

SCHOUPS

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The new Pledge Act – registration in the National Pledge Register

We have already reported on the reform of the real securities on movable property and the creation of a National Pledge Register in our newflashes of 31 July 2014 and 22 July 2016.

The Act of 11 July 2013 (as last amended by the Act of 25 December 2016) provides for the possibility of creating a non-possessory pledge. In order to make this non-possessory pledge opposable to third parties, it has to be registered in the National Pledge Register. The entry into force of the new Pledge Act and the National Pledge Register is scheduled for 1 January 2018. With a view to this entry into force, an implementing decree was recently published that regulates the specific functioning of this Pledge Register.^[1]

Registration in the National Pledge Register makes the non-possessory pledge opposable to third parties and in addition determines the ranking of a pledge. The rule is that the first (correctly) registered pledge receives priority. For tangible movable goods, the pledge by dispossession remains possible, and consequently registration in the Pledge Register is optional. For pledge rights on debt claims, registration in the Pledge Register is entirely excluded. Along with the registration of pledge rights, the Pledge Register can also be used for the publication of a reservation of title by the unpaid seller of movable property.

The Pledge Register is an autonomous system, so that the registration or consultation of data takes place without active intervention of the holder of the register. The ultimate responsibility for a correct and current registration remains in the hands of the parties themselves, and then in particular with the pledge holder.

Users of the National Pledge Register get access thanks to identification via the eID. Whoever does not possess a Belgian eID must call upon a Belgian mandatory. Frequent users (e.g. professional lenders) can obtain the status of ‘registered user’ by concluding an agreement with the custodian of the Pledge Register.

Anyone wishing to consult the register must possess the identity information of the pledgor. Thanks to the consultation history, the pledgor can verify who has viewed his or her data over the past six months. A consultation costs five euros. Commercial use of the obtained data is prohibited.

Removal of data from the Pledge Register after payment of the secured debt is the responsibility of the pledge holder. A partial removal is also possible, through the reduction of the registered amount of the secured debt claim or deletion of a part of the goods on which the pledge rests.

A fee is owed for both the registration and for the modification and removal of a pledge in the National Pledge Register. These fees vary between a minimum and a maximum amount as a function of the size of the secured debt claim.

The Act of 11 July 2013 provides a transitional arrangement with regard to the pledge on the business. In order to retain their rank, existing pledge rights on a business must be registered in the National Pledge Register within twelve months after the law's entry into force.

^[1] Royal Decree of 14 September 2017 implementing the articles of title XVII of book III of the Civil Code, concerning the use of the National Pledge Register (Belgian Official Journal of 26 September 2017).

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