

The new single register of security interests over moveable property and other related transactions will be up and running on January 1, 2023

As of January 1, 2023, the formalities for the registration, change and cancellation of liens and pledges over intangible movable property will have to be carried out in a single register called the “*register of security interests over moveable property and other related transactions*”.

This register was created by Decree dated December 29, 2021^[1], with the aim of simplifying the rules governing the publication of security interests over moveable property, which until now varied according to the type of security interest concerned.

A chapter dedicated to this register has been incorporated into the French Commercial Code by the aforementioned Decree, and provides a number of clarifications which are summed up in this article.

Content and electronic form of the single register (Articles R. 521-1 to R. 521-4 of the French Commercial Code)

New Article R. 521-2 of the French Commercial Code provides an exhaustive list of the security interests over moveable property, the publication of which is managed by the single register. These include, in particular:

- non-possessory pledges over tangible movable property, with the exception of the pledges mentioned in the second paragraph of Article 2338 of the French Civil Code;
- pledges by agreement over shares in civil companies, limited liability companies (*sociétés à responsabilité limitée*) and general partnerships (*sociétés en nom collectif*);
- the preferential right (lien) of the seller of a business going concern;
- the pledge over a business going concern;
- certain non-transferability measures decided by a court pursuant to Articles L. 626-14 and L. 642-10 of the French Commercial Code;

- contracts relating to an asset that has been made public pursuant to the provisions of Article L. 624-10 of the French Commercial Code;
- preferential right (lien) of the Public Treasury;
- preferential right (lien) of the social security administration and supplementary schemes provided for in Article L. 243-5 of the French Social Security Code;
- special type of pledge over agricultural assets (*warrants agricoles*);
- leasing transactions pertaining to movable property.

Initial registration (Articles R. 521-5 to R. 521-12 of the French Commercial Code)

The application for registration is made by the applicant by handing over or transmitting, by post or electronically, a registration form to the clerk of the competent commercial court.

For the exhaustive list of information that must appear on the form, please refer to Article R. 521-6 of the French Commercial Code.

The form must also be accompanied by the original document constituting the security interest.

The registration is effective for five years, unless otherwise provided for by law. For example, the registration of the preferential right of the seller of a business going concern and the pledge over the business going concern will, by exception, have a duration of ten years.

It should be recalled in this respect that, since January 1, 2022, the specific regime governing pledges over shares in real estate investment and management companies (*sociétés civiles immobilières*) has been abolished, which means that the registration is now effective for 5 years (as opposed to an indefinite duration before January 1, 2022).

Changes to the registration (Articles R. 521-13 to R. 521-18 of the French Commercial Code)

Any request for changes to the registration must be made to the clerk of the court who has recorded the initial registration, by handing over or transmitting by post or electronically a request for changes form.

The form must be accompanied by the original deed if it is a private document, or by a copy of the deed if it is an authentic deed, or by a copy of these documents.

Cancellation of the registration (Articles R. 521-19 to R. 521-25 of the French Commercial Code)

The request for cancellation must also be made to the clerk of the court who has recorded the initial registration, by handing over or transmitting, by post or electronically, a request for cancellation form.

The registered creditor requesting the cancellation of the registration must prove his/her/its capacity as

creditor. In other cases, the applicant requesting the cancellation of the registration must substantiate his/her/its request, either by providing evidence that the parties agree to such cancellation, by providing a court decision which is no longer subject to appeal, or by providing the deed evidencing the sale of the encumbered asset in application of the rules relating to civil enforcement procedures applicable to moveable property.

Consultation of the registered information (Articles R. 521-29 to R. 521-34 of the French Commercial Code)

The information registered in the register of security interests over moveable property will be downloadable free of charge from a national portal accessible via the Internet.

The list of the elements to be indicated by the applicant who wishes to consult the file, which vary according to the type of security interest, is set out in Article R. 521-32 of the French Commercial Code.

[1] Decree No. 2021-1887 of December 29, 2021 on the register of security interests over moveable property and other related transactions

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