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CABO VERDE

SPECIAL FRAMEWORK FOR PLEDGES OVER MOVABLE ASSETS

Decree Law No. 40/2020, of 1 April 2020, sets forth a special framework for pledges over any type of movable assets (including over the entirety of a pledgor's movable assets), over a part or fraction of a movable asset, or over a company.

Pledges under the new legal framework are subject to the following main rules:

- (a) Pledges must be created by written instrument, which is subject to additional mandatory requirements. Possessory pledges also require the express agreement of the parties;
- (b) Subject to online registration with the Registry of Securities over Movable Assets (the "RGM");
- (c) Effective *vis-à-vis* third parties from the date of registration with the RGM, save in the case of possessory pledges and pledges over contracts on credit, which will in turn be effective *vis-à-vis* third parties upon delivery of the pledged asset;
- (d) Legal mortgages over movable property assimilated by law to immovable property, constituted before the registration of the special pledge provided herein and (ii) privileged credits relating to employees' compensation for employment contract termination, rank ahead special pledges over movable assets;
- (e) Save in the case of possessory pledges, the use and enjoyment of the pledged asset by the pledgor is free until service of enforcement notice;
- (f) The creation of burdens over the pledged asset and the attribution of income or earnings in favour of third parties are subject to the prior written consent of the pledgee;
- (g) Save in the case of possessory pledges, the disposal of the pledged asset prior to receiving enforcement notice is subject to the express written consent of the pledgee (in the event of disposal in the normal course of business, the proceeds of the sale will be deemed automatically pledged in favour of the pledgee). This rule does not apply to possessory pledges;

- (h) Pledgee has a pre-emption right in the event of disposal and appropriation of the pledged asset;
- (i) Enforcement is subject to serving prior notice to the pledgor, to other pledgees and suppliers with registered pledges, being subject to registration of the notices in the RGM as well;
- (j) Appropriation by and transfer of ownership to the pledgee, as well as out-of-court sale to a third party, is permitted after 15 days from registration of the enforcement notices. In the case of appropriation, it is also required a contractual agreement, that a fair market value assessment is obtained or that there is an agreement on the valuation price at the time of appropriation; and
- (k) Pledge over a company is subject to specific enforcement rules.

It should be noted that the special legal framework for pledges over movable assets generally applies to financing transactions. In the event of a pledge being created outside said operations, only the rules on registration and priority ranking apply.

It is also noted that this framework will only enter into force on the day following the date the RGM starts operating (to be determined by an Order).