

Turkmenistan

Civil Code

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(Extracts)

Section 6 - Property Creating Security Rights

Subsection 1 - Mortgage

Article 267 Mortgage

1. Movable things and immaterial wealth (the transfer of which to another persons is allowed) may be burdened for the security of the claim in such a way that the creditor (mortgagee) should have the right to claim for satisfaction by means referring to the value of the thing.
2. Right of the mortgage may also be provided in relation to the expected in the future or conditional claim if this claim might be determined to the of the appearance of the mortgage.

Article 268 Execution

1. The transfer to other persons of movable property endorsed in proportion to the need in securities, as well as other intangible property benefits shall be effected in the procedure established for their acquisition. If in relation to property there is a demand towards third persons, then when the right of pledge arises it is necessary that the third person be informed of the pledge of property.
2. The pledgee and the pledger may notarise the pledge. In this case the pledge shall arise after its registration in the public register, so that there is no need in the transfer of property and application to other creditors. The document must contain data of the person of the pledger, possible third persons - debtors, the pledgee, and also the amount of secured demand, profit and time of satisfaction.

Article 269 Surrogation

If demand is pledged and the debtor performs an obligation before the expiry of the time due, the performance shall replace the demand (surrogation).

Article 270 Acquisition of Pledge in Good Faith

If the transfer of the subject of pledge to another person is effected by means of the transfer of documents and the pledger possesses this property (right) by the time the pledge arises not having the right of pledge, the pledgee shall be considered to be an acquirer in good faith, if he is not aware or he could not be aware of that. This good faith shall provide him with advantage as compared with third persons.

Article 271 Purpose of Security

The pledge shall secure the demand and other supplementary rights related to it.

Article 272 Counterclaims by Pledgor

If a pledger simultaneously is not a personal debtor of the demand secured by pledge, still he may advance a counter-demand, that of the personal debtor, particularly if these counter-demands relate to compensation of monetary demands or appeal.

Article 273 Third Parties Security Rights

If a demand is secured simultaneously by the property of the debtor and third persons, third persons may demand that creditors first satisfy their demands from the debtor's property. Same rule shall apply in relation to a competent person, when the demand has been secured by various types of property and this competent person is entitled only to some of them.

Article 274 Extent of Pledge

The pledge shall extend to all property valuables, which include the subject of pledge owned.

Article 275 Maintenance, Danger of Destruction of Pledge

1. If the subject of pledge is secured by the transfer of possession, the pledgee shall be obliged to maintain it properly. He shall have the right to get profit due to the secured demand. He may demand from the pledger compensation for the expenses related to the subject of pledge.
2. If the pledgee fails to perform the duties laid on him properly, the pledger may demand that the subject be transferred to a third person.
3. If there is a danger of destruction of the pledged subject or essential reduction of its value, the pledger may demand that the subject be returned and offer another means of security. If the pledger fails to offer a new means of security the pledgee shall have the right to sell the subject of pledge. When selling the rules of selling the subject of pledge shall apply. The proceeds received shall replace the subject of pledge. Up to the expiration of the time of pledge this amount of money shall be kept with respective accrued items.

Article 276 Pledgor's Duty of Care

1. If the right of pledge is subject to registration the pledger shall keep the subject of pledge and maintain it properly.
2. If the pledger is supposed to fail to perform this obligation, the pledgee may demand that the subject of pledge be transferred to him. If it concerns a pledged right, which is subject to registration, the pledgee shall have the right to inform the debtor - a third person of the pledge. From the moment he was informed the debtor shall be obliged to perform the pledgee's demand on the expiry of the time due.

Article 277 Consent of Pledgee to Subsequent Pledge

For the subsequent pledge of the subject of pledge by the pledgee it shall be required to obtain a preliminary consent of the pledger.

Article 278 Consent for Transactions

It shall be required to obtain a preliminary consent of the pledgee for concluding transactions related to the subject of pledge.

Article 279 Multiple Pledge

One and the same property may be pledged several times. Priority shall be specified in accordance with the moment of pledge.

Article 280 Pledgee's Rights of Defence

If any hindrance have been created for the pledgee to exercise his right, he may exercise the rights in relation to the creator of hindrance similar to those of the owner.

Article 281 Accessory Character of Pledge

1. With the transfer of the demand to a third person the right of pledge shall also pass to a new creditor.
2. Each of third persons whose legal position may worsen as a consequence of alienation of the subject of pledge shall have the right to perform the demand and thus to acquire the right of pledge.
3. The subject of pledge cannot be transferred to another person without a transfer of the respective demand. If the transfer of demand excludes the transfer of the subject of pledge, the right of pledge no longer arises.

Article 282 Termination of Claim

The pledge shall terminate simultaneously with the claim for which it exists.

Article 283 Termination of Pledge

1. The pledge shall terminate when the pledgee announces to the pledger or the owner that he repudiates the subject of pledge.
2. If the pledge has been secured by the transfer of possession it shall terminate on its return to the pledger.

Article 284 Consolidation

The pledge shall terminate if it together with the ownership right proves to be in the hands of one person. This rule shall not apply until the rights of third persons are encumbered by the claim, which is secured by pledge.

Article 285 Duty to Deliver upon Termination

If the pledge terminates, the pledgee shall be obliged to give the subject of pledge back to the pledger or to the owner.

Article 286 Realisation

1. Satisfaction of the pledgee shall be effected by selling the subject of pledge or some other way of realisation of this subject.
2. The pledgee shall have the right to realise the subject if the time for complete or partial performance of a pecuniary demand comes.

Article 287 Prohibition against Forfeiture Agreement

The agreement by virtue of which the ownership of the subject of pledge passes to the pledgee if his demand is not satisfied or is not satisfied on time.

Article 288 Ambit of Right of Realisation

The right of realisation of the pledged property may be exercised by the pledgee only when it is required for satisfaction of his demand.

Article 289 Priority Ranking

If the subject has been pledged several times the right of demand of its realisation shall belong only to the pledgee whose right of pledge is prior to that of other persons. If he waives this right succeeding pledgees shall have this right.

Article 290 Transferral

1. The subject of pledge must be transferred to the pledgee who is entitled to realise this subject.
2. If realisation of a demand depends on effectuation of a legal action, the pledgee may demand from the pledger that this action be effectuated. If the pledger within two weeks fails to effectuate the pledgee's demand, the pledgee shall have the right to effectuate this action in the name of the pledger in relation to third persons.

Article 291 Notification

The pledgee shall be obliged to notify the owner in advance of the expected realisation of the subject showing herein the monetary sum to be received on its realisation. The realisation cannot be effectuated before the expiry of two weeks after the notification took place.

Article 292 Realisation by Auction Sale

1. The realisation of the subject of pledge by means of selling must be carried out via auction.
2. If the subject of pledge has a market or exchange value, the pledgee may entrust the sale of the subject to a special trade institution.

Article 293 Minimum Price

The subject of pledge cannot be alienated at the price lower than the price of the material. On the pledger's demand the sale price shall be fixed by the expert.

Article 294 Agreement on Ranking

1. The owner and the pledgee may agree on the sale of the subject in another order, different from that rendered in the present chapter. If a third person has the right to the subject of pledge, and in the result of its alienation this right terminates, the third person's consent shall be required for the alienation of this subject.
2. If this different order of sale of the subject of pledge complies with interests of parties, each of them may demand that the sale be effected in this order. If parties fail to come to an agreement, the decision is to be made by court.

Article 295 Participation of mortgagee and owner in the auction

The mortgagee and the owner may jointly take part in the auction. The price offered by the owner may be rejected if the amount is not brought by cash.

Article 296 Sale for cash

Subject of the mortgage may be sold only upon the condition that the purchaser immediately covers the amount in cash and that he shall lose his rights if he does not do this. Upon the sale without this condition the purchasing price shall be treated as the one that is received by the mortgagee; his rights in relation to the purchaser are not affected.

Article 297 Consequences of the legal alienation

1. The same rights shall be transferred to the purchaser by the legal alienation and by transfer of the subject of the mortgage in same way as if he would acquire the thing from the owner.
2. If the subject has been alienated as the subject of pledge so that the alienator has no right of pledge or if there was no need in realisation for the satisfaction of the demand, the acquirer in good faith shall still acquire the non-encumbered property.

Article 298 Means of Settling Claims

The realisation of claims shall be effected by payments of the debtor in favour of the creditor.

Article 299 Profit from the sale

When the subject of the mortgage was sold, the sum of money goes to the mortgagee in order to meet his claim and depending on the amount, the claim is considered as performed by the owner. The rest of the profit is treated as security, which replaces the mortgage.

Subsection 2 - Hypothec

Article 300 Definition

1. Immovable thing may be burdened in order to secure a claim in such a way that the person, for the benefit of whom the burdening is established, shall be granted the right to receive the satisfaction of his claim by means of this thing (hypothec).
2. Hypothec may be established in relation to the future or conditional claim, if to the moment of the establishment of the hypothec this claim could be determined.
3. The demand secured by hypothec may be replaced by another demand. For this purpose it shall be required to have an agreement between the owner and the creditor (hypothecian) and registration of this agreement in the register.

Article 301 Joint Hypothec

If, in order to secure the claim, the hypothec on several things (common hypothec) has been established, then each thing could be claimed upon the request in full extent. Creditor may, on its own decision, claim for the satisfaction generally or partially by means of each separate thing.

Article 302 Owner Hypothec

If the demand did not arise, was terminated or passed to the owner of an immovable property, the hypothec shall pass to him (the owner's hypothec).

Article 303 Registration of Hypothec

1. Hypothec shall arise as a result of registration in the public register. Registration shall be effected in the established procedure on presentation of an immovable property by the owner and of notarised documents by the hypothecian. They must contain data of the owner of the immovable property, the hypothecian, a supposed debtor - third person, and also volume of the secured demand, profit and time of performance.
2. The hypothec may be established also in such a way that the creditor's right that follows from hypothec be specified only in accordance with the demand and herein in order to confirm the existence of the demand the creditor could not make reference to registration. Such hypothec shall be shown in the register as a guarantee (securing) hypothec. Hypothec for greater amounts may be only guarantee.

Article 304 Several Hypothecs

1. One and the same immovable property may be encumbered by hypothec several times. Priority shall be established in accordance with the time of establishing hypothec.
2. If the owner of an immovable property takes an obligation before the other person to terminate hypothec, if the hypothec proves to be together with property in the hands of one person, this obligation may be registered in the public register.

Article 305 Rights of Land Owner against Hypothec Creditor

1. If the owner of an immovable property simultaneously is not a personal debtor of the obligation secured by hypothec, he still may make a counter-demand to the hypothecian, the right which belongs only to a personal debtor, in particular, these are counter-demands related to compensation of monetary obligations and appeal against the demand.
2. If the time for performing a demand depends on termination of interrelations, the termination shall be valid only in case the owner announces it to the creditor or the creditor does it to the owner.

Article 306 Owners' Right to Service Hypothec

1. The owner of an immovable property shall have the right to satisfy the creditor, when the time of performance has already come or the personal debtor shall have the right to perform a respective action.
2. If the owner is not a personal debtor, the demand shall pass to him only after the owner satisfies the creditor.
3. On satisfying the creditor the owner may demand for the documents, required for adjustments to be made in the public register or termination of hypothec.

Article 307 Ambit of Hypothec

1. Hypothec shall extend to the fruits of the immovable property, unless they are obtained as a result of normal economic activity and still are not alienated.
2. By virtue of hypothec interest on demand and court expenses shall be covered at the expense of immovable property.

Article 308 Duty to Maintain Property

1. The owner shall be obliged to accept a real value of property. If due to worsening security circumstances of hypothec there is a threat, the creditor may determine a respective period for the owner to prevent this threat.
2. If property is insured, the insurance organisation may make after the circumstances have worsened insurance payments to the insured only when the creditor has already been communicated of the damage as fait accompli. The creditor may impede the payment to be made, unless he is sure that the payment will be used for the restoration of property.
3. If it becomes clear that the owner is unable to perform his duties, the creditor shall have the right to demand that the management of property be handed over to him. The decision on such demands shall be taken by court.
4. The agreement in accordance with which the owner takes an obligation not to alienate, not to use, or not to encumber this property by some other way shall be void. Validity of such a transaction for third persons cannot depend on the creditors' consent.

Article 309 Accessory Character of Hypothec

Hypothec and the demand as its ground may be transferred to another person only simultaneously and jointly. With the transfer of the demand to a new creditor the hypothec shall pass to the creditor as well. The transfer of the demand shall be considered to be valid only on condition that the notarised document on hypothec is transferred to a new creditor and it is registered in the public register as new creditor.

Article 310 Transfer of Claim to Subsequent Creditors

If after the transfer of the demand to a new creditor the debtor pays off to the former one, this payment does not exempt him from his obligation before the creditor also in the case if he was unaware of the transfer.

Article 311 Validity of Register Data

Hypothec and demand also pass to a new creditor, as it was with the former one. The data registered in the public register proceeding from the creditor's interests shall be considered to be correct. In this case the debtor cannot make references to the fact that such a demand does not exist. This rule shall not apply if a new creditor was aware of the incorrect records in the register.

Article 312 Third Party Rights to Service Hypothec

1. Any third person whose position has worsened due to the realisation of hypothec shall have the right to perform the demand and thus to transfer hypothec to himself. When satisfying the creditor he may demand respectively for the notarised documents and registration of himself as hypothecian.
2. If a personal debtor satisfies the creditor, hypothec shall pass to him and he may demand for compensation on the part of the owner.

Article 313 Creditors Renunciation of Hypothec

1. If the creditor repudiates the demand or hypothec, the hypothecian shall become an owner. Repudiation may have legal force provided it is registered in the public register.
2. If the creditor repudiates hypothec but not demand, the personal debtor shall be nevertheless free, if he in his turn could get compensation from hypothec.
3. If the owner is entitled to contesting, which excludes a continuous use of hypothec, he may demand from the creditor that he repudiate hypothec.

Article 314 Rights of Hypothec Creditor upon Delay

1. If the debtor delays satisfaction of the demand secured by hypothec, the hypothecian shall have the right to demand that the immovable property be realised.
2. Realisation shall be implemented in accordance with the rules and norms of the civil procedural code rendered in the present article. The norms of this code shall apply as special norms.

Article 315 Hypothec Creditors Application for Compulsory Sale

1. Compulsory sale via auction shall be effected by court on the basis of the creditor's application; the court shall nominate a specialist (an expert).
2. The court decision shall be made public. Besides, court shall be obliged to communicate the authorised persons from the register of the coming auction.

Article 316 Court Order for Alternative Form of a Realisation

1. Court may proceeding from the owner's and creditor's joint application establish another form of realisation. Before taking such decision court must hear two parties.
2. The agreement by virtue of which the ownership of immovable property passes to the creditor unless he is satisfied or satisfied not in full shall be void.

Article 317 Consequences of Compulsory Order for Sale

1. After the decision related to the sale of property is taken the debtor shall lose the right to keep fruits of the property.
2. If the debtor himself or with his family lives in the building or part of it, encumbered by hypothec, he shall remain a tenant and must pay for the rent in accordance with market conditions.

Article 318 Right to Object to Compulsory Sale

1. The owner or third person whose rights may be impaired as a result of auction shall have the right to prevent auction by means of satisfying the demand.
2. The auction may be suspended maximum for the period of six months by making an application to court, if the competent person finds that by postponing the auction may be prevented and if proceeding from personal and economic interrelations of the owner, or in accordance with the nature of debt, the suspense is acceptable. The application shall be subject to satisfying, unless the suspense entails favourable results for the creditor.

Article 319 Right to Bid at Sale

Creditors, debtors and owners shall be entitled to place bids at the sale, although debtors and creditors must deposit such a security or other guarantee as appears reasonable to the expert.

Article 320 Lowest Bid

If during the first auction there will be no offer reaching 70% of the value of property estimated by an expert, the auction must be held anew. The second auction must be announced in the similar form, but it must be indicated that it will be the second auction. During the second auction the minimum price must be sufficient at least to cover the process expenditures and the creditor's demands. If it does not take place, auction shall not be held. The expenditures related to auction shall be laid on the owner.

Article 321 Duty of Purchaser at Auction

1. The buyer of the subject of auction shall be obliged to hand over to the expert who has effected compelling performance the purchasing price, from which the expenses connected with the performance are deducted.
2. The buyer shall become the owner of the subject only after payment has been made.
3. As a result of the transfer of ownership all hypothecs and property rights which encumbered this property and which were registered after the hypothec of the creditor who has implemented the compelling performance shall terminate. All other restricted rights to property shall remain unchanged.
4. The new owner shall become a participant of the lease and rent relations effective on the moment of transfer. Due to the transfer the former owner shall be considered to be a tenant in accordance with market conditions.

Article 322 Settlement of Creditor's Claims

1. If a person authorised to realise property has been registered a sole hypothecian or the proceeds obtained from the auction less expenditures cover all the creditors' demands, the expert defines the expenditures more precisely and distributes the purchasing price among the creditors.. The balance shall be handed over to the person whose property has been sold.
2. If the purchasing price is not sufficient for satisfaction of all the demands secured by hypothec, the expert defines the expenditures more precisely, deposits the balance on a special account, compiles a distribution plan in accordance with the list of records in the register and submits it to the court. The court shall approve this plan and instruct the experts to effect distribution on the basis of this plan.

Article 323 Vicarious Liability of Estate

If an officially nominated expert fails to perform duties laid on him in connection with the auctioning, responsibility for the damage incurred due to this failure shall be taken jointly by the state and the expert.

Article 324 Court Order for Compulsory Administration of Property

1. On the basis of the application of the hypothecian authorised for compelling performance the court may replace a compelling alienation of property via auction by a compelling management of property. In such cases court shall nominate the manager or transfer managerial functions to the owner.
2. Before taking a decision court must listen to the persons registered in the public register whose rights may be impaired by compelling management.
3. Compelling management may be established only in case if it is supposed that the effectuation of such management may result in excess of revenue over current management expenses.

4. If a debtor by himself or with his family lives in the building or its part over which a compelling management has been established, he must pay his rent commensurate with market conditions.
5. The manager shall receive fruits of property and proceeding from the distribution plan approved by court and at the end of year he shall distribute them less all the expenditures, management expenses included.
6. The compelling management shall be subject to termination in case if the creditor is satisfied or it becomes clear that such management will not succeed in satisfying creditors.

Subsection 3 - Public register

Article 325 Maintenance of Public Registers

1. Public Registers with rights of access to the public are to be established in which property rights in land and other rights over immovables must be registered and in which usufructs, security and other rights over movable things and immaterial rights may be registered.
2. A separate statute will regulate the organisation of the register.

Article 326 Presumption of Authenticity

1. In relation to the register data presumption of authenticity and completeness shall apply, in other words, the record in the register shall be considered authentic until its inaccuracy is proved.
2. The record in the register shall be considered to be authentic in favour of the person acquiring on the basis of a transaction from another person some right fixed in the register in the name of the alienator, except for the cases when this record has been contested or the acquirer was aware of its inaccuracy.

Article 327 Amendment of Register

1. If the register includes in the name of a person a record relating to the right which no longer belong to him, the person, whose rights and legal status have been impaired as a result of such registration, may demand for the consent from the person whose rights are involved to make respective corrections in the register.
2. An appeal against the authenticity of the register may be registered by injunction or with the consent of the person whose right is affected through correction of the register. Prima facie proof the error in the register shall be necessary where an application for interim relief is made.

Article 328 Ranking

1. The priority of rights fixed in the register shall be specified according to the succession of time for their registration. The date of registration shall be considered the day when the application on registration was presented.

2. The priority may later on be changed. For this purpose it shall be required to present the consent of persons exchanging order of priority and registration of this change in the register.
3. 3. In event of registering this or that right the owner may make a proviso related to the order of priority in registration of his rights. This proviso shall be also subject to registering.

Article 329 Priority Notice

1. A preliminary recording may be made in the register to provide the demand for registration of the right to the property registered. Such recording shall be permitted in order to provide future or conditional demands.
2. The registration effected after a preliminary recording shall not have any impact on the person, protected by the preliminary registration, unless this registration impairs or terminates his demand.
3. Registration of the preliminary recording shall be made with an aim to identify the owner with the permission of the person in relation to whose property the recording is being made.
4. If the person, in relation to whose property recording is being made, shall have the right of protest and this protest excludes enjoyment of the property secured by a preliminary recording during a continuous time, he may demand from the creditor that the preliminary recording be abolished.
5. If the acquisition of some right is invalid for the person in whose favour this recording has been made, he may demand from the acquirer for the consent to registration; the consent shall be required for effectuation of the demand secured by a preliminary recording.