

# THE CONTENT AND FORM OF THE PLEDGE AGREEMENT IN THE CIVIL LAW OF THE RUSSIAN FEDERATION

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## ABSTRACT

*This study investigates the new clauses of the Civil Code of the Russian Federation in regards to pledges. Special attention is paid to the investigation of legislative provisions regarding the content of the pledge agreement with emphasis placed on the analysis of previous and new civil law regulations on the content of the pledge agreement. The study described essential conditions of the pledge agreement that are of particular importance, since they establish that the pledge agreement cannot be concluded until the parties reach an agreement in regards to each said condition.*

*The study states that it is currently possible to register a pledge of property that is not real estate by registering a notice of pledge in the register of pledges of real estate; emphasis is placed on the fact that in relations with third parties, the pledge holder has the right to refer to his or her right of pledge only after the pledge notice is registered and recorded. The study also features a comparison of liens in Russia, CIS countries and Western European countries.*

**Keywords:** Pledge, Pledge agreement, Content of the pledge agreement, State registration of a pledge, Pledge record.

**JEL Classifications:** K120

## INTRODUCTION

One of the characteristic features of a modern economy is an extensive development of bank lending (Gullifer and Payne, 2015; Kvon, Yakupova, Fatykhova, Levachkova & Puris, 2016; Ronzhina, Romantsev, Piskunov & Vrbka, 2016). Bank lending is one of the main elements of a modern market mechanism, which ensures the normal functioning of economic entities in the economy. Mass non-performance of lending contracts on the part of debtors makes the solution of problems related to the repayment of issued loans and removal of the debt loss threat a relevant task not only for any given bank, but also for the government, since it requires the legislator to adequately react to the socioeconomic situation at hand (Braginsky and Vitryansky, 2001; Pokrovsky, 2001; Gullifer and Payne, 2015). At that, a major role should be played by legal instruments intended to protect the interests of both the state and entrepreneurs, which will allow stimulating the economic development of the country. The necessary condition for the successful solution of the problems under consideration is the improvement of legal mechanisms for the active usage of the pledge as the most reliable means of securing the

performance of an obligation. This problem is especially relevant for post-Soviet countries, including Russia, due to the socioeconomic crisis that said countries are experiencing. Considering the recent and already effective changes to the laws on pledge, the state of regulation of pledge relationships can be assessed as satisfactory, although one should not stop at that. Therefore, it is necessary to conduct studies, the results whereof could be used by the legislator to further improve the laws on the application of a pledge, including in banking.

The problems of legal regulation of pledge relationships have long been a subject of active discussions in the theory of civil law. Their theoretical investigation is a relevant and important problem that allows solving specific issues related to the application of pledges, for instance, to protect of rights of pledgers and pledge holders and register pledged personal property. It is worth noting that researchers interpret the concept of pledge differently: Some see its fundamental principles of property rights (Selivanovsky, 2006), while others see its obligatory and legal nature (Dashtserengiyn, 1999). Despite this, the pledge is an additional means of securing obligations.

It should be noted that amendments made to §3 “Pledge” of Article 23 of the Civil Code of the Russian Federation (Civil Code of the Russian Federation, 1995) filled in many gaps in the legal regulation of pledge relationships; for instance, they enshrined new ways of selling pledged property and introduced records of personal property pledges. The assumption is that the provisions on the recoding of personal property pledges via registration of notices of pledge and the availability of a register of notices of pledge will soon prove to be positive factors that will ensure a more efficient usage of pledges as a means of securing the performance of obligations in the civil law.

According to Dashtserengiyn, the lack of personal property registration is the main factor that inhibits the development of personal property pledge in Russia (Dashtserengiyn, 1999). In addition, the Civil Code of the Russian Federation now has provisions on the pledge of exclusive rights to the results of intellectual activity and equation thereto of means of individualization, on the state registration of the pledge of exclusive rights and the pledge of securities and its registration. At that, the legislator set the rules that protect the rights and legitimate interests of the pledge holder and pledger under the conditions of an unstable economy, which is very important, including for bank lending, at the current stage of economic development of Russia and generally facilitates the stability and sustainability of civil commerce.

Previously, juridical literature featured arguments that the legal uncertainty in regards to the possibility of pledging a bank account and the permissibility of restrictions on its disposal made it difficult to use accounts opened in Russian banks to secure the performance of obligations. Nowadays, the laws in effect regarding the pledge contain the following provisions that remove the abovementioned obstacles and create conditions that allow for a more efficient use of pledges to secure the performance of obligations on the financial market: Provisions that regulate the pledge of liability rights, including the pledge of rights under a bank account agreement and establish the procedure for the realization of pledged rights under a bank account agreement and the right of the lender (pledge holder) to restrict the rights of the debtor to the disposal of the bank account (Selivanovsky, 2006; Yeryomichev, 2004); provisions, which establish that the parties of a bank account agreement, the rights to which were pledged, have no right to amend said agreement or take actions that cause the termination of such an agreement without the consent of the pledge holder; provisions, which establish that the pledge holder has the right to monitor the state of the pledger’s account.

Issues of legal regulation of pledge relationships acquire even greater significance in international commerce (Gullifer and Payne, 2015; Khan, 2015; Qingfeng and Kuan, 2013). Theories about the security of obligation performance, including via a pledge, have existed since the dawn of civil law. A pledge is a classic civil institution that dates back to Roman law. Juridical literature notes that essentially different approaches to the regulation of real performance bonds are taken in Russia, England, Germany (Dashtserengiyn, 1999; Staudinger and Kaiser, 2014; Gullifer and Payne, 2015) and international documents, the difference being that in developed foreign legal systems, these means belong to the field of property rights, while in Russia, they are included in the law of obligation, which caused a series of significant flaws in Russian regulation of real performance bonds.

Thus, the purpose of this study is to investigate the pledge as a means of securing the performance of obligations.

## **METHOD**

The methodological framework of this study included scientific works on sociology, psychology, economics and general theory of law. The study used methods of logical and systems analysis, historical-legal and comparative-legal analysis and fundamentals of the civil law science.

Information sources included laws and other legal acts that regulate pledge obligations.

## **DATA ANALYSIS AND RESULTS**

Presently, changes made to the Civil Code of the Russian Federation that establish that rules of said Code regarding property rights also apply to the pledge of real estate (mortgage) and provisions on the state registration and recordkeeping of pledges (including the right of the pledge holder to refer to his right to the pledge in relations with third parties only after the pledge notice is registered and recorded) allow Russia to perform its international legal obligations and help harmonize Russian laws with those of foreign countries (Yeryomichev, 2004). It is worth noting that Russia's joining the Convention on International Interests in Mobile Equipment on 01.01.2011 (On the Joining of the Russian Federation...2010) prompted the Russian legislator to improve the legal regulation of personal property pledges, since mobile equipment (rolling stock, aircraft and spacecraft) is often located beyond Russian territory and the legal regulation of the pledge of this type of property faces various difficulties when exercising the rights of both the lender and the debtor.

On July 1, 2014, the provisions of a Federal Law (On Amendments to Part One of the Civil Code...2013) came into effect and significantly, sometimes radically, changed the previous regulations of the Civil Code of the Russian Federation in regards to pledges. This primarily concerned the conditions that constituted the content of the pledge agreement and its forms. Studying said provisions is necessary and important, since according to Paragraph 1 of Article 341 of the Civil Code of the Russian Federation, the pledge holder's rights in the relationship with the pledger arise (i.e., the pledge is created) once the pledge agreement is concluded.

In comparison to the old edition of Article 341 of the Civil Code of the Russian Federation, the legislator introduced new provisions, namely: Firstly, if the pledged item is property that will be created or acquired by the pledger in the future, the pledge is created for the

pledge holder once the respective property is created or acquired by the pledger (Paragraph 2 of Article 341 of the Civil Code of the Russian Federation); secondly, if the main obligation secured by the pledge is created in the future after the pledge agreement is entered into, the pledge is created at the time established in the agreement, but no sooner than the creation of said obligation (Paragraph 3 of Article 341 of the Civil Code of the Russian Federation); thirdly, the law in regards to a pledge of real estate can provide that the pledge is considered created, existing and terminated regardless of the creation, existence and termination of the obligation secured by the pledge (Paragraph 4 of Article 341 of the Civil Code of the Russian Federation).

It is worth noting that the legislator provided for a more extensive, when compared to other civil documents, list of conditions for the pledge agreement that are considered essential. The meaning of essential conditions of any civil agreement lies in the fact that the agreement cannot be considered concluded unless the parties reach an agreement regarding each said condition (Article 432 of the Civil Code of the Russian Federation). Presently, essential conditions of a pledge agreement include the subject of pledge, the substance, amount and terms of performance of an obligation secured by the pledge. At that, the legislator specifically mentioned that the conditions related to the main obligation, i.e., the substance, amount and terms of performance of the main obligation, are considered agreed upon if the pledge agreement features a reference to an agreement, under which the secured obligation has been created or will be created in the future.

From the list of essential conditions that were previously established by Article 339 of the Civil Code of the Russian Federation, the legislator removed the condition of evaluation of the subject of pledge and the condition that contained an indication of pledged property that each party had. Long before changes to §3 of Chapter 23 of the Civil Code of the Russian Federation were made, (Sukhanov, Braginsky & Vitryansky, 2010) argued that the condition regarding the evaluation of the subject of pledge did not have an independent purpose, since in case of a debtor not performing his or her obligation secured by the pledge, the recovered pledged property is subject to sale on a public auction and is sold to the highest bidder. Furthermore, even the starting price of the pledged property, at which the bidding starts, is determined by a court if the property was recovered via legal action or by the agreement between the pledge holder and the pledger in other cases (Paragraph 3 of Article 350 of the Civil Code of the Russian Federation). At that, the court or parties do not have to proceed from the evaluation of the subject of pledge established in the agreement when determining the starting selling price.

Due to the changes made to Article 340 of the Civil Code of the Russian Federation, which is now titled “Cost of the Subject of Pledge”, the situation changed as follows: For the resolution of issues related to the evaluation of the subject of pledge, the legislation established in Article 340 of the Civil Code of the Russian Federation a provision that the cost of the subject of pledge is determined by agreement between the parties unless otherwise specified by the law. Although the legislator does not establish it in either Article 339 of the Civil Code of the Russian Federation or Article 340 of the Civil Code of the Russian Federation, the assumption is that the agreement between the parties in regards to the cost of the subject of pledge should be included into the pledge agreement, since the cost of the subject of pledge in certain cases is decisive for both the pledge and the pledge holder. Firstly, Paragraph 3 of Article 340 of the Civil Code of the Russian Federation sets a rule that the cost of the subject of pledge that the parties agreed upon is accepted as the starting selling price of the subject of pledge if it is recovered, unless otherwise specified by the law, agreement between the parties or a court ruling; secondly,

according to Paragraph 2 of Article 348 of the Civil Code of the Russian Federation, foreclosure of pledged property is not permitted if the violation of the obligation secured by the pledge on the part of the debtor is insignificant and the amount demanded by the pledge holder is clearly disproportionate to the cost of the pledged property.

Thus, essential conditions of a pledge agreement include the subject of pledge, the substance, amount and terms of performance of an obligation secured by the pledge.

The subject of pledge can be any property, including items and property rights, with the exception of property that is not subject to foreclosure or demands integral to the person of the lender, including demands of alimony, compensation for damages to life or health and other rights that cannot be yielded to another person according to the law. The pledge of certain types of property can be restricted or prohibited by the law (Paragraph 1 of Article 336 of the Civil Code of the Russian Federation).

It is worth noting that Paragraph 4 of Article 336 of the Civil Code of the Russian Federation establishes the obligation of the pledger to warn the future pledge holder in written form, before the conclusion of the pledge agreement, about all known to him/her rights of third parties to the pledged item as of the moment of conclusion of the agreement (property rights, rights that arise under a lease contract, loans, etc.). At that, in Paragraph 4 of Article 336 of the Civil Code of the Russian Federation, the legislator also established the adverse legal consequences for the pledger in case of his or her non-performance of this obligation, namely: At the pledge holder's request, the pledger shall perform his or her obligation secured by the pledge prematurely or change the conditions of the pledge agreement, unless otherwise specified by the law.

When considering the issue regarding the subject of pledge, it is worth mentioning the following circumstance: Previously, Article 335 of the Civil Code of the Russian Federation established that the pledger of an item could be its owner or a person with the right of its economic management, whereas now, Article 335 of the Civil Code of the Russian Federation contains new rules that provide for a better and more detailed regulation of the rights to pledge an item:

Firstly, the right to pledge an item belongs to the owner of the item, while a person with a right in rem to the item, for instance, the right of economic management or the right of operational management (Article 216 of the Civil Code of the Russian Federation), can pledge the item in cases specified in the Civil Code of the Russian Federation (Subparagraph 1 of Paragraph 2 of Article 335);

Secondly, if the item was pledged to the pledge holder by a person that is not its owner or was not otherwise properly authorized to manage the property, of which the pledge holder did not and was not supposed to know (a bona fide pledge holder), the owner of the pledged property has the rights and is under the obligation of the pledger, specified in the Civil Code of the Russian Federation, other laws and the pledge agreement. These rules are inapplicable if the pledged item was lost before that by the owner or the person that was given possession over the item or stolen from the former or the latter or otherwise withdrawn from their possession beyond their will (Subparagraphs 2 and 3 of Paragraph 2 of Article 335 of the Civil Code of the Russian Federation);

Thirdly, if the pledged item is property, the alienation whereof requires the consent or permission of another person or authorized agency, such consent or permission is required to pledge the item, with the exception of cases when the pledge is created by the law (Paragraph 3

of Article 335 of the Civil Code of the Russian Federation). Here, it is worth bearing in mind that since September 1, 2013, Chapter 9 “Legal Transactions” of Part 1 of the Civil Code of the Russian Federation features a special Article 157.1-“Consent to a Legal Transaction” and Article 173.1, which contains provisions regarding the invalidity of a legal transaction executed without the legally required consent of a third party, legal entity, governmental agency or local government agency;

Fourthly, if the pledger’s property that is the subject of pledge was transferred to several persons by way of succession, each successor (acquirer of property) bears the consequences ensuing from the pledge for the non-performance of the obligation secured by the pledge in proportion to the part of the indicated property that was transferred to him or her. If the pledged item is indivisible or remains in common ownership of the successors on different grounds, the successors become pledgers (Paragraph 4 of Article 335 of the Civil Code of the Russian Federation).

According to many researchers of civil law, the condition of the agreement regarding the subject of pledge is considered agreed upon if the pledger and pledge holder indicate data that allow identifying the subject of pledge expressly (Sukhanov, Braginsky & Vitryansky, 2010). At that, Yem argued that the requirements that necessitated the individualization of the subject of pledge resulted from the principle of specific nature of the pledge and referred to a classical author in Russian civil studies Pokrovsky, who studied issues related to lien, its general evolution over the course of history and the main principles of the modern pledge system and concluded that the modern law was created due to the natural need for the strict execution of that which was called the principle of pledge specificity: Only a specific known item can be the subject of pledge (Pokrovsky, 2001). Vitryansky refers to the fact that legal precedents indicate that if the pledge agreement lacks information that would allow identifying the pledged property, the essential condition of the agreement regarding its subject is considered not agreed upon, while the pledge agreement itself is not considered concluded (Braginsky and Vitryansky, 2001).

Indeed, Paragraph 2 of the information letter of the Presidium of the Supreme Arbitration Court of the Russian Federation dated 15.01.1998 No. 26 “Review of the Hearings of Disputes Related to the Application of Regulations of the Civil Code of the Russian Federation Regarding Pledges by Arbitration Courts” indicates that if the pledge agreement lacks information that individually identifies the pledged property, the pledge agreement cannot be considered concluded: The ruling of the arbitration court satisfied the plaintiff bank’s claim to recover an amount of debt under a credit contract against a joint-stock company and recovered two automobiles with reference to the conditions of the pledge agreement entered into by the parties. According to the joint-stock company that appealed against this ruling, the subject of pledge relationships between the parties was property that was defined by the parties in the agreement as “automobiles or other vehicles owned by the borrower”. During the adjudication, the court found out that the joint-stock company had several automobiles, while the plaintiff believed that the court ruling referred to Article 26 of the Law of the Russian Federation “On Pledge”, according to which, if the subject of pledge includes several items, the pledge holder accrues the right to satisfaction via any of the items at his or her own option (Review of the Hearings of Disputes...1998).

When considering this dispute, it is worth bearing in mind the following. According to Paragraph 1 of Article 339 of the Civil Code of the Russian Federation, the pledge agreement must indicate the subject of pledge, its evaluation, the substance, amount and terms of

performance of an obligation secured by the pledge. If the contracting parties failed to reach an agreement regarding even a single condition, then the pledge agreement cannot be considered concluded. Thus, based on the substance of the pledge obligation when defining the subject of pledge in a pledge agreement, the definition must specify not only the type of property (automobile), but also the individual characteristics of the subject of pledge that allow distinguishing it from similar items. Since the documents presented to the arbitration court showed that the parties did not use a phrasing that would specifically indicate the property that was the subject of pledge (individualize the pledged property) when defining the subject of pledge, the satisfaction of the claim by recovering the automobiles that were chosen by the pledge holder from the entire property of the pledger was unjustified. In this case, the pledge agreement is not considered concluded.

In a different case, the subject of pledge was stationary equipment located in the maintenance area of a joint-stock company (pledger).

The arbitration court held justified the defendant's argument that referred to the fact that the pledge agreement lacked the individual features of the pledged property located in the maintenance area. The agreement did not feature a description of the pledged equipment, its denomination, manufacturing numbers or any other quantitative or qualitative indicators. According to the court ruling, the stationary nature, i.e., the permanent location of the property that was the subject of pledge in and of itself is insufficient to allow individualizing the equipment under dispute. Therefore, the pledge agreement cannot be considered concluded (Review of the Hearings of Disputes...1998).

Thus, previously, Articles 336 and 339 of the Civil Code of the Russian Federation did not mention the fact that the conditions of a pledge agreement had to contain information that would allow identifying the pledged property. Now, the law sets in Subparagraph 2 of Paragraph 2 of Article 339 of the Civil Code of the Russian Federation a special rule regarding the identification of property that is a subject of pledge in the pledge agreement, the pledger under which is an individual entrepreneur. This means that the subject of pledge can be described in any way that allows identifying the property as a pledged item at the moment of recovery, including via an indication that the pledger pledges all his or her property or part thereof or via a pledge of a specific type of property. It is worth noting that the above provision concerns a pledge agreement, the pledger under which is an individual entrepreneur.

The next three essential conditions of a pledge agreement (substance, amount and terms of performance of the obligation secured by the pledge) are related to the main obligation. In practice, the parties under a pledge agreement often simply include a reference to the main obligation that is secured by the pledge in the pledge agreement text instead of replicating already existing conditions contained in the main obligation.

Previously, such references could have negative legal consequences related to the fact that in this case, the parties did not agree upon the essential conditions of the pledge agreement and it could be declared invalid. Now, Paragraph 1 of Article 339 of the Civil Code of the Russian Federation sets a rule that the conditions related to the main obligation are considered agreed upon if the pledge agreement features a reference to the agreement, under which the secured obligation has been created. This rule simplifies the procedure of entering into a pledge agreement significantly if its parties are a pledge holder and pledger (debtor) that are parties of the main obligation. If the pledger is a third party, the pledge agreement must indicate the substance, amount and terms of performance of the obligation secured by the pledge as essential

conditions of the pledge agreement, since the third-party pledger is not a party of the main obligation and, hence, did not agree upon the above conditions with the lender.

Certain specificity among the essential conditions of a pledge agreement related to the main obligation is found in the condition regarding the amount of the main obligation and the condition regarding the substance of the main obligation. In terms of the condition regarding the amount of the obligation, the legislator established in Article 337 of the Civil Code of the Russian Federation that the pledge secures the demand in the amount established in the agreement. If the pledge agreement does not feature a condition regarding the amount of the main obligation, then Article 337 of the Civil Code of the Russian Federation establishes that the pledge secures a demand in the amount that it had at the moment of its satisfaction, including interest, penalty, compensation for damages dealt by the delay in performance, as well as the compensation for the expenditures incurred by the pledge holder due to the maintenance of the pledged item and related to the sale and recovery of the pledged item.

In terms of the condition regarding the substance of the obligation secured by the pledge, the legislator included in Paragraph 2 of Article 339 of the Civil Code of the Russian Federation a certain characteristic, albeit non-mandatory: In a pledge agreement, the pledger under which is an individual entrepreneur, the obligation secured by the pledge can be described in a way that allows defining the obligation as an obligation secured by the pledge as of the moment of recovery, including via indication of the security of all existing and (or) future obligations of the debtor to the lender within a specific amount.

The legislator established a provision, according to which the parties can include in the pledge agreement a condition regarding the procedure for selling the pledged property that is recovered under a court ruling or a condition regarding the possibility of recovering the pledged property out of court. At that, it is worth noting the following circumstances: Firstly, if the agreement provides for an out-of-court procedure of recovering the pledged property, the pledge holder has the right to present to the court a demand to recover the pledged property (Subparagraph 2 of Paragraph 1 of Article 349 of the Civil Code of the Russian Federation); secondly, Paragraph 3 of Article 349 of the Civil Code of the Russian Federation includes cases when out-of-court recovery of pledged property is prohibited, while agreements concluded with violations of the requirements set in Paragraph 3 of Article 349 of the Civil Code of the Russian Federation are considered invalid.

Previously, Paragraph 2 of Article 339 of the Civil Code of the Russian Federation established that a pledge agreement had to be concluded in written form, i.e., directly required a simple written form for the pledge agreement in all cases. Now, Paragraph 3 of Article 339 of the Civil Code of the Russian Federation establishes a discretionary rule: The pledge agreement must be concluded in simple written form unless a different notarial form is established by the law or the parties' agreement. Presently, laws, including the Federal Law "On Mortgage" (On Mortgage...1998), Federal Law "On Participation in Share Construction of Condominiums and Other Real Estate Objects and Amendments to Certain Legal Acts of the Russian Federation" (On Participation in Share Construction...2004) and Federal Law "On Pawnshops" do not establish a notarial form of a pledge agreement; however, according to Paragraph 2 of Article 22 of the Federal Law "On Limited Liability Companies", a pledge agreement for a share or part of a share in a charter capital is subject to notarial certification. Non observance of the notarial form of said transaction leads to its invalidity (On Limited Liability Companies...1998; On Pawnshops...2007).



A pledge agreement that secures the performance of obligations under an agreement that has to be registered by a notary is subject to notarial certification. Violation of the rules set in Paragraph 3 of Article 339 of the Civil Code of the Russian Federation makes the pledge agreement invalid.

Based on the above, one can conclude that the legislator continues to repeal the current system of double registration (of rights and transactions) in regards to real estate objects. It is worth bearing in mind that according to Paragraph 8 of Article 2 of Federal Law dated 30.12.2012 No. 302-FZ “On Amendments to Chapters 1, 2, 3 and 4 of Part 1 of the Civil Code of the Russian Federation<sup>1</sup>” (effective as of 01-03-2013), rules concerning the state registration of transactions involving real estate contained in Articles 558, 560, 574 and 584 of the Civil Code of the Russian Federation are not applicable to agreements concluded after the above mentioned Federal Law came into effect.

The legislator added a new Article 339.1 “Stater Registration and Record of Pledge” to § 3 of Chapter 23 of the Civil Code of the Russian Federation. The new article of the Civil Code of the Russian Federation contains important provisions that concern the moment when the right of pledge arises for the pledge holder, which is important, first and foremost, for the pledge holder’s relations with third parties.

For instance, according to Paragraph 1 of Article 339.1 of the Civil Code of the Russian Federation, the pledge is subject to state registration and is created at the moment of registration in the following cases established by the law:

Firstly, according to the law, rights that attach the ownership over the property to a specific person are subject to state registration (Article 8.1 of the Civil Code of the Russian Federation). It is worth noting several important aspects. When it comes to property, the ownership over which is attached to a person by rights that are subject to state registration, the legislator apparently meant items and immovable items at that, which is confirmed by Paragraph 4 of Article 339.1 of the Civil Code of the Russian Federation that establishes the procedure for recording the pledge of other property that is not immovable items. Rights that attach the ownership over property to a specific person are rights in rem. Presently, according to the law (Paragraph 1 of Article 131 of the Civil Code of the Russian Federation), property rights and other rights in rem to real estate are subject to state registration. Article 8.1 of the Civil Code of the Russian Federation establishes that in cases specified by the law, state registration is applied to not only rights to real estate, but also rights to other types of property and that rights to property that are subject to state registration arise and are changed and terminated from the moment a respective entry is made in the state register, unless otherwise specified by the law.

Secondly, the pledge is subject to state registration and is created at the moment of registration if the subject of pledge is the rights of a shareholder (founder) of a limited liability company. Paragraph 1 of Article 358.15 of the Civil Code of the Russian Federation establishes that the pledge of rights of a limited liability company shareholder is performed via a pledge of his or her share in the charter capital in accordance with the rules set by the Civil Code of the Russian Federation and laws on business entities.

State registration also applies to the pledge of exclusive rights (Article 358.18 of the Civil Code of the Russian Federation and Paragraph 2 of Article 1232 of the Civil Code of the Russian Federation). According to Paragraph 2 of Article 358.18 of the Civil Code of the Russian Federation, state registration of a pledge of exclusive rights is executed in accordance with the rules set in Part 7 of the Civil Code of the Russian Federation. Paragraph 2 of Article 1232 of the

Civil Code of the Russian Federation set the rule that if the result of intellectual activity or means of individualization is subject to state registration according to the Civil Code of the Russian Federation, the pledge of this right is also subject to state registration, the procedure and conditions whereof are established by the Government of the Russian Federation (Decree of the Government of the Russian Federation...2008).

According to Paragraph 3 of Article 1232 of the Civil Code of the Russian Federation, state registration of exclusive rights is performed upon the request of the parties; this request can be applied by either both contracting parties or one of them. If an application is submitted by one of the parties, the application must come supplied with one of the following documents at the applicant's option:

- Notice about the rendered disposition of the exclusive right signed by both parties;
- An excerpt from the agreement certified by a notary;
- The agreement itself.

The application of the parties or the document that comes with the application of one party must indicate:

- The type of agreement;
- Information about the contracting parties;
- The subject of the agreement and the code of the document that certifies the exclusive right to the result of intellectual activity or means of individualization;
- The duration of the pledge agreement;
- Restrictions of the pledger's rights to use the result of intellectual activity or means of individualization or the right to dispose the exclusive right to such a result of such a means.

Considering the provision in Paragraph 6 of Article 1232 of the Civil Code of the Russian Federation, which establishes that failure to meet the requirements of state registration of the exclusive right pledge makes it so the pledge agreement for the exclusive right is considered invalid, one can conclude that the pledge of an exclusive right to the result of intellectual activity or a means of individualization in cases when the result of intellectual activity or a means of individualization is subject to state registration in accordance to the Civil Code of the Russian Federation is created at the moment of state registration of this exclusive right.

The pledge of securities is also subject to recording. Paragraph 2 of Article 339.1 establishes that entries regarding the pledge of securities are made in accordance with the rules set in the Civil Code of the Russian Federation and other laws on securities. For instance, Paragraph 1 of Article 358.16 of the Civil Code of the Russian Federation set a rule that the pledge of a certified security is created at the moment of its transfer to the pledge holder, unless otherwise specified by the law or the agreement (On the Securities Market...1996).

It is worth noting that currently, a Federal Law (On Amendments to Certain Legislative Acts...2013) made amendments to the Fundamental Principles of Legislation of the Russian Federation for Notary Activities (Fundamental Principles of Legislation...1993), which concern the registration of pledge notices for personal property; in particular, Article 103.1 establishes that the registration of personal property pledge notices is the notary's entry into the register of personal property pledge notices of information contained in the personal property pledge notices

sent to the notary. To confirm the registration of the notice, the applicant is issued a certificate of registration of a personal property pledge notice in the register of personal property pledge notices. In addition, the Civil Code of the Russian Federation (Subparagraph 2 of Paragraph 4 of Article 339.1) provides for a special imperative term (within three days), in which the pledge holder must send a notice about the change of the pledge or removal of information about the pledge; the term begins at the moment (on the day) when the pledge holder found out or was supposed to find out about the change or termination of the pledge. The pledger has the right to demand that the pledge holder take all necessary actions to make the entry about the termination of the pledge (Subparagraph 2 of Paragraph 2 of Article 352 of the Civil Code of the Russian Federation).

In regards to the pledge holder and third parties, the important thing is the moment when the entry is made regarding the recording of the pledge, since according to the general rule, it is from this moment that the pledge holder has the right to refer to his or her right of pledge in relations with third parties (Subparagraph 3 of Paragraph 4 of Article 339.1 of the Civil Code of the Russian Federation). The lack of an entry regarding the recording of the pledge is irrelevant for the relationships between the pledger and the pledge holder (Subparagraph 3 of Paragraph 4 of Article 339.1 of the Civil Code of the Russian Federation).

## DISCUSSION

Thus, based on the above, one can conclude the following:

- The pledge of property, including securities, the pledge of the right of a shareholder (founder) of a limited liability company and the pledge of rights under a bank account agreement are subject to state registration and recording;
- If the pledged item is property that will be created or acquired by the pledger in the future, the pledge is created for the pledge holder once the respective property is created or acquired by the pledger, unless the law or the agreement specifies that it is created at a different point (paragraph 2 of article 342 of the civil code of the Russian federation).

In the Commonwealth of Independent States, different approaches to the regulation of pledge relationships are explained by different positions in regards to the nature of pledge relationships, despite the fact that the initial legislative framework of CIS countries is largely identical, since the civil codes of the countries were developed based on the model advisory act approved by the CIS Interparliamentary Assembly. For instance, according to the Law of the Republic of Belarus “On Pledge”, Belarus has two types of pledges: A simply pledge and a hard pledge (Shibeko, 2016). In case of a hard pledge, the item is not transferred physically. If the matter at hand is an individual and specific item, then the pledge can be performed by placing signs that are indicative of the pledge. In Germany, the pledge of real estate is under strict legislative and governmental control (Staudinger and Kaiser, 2014). An example of such control is the fact that in Germany, the pledge of agricultural land is limited by the law to 1.5% of the market value of the land plot. Nowadays, there are two systems of pledge registration in Europe: Sweden and Denmark differentiate between loans and pledges. In these countries, state registration is provided for pledges only. The amount of a loan is not recorded by agencies that register real estate rights; in Germany, France and Italy, state registration applies not only to the pledge, but also to the credit acquired under the pledge (Gullifer and Payne, 2015).

Thus, the difference in the regulation of pledges in different countries is explained by a different understanding of the nature of the pledge and the features of the legal systems and economic development of the countries.

## CONCLUSION

The analysis of the legislation allows concluding the following. The pledge is a form of obligation security. The pledge holder acquires the pledge right:

- To real estate
- To other property that is not related to real estate
- To certified securities
- To non-certified securities
- To the rights of a shareholder (founder) of a limited liability company
- To the rights under a bank account agreement.

Lien in the Russian Federation continues to develop. The main priority in the legal development of the Russian Federation is the unification of national and international laws. The materials of this paper can be used to form scientific practices in jurisprudence.

## ENDNOTE

1. On Amendments to Chapters 1, 2, 3 and 4 of Part 1 of the Civil Code of the Russian Federation: Federal Law dated December 30, 2012 No. 302 FZ. Code of Laws of the Russian Federation. No. 53 (Part One).

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