that only the alienable property is subject to mortgage.

The difficult issue of the objective scope of the mortgage on business establishment has led to the most arduous deliberations. After a careful study of the nature of the different elements of the enterprise, the legislations that has governed its pledge or mortgage and the different positions of the jurisprudence, the issue has been resolved

by making the following differentiation. Firstly, the necessary scope of the mortgage, which includes the right to lease the establishment and the fixed and permanent installations of the same. Secondly, the normal scope of the mortgage, which includes the intellectual and industrial property rights and the equipment of the establishment, elements to which the mortgage is extended except if they are exempt from the same by agreement. Thirdly, the conventional scope by which the mortgage may be extended to the goods and raw materials by virtue of an expressly agreement. Fourthly, scope by subrogation by which mortgage is extended to the compensation granted or owed to the holder of the establishment, as in regular cases, with the special regulation of a possible compensation from the owner to the lessee in accordance with the Lease of Urban Properties Act. In order to determine said compensation, the creditor is allowed to intervene, without reducing the rights of the lessee, as said intervention tends to safeguard the security effectiveness.

Without any doubt, the issue that entails greater challenges is the one relating to the goods and raw materials. Between two extreme solutions -the one offered by the French legislation which does not include said elements in the mortgage and which advantage is its simplicity, however, the same removes from the mortgage an important resource of wealth and security; and the solution given by a body of opinion which included the goods and raw materials in the mortgage by neutralising its continuous mobility by a real subrogation system, but which presents the serious problem of the debts from the supplying of goods and raw materials and the effects of the mortgage on the credit of the merchant- an intermediate option has been chosen. The goods and raw materials are not included in the mortgage, except if an expressly agreement between the creditor and debtor, providing that the mortgagor is owner of the same and their purchase price is paid completely. In the case an agreement exists, the scope of the real subrogation is regulated. Thanks to this solution, the credit facilities on said elements are increased as, in many cases, their economic value could be much superior to the value of the establishment. In addition, the creditworthiness of the merchant for the acquisition of new goods is not affected, as the credit of the suppliers is respected by requiring the complete payment of the price of the goods, in order for the same to be subject to mortgage. The scope of the mortgaged is limited to the obligation to maintain the volume agreed. In order to fulfil the same, the creditor is authorised to intervene and terminate the obligation if the volume decrease within the limits established, without prejudice to the usual fluctuation in world trade and respecting the regulation, which is fundamental for the trade, provided in Article 85 of the Commercial Code.

From the principles which govern the scope of the mortgage, the immaterial elements of the establishment are not subject to mortgage, such as the organisation and the costumers of the establishment, elements which can be hardly subject to the mortgage regulations.

Other issue which entails serious difficulties for the mortgage on business establishment is the specification of the relationship among the creditor, mortgagor and owner of the property. Said relationships offered two aspects: the position of the parties while the mortgage is in force and the effect of the termination of the lease on the mortgage.

In order to resolve the first aspect, the following double assumption has been made. The owner of the property could have authorised the mortgage or not. If he has authorised the mortgage, he shall accept what the Mortgage Deeds contains. If the authorisation is given after granting the mortgage, he shall be informed about the consequences of the mortgage for him. Said consequences are basically aimed at reducing the cases of termination of the lease in order to guarantee the stability of the mortgage. Said consequences grant certain economic and legal advantages, without being a heavier burden to the mortgagor, as compensation to the limitations that the mortgage entails for the owner. In the case the owner has not being present while Completion and has not authorised the mortgage, his rights shall not be affected by the granted mortgage, thus this Act respects all the rights granted to the owner by the Lease of Urban Properties Act.

In the event in which a lease is terminated and the owner have to pay the lessee a compensation payment, it is established that the owner shall be informed about the granted mortgage. Said notification is indispensable to prevent the owner, who ignores the existence of said encumbrance on the property, from paying, in good faith, the compensation to the lessee who, by omitting the existence of the encumbrance, could render the right of the creditor illusory. Once the owner is notified, he is affected by some limitations imposed by the nature of the things and the principle of good faith. For example, the obligation of not providing the lessee with the corresponding compensation payments without consent of the creditor or authorisation by a judge. Also, the owner is responsible for informing the creditor about the notifications provided in Article 102 of Lease of Urban Properties Act. Leaving aside the aforementioned, the termination of the lease entails the termination of the mortgage. However, in order to safeguard the stability of the mortgage, some special rules are established, which are as follows. Firstly, the capacity of the creditor to pay the debtor the outstanding rents. This rule is expressly established to avoid any doubts, although it is a simple application of Article 1158 of the Civil Code. Secondly, the real subrogation established in case of termination of the lease due to demolition of the building, replacing the lease with this right in the mortgage foreclosure. Thirdly, the renounce of the lessee to the lease while the mortgage is still in force is considered null and void. This issue has been discussed and resolved in accordance with the general regulation provided in Article 4 of the Civil Code.

Mortgage on cars, wagons and trams

The regulation which governs the mortgage on cars, a term that in this Act has a wide and extensive meaning which includes all the motoring vehicles compared to the aforementioned by the legislation in force, aims:

To extend as much as possible the publicity, not only through the Mortgage Registry but also through the corresponding administrative Registry and the vehicle registration document.

To guarantee the maintenance of the mortgaged vehicle by making compulsory the full comprehensive risk insurance of the vehicle, as this property is more liable to be affected by any kind of risk rather than the other property subject to be mortgaged.



To ease the right to pursuit through the prohibition, which has precedents in Comparative Law, as the mortgaged vehicle may be moved abroad, being rendered the rights of the creditor illusory.

Mortgage on aircrafts

The current regulations projects have been taken into account for aircraft mortgages. Said projects inspire the regulation about the scope and distribution of the mortgage, the priority of debts, mortgage on aircraft under construction, etc. In accordance with said provisions, this mortgage is similar to the mortgages on ships and has to be registered in the Mercantile Registry.

Mortgage on industrial machinery

Industrial machinery is the property which has entailed more problems for being subject to chattel mortgage. The different location, its use and its complexity to be pursued have been the most serious problems to be resolved. The pursuit of this property is further explained.

The first issue has been resolved taking into account one difference:

The industrial machinery may be found in shops and warehouses open to the public which activity is to sell them or in factories and industries as working and production elements.

In the first case, the machinery is considered as goods which are destined to be sold. The purchaser shall immediately enjoy the provision provided in Article 85 of the Commercial Code. Therefore, it is impossible to exercise the right of pursuit. For this reason, the machinery shall not be subject to mortgage in this case. When the machinery is considered as goods, it can be subject to the mortgage granted on the industrial or business establishment in which it is manufactured or sold, without the prejudice to the application of the commercial rules in case the machinery is sold as aforementioned. The machinery shall not be directly subjected to mortgage.

In the second case, the machinery is considered as a production or working element and therefore, it may be subject to mortgage. This consideration has been carefully studied according to what criteria should be applied to consider the machinery as industrial in order for the same to be subject to mortgage. For this purposes, the use of the machinery for an industrial purpose and the effective earmark to a certain industry have been considered. The first one is an objective data and the earmark is an economic and legal data, which apart from anticipating the purpose, it implies the effective characterisation of the machinery as working or production element. The concepts are similar to the ones provided in Article 334.5 of the Civil Code, not relating to immovable property but to industries. This is the reason why for chattel mortgage it does not matter if the owner of the machinery owns the property on which the installation has been made, he/she just needs to own the industry where the machinery is earmarked.

Therefore, the industrial machinery may be subject to three different types of mortgage: chattel mortgage, as direct and autonomous object of the same in accordance with Section 5 of Title One; mortgage on business establishment, as consequence of the

scope of the mortgage in accordance with Section 2 of Title One; and mortgage on real estate when the requirements provided in Article 111 of Mortgage Act met.

Mortgage on Intellectual and Industrial Property rights

The mortgage on these rights is easier to develop than on the rest of the property due to their formal nature, their perfect suitability for being registered and for being, in their essence, subject to our substantive Law. The requirements for this type of mortgage are established pursuant to the general regulation for chattel mortgage. In accordance with the regulation in force which governs these special characteristics and the publicity, the effect of the same has been centralised by locating in Madrid the Mortgages on Intellectual and Industrial Property rights Registry, being its development eased as this single Registry is connected with the administrative Registries.

Non-possessory Pledge

The criterion followed on the nature of the right in rem relating to the pledge and mortgage has been previously explained. The publicity through the Registry is consubstantial to the mortgage and the publicity through the possession to the pledge.

The acceptance of the non-possessory pledge, despite the doubts of doctrinal and practical order presented, obliges to present the foundations considered, which have been subject to a deep deliberation.

As it is indicated, for dividing the pledge and the mortgage and for determining the movable things which may be subject to mortgage, the difference between the movable things subject to be identified by its registration and the movable things which identification through the registry is not possible has been followed. The last mentioned property, at first, is the one which is subject to non-possessory pledge. However, the great diversity of the physical nature and the purpose of said movable things make impossible to apply a single treatment to them.

Among the movable things that cannot be subject to said identification through the registry -at least to a perfect one-, there are some movable things that, either for being working tools of the owner (livestock or agricultural tools, for example) or for requiring a special care and attention (livestock destined for the production and reproduction and not for working) or for its future nature (expected harvest) or other considerations, cannot be moved or are difficult to move. Said movable things are not subject to mortgage due to its imperfect identification through the registry. However, they are not subject to pledge as physically, legally and economically cannot be moved towards the creditor or a third party.

The most serious consideration that arose when said assumption was considered was the following. In the case, that the forms of the tangible security of movable property were limited to the mortgage and the common pledge, the possibility for the immovable property to be subject to said tangible security was excluded. This solution could not be accepted free of consequences. Firstly, from a historical point of view, on this group are included the first regulations which appeared in the scientific doctrine, in several legislative attempts with over half a century of age, and in positive legislation on tangible security on movable property without possession. Secondly, the credit facilities were denied (or it was forced to search for credit facilities in reprehensible moral and

legal conditions) to a large agricultural and stockbreeding sector, which constitute one of the most important wealth resources in Spain. Finally, the work of this Act was incomplete and a significant regulatory gap was created, eliminating some of the cases of the tangible security that exit on our current Law without creating adequate concepts in substitution of the ones eliminated.

Therefore, it was necessary to accept the tangible security on these movable things. However, it entailed a difficult issue relating to the previous determination of their nature and their cataloguing between the pledge and mortgage.

Chattel mortgage is not the adequate concept for this security. Towards the position of the mortgage, chattel mortgage has been admitted when the publicity through the Registry granted the creditor a full and effective security. The publicity for this group of movable things is quite fragile and, due to their nature, it could not take effect neither in the form of the publicity for the immovable property nor in the form of the publicity of the chattel mortgage regulated in Law.

It was not possible to create a new legal concept with its own denomination or without the same that appear as a right in rem of security between the pledge and the mortgage. This solution would have not been wise and its efficacy would have been limited as it leaves to the institution the difficulties of doctrinal, jurisprudential and practical nature that every new legislative development entails.

In our substantive Law, the cases which appear in our regulation are governed by the concept of the pledge, without any uncertainty of doctrinal nature than the one presented in the Act of 5 December 1941 which added the Articles bis to the Civil Code. On the other hand, the terminology used nowadays for non-possessory pledge is the one commonly used, being easily understood by the individuals and the bodies and officers who shall apply this Act. Finally, the configuration of this right as pledge can be easily linked with the provisions relating to priority of debts provided in the Civil and Commercial Codes, whereas the creation of a new right entails the examination and amendment of said regulation.

The regulation of the non-possessory pledge has been developed following, principally, the precedents of our substantive Law in force, in particular the Royal Decree on Agricultural Pledge of 22 September of 1917 and Articles “bis” of the Civil Code, only including the alterations considered necessary to modernise and update said dispositions and to give the institution the maximum legal effectiveness.

Both agricultural and livestock pledges remain. It has been included to the aforementioned the industrial and commercial pledges as well as the pledge on movable things with their own individuality, which may arise from certain characteristics or from the artistic and historic significance of the pledged objects. The registration, scope and rights and obligations of the pledge are regulated. The quick and simple foreclosure proceedings are established in order for the guaranteed credit to be paid.

For regulating the pledge, the judgements contrary to the fiction of the deposit of owned goods have been taking into account. The same have been subject to a special study. Said fiction is not considered in itself to be a deposit. The same is considered special circumstance of the debtor which is similar in some points to the circumstances

of the third depository, but always different depending on the nature of the things. However, the fiction of the deposit has been preserved, as it is traditional in our Law and it is the most expressive way to determine two aspects of great significance relating to the non-possessory pledge: the particular significance of the debtor and his strong responsibility towards the acts that make difficult or prevent the creditor from exercising of his rights. The debtor is subject to all the civil and criminal obligations and responsibilities attached to the capacity of depository.

Other concepts of tangible security on movable property

Different concepts of tangible security on movable property exist, which have not been included in this Act due to the special features of the same. For example, the oil pledge, which is governed by the Decree of 29 November 1935 and Orders of 6 and 17 January of 1936; the industrial pledge, which is governed by the Act of 17 May 1940; and the warehouse warrant, which is governed by Article 194 of the Commercial Code and Title Two of Royal Decree of 22 September 1917.

The Registry

The problem of the publicity has been resolved by creating a Registry for chattel mortgage and non-possessory pledge.

This Registry, as required, has legal nature and depends on the Ministry of Justice and the Directorate General of Registries and Notaries Offices. The Property Registrars are responsible for this Registry. The mortgage on aircrafts shall be registered in the Mercantile Registry in accordance with the assimilation established with the ship mortgage.

The scope of this new Registry has been discussed, whether it is appropriate to establish a system of Property Registry which, as well as for immovable property, includes all the legal record of the property, including the transmission of the property, or a system for registering the encumbrances limited to the purposes of this Act. Although, at the beginning, the first system has been considered the most complete, it has been excluded due to the practical difficulties of its adaptation, as it would entail a total and absolute modification of the property transmission system and the trading of this type of property. Therefore, only an encumbrance Registry has been regulated. However, it has been considered convenient to include the favourable criterion for certain movable property to be registered in the Property Registry, such as business establishments and cars.

The Encumbrance Registry may be established with a double purpose: to register only mortgages or to register other encumbrances, meaning that it could be considered as a Mortgage Registry or as an Encumbrance Registry in general. This issue has been studied from the point of view of the seizures, which are the most common encumbrance.

It is obvious that the seizures which appear after the formalisation of the mortgage shall be recorded on this Registry, as the mortgage has preference over the same and the liquidation of charges and encumbrances, in case of foreclosure, request the acknowledgment of the subsequent encumbrances to avoid rendering the rights of the seizing creditors illusory. In addition, the seizures on the property which is subject to

chattel mortgage or non-possessory pledge shall be recorded, although said property is not mortgaged. The basis resides in the provision that forbids the mortgage and the non-possessory pledge on seized property, in which case, the same shall be considered null and void. However, as security for the creditor, it is necessary to provide a means, which shall be different to the mandatory statement of the debtor, to know the possible existence of legal earmarks of the property. Said means cannot be other than the seizure recording.

Therefore, once the seizure is recorded, if a mortgage is subsequently granted the same shall be considered null and void and shall not be registered. The aforementioned shall be also applied to the pledge. However, if the seizure has been ordered by the Judicial Authority but has not been recorded in the Registry, the mortgage and the pledge shall be valid and shall have preference over said seizure which has not gained publicity through its recording in due course. The recording neither modifies the seizure of the nature nor includes new rights, privileges or securities in favour of the creditor. The recording safeguards the seizure towards subsequent encumbrances which otherwise would have priority over the same.

The organisation of the Registry has not entailed many doubts or difficulties. The registration system relating to the base of the property (principle of specification) is only advisable for the property which may be subject to chattel mortgage. For the property which may be subject to the non-possessory pledge said Registry is not advisable as said property requires an organisation based on the contract and shall be subject to the regulations that arise from its own nature and easy mobility.

The fundamental basis for the organisation, competence, validation and publicity of this Registry is provided in this Act and detailed below.

Enforcement procedures

The provisions of procedural nature provided in Title Four, in which is regulated the enforcement procedures to be applied for the guaranteed credits to be paid, are a necessary complement to this Act.

Following the guideline of the Mortgage Act, three procedures have been admitted: ordinary enforcement, summary and out-of-court proceedings. The fundamental guidelines of the regulation are similar to the guidelines of said Act, making these proceedings faster and shorter and eliminating some of them due to the different nature of the property.

In addition, a special regulation has been established for the cases in which the encumbrance falls on cars or business establishment. The special regulation relating to business establishments aims to maintain the unity of the objects to which the mortgage is extended and to safeguard the preferential right to acquire the local, right granted to the owner by the Lease of Urban Properties Act.

Additional Provisions

This Act includes some additional provisions to clarify certain points. In addition, it includes a repealing provision to make ineffective the Act of 1941, which added Articles 1863 bis to 1873 bis to Civil Code, and to repeal certain principles of the Royal Decree

of 22 September 1917. In rough outlines, this is the Act drafted. The Act of 5 December 1941 stipulated that a regulatory provision shall complete its principles. The difficulties to adapt Articles bis of the Civil Code to our common legal system, and the need of regulating certain cases which were difficult to adapt in said legal entity and were affected by subsequent provisions and projects of said Act, advised to draft this Act which aims to regulate the non-possessory security on movable property in Spain. Many issues shall be resolved relating to this matter. However, new difficulties could not be added to the complexity of said security due to its own nature, therefore, the regulation of the same has been simplified as much as possible. The time and the application of this Act shall determine if this Act has fulfilled its aim, which is to guide and resolve a tangible necessity on the practice, which is defended by doctrine and has been dealt without positive results to date by prior legislative attempts.

Therefore, by virtue of the same and pursuant to the proposal drafted by the Cortes of Spain,

I HEREBY ENACT THIS ACTS AS FOLLOWS:



TITLE ONE

Common Provisions for chattel mortgage and non-possessory pledge

Article 1

Chattel mortgage and non-possessory pledge shall be granted on the alienable property which is mentioned in this Act for both cases.

If said property is on joint-ownership or the same is owned by several owners through usufruct or bare ownership, the same shall only be completely mortgaged or pledged with the consent of every party.

Article 2

1. The agreement on not mortgaging or pledging a property which has been already mortgaged or pledged shall be ineffective. Therefore, chattel mortgage and non-possessory pledge may be granted on property already mortgaged or pledged although said property is under the aforementioned agreement.

Chattel mortgage and non-possessory pledge may be granted on the same right of mortgage or pledge as well as on seized property or on property which purchase price has not been paid completely.

The hereby article shall not be applied with retroactive effect.

Article 3

Chattel mortgage and non-possessory pledge shall be granted through public instrument.

However, non-possessory pledge shall also be granted through policy before Associated Stockbrokers when banking transactions or in any of the cases provided in Article 93 of the Commercial Code.

The public instrument or policy shall be registered in the Registry established by this Act.

If the mortgage or pledge is not registered in the Registry, the mortgagee or pledgee shall be deprived of the rights that are granted, for both cases, in this Act.

The registration does not validate the acts and contracts that are null in accordance with Law. The entries recorded in the special books for mortgage and pledge in Property Registry shall be under the protection of the Courts and shall give effect while said entries are not cancelled or declared null.

Article 4

The debtor shall not alienate the mortgaged or pledged property without the consent of the creditor.

Article 5

Mortgage and pledge shall be extended to any compensation payments corresponding to the mortgagor or pledger, which are granted or owned due to the mortgaged or pledged property in the case that an accident occurs at the property after having granted the mortgage or pledge.

If said compensation payment shall be paid before the expiry date of the guaranteed debenture, the responsible for its payment shall provide the figured agreed. In the absence of agreement, the compensation payment shall be established in the form provided in Articles 1166 et seq. of the Civil Code, providing that in each case, the existence of the mortgage or pledge on the property would have been notified.

Article 6

The non-payment of the insurance quote of the mortgaged or pledged property, if any, shall grant the creditor the capacity to terminate the guarantee debenture or to pay said outstanding payment on behalf of the one responsible of its payment.

In this case, the payment of the amount of the quote, plus the legal interest, may be requested at the same time and with the same title as the principal obligation, within the maximum period established for the costs and expenses in the Mortgage or Pledge Deed.

Article 7

Chattel mortgage or non-possessory pledge shall be granted as security for credit current bank accounts or for bills of exchange pursuant to the requirements provided in Articles 153 and 154 of Mortgage Act.

Article 8

The guaranteed credit with chattel mortgage or non-possessory pledge shall be completely or partially alienated or assigned through public instrument, in any case, pursuant to the requirements and effects provided in Articles 149 and 151 of Mortgage Act.

The guaranteed credit with non-possessory pledge granted through policy before an Associated Stockbroker shall be completely or partially alienated or assigned by a document formalised before the Associated Stockbroker.

In any case, the notification to the debtor shall be carried out through Notarial Deed.

The guaranteed credits with chattel mortgage or non-possessory pledge may cover the securities of the secondary market.



Article 9

Except expressly agreement, chattel mortgage and non-possessory pledge, as security of an obligation that bears interest, shall safeguard, to the detriment of a third party, the capital as well as the interest corresponding to the last two years and to the due part of the current annual payments.

Article 10

To make their credit paid, the mortgagee or pledgee shall enjoy the preference and the priority provided in Articles 1922.2 and 1926.1 of the Civil Code, always safeguarding the priority of the work-related credits.

In case of bankruptcy, the preference and priority of the mortgagee or pledgee shall be regulated in accordance with Bankruptcy Act.

Article 11

The mortgage or pledge foreclosure shall expire three years after the date from which the same is legally exercised.

TITLE TWO

On the chattel mortgage

SECTION ONE

General Provisions

Article 12

Only the following property shall be mortgaged:

1. Business establishments.
2. Cars and other motoring vehicles as well as trams and wagons of private property.
3. Aircrafts.
4. Industrial machinery.
5. Intellectual and industrial property.

The right in rem of chattel mortgage and the property provided on Articles 52, 53 and 54, shall not be mortgaged.

Article 13

Apart from the circumstances required by the notarial legislation, Chattel Mortgage Deed shall meet the following circumstances:

1. Identification of the creditor, debtor and the owner, if any, of the property mortgaged.
2. Description of the property to be mortgaged by specifying its nature, quantity, quality, distinctive marks or other particularities that could allow its identification or individualization.
3. Title Deed of the property and the statement of the mortgagor declaring that said property is not mortgaged, pledge or seized.
4. Amount of the capital guaranteed, in national currency, and the period for its refund, interest rate, if agreed, and amount corresponding to costs and expenses.
5. Address of the debtor and non-debtor mortgagor, if any, for notification purposes.

Article 14

In the participating mortgage of several business establishment, motoring vehicles, wagons, trams, aircraft or intellectual or industrial property rights, the actual liability shall be divided among the same by capital and, if applicable, by interest and costs.



Article 15

The mortgage as security of bearer or endorsable securities shall be granted through public instrument pursuant to the principles provided in Articles 154 and 155 of Mortgage Act.

Article 16

The chattel mortgage subjects, directly and immediately, the property on which the same is granted, notwithstanding the possessor of the property, to the fulfilment of the obligation for which the same was granted as security.

Article 17

The mortgagor shall maintain the mortgaged property, principals and accessories, with the diligence of a head of the family, carrying out all the repairs and replacements needed.

Article 18

The devaluation of the mortgaged property, except when the devaluation is caused by unforeseen circumstances, shall grant the creditor the right to request the legal intervention of the administration of said property by presenting the supporting documentation for said purpose.

The Court officer shall summon the parties to appear before the Judge on the third day. On the following twenty-four hours after the appearance, having the debtor attended or not, and considering what has been alleged and proved, the Judge may discretionary make an order which declares if the intervention shall be exercise or not, appointing a Comptroller, if necessary. In addition, the Judge shall summon the debtor in order to avoid that he performs any act on the property without prior notice of the Comptroller in the form provided in Article 631 and other concordant articles of Civil Procedural Act. The debtor may be released from this security measure if he provides sufficient security to respond to said devaluation. The figure shall be established by the Judge.

SECTION TWO

On mortgage on business establishment

Article 19

In order for a business establishment to be mortgaged, the same shall be located at the premises of which holder is the owner or lessee. Said holder should have capacity to transfer.

Article 20

The mortgage shall necessarily include the leasehold on the premises if the same is held by the mortgagor. On the contrary, it shall include the rights provided in Article 28 of this Act. In addition, the mortgage shall include the fixed or permanent installations providing that the holder of the establishment owns the same.

Article 21

The mortgage shall also include, unless otherwise provided, the following property, which shall be described in the corresponding public instrument:

- a) The commercial name, the sign of the establishment, the distinctive signs and the intellectual and industrial property rights.
- b) The machinery, furniture, equipment and other production and working tools.

The property referred in this Article shall be always subject to mortgage when the following circumstances met: the property must be owned by the holder of the establishment, its purchase price must have been paid completely and the property shall be destined for satisfying the needs of the commercial and industrial undertaking.

Article 22

The mortgage shall be extended, by agreement, to the goods and raw materials destined for the undertaking of the establishment when the two first requirements provided in the last paragraph of the previous article met.

The rights of the purchaser are safeguarded in accordance with Article 85 of the Commercial Code. However, the debtor is obliged to keep in the establishment goods and raw materials in the equal or greater quantity and value as the one determined in the Mortgage Deed. He shall replace the goods and raw materials in accordance with the use of the establishment.

The creditor shall be entitled to examine the administration of the business establishment within the form and the period provided, without obstructing, in any case, the normal operation of the same.

Article 23

The compensation payments that the lessor of the property must pay to the lessee pursuant to the Lease of Urban Properties Act shall be understood to be included in Article 5.

The lessor shall not be released from the amounts owed to the lessee if the mortgagee, who had duly notified his credit, does not agree with the agreement that establishes the amount of said compensation payments.

In any case, the creditor may request the intervention of the Evaluation Committee.

Article 24

Apart from the circumstances provided in Article 13, the Mortgage Deed shall include the circumstances relating to the rent and the lease for all legal purposes and, in particular, for the purposes provided in Article 28.

The granted mortgage shall be notified by Notarial Deed to the lessor or owner of the premises on which the mortgaged establishment is located. Said notification shall be made at the request of the creditor or debtor.



Article 25

The creditor shall exercise the rights corresponding to the lessee to request the material and legal defects to cease. The creditor can also exercise said rights to carry out the corresponding repairs in the leased premises when the debtor or mortgagor do not exercise the same, providing that eight days have passed since the creditor requested the aforementioned to exercise the same.

Article 26

The owner of the premises who has been notified with the granted mortgage shall inform the creditor about the notifications provided in Articles 102 et seq. of Lease of Urban Properties Act.

Article 27

The mortgagor is obliged to continue with the business or industry in the mortgaged establishment in accordance with the use of the commerce. In addition, he is obliged to inform the creditor, within eight days, of any harmful act or event.

Article 28

If the mortgage has been granted by the same owner of the premises, the awardee, in case of foreclosure, shall automatically acquire the capacity as lessor pursuant to what has been agreed on the Mortgage Deed.

Article 29

Although the period agreed in the contract has not lapsed, the creditor shall terminate the obligation due to the following reasons:

1. Modification of the type of business or industry of the mortgaged establishment, if otherwise has not been agreed.
2. Failure to fulfil of the obligations provided in Article 27 and, particularly, failure to pay the rent, social and fiscal taxes as well as the insurance quotes.
3. Alienation, by the debtor, of any mortgaged property without the consent of the creditor, except goods, in accordance with Article 22.
4. Termination of leasehold of the premises.
5. Termination of the lease contract by final judgment.
6. Termination of the lease contract by any other reason recognised by Law.
7. Six months after the notification of the Notary's Certificate, at the request of the lessor, which informs about the government resolution that agrees to demolish the property.
8. A 25% decrease in the value of the mortgaged goods and raw materials, in the case the debtors does not replace the same, in accordance with Article 22.
9. Any other specified cause provided by Law or established in the Mortgage Deed which terminates said obligation.

Article 30

The creditor who pays the outstanding payments mentioned in Article 29.2 shall demand the corresponding amount, together with the legal interest, at the same time that he demands the secured debt within the maximum figure established for the costs and expenses in the Mortgage Deed.

Article 31

The lessor who has giving his consent for the mortgage is entitle to increase by 5% the rent, notwithstanding the corresponding percentage provided in Lease of Urban Properties Act. If the premise is transferred later, the lessor is authorised to increase by 10% the stake that corresponds to him due to the transfer in accordance with said Act. Both rights may be exercised after grating each consented mortgage.

The consent may be given when the mortgaged is granted or by subsequent public instrument.

The lessor shall notify the creditor in duly form with the final judgment which declares the termination of the lease contract due to the reasons provided in numbers 2 to 5 and 10 of Article 149 of Lease of Urban Properties Act. Said judgement shall not be enforced until 30 days after its notification.

During said period, the creditor may exercise the mortgage foreclosure.

The owner of the property shall be entitled to the right of redemption regarding the acquisition of the awardee in the auction. In the case the owner shall not exercise said right, he is entitled to the rights provided in the first paragraph of this Article.

If the creditor does not initiate the foreclosure within the said period of 30 days, the lessor shall recover the premises corresponding to the terminated lease contract. The creditor may exercise the mortgage foreclosure on the remaining mortgaged property.

Article 32

In accordance with the previous article, the lessor who has not giving his consent to the mortgage shall exercise the actions to terminate the contract provided in numbers 2 to 5 and 10 of Article 149 of Lease of Urban Property Law. The creditor shall appear as party in the proceeding.

The debtor who in bad faith has originated said termination, shall be civil and criminal liable.

Once the leasehold of the mortgagor relating to the premises has been terminated by any reason, the mortgage shall entirely prevail on the remaining mortgaged property.

Article 33

The renounce of the lessee, which shall be made during the existence of the mortgage, to the rights originated from the lease contract shall not have any detrimental effect to the creditor if said renounce has been notified in the form provided in Article 24.



SECTION THREE

On mortgage on cars, motoring vehicles, trams or wagons of private property

Article 34

Apart from cars, lorries, coaches, buses, tractors, motorcycles, and other vehicles which are subject to be registered in the corresponding Administrative Registry are considered motoring vehicles.

In addition, trams, trolleybuses and wagons of private property may be subject to mortgage.

Article 35

Apart from the general circumstances, the Mortgage Deed shall also include the following:

1. Class of vehicle and trademark.
2. Engine Code and Vehicle Identification Number.
3. Number Plate.
4. Cylinder capacity and power in HP.
5. Category and vehicle license and the place and date in which was issued.
6. Deadweight tonnes, if lorries.

In the case of wagons, it shall be described if they are open or closed and the service provided. If the wagon is open, it shall be described if the wagon is a platform or has walls. In the case the wagon is closed, it shall be specified if the wagon is a tank, cage or is just closed. In addition, the wagons shall be identified by its class and number of axles, serial number, load limit, building company, year of construction and other circumstances considered necessary.

In the case the mortgaged property is a tram, the Deed shall include its series and number, year of constructions, service provided, number and other circumstances which may be considered necessary.

Upon completion of the Mortgage Deed, the Notary shall record the corresponding mortgage in the vehicle registration document.

Article 36

The mortgaged vehicles shall be insured against theft, robbery, loss or damage for an equal or greater amount than the total figure of the mortgage liability.

Article 37

The vehicles which mortgage has been recorded in the vehicle license shall not leave Spanish territory without the consent of the creditor.

For this purpose, the Spanish Customs shall require said vehicle license.

SECTION FOUR

On mortgages on aircrafts

Article 38

Spanish aircrafts may be mortgaged providing that said aircrafts are registered in the corresponding section of the Mercantile Registry of the province in which the same are registered.

In relation to foreign aircrafts, the mortgage is subject to the international conventions and the principle of reciprocity.

The aircraft which is been built shall be mortgaged when the money invested in the same is a third part of the total amount of the budget. The provisional registration in the Mercantile Registry shall be definitive once the aircraft is built.

Article 39

Except otherwise agreed, the mortgage shall include the airframe, engines, airscrews, radio and navigation equipment, tools, accessories, furniture and, in general, gear and equipment of the aircraft although the aforementioned can be separated from the aircraft.

The spare parts shall be mortgaged together with the aircraft, providing that the same are listed in the Mortgage Deed.

Article 40

Apart from the general circumstances, the Mortgage Deed shall include the following:

1. Number plate.
2. Construction phase in which the aircraft is, if necessary.
3. Trade and nationality marks as well as other characteristics that allow the identification of the aircraft.
4. Address of the aircraft.
5. Specification of all the insurances contracted and, in particular, the mandatory ones.

Article 41

The rescue compensations and the expenses which are necessary for the maintenance of the aircraft shall have preference over the chattel mortgage, providing that said payments are registered, following a reverse chronological order, in the corresponding Mercantile Registry within the 3 following months since said rescue operations or repairs took place.



SECTION FIVE

On mortgage on industrial machinery

Article 42

The machinery, equipment and tools installed and destined for its owner to the undertaking of the industry and which directly satisfy the needs of said industrial undertaking may be mortgaged. Said industry shall be registered in the industry or mining register in name of the mortgagor.

For the purposes of the mortgage, steam boilers, ovens that are not part of the building, chemical installations and the remaining fixed elements for the industrial undertaking shall be also considered as machinery.

Article 43

Apart from the general circumstances, the Mortgage Deed shall include the following:

1. Description of the machinery, equipment and tools including their manufacturing characteristics, number, type, and other distinctive features that allow their identification.
2. Location and industry for which the same are destined.
3. Application of each machine or tool and their conservation status or degree of deterioration.

Article 44

The owner of the machinery and the other mortgaged property is obliged to preserve the same in the location and status in which they were found. In case of failure, he shall be civil and criminal liable.

However, he may use said property according its purpose, but without damaging its integrity.

The creditor shall be entitled to terminate the mortgage debenture in case of misuse of the property or if the debtor resists to the inspection of the thing by the creditor or person the appointed by the same for said purpose.

SECTION SIX

On the mortgage on intellectual and industrial property rights

Article 45

1. The rights safeguarded by the industrial property legislation as patents, topographies of semiconductor products, brands, trade names, industrial designs, plant varieties and any other typical pattern, may be subject to mortgage in accordance with their governing Act.

2. The mortgage security may be granted by the owner or licensee who has authority to transfer his right to a third party, either on the right on the request for grating the right. The licensees may mortgage their licenses as security if said he owns totally or partially

the license. In addition, he may mortgage his license as security in the case said license is owned through any of the faculties that are part from the exclusive property rights, within all or part of the national territory, with the condition of exclusive or non-exclusive license.

3. The industrial properties rights which can be registered but are not may not be subject to mortgage as well as the personality rights which do not have patrimonial content or cannot be alienated, and, in general, every right which is not subject to individual appropriation.

4. The security is extended to the rights and upgrades as result of the addition, modification or improvement of the property rights registered.

5. Once the respective entries haven registered correctly in the Movable Estate Registry, the Registrar shall automatically provide the Spanish Patents and Trademarks Office with the certification of the content in order for the aforementioned body to confirm its registration and for coordinating its publicity between the two bodies. The registration security shall be considered formalised pursuant to the effects provided by this Act when the same is registered in the Movable Estate Registry.

6. The names of internet domains are subject to the regulations of their corresponding Registry. The rights that are not subject to voluntary alienation shall not be encumbered by chattel mortgage in accordance with applicable Law.

7. The regulations provided in this Section establish the common rules for chattel mortgage on industrial property rights and for the chattel mortgage on protected rights according to the intellectual property rights legislation. The aforementioned rights are mentioned in the next article.

Article 46

1. Chattel mortgage may be granted on exploitation rights and every right or pattern of intellectual property of patrimonial content which may be subject to “inter vivos” transference in accordance with their governing Act. In addition, the exploitation rights of films may be subject to chattel mortgage in accordance with the terms provided in said Act.

2. The security may be granted by the owner or by the assignee, exclusively or as partial assignee, providing that the same is authorised to alienate his right to a third party.

3. The intellectual property rights which can be registered but are not and the personality rights such as the author’s right, rights which cannot be alienated and the rights which cannot be subject to individual appropriation, shall not be subject to chattel mortgage.

4. In case otherwise agreed, the security on the original work is not extended to translations and adaptations; revisions, updates or annotations, overviews, summaries or abstracts; musical arrangements or any other transformation of the work. Said transformations may be subject to other separated securities.

5. Once the corresponding entries have been registered in the Movable Estate Registry, the Registrar shall immediately provide the corresponding Public Registry with the



certification which includes the kind of industrial property subject to the guarantee for its recording as well as for the coordination of its publicity between the two bodies. The chattel mortgage shall be considered granted and pursuant to the effects provided in this Act when the same is registered in the Movable Estate Registry.

Article 47

Apart from the general circumstances, the Mortgage Deed shall include the following:

1. Nature, kind and remaining characteristics of the property mortgaged.
2. Date and registration number, renewal, restoration or extension in the special Registry.
3. Licences, authorisations or concessions granted by the holder to third parties.
4. Supporting documentation that proves that royalty is paid to date, if any.

Article 48

The holder shall not neither renounce to his right nor assign its use or the total or partial exploitation without the consent of the creditor.

However, the holder of a film limited to certain Spanish film regions shall transfer partially his exploitation right after having partially cancelled the mortgage credit according to the percentage fixed in the Mortgage Deed. In the absence of the same, the percentage requested by the official entity and competent bodies shall be paid.

The transfer of the rights prior to have partially cancelled the mortgage credit shall not be detrimental to the rights of the creditor, being the assignor and the assignee jointly and severally liable for paying the amount of the percentage fixed.

Article 49

The creditor is authorised to receive, by virtue of agreement, the total or partial amount of the rights of the holder shall assign the amounts received to the payment of the interest. The remaining amount, if any, shall be assigned to repay the capital. For this purpose, the agreement shall be notified in duly form to the Spanish General Society for Authors.

Article 50

The creditor may obtain, in case the holder of the mortgage property does not, the renewal, restoration or extension needed for the maintenance of the rights mortgaged. In addition, the creditor may also pay the corresponding royalty, what entails the effects provide in the second paragraph of Article 6.

Article 51

The creditor may terminate the mortgage debenture before its expiry date due to the following cases:

1. Failure to pay the corresponding royalty.
2. Failure to exploit the patent within more than six months or failure to use the brands during four consecutive years, except otherwise provided.

TITLE THREE

On the non-possessory pledge

Article 52

The legitimate holder of agricultural, livestock or forestry holdings may grant non-possessory pledged on following property:

1. Pending fruits or expected harvest in the crop year in which the contract is granted.
2. Individual fruits or products from said activities. If the fruits or products are not stored, it shall be determined the place in where they shall be deposited.
3. The animals, as well as their young and products.
4. The machinery and tools for the undertaking of said holdings.

Article 53

In addition, non-possessory pledge shall be granted on the following property although the same is not related to the aforementioned holdings:

1. The machinery and other movable property which can be identified by their particular characteristics, such as brand or production number, model and other similar characteristics, and which do not compile the requirement provided in Article 42.
2. Stored goods and raw materials.

Article 54

The collection of objects with artistic and historical value such as paintings, sculptures, porcelains or books shall be subject, either totally or partially, to non-possessory pledge as well as the objects which are not part of a collection.

Credits and other rights corresponding to the holder of contracts, licenses, concessions or administrative grants may be subject to non-possessory pledge, providing the alienation of the same to a third party is authorised by Law or by the corresponding deed. Once the pledge is granted, the Registrar shall immediately inform the competent Public Administration through notification issued for said purpose.

Credit claims, and even future credits, shall be subject to non-possessory pledge providing that the same are not represented by securities and are not considered as financial instruments for the purposes provided in Royal Decree 5/2005 of 11 March on urgent reforms for boosting the productivity and improving the public procurement. Said credit claims and future credits shall be registered in the Movable Estate Property for being granted effectively.



Article 55

Non-possessory pledge shall not be granted on property mentioned in Article 12 or on property mortgaged by agreement in accordance with Article 111 of Mortgage Act.

In accordance with the aforementioned Law, pledge shall not be granted on property already pledged.

Article 56

The granted pledge shall affect in any case the rights legitimately acquired, in virtue of a document with prior date, by a third party on the pledged property; notwithstanding the civil or criminal liability incurred by the person who defrauds other person by offering the same a property already encumbered as pledged or by pretending to be the owner of a property which does not belong to him.

Article 57

Apart from the general circumstances, the Pledge Deed or policy shall include the following:

1. Description of the pledged including its nature, quantity, quality, status and other circumstances that allow its individualization or identification.
2. The building in which said property is located due to its origin, application and storage or deposit, if necessary.
3. The responsibility of the owner to preserve and keep the same at the disposal of the creditor in order for him to examine and verify the existence and condition of the same at any moment. The property shall be preserved as agreed. In the absence of agreement, it shall be preserved in accordance with the provisions provided in Article 63.
4. The contracted insurances relating to the corresponding policy.

Article 58

The debtor may refund, at any time, the principal amount together with the interest bore to date.

Article 59

The owner of the pledged property shall be considered as depositary of the same for all legal purposes, assuming the corresponding civil and criminal liability without the prejudice to his right to use the pledged property without devaluating the same.

When the legal depositary dies, the creditor may request the pledged property to be handed over as deposit to another person.

Article 60

The pledged property shall not be moved from the place where the same is located according to the Pledge Deed or policy without the consent of the creditor.

Article 61

The debtor shall assume the corresponding expenses and cost for the maintenance, repair, administration and collection of the pledged property.

Article 62

If the debtor misuses the property or does not fulfil the obligations provided in the previous articles, the creditor shall request the refund of the appropriate amount or the selling of the pledge without prejudice to the responsibilities that may arise.

In case of loss or damage, the corresponding compensation payment shall be requested to the persons responsible for the damages and, if appropriate, to the insurance company.

Article 63

The creditor may verify the existence of the pledged property and examine the condition of the same. In the case the owner of the property resists to fulfil said obligation, after having being notified by Notary or Judge for said purpose, the creditor is entitled to request the corresponding Court, by providing the existence of said notification and the registration of the pledge in his name, the authorisation to enter in the establishment or place where the property is located, involving the judicial intervention. Without further formalities, the Judge shall order so. The judgment shall be considered the order to conduct the proceeding agreed together with the creditor.

Without the prejudice to the expiration of the guaranteed debenture, the provisions provided in the paragraphs foregoing are understood since the notification is made.

Article 64

In the case the pledged property is abandoned, the obligation shall be considered terminated. The creditor may be responsible for the maintenance, administration and, if appropriate, collection of said property pursuant to what was agreed on the Pledge Deed or policy under his own responsibility.

Article 65

When the debtor, with the consent of the creditor, decides to sell the pledged property, totally or partially, the creditor shall have preference to acquire the same by dation in payment, providing that the agreed selling price was less than the total amount of the credit, remaining the same due to the difference.

Article 66

Despite what it is provided in the first paragraph of Article 10, the following payments shall have preference over the credit backed by pledge:

1. Credits duly justified by seeds, cropping expenses and collection of the fruits or harvest.
2. The rents or incomes of the last twelve years of the estate where the pledged property is produced, stored or deposited.

In case of bankruptcy, the provisions of Bankruptcy Act shall be applied.



TITLE FOUR

On Registration of chattel mortgage and non-possessory pledge

General Provisions

Article 67

Under the authority of the Ministry of Justice and the Directorate General of Registries and Notaries Offices, and being the Property Registrars responsible for the same, two special books shall be created:

“Chattel Mortgage and non-possessory pledge Journal”

“Chattel Mortgage Registrations” and “Non-possessory Pledge Registrations”

Article 68

On the aforementioned books, the following shall be registered:

- a) The Mortgage or Non-possessory pledge Deed or its modification. The prior registration of the person who grants said titles in said registries shall not be necessary except for aircrafts.
- b) The instruments corresponding to the assignment by “inter vivos” acts and the acts corresponding to the cancellation of the mortgage or pledge credit when the same were previously registered in favour of the person who makes the disposition.
- c) The Awarding Deed by “mortis causa” in favour of a certain person in the form provided in Article 14 of Mortgage Act. The awarding and registration in favour of the heirs shall not be necessary in order to register the Assignment or Cancellation Deeds that they may formalised on behalf of the deceased, proving that the credit is registered in name of the deceased. The heirs shall not need the prior awarding or registration in their favour to take legal actions before the Court in relation to the credit of the deceased.
- d) The court order to seize the property and court orders which cancel the seize on the property subject to be mortgaged and pledged or on the credits registered. In addition, the court orders arisen from the presentation of the claim to declare null the Deed registered shall be registered.
- e) The final judgment that declares the Deed null as well as that the judgments that declare the termination, revocation, resolution or cancellation of the mortgages or pledges registered.

Article 69

The deeds mentioned in the previous Article shall be registered in the corresponding Property Registry in accordance with the following rules:

1. The Mortgage Deed of the business establishment and industrial machinery enterprises shall be registered in the Registry corresponding to the area where said business establishment are located.
2. The deeds relating to cars and other motoring vehicles shall be registered in the Registry of the capital of the province where said vehicles are registered. The deeds corresponding to trams shall be registered in the Registry corresponding to the starting point of the line. The deeds relating to the wagons shall be registered in the Registry corresponding to the address of the owner.
3. The deeds relating to intellectual and industrial property rights shall be registered in the Mercantile Registry of Madrid determined by the Ministry.
4. The deeds relating to aircraft shall be registered in the corresponding section of the Mercantile Registry of the province in the same are registered.

Article 70

The Non-possessory pledge Deed shall be registered in the corresponding Property Registry in accordance with the following rules:

1. The deeds relating to pending fruit, expected harvest or machinery and tools provided in Article 52.4 shall be registered in the Registry corresponding to the territorial division where the plot in which are produced is located or the holding in which are used is verified.
2. The deeds relating to products from agricultural holdings, individual fruits or goods or raw materials stored shall be registered in the Registry corresponding to the location in which the warehouse where the same are or shall be deposited.
3. The Pledge Deed relating to animals, their young and products shall be registered in the Registry corresponding to the place where the plot which contains the animals or stables, barns, plant nursery, breeding centre, etc. is located.
4. The deeds relating to property or objects with artistic and historical value, machines and tools which do not corresponding to agricultural, livestock or forestry holdings and property with specific characteristics shall be registered in the Registry which corresponds to the address of the pledger.
5. If the plot is located in a place where two or more Registries are competent, the registration shall be carried out in each one of them.

Article 71

The Journal shall include, by rigorous registration order, the date and time on which the Mortgage Deed and Non-possessory Pledge Deed are presented. The registration shall be carried out within 30 days since the presentation of the aforementioned deeds.

Article 72

Under their own responsibility, the Registrars shall confirm in the documents presented the following:

- a) The due legal form of the act.
- b) The grantors capacity and power to dispose as well as the jurisdiction of the Judge, Courts and other authorised officers.



c) The legality of the content of the documents. The Registrar, in this point, shall be limited to examine if the content is clearly, directly and particularly contrary to any of the legal provision of imperative nature or not. The Registrar shall indicate the general provision and article number or paragraph infringed.

Article 73

The Registrar's statement which cancels or rejects any operation relating to the chattel mortgage or the non-possessory pledge, in case the Registrar does not agree to its amendment, shall be appealed by the parties affected by virtue of Article 76 et seq. of Mercantile Registry Regulation.

Article 74

The Mortgage Deed of each property mortgaged shall be registered in an individual and special entry and individual sheet. While the mortgage and other encumbrances are not cancelled, the entries of said property shall be included and registered under the same number subsequently and seamlessly. Once the encumbrances have been cancelled, the number shall be eliminated and the sheet closed.

Each Non-possessory Pledge Deed or policy shall be registered individually, in an individual entry, whatever the pledged property is.

Article 75

When a business establishment or industrial machinery is mortgaged or the property pledged, both subject to the scope of the mortgage on the property in which are installed, in accordance with Article 111 of Mortgage Law, the granted mortgage or pledge shall be registered in the margin document which contains the registration of the ownership of the property in favour of the mortgagee or pledgee. As aforementioned, the mortgage on a tram shall be recorded in the margin of its registration document.

Having recoded said marginal note, the chattel mortgage or pledge on said properties shall have preference over other subsequent mortgage or encumbrance registered with extension agreement on said property.

If in the Registry appears the leasehold of the premises in which the business establishment or the mortgaged or pledged machinery is located registered in favour of the mortgagee or pledgee, a marginal note shall be recorded in the corresponding registration including the granting of the mortgage or pledge. Having recorded the marginal note, the same shall have the effects provided in the previous paragraph.

The aforementioned marginal notes shall be recorded or cancelled by the Mortgage or Pledge Deed or the deeds relating their cancellation.

Article 76

The Property or Commercial Registrar shall inform the heads or persons in charge of the special Registry about the mortgage on cars or other motoring vehicles, wagons, trams, intellectual property, industrial property, aircrafts and industrial machinery. The heads and persons in charge shall confirm the receipt of the records and verify the same.

In the case the special Registry has not recorded the aforementioned mortgages, the effects of the registration of the same in the Chattel Mortgage Journal shall not be altered.

Article 77

The registrations shall be cancelled as provided in Articles 82 and 23 of Mortgage Act. The registration of chattel mortgage as security of bearer or endorsable securities shall be cancelled as provided in Article 156 of Mortgage Act.

If the registration has been carried out through a document formalised before an Associated Stockbroker, the same shall be cancelled through a cancellation document issued by said Stockbroker.

Article 78

The Chattel Mortgage and Non-possessory Pledge Registries shall be public. Said publicity shall be made effective as follows:

- a) By showing directly the books to the interested party who may take note of the necessary details.
- b) By a non-certified extract provided by the Office; and,
- c) By a certificate of the entries issued by the Registrar.

Article 79

The registration of the mortgage shall expired and be cancelled ex officio or at the request of a party after 6 years since the expiry date of the guaranteed debenture. The registration of the pledge shall expired or be cancelled after 3 years since the date of the guaranteed debenture has expired.

Article 80

A general provision from the Ministry of Justice shall determine the requirements and circumstances of the journals and registrations as well as the requirements and circumstances of the special journals, which are necessary for the immediate functioning of the Chattel Mortgage and Non-possessory Pledge Registries.



TITLE FIVE

On the proceedings for demanding the guaranteed credits

Article 81

Without prejudice to the proceedings provided in Civil Procedure Act, the creditor shall demand the credit by the proceedings regulated in this Act.

For the purposes of this Law and in accordance with Article 4, it shall be considered as third holder party the one who acquires the mortgaged or pledge property with the consent of the creditor.

SECTION 1

On Applicable Court rules on chattel mortgage

Part 1. Summary Court Proceedings

Article 82

(Repealed)

Article 83

(Repealed)

Article 84

(Repealed)

Article 85

(Repealed)

Part 2. Out-of-court sale proceeding

Article 86

In order for applying the out-of-court sale proceeding, the following requirements are needed:

1. In the Mortgage Deed, the debtor or non-debtor mortgagor shall appoint a representative on Completion date for being represented in the sale of the mortgaged property. Said representative may be the creditor himself.
2. The price in which the interested parties value the property shall be included in the Mortgage Deed. The type of auction shall not be different from the one agreed for the court proceeding, if any.

3. The debtor or non-debtor mortgagor shall include an address for notification purposes. Also, an e-mail address may be indicated. In said case, the notification shall be notified electronically.

At any event not regulated by this Act, the regulations relating to electronic auction shall be subsequently applied to the forced out-of-court sale originated by the chattel mortgage or non-possessory pledge.

Article 87

The out-of-court proceeding shall necessarily meet the following rules:

1. The process shall only be made the competent Notary to act in the area where the mortgaged property is located or in the district adjacent to the same.
2. Through a notification addressed from the creditor to the Notary, prior fulfilment of the requirements provided in this Article, it shall be proceed with the sale of the property through public auction.

The creditor shall include in the notification the exact amount subject to the claim, capital and interest, and the reason for the termination. He shall provide the Notary with the deed or deeds of his credit. Said deed shall comply with all the requirements provided in Civil Procedure Act in order for the same to be enforceable.

This request shall be recorded in the Initial Minutes.

3. At the request of the creditor, the Notary shall demand the debtor or non-debtor mortgagor or third holder, if any, the payment by stating the reason of the termination and the total amount claimed. The non-debtor mortgagor or the third holder must be informed that in case of non-payment, the mortgaged property shall be auctioned without further notifications or requests.

The persons demanded, within five days after receiving the notification, shall pay or hand over the physical possession of the mortgaged property to the creditor or representative appointed in the Mortgage Deed.

When the debtor fails to hand over the possession of the property, the Notary shall not continue, at the request of the creditor, with the sale procedure. The creditor, in order to demand his credit, may initiate any of the legal proceedings, without prejudice to exercise the civil and penal actions to which he is entitle.

4. At the request of the creditor, the Registrar shall issue a complete statement in relation to the entry of the mortgage which shall mention if the mortgage exists or if it has been cancelled. In addition, it shall be included all the modifications on the mortgage registered in said Registry as well as the relation of the subsequent entries. The statement shall be attached to the demand for payment.

Apart from the registration of the mortgage, the Registrar shall very that he has issued the statement by indicating the date, the initiation of the proceeding and the Notary responsible for the same.

When preparing the Registry certificate, an entry subsequent to the registration of the mortgage appears, the debtor and the holder of the mortgage shall be notified about the proceeding in order for them to take part in the auction or to carry out



the payment of the credit, interest and costs before the same. In this case, the creditors shall be subrogated to the rights of the plaintiff. The payment and the subrogation shall be recorded in the margin of the registration of the mortgage, in which creditors are subrogated and in the margin of the corresponding entries. For said purpose, the Notarial Deed or court order, if any, which reflects the payment of the outstanding amount, shall be presented before the Registry.

5. Having lapsed five days since the notification, the property shall be auctioned. The call of the public auction shall be published in the Official State Journal. The electronic auctioned shall be held at the Auctioning Website of the State Agency of the Official State Journal. The auction shall accept bids within the maximum period of 20 days since the date the auction is open. The auction shall be closed within an hour after the last bid although it entails the extension of the maximum period of 20 days mentioned in this Article. The period is extended a maximum of 24 hours.

6. The selling price of the property shall be carried out through a sole auction using as rate the appraisal value established in the Mortgage Deed. However, if bids for an amount equal or greater than 70% of the value of the property at the beginning of the auctioned are presented, the property shall be awarded to the highest bidder.

When the bid presented is less than 70% of the rate established for the auction, the debtor may present, within 10 days, a third party that may improve the bid by offering an amount equal or greater than the 70% of the appraisal value, or an amount greater than 60% of the appraisal value and to the best bid.

If the aforementioned due date lapsed, and the debtor or registered holder of the property do not exercise the aforementioned action, the creditor shall request within five days the awarding of the property by 70% of the value of the amount requested or by the amount which cover all the outstanding concepts, providing that said amount is superior to 60% of the appraisal value and improves the bid.

If the creditor does not exercise said faculty, the property is understood to be auctioned to the highest bid, providing that said amount offered is greater than 50% of the appraisal value or, if less, the same covers at least the outstanding amount claimed.

If there is not any bidder, the creditor shall request within 10 days the awarding of the property by the amount equal or greater than 50% of the appraisal value or by the outstanding amount owed to the creditor including all the concepts.

7. The execution creditor shall attend the auction as bidder, providing that other bidders exists, without depositing any amount. The remaining bidders shall deposit, in order to participate in the auction, a 5% of the appraisal value. The deposit shall be made by authorising the same to be subject to the following rule.

8. Once the auction has finalised with the awarding of the property to the highest bidder, the bidder shall provide the Notary within the second day with the difference between the prior deposit and the awarding price. The deposits made by the other bidders shall be refunded to the same. If the awardee does not deposit the amount, the property shall be awarded to the second highest bidder following the

order of the bids. Said bidder must have authorised his deposit to be subject to the mentioned rule. The deposit of the bidder who has not satisfied the difference shall be allocated to cover the costs of the procedure. The remaining, if any, shall be allocated to pay the credit and interest.

When the awardee is the creditor himself, the same shall deposit the difference between the amount claim and the awarding price. If he does not deposit said amount, he shall be responsible for paying the costs of the auction hold and the ones of the subsequent auctions necessary, if any.

9. Once the costs of the proceeding are satisfied, the amount obtained in the auction shall be allocated to pay the credit, being the capital and interest.

The Notary shall provide the mortgagor and third holder with the remaining, providing that does not exists other persons who have registered a seizure on the property or filed a judicial claiming against them. In the case said persons exist, the remaining shall be deposited at their disposal in a public body for said purpose.

10. The awarding of the property shall be recorded public instrument executed by the awardee and debtor or non-debtor mortgagor or third holder, as applicable, or his respective successor. If the last mentioned do not appear, the representative appointed for said purpose shall grant the public instrument on his behalf.

Said public instrument shall include the procedures observed, the awarding price, the payment of the same by the awardee, the payment in favour of the creditor, and the allocation of the remaining amount, if any.

If the awardee is the same person as the creditor and in fact, he has also been appointed as representative, he shall grant the public instrument by this double concept as aforementioned.

In the case the Awarding Deed includes the payment made to the creditor and the allocation of the remaining amount, if any, it shall be sufficient title for confirming the ownership of the property and for exercising the cancellation of the mortgage and subsequent entries.

If the awardee is joint owner or third holder of the property auctioned, once it is designated the amount of the auction, depending on the cases, the Notary shall limit the awarding to the remaining individual stakes executed or, without verifying the same, shall declare the procedure finished. A copy of the Minutes of the Auction, when the property is not awardee, shall be sufficient title to cancel the mortgage and the subsequent entries if the same includes the payment made to the creditor and the allocation of the remaining amount, if any.

11. If the auction is declared void and the creditor do not request the awarding, the procedure shall be considered finished with no effect. In this case, the creditor is still entitled to exercise his right in the corresponding court proceedings.

If the price of the property auctioned were insufficient for paying the total credit which corresponds to the creditor, he is still entitling to his right due to the difference.



12. The different parts of the proceeding, except the Awarding Deed, shall be included as procedural steps at the end of the Initial Minutes mentioned in rule two.

Said Initial Minutes shall be included to the official files in the date corresponding to the last proceeding step taken. The execution of the Awarding Deed shall be noted on said minutes.

13. The awardee of the property shall be provided with the same the by the person who has the property in his possession in accordance with rule three. In the case the awardee is not provided with the same, he shall request the legal possession of the same in accordance to Civil Procedure Law without prejudice to the civil or criminal penalties that the awardee may exercise against the person who has denied its delivery.

Article 88

The out-of-court sale proceeding shall only be suspended due to any of the following reasons:

1. The presentation of the registry certificate which proves that the mortgage is cancelled or of the public instrument receipt or cancellation of the mortgage.
2. When the existence of a criminal lawsuit on a seemingly criminal fact which determines the falseness of the public instrument presented or the infirmity or the illegality of the sale process is duly accredited through supporting documentation.
3. In the case the Notary has the declaration of bankruptcy from the debtor although the public auction of the property was already published. In this case, the suspension may be risen when, by judgment pronounced by the Judge of the auction, it is confirmed that the property or rights are not affected or that the debtor do not need the same to continue with his professional or business activity.
4. When a third party files a claim to ownership attaching to the same, as a matter of obligation, the Title Deed of the property, the same shall be prior to the date of the Mortgage Deed. If the deed refers to property subject to be registered in any Registry, said deed shall have been registered prior to the date of the Mortgage Deed. The process shall be suspended until the termination of the proceeding initiated by the third party.
5. If the corresponding registry certificate confirms that said property is subject to other chattel mortgaged or affected by a real estate mortgage in force or registered prior to the mortgage object of the proceeding in accordance with Article 111 of Mortgage Act. This information shall be communicated to the corresponding Court for the purposes provided in Article 1862 of the Civil Code.

If in the two aforementioned cases, the suspension only affects part of the property subject to the chattel mortgage, the process may continue for the remaining property at the request of the creditor.

The out-of-court sale proceeding shall also be suspended when any of the parties proves that have duly informed the corresponding Judge about the abusive nature of any of mortgage clauses which are ground for out-of-court sale or which has determined

the payable amount. Once the requisite steps have been performed and always in accordance with the corresponding judgement, the Notary shall continue with the out-of-court sale proceeding at the request of the creditor providing that the abusive clause is not ground for the proceeding or the same has determined the payable amount.

Having verified any of the circumstances provided in the parts 1 and 2, the Notary shall cancel the proceeding until the criminal proceeding and the registry procedure terminate, providing that the documents are not considered false and the cancellation of the mortgage is not registered.

If the auctioned has been suspended for more than 15 days, the deposits and guarantees shall be refunded, leading back the situation as just before the publication of the auction. The resumption of the auctioned shall be carried out through a new publication of the same. A new request for obtaining the registry information shall be made as if a new auction took place.

If the claim of the creditor and the initiation of the out-of-court sale are based in any other reason which is not the expiry date or the non-payment of the interests or any other compensation responsibility of the debtor, the proceeding shall be cancelled providing that before the auction the opposition to the same has been recorded at the Registry by declaratory judgment. For this purpose, the Judge shall order the caveat of the claim as well as notify the Notary with the aforementioned.

Special Regulation

Article 89

For the mortgaged business establishment, apart from the rules established previously, the following ones shall be observed:

1. The lessor shall be notified through Notarial Deed about the initiation of the proceeding.
2. The bids made in the auction shall be for all the property included in the mortgage, without dividing among the same the offered bid.

It is understood that the applicants accept all the obligations that are imposed to the acquirer of the establishment by Lease of Urban Properties Act.

3. Having awarded the property to the highest bidder or to the creditor, if appropriate, it shall be considered as price for transferring the establishment the corresponding part of the awarding price in accordance with the proportion between the rate established in the deed for the business establishment and the rate fixed for transferring the same.

In the awarding, the amount corresponding to the stake of the owner shall be indicated in the transferring price. The Judge or Notary shall withheld said amount, being the remaining disposed as appropriate.

4. Having held the auction and price being deposited, the lessor or third holder of the property shall be notified on the following 8 days. Said notification shall include the result of the auction, the total price of the bid, the part form said bid which corresponds to the transfer of the establishment, the stake provisionally withheld in their favour at the Court or Notary's Office, that the notification is executed for



them to exercise their preferential right over the acquisition of the property provided in Lease of Urban Properties Act or to receive their stake from the transferring price.

5. Depending on the case, once the corresponding party is notified the following steps shall be taken:

a) If the owner chooses to receive the stake, it shall be provided by the Court or Notary. An order or public instrument shall be made awarding the property in favour of the bidder.

b) If the owner exercises his preferential right, he shall provide the Court or Notary with the corresponding amount in order to be refunded to the awardee. In this case, the owner of the property shall be awarded with the same and the remaining property shall be awarded to the bidder.

Having exercised his preferential right and if the price paid by the lessor is enough to cover the amount claimed and the costs, the awardee may renounce to the awarding of the remaining property on the 3 following days. The same shall be refunded with the total amount deposited.

c) If the period established by the Lease of Urban Properties Act lapsed without having the owner of the property exercise his right, an order shall be made or the Awarding Deed executed. The awardee shall be refunded with the amount withheld as his stake in the transferring price. The awardee shall be subject to what is provided in Lease of Urban Properties Act.

Article 90

When the mortgaged has expired by virtue of the cause number seven, which is provided in Article 29 of this Act, the transmission of the business establishment shall entail the right of the lessee to return to the building once the same has been rebuilt.

Article 91

In relation the mortgage on a motoring vehicle, the Judge, when he gives leave to claim, shall order the seizure of the same or its deposit in Court. The vehicle shall be sealed off and not be used, except if the aforementioned is not possible due to special provisions, being a Comptroller appointed. In this case, the provisions provided in the third rule of Article 84 shall not be applied unless the creditor provides security enough.

SECTION 2

On Applicable Court rules on chattel mortgage

Part 1. Summary Court Proceedings

Article 92

(Repealed)

Article 93

(Repealed)

Part 2. Out-of-court proceeding

Article 94

For the notarised auction of the pledged property, the creditor, through the competent Notary to act in the place where the property is located, stored or deposited, shall demand the debtor the total amount claimed and inform the same about the reason of the termination of the obligation. It shall be indicated that in case of non-payment, the property shall be auctioned without further notifications or requests.

The person demanded, within the 3 following days, shall pay or hand over the possession of the property pledged to the creditor or the representative appointed for said propose in the corresponding act.

When the debtor fails in his obligation of handing over the possession of the property, the Notary shall not continue with his action and the creditor, for demanding the payment of the credit, shall initiate any of the judicial proceedings without prejudice to take the corresponding civil and criminal actions.

If the debtor does not pay but hands over the possession of the property, the Notary shall alienate the property as provided in Article 1872 of the Civil Code.

Article 95

When the property subject to the mortgage foreclosure is pending fruits or harvest expected, the auction may be postponed until it has been confirmed the collection of the same.



ADDITIONAL PROVISIONS

Provision One

The deadlines given by this Act shall be calculated on working days.

Provision Two

The Public Instruments provided in this Act may be registered without prior payment of the rights in rem and Stamp Duty, providing that the payments corresponding to all the concepts shall be unrestricted secured, through a letter or other written document, by an Official Bank or registered private Bank. Once the registration is carried out, the Registrar shall inform the corresponding Settlements Office about the same.

Provision Three

In the case the provisions provided in this Act shall be insufficient, the Mortgage Law shall be subsidiary applied if compatible and in accordance with the previous articles.

Provision Four

As a proposal from the Ministry of Justice, the Government is authorised to establish the date for this Act to enter in force. Said date shall be established within four months since the date in which this Act is enacted. In addition, the Government is authorised to order the provisions considered necessary for the application and fulfilment of this Act.

FINAL REPEALING PROVISION

Articles 1863 bis to 1873 bis of the Civil Code, the Act for 5 December 1941, Title One and Additional Provisions of Royal Decree of 22 September 1917 and the remaining legal provisions contrary to this Act shall be repealed, except from the ones that may be applied to National Agricultural Credit Service.

Palacio de El Pardo, 16 December 1954.

FRANCISCO FRANCO

