

LAW OF THE KYRGYZ REPUBLIC

On Pledge

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CHAPTER I

GENERAL PROVISIONS

Article 1. Concept of pledge

1. A pledge is created either on the basis of Law or by agreement between the pledgor and the pledgeholder in accordance with this Law. Such an agreement may be either a separate agreement or a part of the agreement that gives rise to the secured obligation. The pledge confers upon the pledgeholder rights in the pledged property as provided by this Law. The pledgeholder's rights may be enforced under the circumstances set out in the pledge agreement.

2. Any valid obligation between the subjects of law (legal entities, individuals, the State) may be secured by a pledge. Before pledge rights may be enforced, the secured obligation must be expressed as a monetary claim.

3. A pledge gives a pledgeholder the right to obtain expedited satisfaction from the value of the pledged property, in the event of failure by the pledgor to perform the secured obligation.

4. If registered, the pledge will convey to the pledgeholder superior rights over other creditors who has not registered pledge for the same property earlier. A registered pledge will also be enforced if the pledgor is subject to a process of bankruptcy, and will be effective against third parties who acquire an interest in, or possession of the pledged property.

Article 2. Legislation on pledge in the Kyrgyz Republic

1. Legal relationships in pledges in the Kyrgyz Republic are regulated by the Civil Code, as well as the present Law, and other published legislative and normative legal acts that are in accordance with them. If a pledgor is subject to a process of bankruptcy, pledge relationships are additionally governed by the Bankruptcy Law.

2. Mortgages will be governed by the Land Code, and other legislation of the Kyrgyz Republic on mortgage relations. The provisions of this Law shall apply to mortgages in accordance with Articles 5 and 31 hereof.

3. Foreign physical and juridical persons as well as persons without citizenship shall exercise the same rights in pledge relations and shall bear the same liabilities as physical and juridical persons of the Kyrgyz Republic.

Article 3. Definitions

1. Pledgor - a person who pledges property, whether the debtor himself, or a third party to the secured obligation.

2. Pledgeholder - a person whose interest in the underlying obligation is secured by the pledge.

3. Pledge agreement - an agreement between parties for purposes of creating a pledge.

4. Immovable property - property which is inseparable from land, as defined in Article 24 of the Civil Code, or fixtures integrated with buildings, installations or structures that are firmly connected to the land.

5. Movable property - property which is not defined as immovable property.

6. Possessory pledge - pledge of movable property which is handed over to the possession of the pledgeholder from a pledgor.

7. Pledge Notification - the form filed with the Pledge Registration Office which contains the essential information concerning the pledge that must be entered into the Single State Registry and made available to the public in accordance with this Law.

8. Firm pledge - a type of pledge where the pledged property remains with the pledgor in accordance with the Pledge Agreement and which may be registered in the Pledge Registration Office in compliance with this Law.

9. Pledge Registration Office - the registry created pursuant to this Law which has the responsibility to register and maintain the public data base of all registered pledges.

10. Single State Registry - the computer data base of pledges to be established and maintained by the Pledge Registration Office pursuant to this law.

11. Registration of a Pledge - the procedure by which a pledge agreement between the pledgor and pledgeholder is transformed into a property right that accords the pledgeholder priority over creditors that have not registered a prior pledge and against third parties.

12. Pledged Property - any property described in Article 4 which is pledged pursuant to this Law. 13. Registered Pledge - the pledge which passed the registration procedure in accordance with Chapter II hereof.

Article 4. Subject of a pledge

1. Any type of tangible or intangible property which can be alienated, whether things or rights, may be the subject of a pledge in the Kyrgyz Republic.

2. Things that may be pledged include any movable or immovable property including all kinds of goods, fixed assets and working assets, buildings, structures, installations, equipment, inventory, work in progress, finished goods, precious metals without any limitation, crops, objects of material and spiritual culture, cash (both Kyrgyz and foreign currency), monetary instruments, securities certificates and other property, which is not removed from civil circulation. Unless otherwise provided by agreement, indivisible fruits and accessories of the property are covered by the pledge.

3. Any legally recognized property right may be pledged, including royalties for use of a property right, right to receive money, right to the possession or usufruct of things which entails less than full ownership, leases, liability claims, contract claims, intellectual property rights, uncertificated securities and other rights. Rights of a personal character, such as wages, or the right to receive personal services can not be subject of a pledge. Pledge of the right to use mineral deposits and other natural resources, which owner is the State shall be made in accordance with the Constitution of the Kyrgyz Republic, the Civil Code of the Kyrgyz Republic and with the consent of the authorized state bodies.

4. Things or rights that will exist in the future may be the subject of a pledge, such as, without limitation, the pledgor's future inventories of manufactured products, or accounts receivable.

Article 5. Developed Parcels of Land

In case a structure, building, or immovable installation, or the rights to them, are pledged, the pledgor's rights to the parcel of land on which the structure, building or installation is located shall also be included in the pledge without need for a separate registration.

Article 6. Obligations secured by pledge

1. Unless provided otherwise by agreement, a pledge shall secure the value of the obligation to the pledgeholder at the time of enforcement of the pledge, including unpaid principal, interest, penalties, maintenance expenditures necessary and reasonable to preserve the value of the pledged property, compensation of losses caused by delay of performance, and expenses relating to compulsory execution of the pledge.

2. The pledge may secure one obligation or many. Multiple obligations and future obligations secured by a pledge may be identified by a description of the class of obligations included in the pledge.

Article 7. Ownership of pledged property

1. A pledge of property, whether things or rights, may be made only by the owner of those things or rights. The pledged property in case of debtor's default may be enforced only to the extent of the ownership rights of the pledgor.

2. A thing in common joint ownership may be pledged with the written consent of all the owners or a governing body, the owners have elected to administer its economic use.

3. The pledge of an owner's share in common share ownership shall not require the consent of the other owners.

4. Members of a cooperative enterprise or other form of enterprise under common ownership may individually or collectively pledge their rights in the entity, and the decision to pledge all or any part of the property of the entity may be made by majority of the votes of the executive body of such entity.

5. The owner of an apartment in an apartment house may independently decide to pledge it.

6. Where the ownership of property, or the precise extent of the pledgor's property rights are uncertain, the pledgor may pledge the claimed property rights to the extent they may be recognized at law. In such a circumstance, the pledgor will have a continuing obligation to cooperate with the pledgeholder in any judicial proceeding to establish the extent of the pledgor's rights in the pledged property.

7. Notification of a creditor's rights to satisfaction from property in the possession of another may be made under this Law irrespective of whether the creditor retains legal title to the property pending performance of the obligation.

A creditor who conditionally retains title over property left in the possession of a debtor as a means of securing credit to the debtor, or uses "financial leasing" or similar financing arrangements, will rank junior to a subsequent pledgeholder with a registered pledge in the same property who lacks knowledge of the creditor's retained title, unless the creditor's financing arrangement was previously registered pursuant to this Law as if it were a pledge. This provision will not apply to a seller of property who retains title pending payment of the purchase price, if full payment is made within 90 days after the buyer obtains possession of the property. Nor does it apply to a lessor of property where, under the lease, property of value will return to the lessor after the term of the lease expires.

Article 8. Forms of pledge

1. For the purposes of this Law a pledge may arise in the form of:

1) a possessory pledge, when movable property, pledged to secure the fulfillment of the obligation of the pledgor, is transferred to and remains in the pledgeholder's possession pursuant to agreement;

2) firm pledge when a pledged property remains in the possession of the pledgor pursuant to the pledge agreement, and which may be registered in the Pledge Registration Office in accordance with this Law;

2. In case of a registered pledge the pledgeholder has a preferential right for satisfaction of his requirements from the pledged property over the pledgeholders of a non-registered pledge. A pledge of property not in the possession of the pledgeholder and which is not perfected by registration will operate only as a contract between the parties to the written agreement and will not create preferential rights against third parties.

Article 9. Subsequent pledge of pledged property (repledging)

1. Unless otherwise provided by the earlier registered pledge agreement a property may be repledged and registered in accordance with this Law.

2. The first registered pledge will rank senior to any subsequently registered pledge in securing the right of satisfaction from the pledged property. Each subsequent pledge will rank in the order of the date and time that it was registered and therefore will be junior to any pledge that was registered earlier. If there are insufficient proceeds from the compulsory execution sale of the pledged property conducted under Chapter V of this Law sufficient to pay the claims of any more junior pledgeholders, the pledges relating to their claims will terminate without however affecting the validity of the claim as an unsecured claim.

3. Upon execution pursuant to Chapter V hereof, the claim of a junior pledgeholder may be satisfied from the value of property that is subject to a prior pledge only after full discharge of the claim of the senior ranking pledgeholder who has taken possession of the property. A junior pledgeholder in possession of the pledged property may sell the pledged property by compulsory execution only subject to the registered pledges of the more senior pledgeholders, whose pledges shall therefore continue in effect against any buyer of the property.

4. The order of priority for satisfaction of rights under this Law may be changed only upon the written consent of each person who as a result of the change would lose a preferential right to satisfaction from the pledged property.

5. The pledgeholder's right to satisfaction from pledged property is a right to satisfy a fixed monetary claim from the proceeds of the sale of the pledged property, and not a right to take ownership of the pledged property, except as provided in Article 37(3) of this Law.

6. The pledgor is obliged to inform any pledgeholder about all prior pledges, and also about the nature and size of the obligations secured by those pledges.

7. Pledged property cannot be subject to execution for the debts of the pledgor to the government budget. The claims of the tax agencies, or a final judgment of a court awarding damages, will rank only in the order in which it is registered as if it were a pledge under this Article.

Article 10. Insurance

If the pledge agreement requires the pledgor to insure the pledged property, or to obtain additional insurance against any other insurable loss, the pledge will extend to any rights of the pledgor under such insurance policy and the pledgeholder shall have a preferential right to obtain satisfaction of the secured claim from any ensuing insurance proceeds.

Article 11. The pledge manager

1. The pledgeholder may appoint a pledge manager as his agent to carry out all the rights of the pledgeholder in the pledged property. The pledge manager may be an individual or a legal entity.

2. The appointment by the pledgeholder of a pledge manager is effected by means of concluding a separate agreement (authorization contract) with him or by including an additional term about the appointment of the pledge manager in the pledge agreement.

3. Unless otherwise agreed by the pledge manager and pledgeholder, the pledge manager's agreement may be terminated at any time upon notice by one of the parties.

4. Information about the appointment or termination of authority of the pledge manager should be furnished to the pledgor and, in the case of a registered pledge, submitted to the registration office in accordance with Article 18 hereof.

Article 12. The rights of third parties in respect to pledged property

1. The pledgor shall have the right to sell the pledged property to a third party only if this right is expressly provided by the pledge agreement.

Anyone who acquires pledged property from a pledgor, and any persons who derive their interests from such a transaction, will acquire such rights in the pledged property only as encumbered by the pledge, except the following cases:

1) if the pledge agreement, or a written amendment thereto, expressly permits the property to be disposed free of the pledge, whether generally or in favor of a specific third party;

2) if the pledge was not registered at the time the pledged property was acquired by the third party;

3) if the pledged property consists of goods in turnover, in accordance with Article 28 of this Law;

4) if pledgor's business is retail sale, a third party who buys such property in an ordinary retail transaction acquires it free of the pledge, unless before the time of the sale the buyer has been directly informed that the pledgeholder is entitled to enforce his pledge rights in the goods.

2. Unless otherwise provided by the pledge agreement, a third party who satisfies fully the claim of the pledgeholder shall receive at the same time with any assignment of the claim, the pledge, securing the claim.

Article 13. The pledge agreement

1. The need for notarization of a pledge agreement or secured obligation related to that agreement shall arise only in compliance with the provisions of the Civil Code of the Kyrgyz Republic and this Law. The provisions of other legal Acts of the Kyrgyz Republic in respect of the need for pledge agreement notarization shall be null and void.

2. In the event a pledge agreement or the corresponding obligation, or changes and amendments made to it, are subject for notarization in accordance with the Civil Code of the Kyrgyz Republic, the contents of the agreement shall be notarized.

CHAPTER II REGISTRATION OF A PLEDGE

Article 14. Pledge Registration Office

1. The Pledge Registration Office shall be a registration institution governed by a qualified specialist - Registrar, and shall possess all the rights and responsibilities of a legal entity. The Ministry of Justice of the Kyrgyz Republic shall appoint and dismiss the Registrar. The Registrar shall provide a report on its activity to the Ministry of Justice of the Kyrgyz Republic within the terms and by the form established by the said Ministry. The Regulations on the Pledge Registration Office shall be approved by the Ministry of Justice.

2. The Pledge Registration Office shall register and notify pledges through its central registration office in Bishkek, and at such other offices as it may consider necessary or convenient to establish. The pledge registration field offices may be located at notarial offices specially designated for that purpose by the Registrar, or in other suitable offices.

3. The Pledge Registration Office shall maintain at its central office the Single State Registry of pledge transactions, which shall be a central computer data base of all pledge transactions registered pursuant to this Law. The Single State Registry shall be equipped for electronic data communication with each of the field pledge registration offices. Each office will be equipped to enter registration information into the Single State Registry as well as to search the data base of pledge transactions.

4. Each registration entered into the data base must be retrievable by searching for the place it was registered, and the name of the pledgor, and to the extent it is technically feasible, the other items of information contained in the pledge notification in accordance with Article 16(1) (1 and 5) and 16(2).

5. The Registrar bears responsibility for the correctness and timeliness of effecting registration of a pledge notification filed under this Law. The Registrar must reimburse losses incurred by injured parties as a result of untimely, incomplete or inaccurate entry of information in the Single State Registry.

Article 15. Registration of a pledge

1. Pledge registration shall not be obligatory procedure and shall be carried out in order to establish priority of rights in the pledgeholder over other creditors who do not register a prior pledge as well as against third parties.

2. A possessory pledge is considered to be perfected at the time when the pledged property is transferred to the possession of the pledgeholder or the pledgeholder's agent in accordance with the pledge agreement.

3. Registration of a pledge, where monetary instruments and securities are used as a collateral, shall be carried out by the agencies authorized for conduct of the Registry of the holders of such instruments or securities.

4. A pledge of cash may be perfected only by possession. Cash shall be held by the pledgeholder in a deposit account in which the interest accrues to the pledgor.

5. Registration of a pledge is initiated by the filing of a pledge notification in the form attached to this Law. If necessary the form of pledge notification may be amended by the Ministry of Justice of the Kyrgyz Republic. Registration offices must register every pledge notification submitted for registration in the prescribed form. The Registrar may establish procedures by which persons may file the pledge notification in an electronic format compatible with the Single State Registry data base.

6. Upon receiving the pledge notification the Registrar shall immediately assign a consecutive registration number, record the date and time of receipt of the pledge notification, apply the official seal on the pledge notification, and give a certified copy of the pledge notification and a receipt for the fee payment to the person, submitting the pledge notification.

7. The registration office which performed the registration shall enter the information from the pledge notification into the Single State Registry, in the same order in which the pledge notification was filed, before the end of the working day on which the pledge notification was filed.

8. Registration shall be considered completed at the time when the Single State Registry data system automatically records the availability of the information on pledge taken from the properly filed and registered pledge notification, and this information is made available to the public by means of the terminals connected to the data base. The time and date of perfection of the pledge shall be precisely recorded by an automated feature of the data base system. The data base system will maintain security measures to prevent any alteration of the data and to assure its continued integrity.

Article 16. Contents of the pledge notification

1. In order to register a pledge of property, a pledge notification must contain:

1) the name, address and telephone number of the pledgor, and of the debtor of the secured obligation, if he is not the pledgor;

2) name, address, and telephone number of the pledgeholder, or pledge manager if such has been appointed;

3) the date and title of the contract that created the obligation secured by the pledge, and the expression of the obligation in monetary form;

4) the date and place of entering into the pledge agreement;

5) a description of the property which is the subject of the pledge, including a general indication of the location of the pledged property at the time of registration, and the future location of the property if known;

6) information on the title of property;

7) a short notice, if there is any restriction on repledging.

2. A pledge notification must contain the signature of the pledgor, or of his authorized agent who has the notarized power of attorney.

Article 17. Registration of changes to a registered pledge

1. The changes in the following information shall be subject for additional registration within three days period:

1) described in subsections 1, 2 and 5 of point 1 Article 16 hereof;

2) transfer of the property subject to the pledge;

3) transfer of the pledge in connection with an assignment of the secured obligation to a third party;

4) appointment or dismissal of a pledge manager;

5) initiation or cancellation of a procedure for compulsory execution of the pledged property;

6) an interim order of a court suspending or canceling suspension of a procedure of compulsory execution of the pledge;

- 7) termination of the pledge.
2. The Registrar shall enter the information in the Single State Registry stating the date and time, and inform both the pledgor and pledgeholder.
3. In case the Registrar receives from the pledgor or pledgeholder a protest to any of the submitted changes in the supplemental pledge notification, the Registrar shall within 15 days establish the authenticity of the change and either register the information or reject it.

Article 18. Contents of the supplemental pledge notification

1. The supplemental pledge notification must contain:
 - 1) on the appointment of a pledge manager: the name and address of the pledge manager;
 - 2) on the assignment by the pledgeholder of the obligation secured by the pledge: the name of the assignor, and the name, address and telephone number of the new pledgeholder;
 - 3) on acquisition of the pledged property by a third party: the name of the person who acquired the right of ownership to the pledged property;
 - 4) on initiation or cancellation of the procedure of compulsory execution of the pledge: a copy of the notice of compulsory execution and the date of delivery or cancellation of the notice;
 - 5) in case of an interim order of a court suspending or canceling suspension of a procedure of compulsory execution: name of the court, the content of the interim order, name of the person who has filed the claim for an interim order;
 - 6) on termination of the pledge: the date of termination.
2. A supplemental pledge notification must contain the date and number of the original registration, and the signature of the pledgeholder or of his authorized agent.

Article 19. Access to the Single State Registry

1. Any person may inspect the Single State Registry and, having paid the prescribed fee, receive an extract of any record in it.

Article 20. Fees

The Registrar shall charge fees according to the following schedule:

- 1) for registration of a pledge, where the secured obligation is:
 - less than 1000 minimum monthly wages: one minimum monthly wage;
 - more than 1000 minimum monthly wages: two minimum monthly wages;
 - more than 10000 minimum monthly wages: three minimum monthly wages;
- 2) for supplementary notification one half of the fee stipulated in subpoint 1.
- 3) for an extract from the register: 0,5 minimum monthly wage.

CHAPTER III RIGHTS IN PLEDGED PROPERTY

§ 1. Firm Pledge

Article 21. Rights of pledgeholder in case of firm pledge

Where the pledged property is in the possession of the pledgor, unless otherwise provided by the pledge agreement, the pledgeholder shall be entitled to:

- 1) obtain physical access to the property, and any existing documentation concerning it, as may be necessary to verify its condition, amount, and terms of storage or use;
- 2) require termination of any encroachment on the property, threatening to destroy, damage or reduce its value;
- 3) demand that the pledgor take measures to protect the property;
- 4) demand restoration or replacement of the pledged property or, alternatively, the discharge of the debt (or relevant part of the debt), irrespective of the agreed terms of payment in case the property is damaged without fault of the pledgeholder.

Article 22. Rights of pledgor in case of firm pledge

Unless otherwise provided by the pledge agreement, the pledgor shall have the right:

- 1) to possess and use the secured property in accordance with its character and intended purpose;
- 2) to lease, or otherwise transfer possession of the secured property, subject to the pledgeholder's rights, at the same time the pledge agreement remains effective.

§ 2. Possessory Pledge

Article 23. Obligations of a pledgeholder of a possessory pledge

Unless otherwise stipulated by agreement, the pledgeholder of a possessory pledge is obliged:

- 1) to take such measures as are stipulated by the agreement or which are reasonably necessary for the physical preservation of the pledged property, subject to reimbursement by the pledgor for all such expenses incurred if it is provided in the pledge agreement;
- 2) to inform the pledgor immediately about any damage or destruction that occurs to the pledged property, or any threat thereof;
- 3) to give the pledgor a regular report on any use of the pledged property;
- 4) to insure the pledged property in an amount equal to its value, at the expense of and for the benefit of the pledgor;
- 5) to properly maintain the pledged property;
- 6) to return the property subject to the possessory pledge immediately upon performance of the secured obligation.

As used in this provision the term "immediately" means three (3) days, unless the pledgeholder establishes good cause for delay that could not have been foreseen at the time of making the pledge.

Article 24. Responsibility of the pledgeholder of a possessory pledge for loss or damage

Unless otherwise stipulated by the agreement, the pledgeholder of a possessory pledge shall be liable to the pledgor for any loss of or damage to the pledged property that he cannot prove to have occurred without his fault.

The damages payable by the pledgeholder will be determined by calculating the amount by which the market value of the pledged property after the loss or damage falls short of the monetary value of the pledged property agreed by the parties when transferring the pledged property or, in the absence of such agreement, the market value of the property when pledged.

Article 25. Rights of the pledgeholder of a possessory pledge

1. The pledgeholder shall be entitled to use the property which is the subject of the possessory pledge only as provided in the pledge agreement, except that where the secured property is cash, and the pledgeholder is a bank, the pledgeholder has the right to use the cash unless otherwise provided by the pledge agreement. The acquired material benefits shall be directed first of all towards the reimbursement of any expenses incurred by the pledgeholder for maintaining and preserving the pledged property, and then may be applied to the repayment of interest due under the principal debt.

2. If a pledgor learns of any threat of destruction, damage or other reduction in the value of the pledged property as a consequence of its nature and composition and without fault of the pledgeholder, the pledgor shall inform the pledgeholder immediately and demand the corresponding protection. In the event such destruction, damage or other reduction in the value of the pledged property occurs without fault of the pledgeholder, the pledgeholder may demand replacement of the pledged property, and also recover compensation for any consequential losses suffered by the pledgeholder.

Article 26. Right to advance performance

1. If the pledgor refuses to comply with a pledgeholder's demand for replacement of pledged property in accordance with Article 25(2) of this Law the pledgeholder may demand performance of the secured obligation ahead of schedule, and execute against the pledged property.

2. The pledgor has the right to demand the termination of the possessory pledge ahead of schedule at any time by performing the secured obligation unless otherwise provided by the pledge agreement.

3. Where the secured obligation is a monetary debt, and the pledgor is a natural person, the pledgor may terminate the possessory pledge in advance of the time specified in the pledge agreement by discharging the debt secured by the possessory pledge.

SPECIAL KINDS OF PLEDGE

Article 27. Pawnshops

1. Pawnshops specialize in taking possessory pledges of things as a means of securing loans, without recourse to the pledgor for any deficiency.
2. Pledge of things in pawnshops shall be performed in accordance with Article 341 of the Civil Code of the Kyrgyz Republic.
3. Article 9, point 5, and Chapter V of this Law do not apply to pawnshops.
4. To avoid liability under Article 28 of this Law a pawnshop must prove that the loss of or damage to the pledged property was caused either by the intent or gross carelessness of the pledgor or by reason of insuperable force.
5. The pawnshop's receipt shall constitute a pledge agreement.

Article 32. Pledge of goods in turnover

1. Goods in turnover are goods, such as inventories, raw material, semifinished goods, and finished products, that are expected to be depleted and replenished over time. Such goods may be pledged under this Article if they can be generally described in a manner capable of identifying them. The pledge agreement for goods in turnover should specify the type of goods pledged, describe their original characteristics, general value, and location, and similarly describe any goods which may serve as substitutes for the pledged property.
2. In a pledge of goods in turnover, the subjects of the pledge are goods of a specified value, which may be determined according to the number, size or quantity of the goods. Unless otherwise provided by agreement, the pledgor shall have the right to substitute for the subject of the pledge so that the general value of the goods is not less than the value established in the pledge agreement, except that, the decrease of the value of pledge of goods in turnover shall be allowed in proportion to the discharged portion of the obligation secured by the pledge, if not otherwise agreed.
3. The pledge of goods in turnover may be either possessory (possessory pledge) or non-possessory (firm pledge). Pledged goods located on the premises of the pledgor may be possessory if they remain in the control of a pledge manager under lock and seal.
4. Goods in turnover acquired by the pledgor in accordance with the terms of a pledge agreement on goods in turnover shall become subject to the pledge from the moment of their transfer to the physical possession of the pledgor. The pledge of such goods will terminate at the moment of their transfer to the physical possession of a buyer.
5. A pledgeholder who lends the pledgor money for the purchase of goods in turnover, and who has registered a pledge in such goods prior to the moment the purchased goods became subject to the pledge, shall have priority over any other pledgeholder who receives notice of the above facts prior to the transfer of the goods in turnover to the physical possession of the pledgor.

Article 29. Pledge of an enterprise

1. An enterprise of any kind in accordance with its regulations or charter, including any joint stock company, partnership, cooperative, state enterprise, or other form of business organization, may pledge any property as it may possess in accordance with the requirements of the Civil Code of the Kyrgyz Republic, whether the property belongs to it by right of ownership, by right of economic management, or by any other right of use, possession or ownership recognized by law. In case of pledge of an enterprise it must be stated clearly in the pledge agreement or in the other corresponding agreement what part of the property of the enterprise or the whole of enterprise is pledged.
2. Unless otherwise provided by law or agreement, the pledge of an enterprise shall extend to all its property that may be pledged under Article 4 of this Law, irrespective of whether it refers to the independent balance sheet of the enterprise or not.
3. The pledgor of an enterprise shall be obliged to submit on request of the pledgeholder the current income statements and the balance sheet of the enterprise confirmed by audit report.
4. In case of compulsory execution of a pledge of an enterprise, the pledgeholder has the right either to sell all the property of the enterprise as a going concern, or to sell such individual assets as will be sufficient to discharge the secured debt. Pending the compulsory execution sale, the pledgeholder may take such measures for the revival of the financial position of the enterprise as are provided by the pledge agreement, including the appointment of representatives to the managing body of the enterprise, restrictions on the right to dispose of products produced or other property of the enterprise, collection of debts, reduction of costs and other measures.
5. The pledgeholder may exercise the right of compulsory execution by appointing an "enterprise manager" to manage the enterprise pending sale, and then to sell either individual assets or the whole enterprise as a going concern, or to break up the enterprise into different parts, some of which may be sold as going concerns, and the rest of the assets

sold individually. Upon compulsory execution of the enterprise as a going concern, the pledgeholder is obliged to nominate an enterprise manager who must be a well-qualified and experienced expert.

6. Information on the appointment of an enterprise manager shall be included in the notice of compulsory execution. If the appointment of an enterprise manager is made after the notice of compulsory execution, the notification of appointment of the enterprise manager should be submitted to the pledge office within 7 days after its delivery to the pledgor.

7. Upon appointment, the enterprise manager shall assume all rights of management of the pledged enterprise. All authority of other persons in the management of the pledged enterprise, or arising under contracts with the pledged enterprise, or from other relationships with the enterprise, cease on delivery of the notice of compulsory execution containing a notice of appointment of an enterprise manager. Each person whose management authority is thus terminated is obliged to provide all necessary information and assistance to the enterprise manager, so that he can manage the enterprise and discharge his duties. The enterprise manager may delegate his authority to others in connection with operating or winding up of the enterprise. The enterprise manager is not liable for any debt of the enterprise, except for debts which he undertakes while he manages the enterprise, and such debts may be satisfied from the sale of the assets of the enterprise, as expenses of the secured creditor.

8. The liquidator appointed in accordance with the requirements of the Civil Code of the Kyrgyz Republic and acting on behalf of the pledgor who does not immediately pay the enterprise pledgeholder's claims must hand possession of the assets of the enterprise to the enterprise manager, if requested by him to do so. The enterprise manager who is in possession of the enterprise may manage the enterprise despite the subsequent appointment of a liquidator, and is obliged to hand to the liquidator only the balance of proceeds received on sale of the individual assets, or of the whole enterprise, after paying off the secured claim, the expenses of the sale, and the expenses of the enterprise manager.

If the enterprise becomes subject to a bankruptcy process, the enterprise manager shall become the liquidator of the enterprise, and shall hand to the court such balance of proceeds.

Article 30. Pledge of rights

1. Where the pledged property is a monetary debt due to the pledgor, the pledgor is not obliged to inform his debtor that the debt has been pledged. The debtor whose debt has been pledged may satisfy the debt by payments to the pledgor, or to a person appointed by the pledgor, unless the pledgor or the pledgeholder notify the debtor on existence of the pledge. After such notice is given to the debtor, the pledgeholder may directly pursue the debtor for the pledged debt owed to the pledgor, and the pledged debt may only be satisfied by payment to the pledgeholder, or to the person appointed by the pledgeholder.

2. Where the pledged property is a contractual obligation owed to the pledgor by a third party, other than a debt for money, such contractual obligation shall be satisfied by the obligor as agreed with the pledgor. In such case the pledgeholder may receive satisfaction after any value from the contract has come into the possession of the pledgor. The pledgeholder may receive satisfaction directly from the obligor of the contractual obligation only after the pledgeholder sends a copy of the notice of compulsory execution to the obligor with a statement that the pledgeholder is exercising his right under this Law to compulsory execution of the obligor's contractual obligation to the pledgor.

3. Unless otherwise provided by the agreement in case of pledge of rights the pledgor is obliged:

- 1) not to assign the pledged rights;
- 2) not to perform any actions which may terminate the pledged right or reduce its value;
- 3) to take all actions which are necessary for maintenance of the validity of the pledged right;
- 4) to take all measures which are necessary for protection of the pledged right against infringements on the part of third parties;
- 5) to inform the pledgeholder about any changes occurring to the pledged right, any infringements on the part of the third parties, and any claims of third parties to this right.

Article 31. Mortgage

The relations of the parties of the mortgage agreement which subject is a type of pledge in accordance with the provisions of sections 3, 4 and 5 of Article 325 of the Civil Code shall be governed by the provisions of this law and by the legal Acts, regulating mortgage relations.

CHAPTER V EXECUTION AGAINST THE PLEDGED PROPERTY

Article 32. The grounds for execution against the pledged property

1. The execution against the pledged property in order to satisfy the claims of the pledgeholder (creditor) may be used if the obligation secured by the pledge is not performed when it falls due, or upon such other conditions as may be agreed by the parties to the pledge agreement.

2. Unless the pledge agreement otherwise provides, the obligation secured by a registered pledge shall fall due at the moment of filing a voluntary application for insolvency, or of filing an involuntary application for insolvency, if the debtor has failed to meet its obligations when due as defined in Article 100 of the Civil Code.

Article 33. Procedures for execution against the pledged property

1. The pledgeholder shall commence the procedure for execution against the pledged property by delivering to the pledgor a written notice of execution against the pledged property that sets forth:

1) a description of the pledge agreement, and of the obligation and the pledged property concerning which the procedure of execution against the pledged property is undertaken;

2) for a registered pledge, the registration number and date of registering the pledge notification;

3) a brief description of the circumstances of the default in satisfying obligations secured by the pledge, for reason of which the execution against the pledged property is commenced;

4) a statement that the pledge is immediately subject to seizure under this Law;

5) the signature of the pledgeholder or person authorized by him, and, in the case of execution against a pledged enterprise, the signature of any prior ranking pledgeholder of an enterprise pledge, and the signature and description of any enterprise manager who has been appointed.

2. Within seven (7) days after delivery of the written notice of execution against the pledged property to the pledgor, the pledgeholder of a registered pledge shall, by supplementary notification, register the notice of execution against the pledged property in the Pledge Registration Office. If such registration is not timely made, the procedure of execution against the pledged property shall not commence until registration is effected.

3. If the pledgor cannot be found at his place of business or residence for purpose of delivery of the notice, secure attachment of the notice to the pledged property, or to the place where the pledged property is located, shall be deemed to be receipt of the notice by the pledgor.

Article 34. Appeal against seizure of the pledged property

1. The pledgor, within 30 days from the commencement of the procedure of execution against the pledged property, may apply to the court for cancellation of that procedure. The court shall promptly dismiss the pledgor's claim unless the pledgor submits evidence showing that:

1) the pledgor never agreed to create a pledge;

2) the pledge has been terminated;

3) the circumstances for execution against the pledged property stated in the pledge agreement do not exist;

4) the procedures for execution against the pledged property have not been followed, or

5) the notice of execution against the pledged property is fraudulent in its entirety.

2. In the event the pledgor submits evidence supporting any claim under points 1 (1-5) of this Article, and the court finds there exists a reasonable likelihood that additional time will permit the pledgor either to prove his claim or to perform the secured obligation, the court shall grant, prior to the expiration of the 30 days, an interim order suspending the procedure of execution against the pledged property for a period not to exceed an additional 30 days.

3. If the pledge agreement provides for compulsory arbitration of disputes between the pledgor and pledgeholder, the proper arbitration judgment made by an international or Kyrgyz Republic arbitration tribunal recognized by law will be binding in the court in respect of any of the pledgor's claims under points 1 (1-4) of this Article.

4. Unless the court issues an order canceling the procedure of execution against the pledged property on grounds stated in points 1 (1-5) of this Article prior to expiration of the 30 day period after the commencement of the procedure of execution against the pledged property, or of any additional period of suspension granted by an interim order, the pledgor's claim shall be considered to be dismissed, the execution against the pledged property may proceed, and no objection by the pledgor to the notice of execution against the pledged property may be heard, except for a claim described in point 1(5) of this Article. Such a claim under point 1(5) shall not be accepted by a court after expiration of the 30 day period for making claims unless it is filed within seven days after receipt of either the notice of execution against the pledged property or after it became known that the pledgeholder has taken possession of the property under a claim of right to execution against the pledged property, whichever is earlier.

Article 35. Assignment to the pledgeholder the right to possess the pledged property subject to compulsory execution

1. After receipt by the pledgor of the notice of execution against the pledged property issued pursuant to Article 33 hereof, the pledgeholder, or his representative, shall have the right to take immediate possession of the corresponding pledged property from the pledgor or a third party, unless the pledge agreement or a court order provides otherwise.

2. If the pledgor fails to transfer the pledged property to the possession of the pledgeholder, or if the transfer is prevented by a third party, the pledgeholder, or his pledge manager, may take such lawful actions as are necessary to take the property from the pledgor or the third party, and to provide its transfer to the possession of the pledgeholder.

3. If the pledgeholder cannot exercise his right to possession of pledged property for any reason (for example, if the pledgeholder has no right of entry to the place where the subject of pledge is located, or if the pledgor or other possessor of the pledged property has refused such a right upon request), the pledgeholder may apply to the court for the appointment of an official to enforce the pledgeholder's right to possess the pledged property. The official so appointed has the authority only to seize the pledged property and immediately transfer it to the possession of the pledgeholder.

The official can be any person appointed independently from the pledgeholder who possesses appropriate qualifications and skills (for example, a bailiff, or civil police personnel).

The enumeration for the official shall be established by agreement between the pledgeholder and the official, but execution shall not be delayed for this reason. If there is no agreement, the amount of payment shall be established by a subsequent court decision based upon the actual costs of execution. These costs shall be paid, in priority over all other payments, at the time of the execution sale, or of any prior receipt of proceeds from the pledgeholder's use of the property.

4. After acquiring possession of the pledged property, and prior to its execution sale, the pledgeholder shall have the rights and obligations with respect to the pledged property set forth in Articles 23, 24 and 25 of this Law. The pledgeholder may undertake measures to increase the selling price of the property or reduce the expenses of its sale, by making such improvements as cleaning, renovation, repair, and completion of construction. The pledgeholder can take measures for protection of the pledged property at any time, by arrangement with the pledgor. Under petition of the pledgeholder made after registration of the notice of execution against the pledged property, the court may order other measures for protection of the pledged property.

5. After the notice of execution against the pledged property is delivered to the obligor of a pledged contractual obligation, other than a money debt, the pledgor shall not change the contractual obligation or exercise the pledgor's rights relating to the contractual obligation without the consent of the pledgeholder. If the pledgeholder exercises the rights of the pledgor in relation to a pledged contractual obligation, the pledgeholder is also obliged to execute any related obligation of the pledgor which follows from the same contractual obligation.

6. In case of conflict between two or more pledgeholders who have commenced execution against the same pledged property, the right to conduct the procedure of execution against the pledged property including the execution sale, and to possess and protect the pledged property, pending sale, belongs to the pledgeholder who has priority as defined in Article 9 of this Law, subject to the following exceptions:

1) when an enterprise manager is appointed to operate the pledged enterprise as a going concern, if the separate assets of the enterprise have also been pledged to secure other obligations, a pledgeholder who executes the pledged enterprise as a going concern may conduct the procedure for execution against the pledged enterprise as to all the property, provided the enterprise pledgeholder accords to the senior ranking pledgeholders priority in payment from the proceeds of that execution; and

2) if a pledgeholder in possession of the pledged property has already sold or contracted to sell pledged property, this pledgeholder has the priority right to execute against the property sold or which he has agreed to sell.

Article 36. Compulsory execution sale of pledged property

1. On the expiration of 30 days from the pledgeholder's commencement of the procedure for execution against the pledged property, the pledgeholder has the right to dispose of the pledged property by execution sale, unless a court order provides otherwise.

The term "sale" in this Article includes a lease, or other permission to use the property for a fixed term.

2. An execution sale of the pledged property may be either public or private, provided that the time, place, terms, and manner of the sale are commercially reasonable for the kind and condition of the property. Evidence that a higher price could have been obtained is insufficient to prove that the sale was not commercially reasonable, unless the information was provided to the pledgeholder prior to the sale.

A public sale must be advertised in a manner to adequately inform potential buyers of the kind and amount of property to be sold, the time and place of the public sale, and the registration number and date of the pledge notification. Information about such advertisements and the time and place of a public sale, or of the proposed terms of any private sale, shall be sent to the debtor, and other persons with registered interests in the pledged property at least 7 days prior to the sale, unless the property is perishable or will otherwise rapidly decline in value. One of the established places of

public auction in the Kyrgyz Republic shall be presumed to be a commercially reasonable place of sale for purposes of conducting a public sale.

To act "commercially reasonable" means to take measures for sale of the collateral in good faith and in such a way that it would be mostly beneficial for all the participants, taking into account the reality.

3. Any person, including the pledgeholder, but excluding the pledgor and any persons acting on behalf of the pledgor, who is the highest bidder at a public execution sale under this Article, and who neither acts in collusion with others to reduce the purchase price nor knows of any defects in the procedure for execution against the pledged property shall purchase a clear title to the pledged property, subject only to the rights of any pledgeholders who rank prior to the pledgeholder who conducts the sale. A purchaser at a private sale will take such clear title to the pledged property (depending only upon the pledgeholders who have priority rights as compared with the seller) if the private sale is conducted in fair and commercially reasonable way.

4. If the pledge is a possessory pledge and the pledged property is a money deposit, securities, fungible goods, or other things which can be replaced by identical things in case there is any need for their return to the pledgor, the pledgeholder may exercise his rights to execute the pledged property immediately after the defaulted obligation secured by pledge falls due, or upon delivery of the notice of execution against the pledged property, without waiting for the expiration of the 30 day period.

Irrespective of whether the pledge is a possessory or registered pledge the pledgeholder shall have the right to sell or otherwise dispose of the pledge if this collateral is perishable by its physical properties or there is a danger that it will quickly lose its value.

5. The pledgor may purchase the pledged property at a public or private execution sale, or may redeem the pledged property at any time prior to the execution sale by payment of all amounts due to the pledgeholder with respect to the obligation secured by the pledged property, including the expenses of execution against the pledged property.

6. Alienation of pledged property by means of execution against such property in order to satisfy the obligation secured by the pledge, is not a trade operation and is free from taxation.

Article 37. Rights and obligations of the pledgeholder on sale of pledged property

1. The pledgeholder may conduct the execution sale of the pledged property by any means convenient to him. The pledgeholder may appoint a pledge manager to act in his name for the sale or for any matter in connection with the sale. The pledgeholder has the right to delay the sale in order to obtain higher value for the pledged property. Such delay shall not exceed 6 months from the commencement of the process of execution against the pledged property, or from the expiration of any extension by interim order, except when an enterprise manager is appointed, the period of delay may extend to one year. The length of the delay in selling the pledged property may be extended without application to the court if the pledgor and all pledgeholders agree in writing to the delay.

2. The pledgeholder may not purchase the pledged property himself by private sale, nor resell at a higher price in a private sale the pledged property purchased by the pledgeholder at a public sale, if the private-sale purchaser was known to be a potential buyer at the time of the public sale.

3. Unless otherwise provided by the pledge agreement, the pledgeholder is entitled to petition the court for recovery of any deficiency still remaining due from the obligation after the pledgeholder obtains partial satisfaction by execution against the pledged property. After default, a pledgeholder in possession of pledged property may propose to retain the pledged property in full satisfaction of the secured obligation, without further recourse to the debtor for any deficiency in payment of the obligation. The proposal must be contained in a written notice delivered to the pledgor, to any registered pledgeholders, and to any claimants registered under Articles 7(7) and 9(7) of this Law. If an objection to the proposal is received within 30 days, the pledgeholder in possession must conduct an execution sale. If no objection is received, an execution sale will be deemed to have been made to the pledgeholder upon the expiration of 30 days.

4. The pledgeholder shall place in a depository any proceeds realized from the execution sale in excess of the amounts due to the pledgeholder. This amount shall be used to pay any junior ranking pledgeholders, and the remainder shall be immediately paid over to the pledgor. All amounts paid by the pledgeholder for court costs, maintenance, improvement or completion of the pledged property, expenses pursuant to Article 35(4) of this Law, and the execution sale, are part of the expenses of execution against the pledged property due to the pledgeholder in accordance with Article 6 of this Law.

Article 38. Liability to pledgor, following misappropriation of the pledged property by a pledgeholder

The pledgor may recover damages from the pledgeholder if the latter takes possession of the pledged property without legal right to do so or in an unlawful manner.

Article 39. Liability to pledgor for unlawful sale of the pledged property

If a court determines that the property was sold at less than a fair price because of failure to follow the procedures established by this Chapter, part or all of any deficiency in payment of the obligation still remaining due to the pledgeholder after receiving the proceeds from the sale may be written off by the court judgment. If the pledgor or a junior pledgeholder proves that the fair market value of the pledged property at the time of the execution sale exceeded the amount of the sale price, and that, due to fraud by the senior pledgeholder who conducted the sale, the pledgor or junior pledgeholder was denied what should have remained from the sale proceeds after satisfaction of all prior ranking secured obligations, as provided by Article 37(2) of this Law, the pledgor or junior pledgeholder may petition the court to claim compensation for damages from the pledgeholder for the lost sum. In this case the fair market value determined by the court shall not exceed the value decided by the parties in accordance with the pledge agreement.

CHAPTER VI
PROTECTION AGAINST INFRINGEMENT OF
RIGHTS IN PLEDGED PROPERTY

Article 40. Immutability of the pledge agreement

1. In the event legislation enacted after the conclusion of a registered pledge agreement establishes new rules that adversely affect the contractual rights of the pledgor, the pledgeholder, or both, the terms of the pledge agreement shall remain in force, unaffected, during the full term of the agreement.

2. If a state agency or an agency of local self government, or any official of such agencies, issues a decision that violates the contractual rights of the pledgor, pledgeholder or both, that decision shall be declared by a court unlawful upon the petition of the pledgeholder.

3. All the losses caused to the pledgeholder as a result of actions specified in point two of this Article shall be compensated in full by the state agency that had issued such decision.

Article 41. Liability for violating pledge rights

1. If the Kyrgyz Republic takes legislative measures terminating or diminishing the rights of the pledgor or pledgeholder in the pledged property, the losses caused to the pledgeholder as a result of such acts shall be fully compensated by the Kyrgyz Republic.

2. If the state takes measures compulsorily appropriating the pledged property or rights in the property, such as nationalization, requisition, confiscation, sequestration, or other measures with similar consequences, the Kyrgyz Republic shall compensate the pledgeholder from the Republican budget for losses caused to the pledgeholder as a result of these measures.

3. If a decision by a state agency directly appropriates pledged property or causes the property to substantially diminish in value, such as a decision to withdraw the plot of land on which the pledged building, other installations, or crops are located, the losses caused to the pledgeholder by such decision shall be reimbursed to him in full by the state agency which issued such a decision.

4. Disputes related to the amount of indemnification of losses in aforementioned cases shall be resolved in judicial order.

Article 42. On the procedure for effectuation of this Law

1. This Law shall take effect in a month after its promulgation.

2. The Law of the Kyrgyz Republic "On Pledge" dated March 6, 1992 (Vedomosty of the Supreme Soviet of Republic of Kyrgyzstan, 1992, # 4/2 p.188), shall be considered null and void from the moment this Law takes effect.

3. The Government of the Kyrgyz Republic within three months period shall: bring its decisions and resolutions in line with this Law; prepare and submit to Jogorku Kenesh of the Kyrgyz Republic proposals on bringing the legal Acts of the Kyrgyz Republic in line with this Law.

4. The pledges made before effectuation of this Law may be registered in the Single State Registry within 6 months.

President of the Kyrgyz Republic A.Akaev

Enacted by Legislative Assembly of Jogorku

Kenesh of the Kyrgyz Republic May 20, 1997