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Security Interest Law in Panama

Alfredo Ramirez, Jr. and Michelle Martinelli***

The main security interests that a creditor has available in Panama are the mortgage and the antichresis on real property, regulated by the Civil Code of 1917, which is based on the Colombian and Spanish Civil Codes, and the pledge on chattel property, regulated by the Commercial Code as supplemented by the Civil Code. Other security interests include: the chattel mortgage, regulated by Law Decree No. 2 of 1955; mortgages on vessels, regulated by the Commercial Code and supplemented by the Civil Code; and mortgages on aircraft, regulated by Law Decree No. 19 of 1963 and supplemented by applicable chattel provisions to the Code of International Private Law of 1928 (Código Bustamante). In relation with countries that are also a party, the provisions of the Código Bustamante may be applicable in matters such as mortgages on vessels and enforcement of securities.

The aforesaid securities to guarantee the performance of a principal obligation. Also, real rights that arise from the securities allow the creditor to dispose of the property subject to the security in accordance with the Law and to satisfy the debt with the sale proceeds¹ with preference over other creditors.² The person creating the mortgage or pledge shall own the property and shall be capable of disposing of it or otherwise shall be a representative legally authorized to do so.³ Lastly, third parties may secure obligations by mortgaging or pledging their properties.⁴

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1. Código Civil [C. civ.] art. 1563 (5th ed. EDITORIAL MIZRACHI & PUJOL, S.A. 1995) (Pan.).
 2. *Id.* art. 1660 (2), 1661 (3).
 3. *Id.* art. 1548 (2) (3).
 4. *Id.* art. 1548 (3).
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I. Securities.

A. TYPES OF SECURITIES.

The mortgage on real estate secures the performance of a principal obligation regardless of the owner or possessor of the property.⁵ Mortgages may secure future obligations or those obligations subject to the occurrence of a future condition. In these case, in order to affect third parties, it is necessary to make a notation in the Registry once the obligation comes into effect or the condition occurs.⁶

Real estate and real property rights can be mortgaged. In addition, the following may be mortgaged, subject to the restrictions established by Law:⁷

- * buildings on the land of another;
- * the right to receive the fruits in usufruct;
- * the mere property (owner having title without right of possession or use);
- * property previously mortgaged, without prejudice to the rights of the prior mortgagee;
- * the right of surface, of pasture, water, woods, and other similar real property interests;
- * railroads, tramway, channels, ports, elevators, deposits, drainages, sewers, subways, urbanization, electric wiring for gas, electric and hydraulic energy, telegraphs, telephone and other works for public and private service use, and the concessions awarded by the Government or municipal authorities for the construction and exploitation of the aforesaid works for ten years or more;
- * properties belonging to persons not capable of disposal, if done according to the law;
- * the right of mortgage; and
- * property in litigation, if the complaint has been previously registered.

The following properties may not be mortgaged:⁸

- * future rents and crops, unless mortgaged together with the land producing them;
- * chattel properties attached to buildings if not mortgaged with the obligations and shares of banks, companies and corporations of any kind;
- * real rights on properties to be acquired in the future if not recorded;
- * easements of access, unless they be mortgaged jointly with the dominant property;
- * use and habitation of dwellings; and
- * mines where title of concession has not been awarded, even if situated on one's own land.

B. SCOPE OF THE MORTGAGE.

The mortgage extends to the natural accessions, to the improvements, to the pending benefits and income not received upon termination of the obligation, and to the amount of any indemnification granted or owed to the owner by insurers of mortgaged properties or by virtue of expropriation by eminent domain.⁹

5. *Id.* art. 1566.

6. *Id.* art. 1591.

7. *Id.* art. 1568.

8. *Id.* art. 1569.

9. *Id.* art. 1571.

When several properties are mortgaged together for a single credit, the amount or share of the lien for which each property is liable may be allocated by the parties. In the absence of the aforesaid allocation, the creditor may bring an recovery action for of the totality of the secured amount against any or all of the properties at the same time.¹⁰ The mortgage shall remain upon all the mortgaged properties, even if the secured obligation is reduced.¹¹

C. STATUTE OF LIMITATIONS.

The statute of limitations varies depending upon the nature of the principal obligation.

D. REQUIREMENTS FOR REGISTRATION.

To create a mortgage and have it affect third parties, it must be established through a Public Deed recorded in the pertinent section of the Public Registry.¹² Likewise, all acts or agreements, which may modify or affect an obligation subject to a mortgage, such as payment, compensation or extensions, will affect third parties only after it is recorded in the Public Registry.¹³

E. ASSIGNMENT OF MORTGAGES.

A mortgage may be assigned, in whole or in part, to a third party provided it is executed by means of a Public Deed, is known by the debtor, and is recorded in the Public Registry.¹⁴

The antichresis is a real right that allows the creditor both to receive the rent and other fruits of a real estate and to apply them toward payment of interest and principal.¹⁵ In case of default, the creditor secured by the antichresis, is entitled to cancel the credit with the judicial sale proceeds of the property in a manner similar to that provided for mortgage creditors.¹⁶

The pledge is a security interest in personal property to secure performance of an obligation.¹⁷ The secured creditor is allowed to satisfy his credit with the sale proceeds of the property with preference over other creditors.¹⁸ Third parties may also pledge to secure a principal obligation.¹⁹ Possession of the property must be given to the creditor or to a third party appointed as the depository.²⁰ The pledge will be null and void if the owner retains possession. Neither the creditor nor the depository are allowed to use the property without the consent of the owner.²¹

10. *Id.* art. 1572.

11. *Id.* art. 1575.

12. *Id.* art. 1595.

13. *Id.* art. 1593.

14. *Id.* art. 1598.

15. *Id.* art. 1622.

16. *Id.* art. 1625.

17. *Id.* art. 1548.

18. *Id.* art. 1563.

19. *Id.* art. 1548.

20. *Id.* art. 1554.

21. *Id.* art. 1561.

The creditor or depository shall perform all the necessary acts for the conservation of the property under pledge and shall be liable for the loss or deterioration thereof, unless they show that the loss or damage is not attributable to them.²² The secured creditor is only required to return the property upon full payment of the secured debt plus the expenses incurred for its conservation.²³

A chattel mortgage subjects personal properties to the performance of an obligation while allowing the debtor to retain possession.²⁴ However, only those personal properties that can be fully described and identified can be mortgaged.²⁵ In addition, there cannot be preexisting mortgages or pledges on the property.²⁶ For example, personal property that by its special nature has been incorporated into a mortgaged real estate cannot be subject to a mortgage.²⁷ These mortgage contracts must be executed by means of a Public Deed when the or greater than U.S. \$4,000.²⁸ Furthermore, although the owner retains possession, he is not allowed to sell, pledge, mortgage, or in any other manner, assign or create a lien on the property.²⁹ The owner must not only use the property without diminishing its value but also maintain it in good condition.³⁰

Those vessels eligible for registration in the Panamanian Registry can be mortgaged under similar rules as those established for mortgages on real estate.³¹ Since Panama has one of the largest maritime fleets in the world, both in terms of net tons and number of vessels registered, mortgages on vessels are quite common. Such mortgages must be created by means of a Public Deed and registered in the pertinent section of the Public Registry.³² However, the Law allows the rapid creation of preliminary mortgages abroad through specially empowered Merchant Maritime Fleet Consuls.³³ In such cases, the mortgage shall be effective for a period of six months, during which the interested party must file the documents in the Public Registry in Panama for final registration.³⁴ Owners of vessels temporarily registered under the Panamanian Flag, whose property title has not yet been registered in the Public Registry, may mortgage their vessels. As soon as title is registered in the Public Registry, the mortgage must also be recorded in order to affect third parties.³⁵ Vessels already mortgaged may be subject to additional mortgages that will be registered with the corresponding priority.³⁶

22. *Id.* art. 1558.

23. *Id.* art. 1562.

24. Law Decree No. 2 of May 24, 1955, G.O. 12,679 of June 2, 1955, modified by law No. 78 of Sept. 19, 1978, G.O. 18,687 of Oct. 20, 1978, art. 2 (Pan.).

25. C. civ. art. 1567 (3).

26. Law Decree No. 2 of May 24, 1955 art. 3.

27. *Id.* art. 4.

28. *Id.* art. 21.

29. *Id.* art. 6.

30. *Id.* art. 22.

31. Código Comercial [C. com.] art. 1512 (5th ed. EDITORIAL MIZRACHI & PUJOL, S.A. 1996) (Pan.).

32. C. civ. art. 1595.

33. C. com. art. 1512-A.

34. *Id.* art. 1512-C.

35. *Id.* art. 1513.

36. *Id.* art. 1512-E.

Mortgage contracts executed inside or outside the Republic of Panama must be executed in writing, in any language, either by means of a Public Deed or a private document. If done by means of a private document, it must be authenticated by a Public Notary, by a Consul of the Republic of Panama, or by apostille in accordance with the Hague Convention.³⁷ The contract should be executed observing the formalities of the country where it is signed.³⁸ The mortgage will only affect third parties from the date it is filed with the Public Registry.³⁹ A mortgage may be created to secure future or contingent obligations provided that the fixed or maximum principal amount secured is specified. Mortgages cannot secure indefinite amounts.⁴⁰

A vessel of Panamanian flag subject to a mortgage may not be taken out of said registry unless the mortgage is first canceled or the creditor gives his written authorization. In cases where the vessel is to be taken out of the Panamanian Registry ex officio by Panamanian authorities due to criminal activities or other serious violations of the Law, mortgagees shall receive sixty days advance notice so that they may enforce their mortgages or take any other measures they may deem necessary to protect their rights.

In order to secure loans, farmers and ranchers may pledge machinery, equipment, and goods destined for agriculture. They may also pledge animals and their by-products and crops of any nature, either pending or already harvested, including timber.⁴¹ The farmer or rancher retains possession of the property as depository and cannot dispose, sell or in any manner encumber it.⁴² Additionally, the property cannot be removed from the farm on which it was located at the moment the pledge was created without the creditor's authorization.⁴³ In case of default, the creditor is entitled to cancel its debt with the sale proceeds of the property under pledge with preference over other creditors.⁴⁴

The agrarian pledge must be recorded in the Public Registry and in a special registry maintained by the authorities of the Province in which they are located.⁴⁵ After the contract has been registered, the creditor will receive a "pledge certificate"⁴⁶ which can be negotiated by endorsement.⁴⁷

Individual aircraft and entire fleets may be mortgaged. Such mortgages shall be registered in the Public Registry. The mortgage will affect third parties from the date of registration. The Law treats aircrafts as chattel property.

37. *Id.* art. 1515.

38. *Id.*

39. *Id.*

40. C. civ. art. 1591, 1774.

41. Law No. 22 of Feb. 15, 1952, G.O. 11,727 of Mar. 11, 1952, art. 1 (Pan.).

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

II. Foreign Investment.

Panamanians and foreigners are equal under the Law. However, the Law may impose special conditions or deny the exercise of certain activities to foreigners.⁴⁸ For example, the National Constitution specifically provides that foreigners are not entitled to acquire lands located less than ten km from the national borders.⁴⁹

The Law does not contemplate special requirements for a foreign creditor to create a security interest in property located in Panama. Neither the creation of such security nor the filing of judicial proceedings to enforce the security require the foreign creditor, who does not operate locally, to register in Panama. However, foreign legal entities operating in Panama must register in the Public Registry.⁵⁰ Failure to do so prevents them from filing judicial proceedings in order to enforce a security.⁵¹

A foreign creditor need not appear personally in Panama, but may do so through a duly appointed representative. In cases where the creditor is a legal entity, it must prove its existence through a Certificate of Good Standing or an equivalent document. Likewise, the capacity of the individual acting on its behalf must be evidenced through a Certificate of Incumbency or an equivalent document.⁵²

All documents issued abroad for the purpose of filing with the Public Registry or local courts must be duly authenticated by a Panamanian Consul, or in the absence thereof, by the Consul of a friendly nation or by means of an apostille pursuant to the Hague Convention. If the documents are not in the Spanish language, they must be translated by an Official Public Translator.⁵³

III. Exchange Control.

Panama does not have a central bank or financial or capital restrictions. The right to issue currency belongs to the State, which has exercised its right by issuing coins for the purpose of keeping a small proportion of the total money in circulation in local currency. Panama does not have a mandatory legal currency. The national currency, the balboa, is at par with the U.S. dollar, which circulates freely as legal tender. By means of an agreement entered into in 1904, the governments of the United States and Panama agreed that the monetary system used in the Republic of Panama and the former Canal Zone were to be the same. The aforesaid agreement was approved by Panama by means of Decree No. 74 of 6 December 1904, and it is still in effect.

By virtue of the foregoing, no exchange controls are applicable to a loan contract, advances by the lender, repayments of principal or interest by the borrowers, or to the enforcement of the security. Nationals and residents in Panama may request loans in the currency they wish.⁵⁴ Any form of payment, including both conventional payments and

48. Constitución Política de la República de Panamá [Constitution] art. 20 (Pan.).

49. *Id.* at art. 286.

50. Law No. 32 of Feb. 26, 1927, G.O. 5,067 of Mar. 16, 1927 art. 90 (Pan.).

51. *Id.* art. 91.

52. Código Judicial [C. Jud.] art. 647 (5th ed. EDITORIAL MIZRACHI & PUJOL, S.A. 1993) (Pan.).

53. *Id.* art. 864.

54. C. com. art. 805.

those made through the enforcement of a security, may be made in any currency agreed upon between the parties.

Finally, the Judicial Code provides that if a determined obligation is in foreign currency, the execution, at the creditor's option, may be brought in the aforesaid currency, or by the equivalent legal tender of Panama, in accordance with the exchange rate valid at the time of filing of the lawsuit, as per certification issued by Banco Nacional.⁵⁵

The Panamanian income tax system is strictly territorial. All income produced within the country is subject to taxation regardless of the nationality, domicile or residence of the beneficiary, where the contract was executed, or where the payment received.⁵⁶ Therefore, interest and other income derived from loans economically invested in Panama are taxable. Likewise, interest paid on loans to borrowers domiciled abroad would not be subject to income tax provided that the funds are used outside of Panama, even if principal and interest is paid locally.

Interest, commissions, or other income produced by taxable loans remitted to creditors domiciled abroad are subject to a withholding of six percent by the person making the remittance.⁵⁷ The tax withheld shall be sent to the Internal Revenue Office within fifteen days.⁵⁸ The creditor domiciled abroad is not required to file income tax returns.

Documents evidencing loans and other contracts or obligations upon which no special tax is levied shall pay a stamp tax of U.S. \$10 per U.S. \$100 or fraction thereof on the value stated in the document.⁵⁹ Mortgages and other documents contained in a Public Deed must be executed in stamped paper fees with a value of U.S. \$4 per page. Preparation of the Deed will require payment of notary fees. No stamp tax will be levied if the amount paid in stamped paper exceeds the stamp tax that would have been levied; otherwise, the stamp tax would be levied only on the difference.

Registration in the Public Registry of mortgages on real estate and antichresis results in fees of U.S. \$20 per U.S. \$100 or fraction thereof of the value of the obligation secured. Pledges are not required to be registered, therefore, there would be no fee. However, since the pledge should be authenticated by a Notary Public, notarial fees must be paid.

The registration fees for mortgages on vessels are U.S. \$10 per net ton or registered ton and in no case should they exceed the sum of U.S. \$500. The preliminary registration of mortgages on vessels imposes the following fees:

- * for the first U.S. \$2m of the total amount of the mortgage: U.S. \$450;
- * per each additional million or fraction thereof: U.S. \$150 up to a limit of U.S. \$1,200.

When the preliminary registration is done through a Panamanian Consul, a U.S. \$750 handling charge will be imposed per each transaction. Chattel mortgages, mortgages on aircraft, and agrarian pledges are also subject to registration fees. All documents filed with the Public Registry also pay a 20 percent surcharge on the corresponding registration fee.⁶⁰

55. C. Jud. art. 1640 (6).

56. Código Fiscal [C. Fiscal] art. 694. (Pan.).

57. *Id.* art. 701 (h).

58. Executive Decree No. 170 of 1993, art. 116 (Pan.).

59. C. Fiscal art. 967(2).

60. Law No. 47 of Aug. 8, 1975, G.O. 17,909 of Aug. 21, 1975, art. 1 (Pan.).

IV. Registration Reporting.

Occasional and sporadic loans made by private parties, whether national or foreign, are not regulated. Therefore, such loans are not subject to any special registration requirements. Mortgages and antichresis, as well as any other acts pursuant to which they are modified or canceled, must be recorded in the pertinent sections of the Public Registry.⁶¹ Pledges need not be contained in a Public Deed nor recorded in the public Registry. However, in order to affect third parties, they must be given a date certain by Notary Public.⁶² Agrarian pledges must be registered in the Public Registry and in a special registry maintained by the authorities of the province in which they are located, called "The Book of Registry of the Agrarian Pledge."⁶³ In case of a judicial sale of mortgages and antichresis, the resulting transfer must be recorded in the Public Registry.

V. Publicity.

Records of all securities contained in a Public Deed are maintained by a Notary Public.⁶⁴ They will issue official copies of the Deeds to any person who request them.⁶⁵ Furthermore, notice of mortgages and antichresis is given to third parties through registration in the Public Registry and such acts affect and are enforceable vis-a-vis third parties from the date of filing.⁶⁶ All documents recorded in the Public Registry become a matter of public record. Furthermore, upon request, the Public Registry issues official certificates regarding the matters recorded.⁶⁷

The loan performed occasionally or sporadically by a private party, whether national or foreign, is not a regulated business. There are no special requirements or qualifications that must be complied with by the lender to make the loan, take the security, or enforce it. However, companies engaged in banking, savings, consumer loans, and other financial related activities in Panama are regulated by special laws.

VI. Formalities.

Loan documents and other contracts may be executed in the language agreed upon by the parties. However, those documents executed by means of a Public Deed, must be written in the Spanish language. Whenever one or more of the parties is not fluent in Spanish, the Notary will require that said party or parties be assisted by an official translator.⁶⁸

Mortgages on real estate, vessels and aircrafts, agrarian pledge, antichresis, as well as chattel mortgages in excess of U.S.\$4,000 must be executed in a Public Deed. Pledges should be authenticated by a Public Notary in order to affect third parties.⁶⁹

61. C. civ. art. 1590, 1593, 1595, 1622 (b).

62. *Id.* art. 1536.

63. Law No. 22 of Feb. 15, 1952, art. 4.

64. C. civ. art. 1720.

65. *Id.* art. 1752.

66. *Id.* art. 1761.

67. *Id.* art. 1753.

68. *Id.* art. 1746.

69. *Id.* art. 1556.

VII. Priorities.

All mortgages are ranked by their registration date in the Public Registry. The registration date relates back to the moment the Deed was filed in the Journal Book of the Public Registry.

Panamanian law allows the creation of a mortgage upon real estate previously mortgaged, without prejudice to the preferential rights of the pre-existent mortgagee.⁷⁰ Taxes levied on the real estate and credits in favor of its insurers for two year premiums have priority over creditors secured by a real estate mortgage or antichresis.⁷¹

No further securities can be created on properties already pledged. Possession of pledged property cannot be retained by the owner.⁷² Claims arising out of the construction, repair, maintenance, or sale price of a chattel property have priority over a creditor secured by a pledge thereon.⁷³

Payment of expenses caused by the deposit, administration, and auction of a property secured by an agrarian pledge, as well as any taxes owed on the property, have preference over the creditor so secured.⁷⁴

Payments of costs associated with the assistance and salvage of an aircraft, as well as those associated with its maintenance, have priority over a creditor secured by a mortgage.

With respect to mortgages on vessels, the following claims have priority over a secured creditor:

- * tonnage taxes owed to the Government;
- * legal expenses incurred for the common benefit of maritime creditors;⁷⁵
- * the expenses, indemnifications, and salaries incurred for the assistance and salvage of the vessels during the last voyage;⁷⁶
- * salaries, payments, and indemnifications owed to the captain and crew for the last voyage;⁷⁷
- * salaries and expenses owed to longshoremen and dock workers, directly hired by the owner or captain, for loading and unloading the vessel during its last arrival;⁷⁸
- * indemnification owed for damages caused by negligence;⁷⁹ and
- * amounts owed in general average.⁸⁰

70. *Id.* art. 1568 (4).

71. *Id.* art. 1661.

72. *Id.* art. 1554.

73. *Id.* art. 1660 (1).

74. Law No. 22 of Feb. 15, 1952, art. 2.

75. C. com. art. 1507 (1).

76. *Id.* art. 1507 (2).

77. *Id.* art. 1507 (3).

78. *Id.* art. 1507 (4).

79. *Id.* art. 1507 (5).

80. *Id.* art. 1507 (6).

VIII. Choice of Law and Forum.

Choice of law provisions are valid provided that the applicable foreign law does not contravene Panamanian public policy.⁸¹ However, securities on properties located in Pennant will be governed by, and construed in accordance with, Panamanian Law.⁸²

Submission to the jurisdiction of foreign courts for the resolution of disputes arising out of securities on property located in Panama will not be recognized by Panamanian courts; however, said securities will be enforced by local courts.

IX. Enforcement of Foreign Judgments.

Judgments rendered by foreign courts and foreign arbitration awards shall include public judgments of Panama, the force granted by the respective agreements or treaties. In the absence of special treaties entered into with the State wherein the judgment has been rendered, judgments may be enforced in Panama, unless there is evidence that in the aforesaid State, judgments issued by Panamanian courts are not enforced.⁸³

Except as otherwise provided in special treaties, no judgments rendered in a foreign jurisdiction may be executed in Panamá, unless they comply with the following requirements:⁸⁴

- * that the judgment had been rendered as a result of the exercise of a personal action (*actio in personam*), except as stipulated by the law with respect to succession proceedings filed in foreign countries;
- * that it had not been rendered by default (under contempt of court); that is, that the complaint had not been personally served to the defendant within the jurisdiction of the Court where the action was filed, unless the defendant, in contempt, requests the execution;
- * that the obligation to be enforced be lawful in Panama; and
- * that the copy of the judgment be authentic.

The request to declare whether or not a judgement from a foreign court may be enforced shall be filed before the Supreme Court of Justice unless, pursuant to the respective treaties, another court is competent.⁸⁵ The court shall serve a five day notice on the defendant and on the Attorney General of the Nation. If all were in agreement that the same must be enforced, the court shall decree it.⁸⁶ If the parties were not in agreement and there were facts to be proven, the court shall grant a term of three days to announce evidence, and fifteen days to produce such evidence, and may grant additional time to gather evidence abroad. Having expired said terms, the court shall hear the parties, giving successively to each one a period of three days, after which it shall decide whether or not to enforce the judgment.⁸⁷ If the court decides that the judgment must be enforced, its enforcement shall be requested before the appropriate court.⁸⁸

81. Law No. 15 of Sept. 26, 1928, G.O. 5,428 of Jan. 7, 1929, art. 186 & 175 (Pan.).

82. *Id.* Ch. III.

83. C. Jud. art. 1409.

84. *Id.*

85. *Id.* art. 1410.

86. *Id.* art. 1410.

87. *Id.* art. 1410.

88. *Id.* art. 1410.

XI. Remedies and Enforcement.

Foreclosure of a mortgage requires the filing of a complaint before a Circuit court through a special executive proceeding. The complaint includes the Public deed whereby the mortgage was created and a certificate issued by the Public Registry confirming the existence of the mortgage.⁸⁹

The judge shall issue an executory writ ordering the payment of the amount owed court costs. This writ shall be served on the debtor.⁹⁰ The attachment order shall be recorded in the Public Registry.⁹¹ The property then will be out of commerce and cannot be sold or transferred until an auction or release of the property by means of the payment of the debt.⁹²

The debtor has eight working days within which to file any defenses.⁹³ However, the debtor commonly waives in the contract all defenses except payment and the statute of limitations.⁹⁴ In such cases, the proceedings are brief and are concluded rapidly.

It may be agreed upon that while the sale of the property is taking place, the creditor may be in charge of the management of the property. In this case, the judge may order that the creditor be given possession of the property.⁹⁵

The "base" of the auction shall be the value stated in the deed. If no value is stated, the property must be valued by the court in accordance with its recorded value if it requires payment of taxes to the Treasury.⁹⁶ If such is not the case, the property will be appraised in accordance with the estimate given by the debtor under oath or through experts.⁹⁷

At the first auction the court will accept bids not less than two thirds of the "base." If no bid for that amount exists, the Court will call a new auction at which time bids for no less than half of the "base" value will be accepted. If there are no bids for half of the "base" value at the second auction, the next auction will take place the following day without any notice and the court will accept bids for any amount.⁹⁸ The executing creditor can submit bids for the account of its credits provided that such bids cover the "base" of the auction.⁹⁹

If the debt and court expenses are not fully covered with the proceeds of the auction, the executing creditor may increase the execution to include additional assets of the debtor. These additional assets will be embargoed and auctioned in accordance with the same procedure.¹⁰⁰

89. *Id.* art. 1758.

90. *Id.* art. 1761.

91. *Id.* art. 1763.

92. *Id.* art. 1671 (a).

93. *Id.* art. 1706.

94. C. civ. art. 1602.

95. C. Jud. art. 1764.

96. *Id.* art. 1681.

97. *Id.* art. 1677.

98. *Id.* art. 1740.

99. *Id.* art. 1747.

100. *Id.* art. 1748.

Once the property is awarded to the buyer, the court will order the Public Registry to register the property in the buyer's name free of all liens and encumbrances.¹⁰¹ If the property is subject to other mortgages, the creditor shall be required to notify the other mortgages. Where the executing creditor filing the complaint is not the holder of the first mortgage, the creditors holding preexisting mortgages must be notified so that they exercise their preferential rights to the proceeds.¹⁰² However, if the creditor is the holder of the first mortgage, the intervention of other secured creditors shall not suspend the auction or the payment.¹⁰³ In the aforesaid cases, the court shall issue a writ establishing priority and apportioning rights among the other creditors for any remaining proceeds of the auction.¹⁰⁴

In cases concerning a pledge, the creditor shall file a complaint together with the document evidencing the pledge.¹⁰⁵ The court shall issue an executory writ demanding payment of the principal, accrued interest, and courts cost within five working days.¹⁰⁶ The defendant may file any available defenses. No waiver of defenses is allowed.¹⁰⁷ Thereafter, the court will fix a date for an auction pursuant to a procedure similar to the one described for mortgages on real estate.¹⁰⁸ However, the pledge agreement may establish a special method of disposing of the property subject to the pledge.¹⁰⁹

In the event that the pledge consists of titles or an instrument negotiable in stock exchanges or public markets, the sale may be made through a broker, with prior notice to the debtor, at the quoted price as of the date of sale. The pledge shall be appraised by two brokers appointed by the parties, by a third party appointed in the event that two brokers fail to agree, or by the judicial authority, in the absence thereof. If no brokers are available, wholesale dealers shall act as such. Provisions authorizing a creditor to appropriate the property in case of default, without the foregoing formalities, shall be null and void.

Law Decree No. 2 of 1955 establishes a detailed special procedure for the enforcement of chattel mortgages. Creditors so secured can request the restitution of the chattel property on its judicial sale in case of default by the debtor.¹¹⁰ The failure to make one payment when due constitutes default if the debtor has not yet paid half of the loan; otherwise, failure to make two payments constitutes default.¹¹¹

Upon filing a complaint, together with the mortgage deed and any other relevant evidence, the Court will order the attachment of the property.¹¹² Notice of such order will be given to the Public Registry.¹¹³ A copy of the complaint will be served on the debtor. If

101. *Id.* art. 1750.

102. *Id.* art. 1766.

103. *Id.* art. 1769.

104. *Id.* art. 1770.

105. *Id.* art. 1775.

106. *Id.*

107. *Id.* art. 1777.

108. *Id.* art. 1778, 1779.

109. *Id.* art. 1779.

110. Law No. 2 of May 24, 1955, art. 27.

111. *Id.* art. 28 (A).

112. *Id.* art. 29.

113. *Id.*

the debtor cannot be located, copies of the document will be sent by mail to the debtor's last known address as indicated by the creditor. The Court will then order that the property be auctioned.¹¹⁴

Further, the following conducts give rise to criminal liability:

- * the destruction or deterioration of the property due to negligence;¹¹⁵
- * encumbering or disposing of the property;¹¹⁶
- * the sale of the property when it is known that the vendor has no title, has no legal capacity to do so, or that the property is already encumbered.¹¹⁷

Mortgage on vessels can be executed before the maritime Court if the vessel is physically seized in Panamá.¹¹⁸ The Law allows the mortgage contract to contain provisions through which the vessels can be sold out of court in case of default, provided that at least twenty days prior notice be given to the debtor and other mortgagees, if any. Such out of court sales do not affect other liens on the vessel, save other valid mortgages,¹¹⁹ but would be extinguished six months after transfer of title is recorded in the Public Registry.¹²⁰

114. *Id.* art. 31.

115. *Id.* art. 50.

116. *Id.* art. 51.

117. *Id.* art. 52.

118. Law No. 8 of Mar. 30, 1982, G.O. 19,539 of Apr. 5, 1982, modified by Law No. 11 of Mar. 23, 1986, G.O. 20,560 of May 26, 1986, art. 17 (Pan.).

119. C. com. art. 1527.

120. *Id.* art. 1508.
