Law on Fiduciary Transfer of Ownership Right
(Official Gazette of the Republic of Montenegro, No 23/96)

Article 1

Concept of the Contract (for movable property)

The debtor or a third party shall transfer, with the contract of fiduciary transfer of ownership right on a movable property, the ownership right to the creditor in order to secure the satisfaction of claim, and the creditor shall be obliged to provide the debtor with an undisturbed exercise of the ownership right, after the satisfaction of his claim.

Concept of the Contract (for immovable property)

The debtor or a third party shall be obliged to transfer, with the contract of fiduciary transfer of ownership right on a immovable property, the ownership right to the creditor in order to secure satisfaction of claim, and the creditor shall be obliged to provide the debtor with an undisturbed exercise of the ownership right, after the satisfaction of his claim.

Manner of Acquiring the Ownership Right

The ownership right on immovable property shall be acquired by registration in the land or other public books, with the registration of the fiduciary transfer of ownership right.

Form of the Contract

The contract of fiduciary transfer of ownership right must be concluded in writing, and in the case of immovables it must also be authenticated by the court.

Article 2

Security for Future or Conditional Obligation

Fiduciary transfer of ownership right may be executed in order to secure a future, as well as a conditional obligation.

Article 3

Extension of the Security to Other Obligations of the Debtor

Fiduciary transfer of ownership right, securing the fulfillment of an obligation, shall also secure other obligations which may occur between the creditor and the debtor after the conclusion of the contract of fiduciary transfer of ownership right which would be due prior to satisfaction of the obligation secured by the transfer of ownership right, unless otherwise agreed upon.
Article 4

Prohibited Provisions

The provision of the contract regarding fiduciary transfer of ownership right stating that the property subject to this right shall be definitely transferred to the creditors’ ownership, if his claim is not satisfied when due, without previously implemented procedure envisaged by this Law, shall be null and void, as well as the provision allowing the creditor to use the encumbered property, collect fruits of the property or exploit the property in another manner.

Allowed Provisions

Such agreements shall be allowed after the expiration of the eight-day deadline from occurrence of the claim.

Article 5

Specification

Property serving as security for a claim must be precisely specified (principle of specialty).

Object

Fiduciary transfer of ownership right shall attach to the entire property, its fruits until they are separated and other constituent and accessory parts.

Article 6

Stock of Goods

The contract of fiduciary transfer of ownership right may also relate to the stock of finished products (machines, automobiles and other supplies of goods).

Minimum Goods for Security

The contract shall prescribe the mandatory existence of the minimum quantity of goods in the stock of goods, the value of which secures the claim.

Article 7

Informing the Creditor

The debtor shall be obliged to inform the creditor, through appropriate commercial papers, on his every transaction regarding the stock of goods.
Article 8  
Taking Away the Stock of Goods or Premature Sale

In the case the debtor does not take care of the stock of goods, i.e. goods from the stock of goods in a proper manner and generally deals with them contrary to the contract and law, the court shall, at the request of the creditor, order the stock of goods, i.e. goods to be taken away from the debtor and delivered to a third party or order a premature sale of the property when it is justified.

Article 9  
Specification of Goods in the Stock of Goods

Goods serving as security must have a determined value, must be marked and located in a special place.

Replacement of the Goods

The debtor may, with the consent of the creditor, replace the goods in the stock of goods with the goods of the same value.

Article 10  
Right to Possession

In the case of fiduciary transfer of ownership right, the possession of the property shall remain with the debtor or with a third party who is the transferor of the ownership right.

Third Party Possessor

The creditor and the debtor may agree to give the property, subject to the contract or documents giving the holder exclusive disposition right on the property, to the custody of a third party.

Joint Custody of the Property or Document

The parties to the contract may agree to jointly keep the property or document.

Article 11  
Obligation to Keep the Property

The debtor shall be obliged to keep the property with a diligence of a conscientious custodian, i.e. conscientious administrator.
**Delivery of the Property**

The debtor shall be obliged to deliver the property to the creditor if he does not pay his debt within the deadline.

**Article 12**

**Informing on Changes in the Property**

The debtor shall be obliged to inform the creditor on all changes occurring in the encumbered property, and especially its deterioration or loss of value, otherwise he shall be liable for the incurred damage.

**Article 13**

**Using the Property and Collecting the Fruits**

The debtor shall be entitled to use the encumbered property and collect its fruits, but he shall not be entitled to give it for use to another person, unless the creditor allows him to do so.

**Liability of the Debtor**

The debtor who delivers the property to another person for use, without the permission of the creditor, shall be liable for accidental ruin or damage that would occur under such circumstance.

**Article 14**

**Creditor’s Right to Fruits**

The creditor shall have the right to fruits of the encumbered property from the moment of the final acquisition of the ownership right on that property.

**Article 15**

**Sequestration**

At the request of the creditor, the court shall order the encumbered property be seized from the debtor and delivered to a third party, if the debtor does not keep the property in a proper manner, or delivers it to another person to use without the creditor’s permission, and generally deals with the property contrary to the contract and law.
Article 16
Right to Additional Security

The creditor shall be entitled to request from the debtor or a third party another property, if the encumbered property has material or legal defect, due to which it does not represent sufficient security for satisfaction of claim.

Article 17
Premature Sale of the Property due to its Deterioration or Loss of Value

When the encumbered property deteriorates or otherwise loses its value, thus causing the danger that it shall become insufficient to secure the creditor’s claim, the court may, at the request of the creditor or the debtor, and after having heard the other side, decide to sell the property at a public auction or at Exchange or market price if there is one, and that the price or a sufficient part of the price is deposited at the court in order to secure the creditor’s claim.

Replacement of the Property

The court shall reject the creditor’s request, if the debtor offers to transfer to the creditor his ownership right on some other property, of at least the same value, which shall take place of the previously encumbered property.

Replacement of the Property at the Debtor’s Request

The court shall, under the terms referred to in paragraph 1 of this Article, allow the replacement of the encumbered property at the request of the debtor even in the case when the creditor does not request its sale.

Article 18
Creditor’s Right to Sell the Property

The creditor shall acquire the right to sell the debtor’s property when the debtor does not meet his obligation when due.

Premature Sale of the Property

The creditor may, with the consent of the debtor, after occurrence of the claim, sell the encumbered property to a certain person, if he concludes that the price is reasonable.
Real Subrogation

The realized price or a sufficient part of the price shall come into the place of the encumbered property and shall be deposited in the court in order to secure satisfaction of the creditor's claim.

Article 19

Creditor's Request for Transfer of the Property

The creditor may request from the debtor the transfer of the property as soon as the claim becomes due.

Retransfer of the Property to the Debtor

If the debtor pays his debt, the ownership on the property shall automatically be transferred to the debtor.

Article 20

Sale or Retention of the Encumbered Property

If the creditor's claim is not satisfied when due, the creditor may sell the property at the price determined by appraisal of an expert, or, if wishes, keep it for himself at this price.

Sale of the Property in the Case of Commercial Contracts

If the debtor does not satisfy the claim arising from the commercial contract when due, the creditor may proceed to sell the encumbered property at a public auction, upon the expiration of eight days upon the warning made to the debtor and to the third party who is the transferor that he shall so proceed.

Notice of the Sale

The creditor shall be obliged to timely inform both persons on the date and place of the sale.

Sale of the Property at Market or Stock-Exchange Value

If the encumbered property have market or stock-exchange price, the creditor may sell them at that price, upon the expiration of eight days from the warning made to the debtor or the third party who is the transferor, that he shall so proceed.
Article 21

Commercial Practices and Commercial Standards

All measures undertaken by the creditor for the purpose of claim satisfaction must comply with the existing commercial practices and be commercially reasonable.

Article 22

Right to Satisfaction

The creditor shall be entitled to satisfy his claim, interest due, as well as the costs of claim satisfaction from the price realized by the sale of the encumbered property.

Obligation to Return the Excess Amount

If the value of the property is greater than the value of the claim, the creditor shall be obliged to return the difference to the debtor or third party who is the transferor within eight days from the day of claim satisfaction.

Article 23

Registration of the Contract

The contract of fiduciary transfer of ownership right shall be registered in the public registry kept by a specialized agency.

Nullity of the Contract

If the registration is not done, the contract shall be null and void.

Deadline for the Contract Registration

The contract must be registered in the registry within eight days from the day of its conclusion.

Article 24

Application Submission

Application for registration of the contract shall be signed by both parties to the contract.

Contents of the Application

The application shall contain the name and address of the contracting parties, as well as data on the property that must be described.
Signing the Statement

The debtor must sign the statement indicating the entire amount of his debt with its status on a certain date.

Confirmation by the Creditor

The creditor shall be obliged to confirm this statement.

Issuing the Confirmation at the Proposal of Third Parties

Specialized agency shall be obliged to issue the confirmation with the data contained in the application at the proposal of every third party.

Article 25

Publicity of the Registry

The registry shall be public.

Contents of the Registration

The registration must contain the description of particular marks of the encumbered property.

Minimum Data for Registration

In the case such marks do not exist, the type and number of encumbered property must be designated in the registration.

Article 26

Marking the Property

Specialized agency shall mark the encumbered movable property.

Appraisal by an Expert

The Agency referred to in paragraph 1 of this Article shall appraise the encumbered movable and immovable property of the goods in stock and enter the data thereon in the registry (appraisal by an expert).
Article 27

Informing the Tax Authority

The specialized agency shall be obliged to inform a competent tax authority on definitive acquisition of the ownership right on immovable property within eight days from the moment of definitive acquisition.

Article 28

Cessation of the Ownership Right

The ownership right of the creditor on encumbered property shall cease:

Cessation of Claim

1) When the claim whose satisfaction has been secured ceases to exist;

Renunciation by the Creditor

2) When the creditor renounces the ownership right on immovable property with a written statement given before a competent state body keeping the cadastre of immovable property, whereas in the case of movable property, a written statement thereof shall suffice.

Destruction of the Property

3) When the encumbered property is destroyed, and it is not restored.

Article 29

Deletion from the Registry

When the claim ceases to exist, the debtor may request deletion of the contract from the registry.

Statement of the Creditor

In the case referred to in paragraph 1 of this Article, the debtor shall request from the creditor the statement that the claim ceased to exist and that his security does not exist any more.

Liability for Damage

In the case the creditor refuses to give the statement, he shall be liable for damage incurred by such action.
Document on Cessation of the Claim

The statement of the creditor may be replaced with the document from which it can be clearly seen that the claim ceased to exist.

Article 30
Coming into Force

This Law shall come into force on the eighth day after its publication in the “Official Gazette of the Republic of Montenegro”.

Number: 01-613
Podgorica
26 July 1996