

Enacted: February, 18 2020

**Law No. 45-20
on Movable Collateral**

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Law No. 45-20 on Movable Collateral ("Law 45-20") was enacted on February 18, 2020 with the purpose of establishing a legal framework that encourages the use of movable collateral, especially as a tool for small and medium enterprises to access credit. Particularly, this new law establishes a publicity and electronic registration system and regime that ensures a faster and more efficient way of enforcement for the return of its capital.

I. Purpose and scope

Law No. 45-20 has the purpose of establishing the legal framework of the movable collateral regime, the Electronic System of Movable Collateral, their enforcement, as well as the unitary legal regime for the incorporation, effectiveness, publicity, registration, priority, execution and everything related to said security interests.

The Law 45-20 governs throughout the national territory and its application regulates access to credits and securities and financial instruments regulated in the Law on the Securities Market, provided that no special legislation or regulation is issued for such purposes. However, the movable collateral regime referred to in Law 45-20 will not be applicable to aircraft, ships or other assets that are subject to mortgage under the law.

II. Unitary Character of the Movable Collateral Regime:

In the legal system of the Dominican Republic, a movable collateral refers to all preferential rights that are constituted on movable assets, such as the pledge, universal pledge, assignment of rights by way of security, chattel pledge with or without dis-possession or any other included under the unitary concept of movable collateral, therefore applying to such security, this law upon its entry into force.

III. Constitution of Movable Collateral

The movable collateral referred to in Law 45-20 may be incorporated: (i) by agreement between the parties to a pact or a contract, (ii) by provision of the law; or, (iii) by court order.

Movable collateral may be constituted on the patrimonial rights derived from intellectual property, on the right to the payment of money by virtue of deposits and lines of credit, of the capacity of a partner on shares, quotas and partnership interests or representative participations in the capital of civil or commercial companies. Likewise, a movable security on future assets and rights may be constituted.

In accordance with this law, once constituted, movable collateral grant the secured creditor the rights inherent to a preferred security interest.

Individuals, legal persons or autonomous estates that exercise a legitimate right of possession over the assets subject to registration in a special registry, may constitute a security interest over said property, when at the time of the constitution they appear as the titleholders of these in the special registry.

The security interest over movable assets does not require formalities for its constitution, since it can be documented in a public deed, in a private document with or without legalized signatures, in an electronic document with or without a digital signature; provided that it preserves its content in a reproducible form or in any written form that records the will of the parties to constitute it.

IV. Requirements of the Movable Collateral Agreement

Law 45-20 establishes that the contract or agreement that constitutes a security interest over a movable asset must meet certain minimum requirements including: (i) name, denomination or company name of the debtor and the secured creditor, as well as their identity documents; (ii) the registration number assigned in the registry, as applicable; (iii) the statement containing the constitution of the security; (iv) the maximum amount secured by the movable collateral or the way to determine that amount; (v) description of collateral and derivative assets; (vi) the authorization of the debtor to the secured creditor for the registration of the security; (vii) among others.

The agreement or the contract by means of which a security interest is constituted over a movable asset may be in Spanish or another language. However, in the latter case and for the purposes of its enforcement, it must be translated into Spanish by a translator in accordance with the Constitution and the laws of the Dominican Republic.

V. Publicity and Enforceability

The rights conferred by the security interest will be enforceable vis-à-vis third parties from the moment the publicity requirement has been met. Movable collateral without possession will be publicized by means of its registration in the Electronic System of Movable Collateral. In the case of movable collateral with possession, unless the parties agree that is the publicity will be achieved by electronic registration in the Electronic System of Movable Collateral, they will be enforceable vis-à-vis third parties by the delivery of the secured assets to the secured creditor or to a third party designated by the latter who will have possession or control of the movable asset. Law 45-20 establishes different forms and rules of publicity according to the type of security interest granted by the debtor to the creditor, so these must be observed for each particular case.

VI. Electronic System of Movable Collateral

The Electronic System of Movable Collateral is an electronic file with remote access where movable collateral are published in accordance with this law. The platform that contains the electronic file named Electronic System of Movable Collateral ("SEGM", for its acronym in Spanish) will be governed by this law, by the regulation for its implementation to be issued by the Executive Branch at the request of the Ministry of Industry and Commerce and MiPymes (which means micro, small and medium enterprises), by the complementary regulations of the Ministry of Industry and Commerce and by other internal provisions issued for its operation.

VII. Features of the Electronic System of Movable Collateral

The SEGM is characterized by the following:

- It is a unique system that will operate nationwide with a centralized and electronic data base, through remote access by means of the electronic platform specially designed for this purpose.
- Registrations are made through standard electronic forms.
- The specific rules of operation of the SEGM will be contained in the regulation issued by the Executive Branch.
- It is an IT system equipped with security measures which ensure and safeguard the information contained in the data base.
- It does not require prior qualification or review so that registrations can be carried out. Likewise, the SEGM is organized under a personal folio system based on the identification of the debtor, for which each debtor will be assigned a folio.
- Although said system is organized by personal folio, it must allow for searches of specific assets that have a serial number that allows to accurately identify the movable asset.
- The database formed by the notices incorporated through the SEGM is public and may be consulted in the manner established by this law and the regulations.

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- The electronic form by which the registration is generated when several debtors constitute a security on the same assets in favor of one or more secured creditors, will allow the identification of said debtors and the search may be done jointly or independently by the name of each of said debtors.

The SEGM will be the only place where movable collateral, security interests over movable assets or rights over them are registered.

The SEGM will be administered by the person with whom the Ministry of Industry and Commerce and MiPymes executes the concession agreement.

The fees that will be charged for the service rendered by the administering entity will be established through the SEGM Regulation that will be issued by the Executive Branch. These fees may only be modified through said regulations and not through internal disposition of the managing entity. The rate or amount of the fee may not be charged based on the amount of the credit but must be a single fee per operation. In any case, it should be as economical and sufficient to cover the costs of administration and operation of the SEGM.

Persons who are users of the system can have access to the SEGM; that is, those that are registered therein by executing a usage contract. The SEGM will generate an access account through which the user will access the electronic forms to register the corresponding security. The user is solely responsible for the information it places in said forms.\

VIII. Validity of the Registration of Movable Collateral

Unless the parties agree to another term in the contract or agreement, the registration of a security interest in the SEGM will be valid for five (5) years, which may be renewable for the term agreed by the parties or additional periods of five (5) years. The date of the original priority of the creditor shall be conserved, provided that the renewal is made before the expiration date.

IX. Priority

The priority of a movable guarantee is determined by the time it of its publicity.

The publicity and priority of the nonpossessory security interests, of the security that specifically must be registered because this law indicates it and of the security interests that arise by virtue of administrative or judicial resolutions, is determined by the date of registration in the SEGM.

A secured creditor with a security interest over a movable asset has the priority right to pursue the assets given granted as collateral and their attributable or derivative assets, when the same are affected by the security, over any other creditor and the seizures constituted after their publicity.

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If a security interest is registered on assets in the possession or control of the secured creditor, it will have priority over unregistered security interests.

X. Enforcement of Security Interests over Movable Assets

Any type of secured creditors, including national or foreign financial intermediation entities, natural persons or autonomous estates through their trustees or anyone having the status of creditor, may enforce its rights over the collateral.

The secured creditor and the debtor may, at the time of constituting the security interest, or at any time, prior or during the public auction processes, sale or adjudication procedure before judicial bodies, as long as the assets have not been delivered to the creditor or to a successful bidder, convene an enforcement procedure without judicial intervention.

The contract or agreement that contains the constitution of the security interest accompanied by the electronic certification generated in the SEGM has executory force and the character of an executory title.

Any dispute that may arise in relation to the constitution, interpretation, preference, scope of the agreements, terms and conditions established in the security contract may be submitted by the parties to alternative means of dispute resolution, in accordance with the law of the Dominican Republic.

XI. Express Repeal and Entry into Force of Law 45-20

Law 45-20 regulates what refers to any security on movable assets, therefore all provisions regarding the civil pledge or commercial pledge, with or without dispossession that contradicts the provisions of this law are repealed. It expressly repeals several articles of the Law on Agricultural Development No. 6186 dated February 12, 1963, of the Dominican Commercial Code and amends the aspects that refer to the pledge in the Dominican Civil Code so that in the future it says and reads "movable collateral".

Law 45-20 will enter into force ten (10) months from its publication in the Official Gazette.



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