



# Law 5123/2024, a revamped and codified framework for all types of pledge rights in Greece

On 19 July 2024 Law 5123/2024 was published (GG A' 109/19.07.2024) (the **Law**) amending (and purporting to codify) the current legislative framework regarding the creation of pledge rights.

## At a Glance

The primary aim of the new legislative initiative is to address ongoing issues relating to the establishment and enforcement of pledge rights through the development of a unified and modern legal framework which harmonises the rules governing different types of pledges, namely the notional pledge (i.e. pledge over movable property without delivery of the encumbered items to the pledgee), pledge on registered instruments, claims, and rights. To this end, certain provisions of the current framework, including, amongst others, provisions of the Greek Civil Code, Legislative Decree 17.7/13.08.1923 (the LD) and Law 2844/2000 regarding notional pledge and floating charge are repealed.

## What's new:

### The Register

The Law introduces for the first time the Single Electronic Register of Pledges (the **Register**), which will be maintained and operated by the Hellenic Cadastre, serving as a central register for pledge rights. All pledge agreements will be registered digitally with the Register, essentially enhancing transaction security and transparency.

The operation of the Register will commence upon the earlier of either the date of issuance of a relevant decision by the Hellenic Cadastre or 31.12.2024. However, such long stop date may be further extended pursuant to a ministerial decision.

## Pledge over rights and claims

### Establishment

A pledge over rights and claims is established upon (a) execution of an agreement between the pledgor and the pledgee in the form of either a private document which must receive a certain date or an electronic document (i.e. a document executed with qualified e-signature or through gov.gr) and (b) registration with the Register.

The registration with the Register will not be required if the pledge is established over claims arising from bank accounts of the pledgor and the pledgee is the account bank in which such bank accounts are maintained. The rationale behind such exemption seems to be the protection of banking secrecy; however, it may raise concerns about transactions' transparency, as it might increase uncertainty for third parties who do not have visibility of such pledges prior to taking enforcement actions.

### Debtor notification

The pledge agreement must be notified to the debtor of the pledged claim. Such notification may take place not only by service of process via court bailiff as per the current framework, but also by any electronic form that constitutes a "*durable medium*", such as an e-mail. The pledge becomes effective against the debtor upon its notification whilst against third parties upon registration with the Register.

No notification to the debtor is required if the debtor is also the pledgee, the collateral taker (i.e. collateral taker on behalf of other secured creditors) or, otherwise, a party to the pledge agreement.

### Assignment by way of pledge

The Law explicitly provides for the possibility of the parties agreeing on assignment of claims to the pledgee by way of pledge, with the assignment being subject to the resolutive condition of due repayment of the secured claims.

In such a case, Article 39 of the LD shall apply, pursuant to which the pledged claims are assigned to the pledgee upon creation of the pledge and are only taken back ipso jure upon due repayment of the secured claims.

This newly introduced provision is of particular importance since (i) the scope of applicability of the LD is expanded, in these circumstances, from credit institutions or collaterals securing bond loans issued under Greek law to, ultimately, all entities acting as pledgees/assignees and all underlying secured claims and (ii) the contingent creation of the assignment by way of pledge is now directly acknowledged by law, without any need for judicial interpretation as to its legal nature and effects.

### Enforcement

The pledgee shall be entitled to proceed with the collection of the pledged claims on its own account without any procedure after the expiry of 10 business days from the day on which the claim against the pledgor became due, in whole or in part.

The purpose of such provision seems to be to streamline the enforcement process by aligning the interests of the pledgees and the pledgors; however, the stipulation of such 10-day "*grace period*" imposes an unnecessary intervention in the contractual arrangements of the par-

ties; should the parties wish to delay the enforcement of the pledge by agreeing an additional buffer period for the pledgee to exercise its rights under the pledge, they could have freely negotiated and agreed that in their own lender-borrower relationship.

## **Pledge over registered shares**

### Establishment

Similar requirements are provided, as the ones set out above for the pledge over rights and claims. The pledge shall be also registered with the shareholders' book and the share certificates shall be annotated accordingly (to the extent not dematerialised). Importantly however, the registration of the pledge with the shareholders' book and the share certificates' annotation does not affect the establishment and validity of the pledge and it only serves for evidentiary purposes.

The existing provisions in relation to shares listed on the Athens Stock Exchange or held in book-entry form following their dematerialisation remain applicable; the registration of pledges over such shares with the Register may be conducted via interconnection tools with the relevant securities' depositories following a request by any person having legitimate interest.

### Delivery of share certificates

By way of derogation from the current legal framework under the LD and the Greek Civil Code, the pledgor may keep the share certificates incorporating the pledged shares in its possession. In particular, the Law provides that the pledgor

must deliver the share certificates to the pledgee only upon demand, subject to the provisions in respect of dematerialised securities. In the latter case, a certificate from the issuer of the shares confirming the debtor's ownership of such dematerialised securities shall be attached to the pledge agreement.

### Voting and non-pecuniary rights attached to the shares

The Law provides for an interpretative rule that, unless otherwise agreed by the parties in the pledge agreement, the pledgor shall be able to continue to exercise the voting rights (and all other non-pecuniary rights) attached to the shares. Therefore, in case the pledgees wish to exercise the voting rights themselves following the establishment of the pledge this must be explicitly provided in the pledge agreement.

### Enforcement

Enforcement over shares is regulated by the Greek Code of Civil Procedure provisions applying to liquidation of pledged movable assets, thus the issuance of an enforceable title is required. The Law clarifies that the pledgee may proceed with enforcement actions irrespectively of whether it holds (or not) the share certificates.

## **Pledge over other forms of participations in legal entities**

### Establishment

As regards *limited liability companies* (EPEs), the pledge over their units is now established by way of private agreement and registration of the pledge with the

Register, in a similar fashion with the requirements set out above for the pledge over rights and claims. This is in sharp contrast to the pre-existing legal framework that presupposed a public notarial deed for the establishment of a pledge over the units issued by a limited liability company.

As regards *private companies* (IKEs), the pledge over their units is established by way of private agreement and registration of the pledge with the Register, in a similar fashion with the requirements set out above for the pledge over rights and claims, whilst the same applies for the pledge over the participations of parties *in joint ventures with commercial activity* and participations of parties in *partnerships*.

#### Notification of the pledge to the legal entity

In all aforementioned cases, the administrator of the relevant entity (or any of the pledgor and the pledgee, in respect of the joint ventures) bears the responsibility (directly provided by the Law) to notify the relevant entity (as issuer of the units/participations) with respect to the establishment of the pledge. Such notification can, in each case, take the form of an e-mail.

#### Enforcement

Nothing special is provided for the enforcement of such pledges. Therefore, the general provisions of the Greek Code of Civil Procedure shall normally apply in respect of the enforcement process over such types of participations.

### **Pledge over movable assets without delivery – notional pledge & floating charge**

#### Establishment

Similar requirements are provided, as the ones set out above for the rights and claims. Any of the pledgor or the pledgee may take the initiative to register such pledge with the Register.

The pledge may extend to individual assets, groups of assets, pools of claims or assets with a changing composition (floating charge).

#### Enforcement

The pledgee, provided that this has been explicitly agreed in the pledge agreement between the pledgor and the pledgee, is entitled to proceed with enforcement in accordance with the LD, namely by serving an order for payment directly, i.e. without obtaining an enforcement title pursuant to a court process, **provided that** at the time of establishment of the pledge, both the lender and the debtor qualify as businesses or professionals, and the pledge is provided in order to facilitate the needs of the debtor's business or profession.

### **Pledge over other types of securities**

The Law provides also for the pledging of (a) securities or financial instruments, other than shares, and (b) units in collective investment undertakings, which shall be established in the same manner as the transfer of such securities or financial instruments and units, respectively, subject however to the registration of the pledge with the Register of the Law.

## What's next: the Register

The new Register shall be established by the Hellenic Cadastre and will operate as a digital public service through the Single Digital Portal of Public Administration (gov.gr).

From its commencement of operation, the Register will replace the Publication Registration Protocol (par. 2 of article 9 of law 4512/2018) and the pledge registration system of the Land Registries. The existing records will remain valid for agreements/acts already registered with them. These records will continue to be maintained by the relevant public services, from the commencement of the Register's operation.

The Law directly provides that, apart from the pledge rights, the registrations of true sale securitisation transactions, securitisations' servicing agreements (each as required under article 10 of law 3156/2003), as well as NPLs direct sales and servicing agreements (as required by law 5072/2023) must be also registered with the Register following the coming into force of the Law.

Pursuant to a decision by the Board of Directors of the Hellenic Cadastre the operational commencement date of the Register and specific issues related to, amongst others, the procedure for submitting the relevant agreements/acts, the fees for registration and the supporting documents will be regulated in detail.

The Law comes into force as of the publication of the Hellenic Cadastre's decision for the commencement of the operation of the Register.

It is important to note that, as directly provided for in Article 25 of the Law, all pledges that have been entered into and

established prior to the coming into force of the Law shall be regulated by the provisions applying thereto at the time of their creation and establishment without any need for the parties to cater for the registration of such pre-existing pledges to the Register.

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