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Teresa Empis Falcão | tef@vda.pt
Guilherme Daniel | gdd@guilhermedaniel.com
Beatriz Francisco da Costa | bfc@vda.pt

MOZAMBIQUE

REGULATION OF LAW NO. 19/2018, OF 28 DECEMBER 2018, APPROVING THE LEGAL FRAMEWORK FOR THE USE OF MOVEABLE ASSETS AS SECURITY AND CREATING THE CENTRAL REGISTRY OF SECURITY OVER MOVABLES

Regulation of Law no. 19/2018, of 28 December 2018 - which approved in 2018 the legal framework for the use of moveable assets to guarantee compliance with obligations and created the Central Registry of Security over Movables - was finally approved and published by the Council of Ministers, by means of Decree no. 7/2020, of 10 March 2020 (the “**Regulation**”).

The Regulation, which came into force on the date of its publication, sets out the rules and procedures for the access to and operation of the Registry of Security over Movables (the “**CRMS**”), together with the complementary rules for registration, publicity and conflict resolution.

1. Functions of the CRMS

Pursuant to the Regulation, the CRMS must:

- i. ensure the electronic registration of information relating to security over all movable assets, of any nature, and definitive contractual transfers of rights and obligations in relation thereto;
- ii. centralise and disseminate information on movable credit privileges of the State and judicial and contractual security registered in the respective registry for motor vehicles, rail vehicles, aircrafts, vessels and shareholdings;
- iii. ensure public access to the registered information.

The general rule is that the registration of moveable guarantees is electronic and can be carried out by the secured creditor directly in the CRMS or requested in person to the management entity of CRMS, which, in its turn, carries out the electronic registration. The requirement for the registration to be made in person is only applicable to security created between individuals (natural persons).

CRMS is accessible on the internet, 24 hours a day, every day of the year, and CRMS may establish and maintain physical locations open to the public, during the specified days and hours, in addition to the services offered on the internet.

2. Persons entitled to carry out the registration

Either the secured creditor, the transferee of a credit, the lessor or their representatives are entitled to carry out the registration of a security interest, either directly with CRGM or by submitting a request to the management entity of CRMS. Registration must be requested by filling in a specific form and will be carried out by CRMS if (i) the form contains the required information (identification of the security provider, secured creditor, asset given in security, secured obligation and maximum amount covered by the security interest, among others) and is duly completed by an identified user, who declares and warrants that the information provided is true, and (ii) the respective registration fee has been paid.

In the event of the creation of a security interest over an inventory formed by present or future movable assets or when the registration refers to a security interest created by a security provider in favour of the secured creditor under one or more security agreements, a single form may be used to carry out the registry.

It should also be highlighted that the Regulation provides for the possibility of refusal of registration by CRMS, if any of the mandatory fields of the registration form is not properly filled in, or the interested party does not provide the mandatory information in the appropriate form.

3. Vicissitudes of registration

Registration with CRMS takes effect from the date and time it becomes public and remains effective until cancelled.

The registration expires within five years and can be extended at the request of the interested party, using a form submitted six months before the expiration date ¹.

The Regulation also includes rules on changes to and cancellation of registration.

After the expiration date, the registration is excluded from any search, and can be accessed only upon duly substantiated request.

4. Conflict Rules

Regarding the order of priority and enforcement of security interests of any kind, the Regulation refers to the rules set out in Law No. 19/2018, of 28 December, which this Regulation intends to regulate.

Notwithstanding, it establishes a rule for resolving priority conflicts, according to which the priority of competing security interests over the same movables is determined by reference to the moment by which each security interest became enforceable against third parties.

¹ After the expiration date, the registration is excluded from any search, and can be accessed only upon duly substantiated request.

In the case of security interests over movables subject to registration, the relevant moment shall be that of the publicity resulting from its respective registration in the relevant registry office which prevails over any other form of publicity, even made previously. In addition to that general rule, the Regulation includes specific rules on conflicts of priority depending on the type of security interests.

The Regulation also contains a set of rules aimed at resolving conflicts in relation to the law applicable to the creation and enforcement of specific security interest over movables.

5. Interoperability with other registration services

The Regulation foresees the interoperability between CRMS and the registry offices for motor vehicles, rail vehicles, aircrafts, vessels, shareholdings, intellectual property rights and other specialized security registration services.

Where the security interest refers to a movable asset subject to registration of ownership with any of the abovementioned registry offices, the request for registration of the security over the relevant movable may be carried out:

- i. directly with the CRMS and subsequently linked to the respective conservatory; or
- ii. at the registry office, which must upload the protocol relating to the security into the CRMS' system.