

Law

of Republic of Tajikistan

"On mortgage".

Section I. General provisions.

Article 1. Notion of mortgage.

Mortgage is one of the ways to provide fulfillment of obligation.

If debtor does not fulfil his obligations the creditor has a right to satisfy his demand because of the pledged property.

Article 2. Legislation on mortgage.

This Law defines the main provisions on mortgage.

Relationships related to mortgage not regulated by this Law are regulated by other legislative act of Tajikistan.

If an international agreement of Tajikistan specifies different rules on mortgage than those which are set forth in the legislative acts of Tajikistan then regulations of international agreement must be applied.

Article 3. Grounds for emergence of mortgage.

Mortgage emerges because of an agreement or other legislative act.

The legislative act which provides for emergence of mortgage should contain an indication on what circumstance and what property should be recognized as mortgaged.

#### Article 4. Area of application of mortgage and subject of mortgage.

1. Actual demand, particularly, resulting from loan agreement including bank loan, sales and purchase agreements, property leasing, transportation of cargo and other agreements, can be provided with a mortgage.
2. Things, securities, other property and property rights can be subjects of mortgage. Demands of personal character as well as other demands which are prohibited by the Law of mortgage cannot be subject of mortgage.
3. If sides reach understanding about the size of mortgage for demands which can emerge in future then such demands can be provided with mortgage.
4. A right of mortgage can be spread by an agreement over the property which will become in future the property (full economic disposal or operational management) of mortgagee.
5. Mortgage right for things includes their accessories (elements) and integral fruits unless the Law or an agreement provides for a different. Mortgage right for things may include separable fruits only in cases, in the extent and order specified by the Law or an agreement.
6. The list of objects, which can not be mortgaged because of their historical, cultural or other considerations or because of state security, is determined by the Council of Ministers of Tajikistan.

#### Article 5. Types of mortgage.

A Law or an agreement can provide for that mortgaged property remains at disposal of mortgager or is transferred to the ownership of mortgagee.

Mortgage of commodities can be done by handing to a pawnee a permission document for disposal of commodities which is a security. The mortgaged securities can be transferred to the disposed of notary's office or a bank.

#### Article 6. Mortgage of property which is under common ownership.

1. Property which is under common ownership can be mortgaged only under consent of all owners.

2. Mortgage of an owner's share in the common ownership does not require a consent of the other proprietors.
3. Owner of an apartment independently decides whether to mortgage it or not.

#### Article 7. Substitution of subject of mortgage.

The subject of mortgage can be changed only under consent of mortgagee. The order of changing the subject of mortgage while mortgaging the commodities in circulation is regulated by Article 43 of this Law.

#### Article 8. Mortgage and insurance.

1. A Law or an agreement can specify that a mortgagee may be charged with an obligation to insure the mortgaged property for his disposal property.

Mortgagee must insure at the expense of mortgagor the mortgaged property to its full cost which was estimated under agreement of sides while mortgaging a property.

2. A Law or an agreement can specify that a mortgagor may be charged with an obligation to insure property if the state bodies commit and undertake some actions which cease his activity or create obstacles to it or unfavorably influence it (like confiscation, requisition of property) as well as liquidation or recognition as an insolvent debtor.
3. When insurance cases occur the mortgagee has a priority right to satisfy his demands from the sum of insurance compensation.

#### Article 9. Content of agreement on mortgage.

1. An agreement on mortgage must contain the conditions which provide for the type of mortgage, essence of demand provided with a mortgage, its sizes, deadlines for fulfillment of obligations, composition and cost of mortgaged property, place of its location as well as conditions of substitution of object of mortgage and any other conditions on which an understanding should be reached.
2. Agreement on mortgage, which provides obligations emerging from the main agreement subject to notary certification or notary certified under consent of sides, must be also certified in a body which has certified the main agreement.

3. Condition about mortgage can be included in an agreement according to which emerges an obligation provided with mortgage. Such agreement can be done in a form set for an agreement on mortgage.

#### Article 10. Form of agreement on mortgage.

1. Agreement on mortgage must be concluded in a written form.

2. Form of agreement on mortgage is specified by this Law.

Agreement on mortgage concluded out of the territory of Tajikistan can be valid if requirements specified by the legislation of Tajikistan are met.

3. In cases provided for by this law an agreement on mortgage must be notarially certified and registered in a state body carrying out such registration.

4. Agreements on mortgage of immovable and rights for them as well as on mortgage of commodities in circulation and processing are subject to the obligatory notary certification and registration.

Other cases of obligatory notary certification and state register of agreements on mortgages can be provided for by the legislation.

5. In case, if it is provided for, by an agreement, notary's office along with certification of agreement on mortgage should ban an alienation of subject of mortgage.

6. Condition about mortgage can be included in an agreement which causes an obligation provided with a mortgage. Such agreement must be notarially certified and registered in an order specified by this Law.

7. If the form of agreement on mortgage, the order of its certification and registration is not observed, the agreement is considered invalid.

#### Article 11. Moment of emergence of mortgage.

Mortgage emergence from the moment of conclusion of agreement on mortgage, but when agreement should be registered, it emerges from the moment of registration of agreement. Of according to the agreement or legislation the subject of mortgage should be held by mortgagee, then the right of mortgage emerges at the moment of giving to him a subject of

mortgage, if the mortgage was given to mortgagee before agreement was concluded then the right of mortgage emerges of the moment of conclusion of agreement.

#### Article 12. Mortgager.

1. Any juridical or physical person who owns legally a subject of mortgage can be a mortgager.
2. An enterprise, which fully owns the property, may mortgage the whole enterprise, its structural unit and departments of both property complexes and separate buildings and structures under consent of proprietor of this property or body authorized by him.
3. Institution, organization can mortgage its property which it got according to the Law and has a right to dispose it.
4. Person, who can give a right as mortgage can be mortgager of right.  
  
A leasee can give his leasing right as a mortgage under consent of leasor unless a different is provided for by an agreement of leasing.
5. Juridical and physical persons of other states (countries) as well as persons without citizenship enjoy equal rights on mortgage and bear the same obligations as the juridical and physical persons of the Republic of Tajikistan unless a different is provided for by a Law.

#### Article 13 Right to dispose a mortgaged property.

Subsequent mortgages of already mortgaged property is possible unless different is provided for by this Law and previous agreements on mortgage.

#### Article 15. Right of previous mortgagee.

1. If subject of mortgage becomes mortgaged property which is already serving as mortgage supply of another obligation, then the mortgage right of previous mortgagee is preserved.

Demands of subsequent mortgagee are satisfied from the cost of mortgage after satisfaction of demands of previous mortgagee.

2. Mortgager must inform every next mortgagee about all existing mortgages of this: of this property as well as the character and size of obligations provided with these mortgages. Mortgager must compensate all losses of any of his mortgagee caused by non-fulfillment of this obligation.

Article 16. Demands of mortgagee satisfied because of mortgaged property.

Mortgagee has a right to be satisfied because of mortgaged property his demands in a full volume determined at the moment of actual satisfaction including interest, losses caused by delay of fulfillment, and as for the cases provided for by the Law or agreement - even forfeit. Necessary expenses for maintenance of mortgaged property and expenditures for providing a demand with mortgage should be also reimbursed.

Article 17. Emergence of right to claim for compensation at the expense of mortgage.

Mortgagee obtains a right to proceed for compensation at the expense of mortgage if an obligation is not fulfilled on time, except of cases when according to the Law or agreement such right appears later or because of the Law, compensation may occur earlier.

Article 18. Mortgage at partial fulfillment of obligation.

Of debtor party fulfills his obligation provided with mortgage, the mortgage is kept in the original volume until debtor fulfills his obligation in the whole volume unless different is provided for by the Law or agreement.

Article 19. Satisfaction of demand of mortgagee at the expense of mortgage consisting of several things (rights).

If mortgage consists of several things and rights, mortgagee can satisfy his demand as expense of the whole property or some of things (rights) at his own discretion preserving a

right to satisfy in future his demands at the expense of other things (rights) forming the subjects of mortgage.

Article 20. Consequences of satisfaction of mortgagee's demands by third person.

If demands of mortgagee are satisfied by the third person then he gets a right of mortgage along with the right of demand in an order specified by the legislation of Tajikistan for concession of demand.

Article 21. Order of claim for compensation from mortgaged property.

1. Claim for compensation from mortgaged property is proceeded under decision of court, arbitrary court unless different is provided for by the Law.

In cases provided for by the legislation of Tajikistan claim for compensation from mortgaged property is proceeded in unquestionable (indisputable) order on the basis of resolution of notary.

2. Sales of mortgager property, from which a compensation is proceeded, is exercised in accordance with the Civil Proceedings Code of Tajikistan unless different is provided for by this Law or agreement.

List of property of citizens, from which compensation can not be paid is defined by the Civil Proceedings Code of Tajikistan.

Mortgage is sold at auctions, sales, competitions or through second-hand shops.

3. Demand of mortgagee is satisfied from mortgage in the first place among other creditors who want compensations provided for by the legislation of Tajikistan.

Article 22. Satisfaction of demands of mortgagee when the sum proceeded from sale of mortgage is not enough.

If the sum of money proceeded from sale of mortgage is not enough to satisfy fully the demands of mortgagee he has a right, unless different is provided for by the Law or agreement, to get the lacking amount from other property of debtor which can be confiscated in accordance with legislation of Tajikistan, but in this case the mortgagee will not enjoy this privilege based on the right of mortgage.

Article 23. Return of sum gained from the sale of mortgage to the mortgager.

If the sum proceeded from sale of mortgage exceeds the demands of mortgagee the exceeding amount is returned to the mortgager.

Article 24. Cease of compensation from mortgaged property after fulfillment of obligation.

1. Mortgager has a right to cease at any time before the sale of mortgage compensation from the mortgaged property by fulfillment of obligation which has been provided with mortgage.

2. If an obligation, provided with mortgage, provides for fulfillment by shares the pmortgager has a right to cease compensation taken from mortgage by paying back the delayed part of obligation.

3. Agreements, restricting the rights of mortgager which are specified in paragraphs 1 and 2 of this article, are invalid.

Article 25. Preserving a mortgage while subject of mortgage is transferred to a third person.

Mortgage preserves its force if right of property or full economic disposal of mortgaged thing or the right which forms a pan is transferred to a third person.

Article 26. Preserving a mortgage while demand is yielded and debt transferred.

Mortgage preserves force when mortgagee in an order specified by Law makes a concession of demand provided with mortgage to a third person or mortgager transfers debt caused by an obligation provided with mortgage to another person.

Article 27. Grounds and consequences of ceasing of mortgage.

Right of mortgage is ceased:

- 1) if obligation provided with mortgage is ceased;
- 2) if mortgaged property is destructed;
- 3) if the time of validity of right which forms a mortgage is over;
- 4) if the rights for mortgage are transferred to a mortgagee;
- 5) in other cases provided for by the Law.

Article 28. Consequences of reorganization or liquidation of juridical person - mortgager.

When a juridical person - mortgager is reorganized or liquidated mortgager (probably mortgagee) gets a right to claim for compensation from the mortgaged property regardless of deadline of fulfillment of obligation provided with mortgage.

Section II. Mortgage with leaving a property at mortgager's disposal.

Chapter I. General points.

Article 29. Subject of mortgage when pledged property is left at mortgager's disposal.

1. Enterprises, buildings, structures, apartments, transport whiles and other property specified in Article 4 of this Law can be as a subjects of mortgage with leaving mortgaged property at mortgager's disposal.
2. Separable fruits can be as subject of mortgage specified in paragraph 1 of this Article on condition that they do not become from the moment of separation as object of rights of the third person.
3. Mortgage of property given be mortgager temporarily at the disposal or usage of third person is considered as mortgage with leaving it at disposal of mortgager.

Article 30. Rights of mortgagee when mortgaged property is left at mortgager's disposal.

Mortgagee when mortgaged property is left at mortgager's disposal has right, a right if different is not provided for by an agreement, to:

- 1) check according to the documents and actually the availability size, and conditions of storage of mortgage;
- 2) demand from mortgager to undertake measures necessary to preserve the subject of mortgage;
- 3) demand to stop illegal encroachments upon the subject of mortgage which threaten to destruct or damage it from anybody it could proceed.

If subject of mortgage is lost (destructed) not under the fault of mortgagee and mortgager did not restore it or did not substitute it under consent of mortgagee by other property which is equal in its value, the mortgagee has a right to demand to fulfill an obligation provided with mortgage ahead of time.

Article 31. Rights of mortgager when mortgaged property is left at mortgager's disposal.

Mortgager when mortgaged property is left at mortgager's disposal has a right, unless different is provided for by the Law or agreement, to:

- 1) dispose and use the subject of mortgage in accordance with its purpose;
- 2) dispose the subject of mortgage by alienating it with [simultaneous] transfer of obligation which is provided with pledge upon acquirer (recipient) or by leasing it.

Article 32. Obligations of mortgager when mortgaged property is left at the mortgager's disposal.

Mortgager, when the mortgaged property is left at the mortgager's disposal unless different is provided for by an agreement on pledge, must:

- 1) insure the subject of mortgage to its full cost at his own expense;

2) undertake measures necessary to preserve the subject of pawn including capital and current repair;

3) notify the mortgaging about leasing of subject of mortgage.

Article 33. Consequences of infringements of obligations by mortgager when the mortgage property is left at the mortgager's disposal.

If mortgager infringes his obligations provided for by the paragraphs 1 and 2 of Article 32 of this Law, the mortgagee has a right to claim for compensation from the subject of mortgage before the time of fulfillment of obligation provided with mortgage has come.

Chapter II. Hypothec.

Article 34. Notion of hypothec.

Mortgage of immovable property when the subject of mortgage is left at the mortgager's third person's disposal is called hypothec.

Article 35. Subject of mortgage.

1. Property connected with land, buildings, structures, apartments in tenement houses, enterprises, other property complexes, property which is classified by the legislation as immovable property as well as transport vehicles can be subjects of hypothec.

2. The results of the economic and other usage of immovable property including products, fruits and other incomes can be as independent subject of mortgage if that is provided for by an agreement on hypothec.

Article 36. Form of agreement of hypothec and its registration.

1. Agreement on hypothec is formed in an order specified in Article 10 of this Law.
2. Notary's office along with certification of agreement prohibits alienation of the subject of hypothec if it is provided for by an agreement.
3. If the content of obligation provided with hypothec is changed as well as the right of ownership (full economic disposal or operation management) of the other person, the agreement should be additionally registered. Infringement of the above-mentioned requirement causes invalidity of changes in the obligation.
4. If debtor fulfills his obligations provided with hypothec the mortgagee must submit under demand of mortgager documents necessary for inserting changes into register to the body which has registered the hypothec.

If mortgager infringes the above-mentioned requirement mortgager has a right to demand full compensation of losses from mortgagee.

#### Article 37. Right of hypothec mortgager.

Hypothec mortgager has a right, unless different is provided for by the Law or agreement, to:

- 1) own and use the subject of hypothec in accordance with its purpose;
- 2) fulfill main obligation ahead of time if subject of hypothec is sold under consent of mortgagee or to sell the subject of hypothec with [simultaneous] transfer of the main debt with the mortgage burden to the buyer (acquirer);
- 3) lease the subject of hypothec.

#### Article 38. Obligations of hypothec mortgager.

Hypothec mortgager unless different is provided for by agreement or Law must:

- 1) undertake necessary measures to preserve the subject of hypothec including carrying out capital and current repair;
- 2) insure the subject of hypothec;

3) supply similar in value immovable property if the subject of hypothec is destructed or fulfill an obligation either in its full volume or in its corresponding part regardless of coming of time;

4) notify mortgagee about leasing of subject of hypothec.

Article 39. Alienation of subject of hypothec by mortgager.

Alienation of hypothec by mortgager is permitted only under consent of mortgagee.

Article 40. Peculiarities of hypothec of structures, buildings and constructions.

When edifices, buildings and structures are hypothecated, the right of usage of land plot, on which above-said object are located, becomes the subject of mortgage simultaneously. In such cases the right of usage of land plot is transferred simultaneously to an acquirer (buyer) of edifice, building or structure when compensation from the subject of mortgage is claimed.

Article 41 Peculiarities of hypothec of enterprises.

1. The enterprises based on the collective ownership as well as ownership of citizens are hypothecated by enterprise itself.
2. Enterprise hypothecates under consent of proprietor an enterprise based on the right of full economic disposal.
3. Unless the different is specified by the Law or agreement, hypothec of enterprise is spread upon all its property including the main and circulating funds as well as securities reflected in the balance of enterprise.
4. Enterprise-mortgager must submit an annual balance to mortgagee under demand of the latter.
5. When an obligation provided with hypothec of enterprise is not fulfilled, the mortgagee has a right to undertake measures to improve financial state of enterprise which have been provided for in agreement on hypothec including nomination of representatives in

administrative bodies of enterprise restricted in their right to dispose produced commodities and other property.

6. In cases when the measures specified in paragraph 5 of this Article have not given necessary results, the mortgagee has a right to claim for compensation from hypothec of enterprise.

If this is provided for by the Law or agreement enterprise is transferred to mortgagee. In this case, the final assessment of the subject of hypothec is done at the moment of transfer of enterprise under coordination between mortgagee and mortgager or when a dispute takes place - under decision of court.

Article 42. Advance fulfillment of obligation provided with hypothec.

Mortgager has a right to fulfill in advance at any time an obligation provided with hypothec in its full volume, if agreement on hypothec excludes a possibility of subsequent pawn of the same subject of hypothec.

Chapter 3. Pawn of commodities in circulation and processing.

Article 43. Subject of mortgage of commodities in circulation and processing.

1. Raw materials, semi-finished products, spare parts and ready products can be subjects of mortgage of commodities in circulation and processing.

When commodities in circulation and processing are mortgaged, the content and the natural form of the subject of mortgage (commodity reserves, raw materials, materials, semi-finished products, ready products and etc.) can be changed on condition that their total cost does not become less than that indicated in agreement on mortgage. Reduction of cost of the mortgaged commodities, which are in circulation and processing, takes place in proportion to the fulfilled part of obligation provided with mortgage unless different is provided for by an agreement.

2. When commodities in circulation and processing are mortgaged, commodities, which are sold by mortgager, cease to be subject of mortgage from the moment of their transfer into ownership, full economic disposal or operation management of acquirer (buyer), while commodities, bought by the mortgager and envisaged in the agreement on mortgage become

subject of mortgage from the moment when the mortgager gets a right to own or economically dispose them.

Article 44. Rights and obligations of sides of agreement on mortgage of commodities in circulation and processing.

1. Mortgager must take stock of operations on mortgaged commodity. He preserves a right to own, dispose and use the subject of mortgage.
2. Mortgagee a right to check the quantity, type and cost of mortgaged commodity as well as conditions of its storage at any time.
3. If mortgager dose not fulfill conditions of the agreement on mortgage, mortgagee acquires a right to demand the transfer of mortgaged commodity to him or to retain the commodity under the lock or seal of mortgagee at mortgager's [ware-house], or to demand advance compensation of debt provided with mortgage.

Section III. Mortgage with transfer of mortgaged property (thing) to mortgagee (pledge).

Article 45. Notion of pledge.

1. Pledge is an agreement on mortgage according to which mortgaged property (thing) is transferred to mortgagee's disposal.
2. Under agreement between mortgagee and mortgager the subject of pledge can be retained at mortgager's [disposal] under the lock and seal of mortgagee (hard mortgage). Individually defined thing can be retained at mortgager's disposal with imposition of signs witnessing about pledge.

Regulations of this section are applicable to the hard mortgage to the extent that doesn't contradict the essence of relationships between mortgagee and mortgager at such mortgage.

Article 46. Obligations of mortgagee at pledge.

Unless different is provided for by agreement, mortgagee while using a pledge must:

- 1) insure the subject of pledge to its full cost at the expense and in the interests of mortgager;
- 2) undertake measures necessary for preserving the subject of pledge;
- 3) immediately notify mortgager about threat of destruction or damage of the subject of pledge;
- 4) send to mortgager accounts about usage of the subject of pledge if usage of pledge is allowed in accordance with paragraph 1 of Article 47 of this law;
- 5) immediately return the subject of pledge after mortgager or a third person fulfills an obligation provided with pledge.

Mortgagee must gain profits from the subject of pledge in the interests of mortgager only in cases when it's provided for by an agreement.

#### Article 47. Right of mortgagee at pledge.

1. Mortgagee has a right to use the subject of pledge in cases which are directly provided for by agreement on pledge. Profits and property incomes, which were gained by mortgagee in the result of usage of the subject of pledge, are intended to cover expenses of maintenance of the subject of pledge and are also spent to pay back the interests on debt or the debt itself on obligation provided with pledge.
2. If there is a real danger of distraction, deficit or damage of the subject of mortgage not because of the fault of mortgagee, the mortgagee has a right to demand the substitution of the subject of pledge, and if the mortgager refuses to fulfill this demand, to claim for compensation from the subject of pledge before the time of fulfillment of obligation provided with pledge comes.

#### Article 48. Possibility of advance fulfillment of obligation provided with pledge.

If mortgagee preserves and disposes the subject of pledge in a bad way, mortgager has a right at any time to demand to cease mortgaging or to fulfill in advance the obligation provided with pledge.

#### Article 49. Responsibility of mortgagee for destruction, short-fall or damage of the subject of pledge.

1. Mortgagee is responsible for destruction, short-fall or damage of the subject of pledge if doesn't prove that destruction, short-fall or damage haven't been caused by him.

If a mortgagee is a mortgageshop or any other entrepreneurial structure which activity is to give loans under pledge of property, exempting from responsibility may take place only in case when the mortgagee proves that destruction, short-fall or damage of the subject of pledge has been caused because of force-major circumstances or intention or rough carelessness of mortgager.

2. Mortgagee, when pledge is used, bears responsibility for distraction and short-fall of the subject of pledge to the extent of cost of destructed (missing) part as well as for damage of the subject of pledge to the amount (sum) to which the cost of pledged thing has reduced. If during mortgaging of a thing the subject of pledged has been assessed, the responsibility of mortgagee must not exceed the indicated assessment.

Mortgagee must compensate to mortgager the losses in their full volume which have been caused by destruction, short-fall or damage of the subject of pledge, if this is provided for by the Law or the conditions of the agreement.

Article 50. Pledge of property in mortgageshop and other organizations carrying out mortgageshop operations.

1. Agreement on mortgaging a property in the mortgageshop or in another enterprise (organization) which economic (entrepreneurial) activity is to give loans to citizens under mortgage, is arranged by issuing a special mortgage ticket signed by the both sides and which is not subject to a compulsory registration.

2. Mortgageshop (another enterprise exercising mortgageshop operations) must insure the mortgaged property at the expense of mortgager in accordance with an estimate carried out while mortgaging the property.

3. If a loan provided with mortgage is not paid back on time, mortgageshop (another enterprise) after one month period given as privilege (special time-limit) has a right to sell this property at the actual cost, but not less than the specified one through a commission shop. As soon as the debt and other expenses are covered, the remainder of the proceeded sum is returned to mortgager.

Section IV. Mortgage of rights.

Article 51. Rights a the subject of mortgage.

1. Rights to dispose and to use [property] including the rights of lessee, other rights (demands) caused by obligations and similar property rights belonging to mortgager can be the subjects of mortgage.
2. Right which is valid during certain period of time can be the subject of mortgage only within the time of its validity.
3. The cost of the subject of mortgage is fixed under coordination of sides in an agreement on mortgaging rights which can not be financially estimated.
4. Mortgaging rights for land plot as well as of right for other natural resources is permitted within and on conditions specified by the legislation.
5. Debtor of the mortgager, who is related to the mortgaged right, must be indicated in the agreement on mortgaging of rights allonge with other conditions obligatory for any agreement on mortgage. Debtor must be notified about mortgaging of rights. The person, who is debtor of mortgager, must fulfill the obligation to mortgagee unless different is specified by the agreement.

Article 52. Obligation of mortgager while mortgaing rights.

Unless different is provided for by agreement, while mortgaging the rights the mortgager must:

- 1) commit actions which are necessary to provided an actuality of the mortgaged right;
- 2) not make concessions of the mortgaged right;
- 3) not commit actions that result in ceasing of the mortgaged right or reduction of its cost;
- 4) undertake measures necessary to protect the mortgaged right from encroachment of the third persons;
- 5) inform the mortgagee about the changes occured in the mortgaged right, about its infringements by the third persons and about claims of the third persons for this right.

Article 53. Rights of mortgagee while mortgaging rights.

Unless different is provided for by agreement, while mortgaging rights the mortgagor has a right:

- 1) to demand regardless of time of fulfillment of obligation provided with mortgage through the court the transfer of the mortgaged right to himself if mortgagor did not fulfill the obligations specified by the Article 52 of this Law;
- 2) to go into a business as a third person in which the claim about mortgaged right is considered;
- 3) to undertake independently measures necessary to protect the mortgaged right from infringement of third persons in cases when obligations provided for by paragraph 4 of Article 52 of this Law are not fulfilled.

Article 54. Consequences of fulfillment of obligations by debtor towards mortgagor.

1. If debtor of mortgagor fulfilled his obligation before mortgagor fulfilled his one provided with mortgage, all received things by mortgagee become the subject of mortgage and mortgagor must be immediately notified about this.
2. Mortgagor under demand of mortgagee must transfer the sums of debt related to the fulfillment of obligation provided with mortgage unless different is established by the agreement on mortgage.

Section V. Order of registration of mortgage.

Article 55. State registration of mortgage.

Mortgage of the whole enterprise or other property subject to the state registration must be registered in the body which carries out such registration.

If mortgage of property is subject to notarial certification then the agreement on mortgage is considered concluded from the moment of its registration.

Article 56. Mortgager's book - keeping of records on mortgages.

1. Juridical or physical person - entrepreneur must:

- keep a book on registration of mortgages;
- right down not later than 10 days after emergence of mortgage in a registration book the records on mortgages which contain an information on type, subject of mortgage as well as volume of obligation provided with it.

2. Juridical or physical person - entrepreneur must reimburse to mortgagee or correspondingly to a third person the loses caused because of delay in registration of mortgages, insufficiency or incorrectness of record as well as evasion from the obligation to show the registration book for familiarizing.

Article 57. Obligations of the body carrying out registration.

1. State registration of mortgage must be done under an application of mortgager not later than 20 days from the moment of signing the agreement on mortgage unless different term is specified in the agreement.

2. Body carrying out the state registration must immediately notify mortgager about carried out registration.

Article 58. Content of registration record on mortgager.

Registration record on pawn must contain the following information:

- name and address of mortgagor(s) and mortgagee(s);
- date of conclusion or coming into force of agreement on mortgage or date of emergence of mortgage following from a Law;
- size of obligation provided with mortgage;
- brief description of the subject of mortgage;
- character of rights of mortgager for the subject of mortgage.

If the subject of mortgage should be acquired by mortgager in the future, the term during which it must be acquired must be indicated.

Article 59. Certificate of registration of mortgage.

The body carried out a registration of mortgage under demand of applicant issues a certificate of registration which confirms the size of obligation provided with mortgage, the date, time and number of the registration record.

Article 60. Term of validity of registration of mortgage.

1. Registration of mortgage is valid within 5 years and can be prolonged for the next 5-years term either till the moment of fulfillment of obligation provided with mortgage or till the term of validity of such obligation is over.

2. If the term of validity of mortgage is over at the moment of institution of proceedings about liquidation of enterprise of debtor (mortgager), the registration is valid during 60 days from the moment of finishing of liquidation and till the term set for liquidation is over.

3. Application about extension of validity of term of registration of pawn should be submitted not later than 6 months till the 5-year term of registration is over.

4. If an application about extension of registration period of mortgage was not submitted within the term specified in paragraph 3 of this Article, the body which carried out the registration cancels the record on mortgage in the register when the time of validity of registration is over.

Article 61. Appeal against actions connected to the registration of mortgage.

An interested person has a right to appeal against the refusal in registration or illegal registration of mortgage in the court at the place of location of the registering body.

Article 62. Sending an information about registration of mortgage to interested persons.

1. A body, which registers a mortgage, must send an information about registrations of mortgages of property of corresponding juridical or physical person-entrepreneur to interested persons under their demand.
2. The size and order of payment by applicants the services connected with sending information about registration of mortgages is defined by the Council of Ministers of the Republic of Tajikistan.

Article 60. Consequences of fulfillment of obligation provided with mortgage.

If the body, which registered a mortgage, receives notarially certified notification about full or partial fulfillment of obligation provided obligation with mortgage or an information that the mortgager is not a proprietor (doesn't have a right of full economic disposal, operational management) of the subject of mortgage any more, this body must immediately write down the corresponding note in the register.

Article 64. State due for registration of mortgage.

The state due in the size, which is specified by the legislative acts of the Republic of Tajikistan, is taken for the registration of mortgage, issue of certificate of registration as well as for giving of extracts from the register. Applicant submits to the body, which registers, the evidences of payment of the state due. When such evidences are not available the application is not considered.

Article 65. Responsibility of mortgager for infringement of obligations related to registration of mortgage.

Mortgagee has a right to fine the mortgager for infringement of term fixed for registration of mortgage as well as demand a compensation of losses caused by delay in a part not covered by fine. Size of fine is fixed by an agreement.

Article 66. Responsibility of body which registers.

If the actions specified in this Law are not committed or committed in a bad manner, the body, which groundlessly losses caused by its illegal actions or inaction.

## Section VI. Guarantees of rights of sides while mortgaging.

Article 67. Protection of the interests of pawnee when his rights and the rights of mortgagers for mortgaged property on the grounds provided for by the Law are ceased.

1. If Republic of Tajikistan approves legislation acts, which cease either mortgaging right or the right of mortgager for mortgager property, the losses caused by these acts to the mortgagee are reimbursed to him in the full volume and a in an order established by the Council of Ministers of Tajikistan. Disputes about compensation of losses are settled by courts.

2. If the state body of mortgager and management decides to cease the right of property over mortgaged property or to cease the mortgaged rights which are not related to the direct confiscation of the mortgaged property or mortgaged rights including decision to confiscate the land plot where mortgaged house, other structures, edifices or plantations are located, the losses caused by this decision to the mortgagee should be compensated to the mortgagee in the full volume by this state body at the expense of means which are at his disposal. Disputes about compensation of losses are settled by court or arbitrary court.

3. If the state compulsorily expropriates the mortgaged property rights like nationalization, requisitioning, confiscation, sequestration as well as other similar measures, the Republic of Tajikistan reimburses the losses caused by these measures to the mortgagee.

Article 68. Invalidity of acts, which infringe the mortgaged right.

1. If the state body of management or body of local self-management issues an act contradicting to the legislation and as a result of it the rights of mortgagee are infringed, such act is recognized invalid by court or by arbitrary court under the application of the mortgagee.

2. The consequences provided for by paragraph 1 of this Article have an effect also in cases when the mortgager is deprived of the right to economically dispose or to operationally manage the subject of mortgage.

3. The losses of mortgagee which have been caused by issue of [legislative] acts specified in paragraph 1 of this Article should be compensated in the full volume by the relevant body of the state power or state management.

The Chairman

of the Supreme Soviet

of the Republic of Tajikistan  
Imomali Rahmonov.

July 20, 1994 N979

Dushanbe.

