
The Mexican National Register of Personal Property

by Mauricio Garza Bulnes.

The Mexican legal system has been experiencing relevant changes in the last few years, mainly with the purpose of complying with a number of international business standards and to maintain Mexico as one of the top players on the developing countries' contest to attract foreign investments. When planning to invest or start up a new business in a specific industry, there are some vehicles provided by law which helps to attract funds from foreign investors causing them to rely on Mexican companies which implement the best structures to provide comfort to its investors regarding the expected return on their investment.

One of the historical problems of Mexico has been the tremendous complexity for companies to access capital to fund the growth of their business derived from the lenders' fear of losing money attempting to secure debtors' assets to guarantee that they will pay back debt. Nevertheless, during the last ten years, the country has adopted procedures and mechanisms in order to expedite and improve the certainty level to the process of accessing the capitals markets. In such lines, the Mexican Congress has approved certain amendments aimed to induce asset-backed financing relying on Mexican assets or assets subject to Mexican laws, especially via two instruments: the non-possessory pledge and the guaranty fund.

In general terms, the non-possessory pledge provides an easier method to access capital, allowing debtors to pledge their assets in order to guarantee a certain obligation or obligations, while maintaining them in their possession and use and without the need to appoint a depository, in contrast with the traditional pledge in which the possession is transferred to the creditor via a depository. Under a non-possessory pledge, the debtor in possession of the secured asset will be entitled, during the term of the pledge, to use the pledged assets and to receive its produced goods (making this a very suitable structure for the financed acquisition of machinery, equipment and other manufacturing-related assets), to pledge no more than one occasion the same assets, and to sell, in certain applicable cases, the pledged assets (in which case the pledge would be substituted for the asset received in payment, whether cash or any other).

On the other hand, the guaranty fund provides a transfer of assets by the debtor to a trust, in order to secure one or more obligations of such debtor. When applicable, the creditor will instruct the trustee (a financial institution considered under article 395 of the General Law of Negotiable Instruments and Credit Transactions (*Ley General de Títulos y Operaciones de Crédito*)) to sell the trust assets and use the proceeds to pay the debt upon its maturity. If agreed by the parties, the debtor will be entitled to make use of the assets on the trust and to receive its produced goods, and to instruct, in certain applicable cases, the trustee to sell the assets on the trust (in which case the trust assets would be replaced by the assets received in payment, whether cash or any other).

Both security agreements mentioned above were included in the amendments made to the General Law of Negotiable Instruments and Credit Transactions of 2000 (later amended further

in 2003), but seemed to be incomplete as there was no record regarding personal property subject to a pledge or trust available for third parties to rely on or verify on the existence of previously granted liens.

Even when according to Mexican law the non-possessory pledge of personal property was subject to registration, such registration was only to be made in the general commercial file of the relevant Mexican entity granting the non-possessory pledge, resulting in an imprecise and complex recording system as companies may grant a number of simultaneous non-possessory pledges over different assets which would not be easily differentiated in the register.

With the aim of solving this problem, on August 2009, a new amendment to the Mexican Commerce Code (*Código de Comercio*) was published, creating the National Register of Personal Property (*Registro de Garantía de Muebles*). This register office will host the files of all transactions involving the use of personal property to secure obligations, identifying each such property and the characteristics of the transactions they are guaranteeing. According to the amendment, the Mexican government is due to publish the Rules for the formation and operation of the National Register of Personal Property on or before August 27, 2010.

It is important to note that the Public Register of Commerce, which is the Register office under whom the real property is currently registered in Mexico, is by now a very reliable, low cost and constantly updated source of information regarding real estate transactions, and there is no reason to believe that the new National Register of Personal Property will function differently.

Once the rules are issued, not after August 27, 2010, the non-possessory pledge and the guaranty fund will become the most practical tools for Mexican companies to structure asset-backed financings and access capital without necessarily using their real property as collateral. Lenders will have a better certainty and comfort level regarding the personal property granted to them in guaranty, whether in the form of a pledge or *via* a guaranty fund, including a public record evidencing that they are free of any other lien.

While the world is waking from one of the most severe financial crisis ever with a furious reaction from the capital markets derived from, among other things (but specially by), the lack of formalization and attention on debt collaterals, Mexico is now providing higher security standards for investors, hoping that this sort of actions generate a further progress in the path of the country's economic consolidation through the increased access of Mexican companies to the global capital markets.

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