

## Key issues regarding loan securities in Romania. Part II - Mortgages

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This article is the second in our series discussing corporate lending and related collateral. It deals with mortgages, the most common collateral in practice due to their value. The following are selected aspects related to the creation and realization of mortgages in Romania.

### General overview of mortgages

Romanian law allows two main types of mortgages to be created, as it distinguishes between chattel and real estate mortgages.

- **Chattel mortgages** can generally be created on movable property; a wide range of assets are eligible, whether tangible or intangible, including but not limited to equipment, inventory, receivables, stocks, shares, business interests, bank accounts and insurance policies.
- In contrast, **real estate mortgages** are used to encumber immovable property such as buildings, land and subsequent improvements or additions to them.

The scope of a mortgage can also extend to the proceeds from the mortgaged assets. In the case of immovable property in particular, this automatically includes all improvements or installations/conversions to the property after the mortgage was created.

The validity and enforceability of a mortgage is inherently linked to the underlying secured liability, which underlines its accessory nature.

### Formalities for the order

Mortgages are generally created by contract; only in a few cases are they created by operation of law. While a written contract is sufficient in the case of chattel mortgages, contracts for the creation of real estate mortgages always require notarization.

Real estate mortgages are entered in the land register of the pledged property to become effective, while movable assets are subject to an optional (but highly recommended) entry in the National Register of Movable Assets. Depending on the type of asset (listed shares, ships, etc.), other register entries may also be required. Certain chattel mortgages, e.g. those on rental and leasehold rights to real estate or insurance benefits for such payments, also require a land register entry to ensure that all associated rights are securely pledged.

The entry of the mortgage in the relevant register also affects its eligibility and also influences its ranking.

In the case of bank accounts, the law grants "super priority" to mortgagees with "control" over those accounts. Control is given if (i) the mortgagee is the bank holding the accounts, (ii) there is an agreement between the mortgagee, the bank and the mortgagor, or (iii) the mortgagee becomes the holder of the accounts.

### Key clauses in mortgage agreements

Some important provisions must be explicitly stated in the mortgage agreement:

- The maximum secured amount or the parameters that allow it to be determined;

- The parties to the agreement;
- A detailed description of the secured assets; and
- The reason for the secured liability.

### **Enforcement and priority of claims**

In the case of enforcement, the distribution of the proceeds depends on the priority of the mortgage. For enforcement, the mortgagee requires an enforceable title (rum. *titlu executoriu*), and the secured debt must be certain, due and undisputed (*certă, lichidă și exigibilă*).

In bankruptcy scenarios, secured creditors are satisfied from the proceeds of the sale of the mortgaged assets prior to payment to unsecured creditors, with enforcement costs being paid prior to distribution to the secured creditor.

### **Transaction costs**

Transactions involving mortgage agreements on real estate often incur significant costs for notary fees and entry in the land register. It is important that the parties involved are aware of these financial implications so that they can plan accordingly.

### **Conclusion**

Understanding the specifics of creating mortgages on different types of assets in Romania is essential to ensure effective and enforceable security for various transactions.

This article is intended as an introductory guide to the application and use of these legal instruments; professional support is extremely important in practice due to the details not described here and the wide variety of constellations that each individual case can bring with it.

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