

TO: Clients and Friends of the Firm

FR: Frishberg & Partners

RE: The Mortgage Law

## **I. Introduction**

After years of attempts, the Ukrainian Parliament finally succeeded in passing a mortgage law, which could spell the beginning of a successful mortgage market in Ukraine. The Law “On Mortgages” (June 5, 2003, No. 898-IV), which came into force on January 1, 2004, was drafted with the aim of minimizing the credit risks of financial institutions and allowing citizens and companies alike to attract additional financial resources for personal or business needs.

Under the mortgage law, citizens and businesses have the right to receive credit by pledging their land or real estate under a mortgage agreement as security for a loan (credit). The list of objects, which may be pledged under a mortgage agreement, includes land parcels (non-agricultural land is still subject to a moratorium until January 1, 2008 or further), real estate objects, including unfinished construction objects, and air and sea vessels, rendering the possibilities for securing a transaction in Ukraine even more attractive to foreign investors than the previous limited possibilities under the Law “On Pledges.”

## **II. General Rules**

Mortgages may arise on the basis of a mortgage agreement, legislation or a court decision. This being said, the rules regarding mortgage agreements will apply in all cases, unless specifically otherwise stated in the legislation or a court decision. In general, the mutual rights and obligations of the parties to a mortgage agreement arise at the moment of its notarization. However, in the case of mortgages arising on the basis of the law or a court decision, the mutual rights and obligations of the mortgagor and mortgagee arise on the date of the conclusion of the corresponding transaction or the date when the court decision comes into legal force respectively.

In general, mortgages under the mortgage law are derived directly from a principal obligation and remain valid until the principal obligation is satisfied or until the expiration of a mortgage agreement. Of course, if the principal obligation is violated, the mortgagee has the right to satisfy its claims at the expense of the mortgaged property before any other entities/persons with unregistered or later registered rights and obligations related to the mortgaged immovable property. In other words, the mortgage law sets forth a priority system whereby immovable property may be

subjected to a mortgage more than once and whereby the order of the state registration of a mortgage determines the priority of claims against mortgaged property.

Given the above general points, the encumbrance of immovable property by a mortgage should be evidenced by the state registration of such mortgage. If a mortgage is not properly registered, the mortgage agreement will remain valid; however, the claims of the mortgagee will not be given priority in relation to other registered rights and claims to the immovable property, even if such mortgage agreement was concluded before such other claims were duly registered. Importantly, Ukrainian law determines who is responsible for registering a mortgage over immovable property, and state registration is carried out on the basis of a simple notice by the mortgagee, containing the following information:

- 1) information about the parties;
  - a) for resident legal entities – name, place of location and identification code in the Unified State Register of Legal Entities and Natural Persons-Entrepreneurs;
  - b) for non-resident legal entities – name, place of location and country of registration;
  - c) for citizens of Ukraine – surname, name and patronymic, address of permanent residence and individual identification number in the State Register of Natural Persons-Payers of Taxes and Other Mandatory Payments;
  - d) for foreign citizens – surname, name and patronymic (if applicable), and address of permanent residence outside of Ukraine;
- 2) a description of the mortgaged property, sufficient for its identification, or its registration data;
- 3) the amount of debt and interest under the principle obligation and/or a reference to the transaction, which establishes the principle obligation in case the satisfaction of claims which may arise in the future are secured by the mortgage;
- 4) the term of the complete performance of the principle obligation or the validity term of the mortgage agreement in case the satisfaction of claims which may arise in the future are secured by the mortgage;
- 5) a reference to the issuance of a mortgage deed and its number.

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