
Brief Notes on the Mexican Pledge Without Transfer of Possession

by Jaime A. Treviño.

Since 2000, the Mexican General Law of Negotiable Instruments and Credit Transactions, the *Ley General de Títulos y Operaciones de Crédito*, includes the Pledge Without Transfer of Possession as an additional form of security available in Mexico, which constitutes a right over assets with the purpose of guaranteeing the performance of an obligation and preferential rights for its payment, in which the guarantor maintains possession over the secured asset.

The Pledge Without Transfer of Possession has significantly enhanced the options available under Mexican law to structure and formalize asset-backed guarantees, and quickly became an attractive alternative to the traditional forms of Mexican guarantees, such as the bonds, *avales*, mortgages and traditional pledges.

In my opinion, the Pledge Without Transfer of Possession has increased the business opportunities for global financial firms to participate in the Mexican financing market, particularly in the small and mid-size companies' sector. The structure, generally well-known and adopted as an ordinary form of guarantee in many countries, has eased the structuring efforts for transactions and reduced the costs of preparing tailor-made security agreements enforceable in Mexico, the cost and burden of which made this source of funding out of reach for such smaller companies.

I believe that the Pledge Without Transfer of Possession has already changed the way in which financial transactions are guaranteed in Mexico. However, and notwithstanding the benefits that I find in the figure, it is not a perfect instrument. In fact, there are a number of transactions which result better implemented through one of the other "traditional" forms of guarantee, and it is therefore important to consider the particularities of each case, keeping an open mind regarding the final form of guarantee to be structured.

The Pledge Without Transfer of Possession is a valuable instrument, particularly suitable for certain guarantees of a commercial nature and which's guaranteeing assets are variable, undefined or flexible. The proper structuring of the figure may provide a bank or creditor with a first priority pledge over all the personal assets of a business, whether inventory, raw material, accounts receivable, office equipment, cash, rights, intellectual property, or any others. Due to the fact that the possession of the secured assets is maintained by the guarantor, the pledge does not jeopardize the business operations of the guarantor, allowing the business to continue to be run in its ordinary course.

When formalizing a Pledge Without Transfer of Possession, it is advisable that other covenants and agreements become part of the guarantee structure. These ancillary obligations will enable to creditor to have access to first-hand and timely information on the composition of the pledged assets, its location, and other material information. Such information will be very valuable if at any time the pledge needs to be executed and the pledged assets disposed of for the purposes of satisfying the guaranteed obligation.

The registration of the pledge agreement is required in order for the Pledge Without Transfer of Possession to have effects against other creditors and third parties. It is as a result of the registration process that the creditor gains a priority right over the pledged assets and against any other claims or encumbrances of third parties. The implementation of the Register of Personal Property, the *Registro Único de Garantías Mobiliarias*, best-known as the *RUG*, has been a natural consequence to the importance which the figure has reached in Mexican business, and has considerably reduced the registration costs and dues, resulting in a more practical and accessible process, even for loans of lesser monetary value.

An experienced and professional team of attorneys should advise the parties in the structuring of any security interest, such as the Pledge Without Transfer of Possession. Finding an experienced team of attorneys to handle this matter will result to be cost-effective and beneficial for the secured party, particularly during any future enforcement proceedings.

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Please send any comments or questions to info@jatabogados.com. The author is Managing Partner of JATA – J.A. Treviño Abogados, and Resident Partner of the firm's Houston Office, and may be reached at jtrevino@jatabogados.com. JATA is a Mexican law firm with offices in Monterrey, Mexico and Houston, Texas.

www.jatabogados.com

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