



Formally initiated in May 2019 with the aim of completing the reform that took place in 2006, the new reform of the law on security interests is close to completion.

As early as June 2019, the French Civil Affairs and Seals Directorate (*Direction des affaires civiles et du sceau*) had sought the comments of the various stakeholders concerned (legal practitioners, economic circles, academics) by circulating the draft text drawn by the working group set up under the aegis of the Henri Capitant Association, chaired by Professor Michel Grimaldi, together with a questionnaire.

Continuing this approach, it invited them to comment on a document which presents and explains all the provisions of a preliminary draft ordinance resulting from the work done since then.

Below is a very synthetic presentation of the main changes announced.

While a revolution is not to be expected, which is not surprising given the major overhaul carried out in 2006, the reform that is taking shape is nevertheless accompanied by important changes.

Firstly, there are two innovations, relating to the creation, within the French Civil Code, of the assignment of receivable by way of security (*cession de créance à titre de garantie*) and the assignment of a sum of money by way of security (*cession de somme d'argent à titre de garantie*). In what way does the preliminary draft mark a very clear breakthrough in the field of security interests based on exclusivity, which is moreover relayed in the context of the pledge of receivable (*nantissement de créance*). The very broad opening of electronic means for the creation of security interests is also part of this innovative approach.

Beyond that, legibility and accessibility are reinforced. Two movements are contributing to this, one of fixing certain solutions that were hitherto uncertain, and the other, more profound, of extending the influence of general law, as evidenced by the abolition of various security interests deemed obsolete or inappropriate and the repatriation of numerous rules within the French Civil Code. From a

similar perspective, we should also welcome the announced creation of a register of movable security interests (*registre des sûretés mobilières*), probably dedicated to all publicity, barring exceptions.

Finally, the protection of the guarantor and third parties has not been neglected. This is evidenced, for example, by the extension of certain rules to all personal guarantors (*cautions*) who are natural persons, the partial submission of security interests for third parties (*sûretés réelles pour autrui*) to the personal guarantee (*cautionnement*) regime, the new provisions relating to the opposability of exceptions (*opposabilité des exceptions*), or the transformation of special real estate liens (*privileges immobiliers spéciaux*) into legal mortgages (*hypothèques légales*).

What remains now are the substantive analyses, both approving and critical, that most of these changes will generate in the coming weeks and months.

There is also the other aspect of the reform, devoted to insolvency proceedings, the draft of which were also circulated by the French Civil Affairs and Seals Directorate: the new law on security interests will obviously have to deal with these new provisions.

Security interests in general (<i>in personam, in rem</i>)
Abolition of the rule which reserves the use of electronic means under private signatures to the only security interests granted by a person for the needs of his/her profession.
Personal guarantee (<i>cautionnement</i>)
Impact of the dissolution of the debtor, creditor or guarantor company on the obligation to cover the guaranteed debts and the conventional adjustments that may be made to it.
Identification of the nature, commercial or civil, of the personal guarantee by reference to the nature of the guaranteed debt.
Different modalities of joint and several liability, which can be stipulated between the personal guarantor (<i>caution</i>) and the debtor and/or between personal guarantors.
Application to all personal guarantors who are natural persons of the requirement to provide written mention about the nature and scope of the commitment, which must be provided by the personal guarantor (including in the case of residential leases) but not necessarily by hand.
Application of the requirement of proportionality of the commitment to all personal guarantors who are natural persons, no longer sanctioned by a forfeiture but by a reduction of the personal guarantee.
Application to all personal guarantors who are natural persons of the duty to warn on the professional creditor, sanctioned no longer on the basis of civil liability but by a forfeiture proportional to the loss of the chance not to contract.
Application to all personal guarantors who are natural persons of the obligation on the professional creditor to provide annual information concerning the outstanding debt and the duration of the personal guarantee [as regards the duration, the text refers to " <i>the personal guaranty</i> " without specifying that it must be a natural person]; this information obligation also applies to a personal guarantee who is a legal person guaranteeing a financial loan granted by a credit professional to a company.
Application to all personal guarantors who are natural persons of the professional creditor's obligation to inform about the debtor's default.
Generalisation of exceptions opposable by the personal guarantor to the creditor on behalf of the debtor, whether they are inherent to the debt or personal to the debtor, subject to the reservation of legal or judicial measures related to the debtor's default, as well as the personal guarantee, in full knowledge of the facts, of an incapable person.

Loss of the personal guarantor's recourse against the debtor when he/she has paid the debt without warning the debtor when the latter had the means to have the debt declared extinguished, even if he/she would have made the payment on the creditor's proceedings.
Abolition of the personal guarantor's early recourse and referral to the protective measures provided for in the French Civil Enforcement Procedures Code, the possibility of extending the term nevertheless allowing the personal guarantor, when the debt is due, to pay it or to request a security interest.
Limitation to five years (from the end of the personal guarantee) of the period during which the personal guarantor of the balance of a current account or of a deposit account may be sued.
No impact of the creditor's choice of the method of enforcement of a security interest on the benefit of subrogation (French Civil Code, art. 2314).
In rem security interests (<i>sûretés réelles</i>) in general (on movable and immovable properties)
Definition: " <i>Security interest in rem is the appropriation of an asset or a set of assets, present or future, for the preferential or exclusive payment of the creditor</i> ".
Application to in rem security interests for third parties of a certain number of rules governing personal guarantee: warning, information on the outstanding debt, on the duration of the security interest and on the default of the debtor, benefit of discussion, recourse (personal and subrogatory), benefit of subrogation.
Possibility of granting a security interest on the property of a private law legal person by virtue of powers resulting from deliberations or delegations established under private signatures, even though the constitution of the security interest must be done by an authentic instrument.
In rem security interests (<i>sûretés réelles mobilières</i>) in general
Creation of a register of movable security interests (<i>registre des sûretés mobilières</i>), dedicated to publicity, this development being however referred to the intervention of regulatory provisions.
Pledge on movable property (<i>Gage</i>)
Possibility of granting a pledge on an immovable by destination property, with the ability to purge and outbid.
Voidness of the pledge of another person's property opened only to the creditor (provided that he/she was unaware that the pledged property did not belong to the pledgor).
Possibility of dispossessing of the pledged property by means of the title representing it.
Alienability in principle by the grantor of fungible things pledged without dispossession.
Simplified enforcement of the pledge given as a guarantee for a professional debt, inspired by the current commercial pledge (public sale eight days after service of documents, without the need for an enforceable title).
Abolition of the special pledge on vehicles (<i>gage special sur véhicule terrestre à moteur</i>), the specific publicity of which is however retained.
Deletion of the provisions relating to the commercial pledge (<i>gage commercial</i>) in the French Commercial Code, with possible retention of the exemption in writing (this point being under discussion).
Abolition of the special pledge of stocks (<i>gage spécial des stocks</i>), the pledge of tools and equipment (<i>nantissement de l'outillage et du matériel</i>), the hotel warrant (<i>warrant hôtelier</i>) and the oil warrant (<i>warrant pétrolier</i>).
Pledge of receivable (<i>Nantissement de créance</i>)
Freedom of proof of the date of the pledge (<i>nantissement</i>) by the secured creditor.
Possibility to grant successive pledges on the same receivable, the rank of the creditors being determined by the order of the deeds.
Exclusivity (or right of retention) of the secured creditor.
Enforceability by the debtor of the pledged receivable against the secured creditor of the exceptions inherent in the debt (<i>exceptions inhérentes à la dette</i>) as well as personal exceptions (<i>exceptions personnelles</i>) arising from his/her relationship with the pledgor before the security interest became enforceable (<i>opposable</i>) against him/her.

Deposit in a specially allocated account of the sums received by the secured creditor before the due date of the secured receivable.
Deletion of the rule providing, in the pledge of an account (<i>nantissement de compte</i>), for the determination of the rights of the secured creditor, on the balance at the date of the judgment opening insolvency proceedings (reference to the reform of the law of insolvency proceedings).
Pledge of shares of civil company (<i>Nantissement de parts de société civile</i>)
Submission to general law.
Pledge on financial securities accounts (<i>Nantissement de comptes de titres financiers</i>)
Possibility to exclude income and products from the pledge by agreement.
Possibility of constituting successive pledges on the same financial securities account, the rank being determined by the order of the declarations (<i>déclarations de nantissement de compte de titres financiers</i>).
Use of the weighted average price of the last ten trading days for the allotment of the listed shares.
Pledge of going concern (<i>Nantissement de fonds de commerce</i>) and seller's lien (<i>privilège du vendeur</i>)
Sole competence of the registry of the pledgor's domicile for registration, this point being however referred to the intervention of regulatory provisions.
Substitution of the unenforceability against third parties (<i>inopposabilité aux tiers</i>) to the voidness for the sanction of the lack of publicity, including the required publicity, if any, at the French National Institute of Industrial Property (<i>INPI</i>).
Clarification of the ranking of creditors registered on the going concern and of creditors registered on an element of the going concern (date of publication, competition in case of identity of date).
Agricultural warrant (<i>Warrant agricole</i>)
Formal simplifications and adaptations.
Transfer of registrations to the clerks of the commercial courts, this point being however referred to the intervention of regulatory provisions.
Denunciation of default at the initiative of the holder of the warrant.
Property liens (<i>Privilèges mobiliers</i>)
Legal consecration of the deferral of movable liens on the debtor's price claim against the purchaser.
Limitation of the landlord's lien to the movable property belonging to the tenant only and removal of the "claim right" (<i>revendication</i>) currently attached to it.
Assignment of receivable by way of security (<i>Cession de créance à titre de garantie</i>)
Creation.
Reference to the general law on assignment of receivables (<i>droit commun de la cession de créance</i>) and the rules governing the assignment of money by way of security
Abolition of the rule of general law deferring the enforceability against third parties (<i>opposabilité aux tiers</i>) of the transfer of a future receivable to the date of its birth.
Assignment of a sum of money by way of security (<i>Cession d'une somme d'argent à titre de garantie</i>)
Creation
Euro or other currency.
Enforceability against third parties by remittance of the sum.
Free disposal of the sum by the assignee, unless otherwise agreed.
Retention of title (<i>Réserve de propriété</i>)
Opposability by the sub-purchaser or the insurer to the reserving party of the exceptions inherent in the debt as well as personal exceptions arising out of his relationship with the debtor before he/she became aware of the deferral.
Fiducie
Removal of the requirement to value the property or right transferred.

Possibility for the <i>fiduciaire</i> to sell at a price different from that set by the expert, in the event that the property or right does not find a buyer.
Mortgage (<i>Hypothèque</i>)
Requirement of notarial form for the mortgage mandate (<i>mandate d'hypothéquer</i>) and for the mortgage promise (<i>promesse d'hypothéquer</i>).
Liberalisation of the mortgage (<i>hypothèque</i>) on future property.
Abolition of the current rule allowing the creation of a general conventional mortgage (<i>hypothèque conventionnelle</i>) in the event of a shortage of existing properties.
Automatic extension of the mortgage (<i>hypothèque</i>) to the interest and other accessories due to the third party subrogee (<i>tiers subrogé</i>).
Ranking of creditors holding the same rechargeable mortgage (<i>hypothèque rechargeable</i>) in their relations with each other and with respect to third parties.
Explanation of the right to seize (<i>droit de suite</i>) against the third party purchaser (expression replacing that of "third party holder"), with generalisation of the benefit of discussion and opposability of the exceptions by reference to the personal guarantee.
Removal of certain legal mortgage (e.g.: spouses, except for the legal mortgage of married spouses under the regime of participation in acquisition (<i>régime de participation aux acquêts</i>))
Real Estate liens (<i>Privilèges immobiliers</i>)
Transformation of special real estate privileges into legal mortgage, which takes effect on the date of registration, without retroactivity.
Civil enforcement proceedings
Various adaptations
Information and intervention of creditors holding security interests published in case of seizure, with declaration of claim.

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