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MODEL REGISTRY REGULATIONS UNDER THE MODEL INTER-AMERICAN LAW ON
SECURED TRANSACTIONS

(Approved by Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII) at its second plenary session of October 09, 2009)

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INTRODUCTION

The Model Registry Regulations result from the adoption of the Model Inter-American Law on Secured Transactions ((hereafter, Model Law) by the CIDIP-VI. The OAS General Assembly via resolutions AG/RES. 1923 (XXXIII-O/03), AG/RES. 2033 (XXXIV-O/04), AG/RES. 2065 (XXXV-O/05), AG/RES. 2217 (XXXVI-O/06), AG/RES. 2285 (XXXVII-O/07), AG/RES.2401 (XXXVIII-O/08) and AG/RES. 2527 (XXXIX-O/09) respectively, convened CIDIP-VII, selected registries as one of the topics for its agenda, established its methodology and preparatory work, and programmed the Specialized Conference from October 7-9, 2009, at which the Model Regulations were adopted.

The Model Regulations provide the legal foundation for implementing and operating the registry regime contemplated by the Model Law. They complement the Model Law, can be used in both common law and civil law systems, and constitute the basis for future work on this project.

Title IV of the Model Law provides for a Registry to be called the Registry of Movable Property Security Interests. The role of this Registry is to provide for public disclosure of security interests as provided in the various provisions of the Model Law. Registration is a central feature of the priority structure of the Law applicable to security interests in most types of collateral.

The Model Regulations contain features found in modern secured transactions Registry systems that have operated very successfully for many years in jurisdictions in the United States and Canada. Most of these features were recommended by UNCITRAL in its 2008 *Legislative Guide on Secured Transactions*. These features are also found in registry systems that have been adopted more recently or are being developed in Latin American countries, including Honduras and Mexico.

The Model Regulations have been designed to provide guidance to States that have implemented or contemplate the adoption of a local version of the Model Law. However, not all registries established under the Model Law need to be identical. States will make appropriate amendments to the Model Regulations (and, where appropriate, the Model Law) to address their particular circumstances.

PART I – GENERAL

Article 1: Definitions

For the purposes of these Regulations:

Amendment means:

- *extension of registration period (Renewal of a registration);*
- *deletion of a secured creditor where two or more secured creditors are identified in the registration;*
- *addition of a secured creditor;*
- *deletion of a secured debtor when two or more secured debtors are identified in the registration;*
- *addition of a secured debtor;*
- *deletion (release) or addition of collateral;*
- *change of name of the secured debtor;*
- *change of name of the secured creditor;*
- *assignment by the secured creditor;*
- *subordination by the secured creditor;*
- *subrogation of secured creditor's interest;*
- *amendment to the address of a secured debtor or secured creditor;*
- *Optional: a change in the maximum amount secured by the security interest.*

Company Number means the number assigned to a legal or business entity upon its registration in the Companies Registry or other relevant Registry.

Law means the Model Inter-American Law of Secured Transactions.

Name of the Secured Creditor means the name of the secured creditor as determined under Article 11.

Name of the Secured Debtor means the name of the secured debtor as determined under Articles 12 and 13.

Registration Form means the forms as required by the Law and these Regulations on which Registration information is provided in order to effect, amend, cancel, verify or reinstate a registration, and includes a screen.

Password includes a confidential key issued by or under the authority of the Registry.

Registrant means the person who submits registration information to the Registry for the purposes of effecting or cancelling a registration.

Registrar means the person appointed pursuant to the Law to manage the Registry.

Registration includes a registration of a security interest and an amendment to a registration of a security interest.

Registration Information means data transmitted to the Registry in order to effect, amend or cancel a registration as provided in these Regulations, but does not include any documentation that may relate to the registration information.

Registration Number is a unique number allocated to each registration by the Registry that is permanently associated with such registration.

Registry means the Registry established under the Law, and where appropriate, includes the Registrar.

Screen means an electronically reproduced image provided by the Registry that is used for transmission of registration information to the Registry or viewing of Registration Information that exist in the Registry.

Searchable Index means the index as provided in paragraph I of Article 10.

Optional: Serial numbered property means a vehicle, mobile road construction equipment, farming machinery, an aircraft and a boat that has a serial or identification number permanently marked on or attached to its principal part by the manufacturer. Serial numbered property also includes permits and licenses issued by the relevant authorities and identified by a unique number that is indicated on such permits or licenses.

Optional: Serial Number means:

- in the case of a motor vehicle, the vehicle identification number marked or attached to the body frame by the manufacturer;
- in the case of mobile road construction equipment and farming machinery, the serial number marked on or attached to the chassis by the manufacturer;
- in the case of a boat, the serial number marked on or attached to the boat by the manufacturer;
- in the case of permits and licenses, the number identified in the books of the issuer and printed on the permit or license;
- in the case of an aircraft registered under the law of a state that is a party to the Convention on International Civil Aviation, 1944 (Chicago), the registration marks assigned to the airframe by the relevant authority; and
- in the case of any other aircraft, the serial number marked on or attached to the airframe by the manufacturer.

Unique Personal Identification Number means the number assigned to every person or resident pursuant to the relevant law.

PART II – REGISTRY SERVICES

Article 2 - Structural Features of the Registry

I. The Registry shall provide its services to any person who appears at one of the offices of the Registry or communicates electronically, via fax or by mail with the Registry provided that such person complies with the requirements of the Law and these Regulations.

Optional: II. The Registry accepts paper-based forms between (state time when Registry office is open) daily except weekends and holidays. Paper-based forms may be delivered to the Registry in person, by mail or by fax. A form delivered by fax after regular business hours or on a day the Registry office is closed shall be considered to be delivered on the next business day.

Optional: III. Electronic registrations and searches are available 24 hours a day including weekends and holidays.

IV. [Alternative A] The services of the Registry may be provided by an agency of the Ministry of Government responsible for creation and administration of the Registry.

[Alternative B] The services of the Registry may be provided by an agency of the Ministry of Government responsible for creation and administration of the Registry [or by a duly authorized private sector entity.]

V. When, in the opinion of the Registrar, the circumstances are such that it is neither reasonably possible nor practical to provide one or more Registry services, the Registrar may suspend one or more of the services for the period of time during which, in the opinion of the Registrar, those circumstances prevail. An appropriate notice as to the temporary closure of the services shall be displayed on the Registry's website and at its offices.

Article 3 – Payment of Fees and User Accounts

I. The registration services of the Registry shall be provided only to a person who has tendered payment for the service requested or who has a user account with sufficient credit to pay Registry fees.

II. A user account for a person shall be created when a contract providing for an account has been entered into between the person and the Registry. Access to Registry services shall be in accordance with these Regulations and the terms of the contract.

III. *A user account owner shall deposit money in any designated account of the Registry, which money shall be credited to that person's user account.*

IV. *Upon termination of a user account contract, the Registry shall return to the user account owner the amount of any credit in that person's user account.*

Optional: V. *The electronic search services of the Registry shall be freely available and not subject to payment of a fee. The processing of a paper-based search request shall be subject to a fee.*

Article 4 – Role of Registry

The duties and responsibilities of the Registry are ministerial. The Registry has no obligation to verify the accuracy of registration information submitted to it. In accepting or rejecting a form for registration, the Registry does not assess the legal sufficiency of the registration information and does not determine whether it is factually correct or incorrect. The Registry does not determine whether or not a registration or cancellation has been authorized.

Article 5 – Duties of the Registry

I. *The Registry has no responsibility for changes, omissions or alterations of registration information until it is received by the Registry.*

II. *The Registry shall not change, alter or add to any registration information received by the Registry. The Registry shall remove a registration from the Searchable Index:*

- a) *when the registration is no longer effective;*
- b) *when the Registry has received a request to cancel the registration by the registrant who effected it, or-as provided for in Articles 18 or 19 of these Regulations;*

but may not do so in any other circumstances.

III. *The Registry shall reject a registration or cancellation of a registration when a registration requirement of Article 38 of the Law or these Regulations has not been complied with. A message and grounds for rejection shall be sent to the registrant as soon as practicable. Without limiting the generality of the foregoing, the Registry shall reject a registration when:*

- a) *registration information is not communicated to the Registry in one of the prescribed forms;*
- b) *Registration Information is incomplete, incomprehensible, illegible or otherwise does not comply with the requirements of these Regulations relating to effecting a Registration or canceling a registration;*
- c) *the Registry fee is not tendered.*

PART III – EFFECTING REGISTRATION

Article 6 – Registration Procedure

I. *A registration is effected when the registration information required by the Law and these Regulations has been entered into the database of the Registry and is searchable as provided in these Regulations. Every registration shall be separately identifiable by date and time of effectiveness.*

II. *[Alternative A] A registrant seeking to effect a registration or to cancel a registration shall submit to the Registry registration information as provided in these Regulations. A registrant shall ensure that the information required by this Regulation is entered in the appropriate fields on the form or in the screen.*

[Alternative B] A registrant seeking to effect a registration or to cancel a registration shall submit to the Registry registration information as provided in these Regulations, and may file in addition any documentation that may relate to the registration. Provision of information by filing an attachment referred to in this paragraph does not constitute compliance with the requirement of these Regulations with respect to registration information.

III. *A person whose name is recorded in the Registry as user account owner is deemed to have full authority to transmit registration information to effect a registration or to amend or cancel a registration that was effected by that person or another person who is also a user account owner of the same account, including a registration in which persons in addition to the user account owner are identified as secured creditors.*

IV. *A person who has been assigned a user identification number and a Password by the Registry and who has complied with these Regulations may have electronic access to the Registry to effect, amend or cancel a registration. A registration or cancellation of a registration effected using the assigned user identification number and Password shall be conclusively deemed to have been effected by the person to whom the user identification number and Password have been assigned by the Registry.*

V. *Except where electronic access to the Registry is permitted by these Regulations, an Amendment or cancellation of a Registration may be effected by submission of the relevant (paper) form to the Registry authorized by the secured creditor named in the registration or by an agent of the secured creditor named in the registration.*

VI. *Registrations relating to all kinds of collateral shall be indexed according to the name of the secured debtor as provided in these Regulations. Registrations relating to serial numbered property shall in addition be indexed according to the serial number of the property. All amendments and cancellation relating to the registration shall be indexed in a manner that associates them with the registration number.*

Article 7 – Period of Registration

For purposes of calculating the period of effectiveness of a registration, where the calculation is from the day of registration or from the anniversary of the day of registration, a year runs from the beginning of that day. If the day of registration or an anniversary day falls on the twenty-ninth day of February, the anniversary date in a year that is not a leap year is deemed to be the first day of March.

PART IV – VERIFICATION OF REGISTRATION, REINSTATEMENT AND RENEWAL

Article 8 – Verification Notice of Registration or Cancellation

When a registration is effected, [optional: amended] or cancelled, the Registry shall send a notice verifying the registration or its cancellation to the registrant and to the secured creditor (when not the Registrant) at the address(es) set out in the Registration. The Verification Notice may be in printed or electronic form and shall contain the following related information from the Registration:

- a) the name or user identification number (if any) issued to the secured creditor;*
- b) the name of the secured debtor;*
- c) the description of the collateral;*
- d) the date and time when the Registration was effected or cancelled, as the case may be;*
- e) the Registration number allocated to the Registration;*
- f) when a Registration is cancelled, the notice shall contain the statement that if the Registrant delivers to the Registry a notice of reinstatement of Registration, the Registration may be reinstated as provided in these Regulations.*

Article 9 – Reinstatement of Registration

A Registration that has been cancelled without authorization or in error may be reinstated by submitting to the Registry, within 30 days following the date the Registry sent the notice verifying its cancellation, the following registration information in a manner identical to that recorded in the cancelled registration:

- a) the Name of the Secured Creditor;*
- b) the Name of the Secured Debtor;*
- c) the description of the collateral;*
- d) the date and time when the Registration was effected; and*
- e) the Registration number allocated to the registration.*

PART V – REGISTRY CERTIFICATE

Article 10 – Registry Certificates

I. The Registry shall maintain for public consultation a Searchable Index of all effective registrations, consistent with Article 5.

II. The Registry shall issue a Registry Certificate when a request for the Certificate has been made using the requisite form and the person requesting the Certificate has tendered the Registry fee for the Registry Certificate or has a User Account that has a credit sufficient to pay the Registry fee for the Registry Certificate.

III. A Registry Certificate may be requested on the basis of one or more of the following criteria:

- a) the name of the Secured Debtor;*
- b) the Registration Number allocated to a registration;*
- c) Optional: the Serial Number of Serial Numbered Property to which the request relates.*

IV. The Registry Certificate shall either indicate that no registrations were retrieved against the search criterion provided by the person requesting the search or set out all registrations that exist in the Registry searchable index at the date and time when the search was performed under the search criterion or criteria specified in the request and the following information with respect to each such registration:

- a) the Name of the Secured Creditor;*
- b) the Name of the Secured Debtor;*
- c) the description of the collateral as set out in the Registration;*
- d) the date and time when the registration was effected;*
- e) all amendments to the registration and the date and time each amendment was effected;*
- f) the Registration Number allocated to the registration;*
- g) whether or not an enforcement form has been Registered; and*
- h) Optional: the maximum amount secured by the security interest.*

V. Upon request of a person who has requested a Certificate as provided in paragraph II, the Registry shall give a copy of an enforcement form relating to the security interest referred to in the Registry Certificate.

Optional: VI. Upon request by a person who has requested a Registry Certificate, the Registry shall provide a copy of any documents directly related to the registration disclosed in the Certificate when the person making the request has tendered the Registry fee for this service or has a User Account that has a credit sufficient to pay the Registry fee.

**PART VI – IDENTIFICATION OF SECURED CREDITOR
AND SECURED DEBTOR**

Article 11 – Secured Creditor

- I. *Where the Secured Creditor is a natural person, the registration information shall include:*
 - a) *the name of the Secured Creditor in the following form: the last two names, if existing, followed by the first name, followed by the middle name, if any;*
 - b) *the Unique Personal Identification Number, if any; and*
 - c) *the mailing address of the Secured Creditor.*

- II. *Where the Secured Creditor is a natural person who carries on business, other than as a legal entity, under a business name that is not the natural person's name, the Registration shall include the information referred to in the preceding paragraph.*

- III. *Where the Secured Creditor is a legal entity, the registration information shall include:*
 - a) *the Registered Name of the Secured Creditor that may but need not include the abbreviation which is indicative of the type of the legal entity;*
 - b) *the company number, if any; and*
 - c) *the mailing address of the Secured Creditor.*

- IV. *In all other cases, the registration information shall contain the name of the Secured Creditor in the form that would be required, if the Secured Creditor were a Secured Debtor and shall include the mailing address of the Secured Creditor.*

- V. *Where there is more than one Secured Creditor, the Registration Information may identify each individual Secured Creditor according to the rules for the identification of a Secured Creditor.*

- VI. *Registration information may also identify a representative of the Secured Creditor according to the rules for the identification of a Secured Creditor.*

Article 12 - Secured Debtor (Natural Person)

- I. *Where there is more than one Secured Debtor, the Registration Information shall include the name and other information relating to each Secured Debtor separately.*

- II. *Where the Secured Debtor is a natural person, the Registration Information shall include:*

- a) *the Unique Personal Identification Number and mailing address of the Secured Debtor; or*
- b) *if the person does not have a Unique Personal Identification Number, the birth date and the name of the Secured Debtor in the following form: the last name or the last two names, followed by the first name, followed by the middle name, if any; and the mailing address of the Secured Debtor.*

Where the Secured Debtor is a natural person whose name includes more than one middle name, the registrant shall enter the first of the middle names. Where the Secured Debtor is a natural person whose name consists of only one word, the Registration Information shall include the name as the last name of the Secured Debtor.

III. Where the Secured Debtor is a natural person who carries on business, other than as a legal entity, under a business name that is not the person's name, the Registration Information shall include information referred to in the preceding paragraph and the natural person's business name.

IV. Where the Secured Debtor is a natural person, the name of the Secured Debtor shall be determined, for purposes of this provision, by the following rules:

- a) *Where the Secured Debtor was born in [name State] and the Secured Debtor's birth is registered in [name State] with a government agency responsible for the registration of births, the name of the Secured Debtor is the name as stated in the Secured Debtor's birth certificate or equivalent document issued by the government agency;*
- b) *Where the Secured Debtor was born in [name State] but the Secured Debtor birth is not registered in [name State] with a government agency responsible for the registration of births, the name of the Secured Debtor is the name as stated in a current passport issued to the Secured Debtor by the government agency of [name State]. If the Secured Debtor does not have a current passport issued by the Government of [name State], the name of the Secured Debtor is that set out in any other government issued document that identifies the Secured Debtor;*
- c) *If the Secured Debtor was not born in [name State] but is a citizen of [name State], the name of the Secured Debtor is the name as stated in the Secured Debtor's certificate of citizenship of [name State];*
- d) *If the Secured Debtor was not born in or is not a citizen of [name State], the name of the Secured Debtor is the name as stated in the birth certificate or equivalent document issued to the Secured Debtor by the government agency responsible for the registration of births at the place where the Secured Debtor was born;*
- e) *In a case not falling within paragraphs (a) to (d), the name of the Secured Debtor is the name as stated in the same way in both a current motor vehicle operator's licence and a current vehicle registration issued to the Secured Debtor by the government agency of [name State];*

- f) *For purposes of this Article, the name of the Secured Debtor shall be determined as of the date of the event or transaction to which the registration relates;*
- g) *In addition to entering the name of a Secured Debtor who is a natural person determined in accordance with the preceding rules, the registrant may enter any other name of the Secured Debtor of which the Registrant has knowledge as a separate Secured Debtor name.*

Article 13 - Secured Debtor (Legal Entity)

I. Where the Secured Debtor is a legal entity, the registration information shall include the following:

- a) in the case of a Secured Debtor registered in (this State), the company number and mailing address of the secured debtor;*
- b) in the case other than paragraph (a), the name of the secured debtor as registered in (other State) or set out in the constitution, charter or other document creating the legal entity that may but need not include the abbreviation which is indicative of the type of legal entity and the mailing address of the Secured Debtor; and*
- c) the mailing address of the Secured Debtor and the name and mailing address of each natural person authorized under the constitution of the legal entity to execute the contract or contracts in the transaction giving rise to the registration. The name of such person shall be provided same manner as if the person were a Secured Debtor, but the birth date of the person need not be included.*

II. Where the Secured Debtor is the estate of a deceased natural person, the registration information shall describe the secured debtor in the same manner as would be the case were the deceased living, followed by the word “estate” and shall include the mailing address of the administrator of the estate.

III. Where the Secured Debtor is a trade union, the registration information shall describe the Secured Debtor using the name of the trade union and names of each person representing the trade union in the transaction giving rise to the registration and shall include the mailing address of the trade union.

IV. Where the Secured Debtor is a trustee acting for a trust, and the document creating the trust designates the name of the trust, the registration information shall include the name of the trust followed by the word “trust” unless the name of the trust already contains the word “trust” and shall include the mailing address of the trustee.

V. Where the Secured Debtor is a trustee acting for a trust, and the document creating the trust does not designate the name of the trust, the Registration Information shall include the name of at least one of the trustees, in the form required for a natural person Secured Debtor, followed by the word “trust” and shall include the mailing address of the trustee.

VI. Where the Secured Debtor is an administrator acting for an estate of a bankrupt, the Registration Information shall include the name of the administrator in the same manner as if it or he were a Secured Debtor, followed by the word “administrator of (name of bankrupt)” and shall include the mailing address of the administrator.

VII. Where the Secured Debtor is Secured Debtor because of participation in a syndicate or joint venture, the Registrant shall enter the name, if any, of the syndicate or joint venture as stated in the

document creating it, and the name of each participant in the same manner as a separate Secured Debtor.

VIII. Where the Secured Debtor is a Secured Debtor because of membership or participation in an association, organization, including cooperatives or enterprise other than one already referred to in the preceding paragraphs, the Registration Information shall include the name of the association, organization or enterprise stated in a constitution, charter or other document creating it, and the name of each person representing the association, organization or enterprise in the transaction giving rise to the registration in the same manner as if such person were a Secured Debtor.

For purposes of the foregoing paragraph, a person representing an enterprise in a transaction giving rise to a Registration is a person who has legal power to bind the enterprise or its officers or members and who has exercised that power in the formation of the contract or contracts involved in the transaction.

IX. Where the Secured Debtor does not fall within any of the preceding rules, the secured debtor shall be identified in a manner that the secured debtor can be readily identified and the Registration Information shall include the mailing address of the Secured Debtor.

PART VII – DESCRIPTION OF COLLATERAL AND ADDITIONAL REGISTRATION INFORMATION

Article 14 – Collateral Description

I. The Registration Information shall include a generic description of collateral or state the kind or kinds of property, including attributable movable property or a description that identifies specific items of property.

II. A description of property in generic terms shall be interpreted as including all property of that kind that the Secured Debtor has rights to as of the date of the Registration and property of that kind acquired by the Secured Debtor while the registration is effective.

[Optional III & IV]: III. Where Registration Information relates to serial numbered property that is not held for sale or lease in the ordinary course of the Secured Debtor's business, the registration information shall include:

- a) a description of the property in the manner set out in the preceding paragraphs;*
- b) in the case of serial numbered property, other than aircraft registered as required by (the law implementing the Convention on International Civil Aviation, 1944, Chicago), up to, but not exceeding the last ten alpha-numeric characters of the Serial Number;*
- c) in the case of an aircraft registered as required by (the law implementing the Convention on International Civil Aviation, 1944, Chicago), the Serial Number;*
- d) the name of the manufacturer as displayed on the property; and*
- e) in the case of a motor vehicle, the model year of the property.*

Optional: IV. Where the Registration Information relates to serial numbered property in the form of a permit or license where the serial number is marked on such permit or license and recorded on the books of the relevant issuing authority, the Registration Information shall include:

- a) a description of the property in the manner set out in the preceding paragraphs;*
- b) the unique number of the permit or license; and*
- c) the name of the issuer as displayed on the permit or license.*

V. Where the Registration Information relates to fixtures or crops, the registration shall include:

- a) a description of the property in the manner set out in the preceding paragraphs; and*
- b) a description of the real estate to which the collateral is or will be affixed, or a description of the land where the crops will be planted or are growing.*

VI. The Registration Information required to effect a registration shall state the following:

- a) the maximum amount secured by the security interest;*
- b) whether the security interest applies to attributable property;*
- c) whether the security interest is an acquisition security interest; and*
- d) the termination date of the registration.*

PART VIII – AMENDMENTS TO REGISTRATIONS

Article 15 – Amendment

I. Where an amendment to a Registration is to be effected, the registration information shall contain the registration number of the registration to be amended and the nature of the amendment.

II. Where the amendment involves the addition, change or deletion of information relating to the Secured Creditor, the Secured Debtor or the collateral, the registration information shall set out the information to be added, changed or deleted in the manner provided in the preceding paragraphs for effecting a Registration.

III. Where the amendment adds a kind or item of collateral not included in the description of the collateral in the Registration to be amended, adds a Secured Debtor, or changes the maximum amount secured by the security interest, it is effective as to the added collateral, the added secured debtor and the change in maximum amount, only from the time and date of the Registration of Amendment.

IV. Where the amendment involves an assignment or subordination of a registration or subrogation of a Secured Creditor's rights, the assignee or beneficiary of the subordination or the subrogation shall be identified in the same manner as if such person were a Secured Creditor. If the

assignment, subordination or subrogation relates only to part of the collateral described in the registration, the part affected shall be identified.

V. *Where the amendment has been ordered by a court, the court order shall be delivered to the Registry.*

VI. *The registration of an amendment, other than a renewal, does not extend the period of effectiveness of the registration.*

PART IX – OTHER MATTERS

Article 16 - Notice Of Enforcement

The enforcement form required by the Law shall be filed in the Registry. The Secured Debtor and secured creditor shall be described in the registration information on the form in the same manner as in the registration to which the enforcement form relates. The enforcement form must identify the Registration Number of the initial registration to which it relates.

Article 17 – Interests Under Prior Law

I. *A security interest created under prior law may be registered in the same manner as a security interest created under the Law. The registration information shall state that the interest registered arose under prior law.*

II. *For purposes of the preceding paragraph, prior law means the law in force in [Name State] on the date this Law came into force.*

Article 18 – Obtaining Information.

I. *A person who is named in a Registration as Secured Debtor, or a person authorized in writing to act as his/her agent for this purpose, may demand in writing that a person who is named in the same Registration as Secured Creditor:*

- a) *Give a copy of the agreement between the Secured Debtor and the Secured Creditor named in the registration to which the registration relates to the person or persons designated by the Secured Debtor, unless the same secured debtor had previously agreed with the Secured Creditor not to demand such a copy;*
- b) *Approve or update a list of collateral as of the date specified in the demand;*
- c) *Approve or update a statement indicating the amount of the obligation secured by the security interest as of the date of the demand;*

- d) *In case there is no agreement between the Secured Debtor and the Secured Creditor named in the registration, a signed statement that no such agreement exists; or*
- e) *In case of assignment or succession, including by operation of the law, that has not been registered, provide the name and address of any assignee or successor.*

II. *The person submitting a demand under the preceding paragraph must reasonably identify the transaction that is subject of the demand.*

III. *The person to whom the demand is made according to this Article shall comply with a demand within 15 days after the demand is sent. :*

IV. *Where the secured creditor to whom the demand is made and who has received the demand according with the preceding paragraph, without reasonable excuse, fails to comply with the demand, the person making the demand may petition the court for an order demanding that the Registration relating to the property identified in the demand be cancelled. The court shall issue the order in a summary proceeding.*

V. *Where an order of the court referred to in the preceding paragraph is delivered to the Registry, the Registry shall cancel the registration as required by the order.*

Article 19 - Compulsory Cancellation or Amendment of a Registration

I. *A Registration must be cancelled by the person identified in the Registration as the Secured Creditor not later than 15 days after all obligations to which the Registration relates have been performed unless the person named in it as Secured Debtor consents to allow it to be maintained.*

II. *The person identified as Secured Debtor in a Registration, or any other person who has rights to the property to which the Registration relates, may demand in writing that the person identified as Secured Creditor in the Registration, cancel or amend, as is appropriate, the Registration when:*

- a) *All of the obligations under the agreement to which the Registration related have been performed;*
- b) *The description of the property contained in the Registration refers to property that is not collateral under an agreement between the person identified as Secured Debtor and the person identified as Secured Creditor in the Registration; or*
- c) *No agreement exists between the person identified as Secured Debtor and the person identified as Secured Creditor in the Registration.*

The person identified as Secured Creditor in the Registration shall comply with the demand no later than 15 days after the demand is sent. No fee or expense shall be charged, and no amount shall be accepted by a person for compliance with the demand.

III. *Where the Registration is not cancelled or amended pursuant to the demand referred to in the preceding paragraph, the person making the demand may file a Correction Statement that indicates that a Registration is inaccurate or wrongfully registered.*

IV. *Upon receipt of a correction statement, the Registry shall notify the Secured Creditor that the Registration will be cancelled or amended in accordance with the correction statement at the end of a period of 30 days from the date the Registry sent the notice to the address of the secured creditor indicated in the registration unless it receives a court order referred to in the following paragraph.*

V. *The Secured Creditor may petition the court for an order demanding confirmation that the information contained in the registration is correct or that the Secured Creditor has been authorized to effect the Registration. The court may order that the registration be maintained with such changes as are ordered by the court. [Optional: The court shall issue the order in a summary proceeding.]*

VI. *If an order referred to in the preceding paragraph is not delivered to the Registry before the end of the period of 30 days from the date the Registry sent the notice referred to in paragraph IV or such additional period ordered by the court, the Registry shall cancel or amend the Registration in accordance with the demand.*

VII. *When an order of the court referred to in the preceding paragraph is delivered to the Registry, the Registry shall not act on the Correction Statement.*

VIII. *This Article applies with necessary modifications to cancellation of a filed enforcement form, when enforcement proceedings have been terminated under the law.*

[Optional: IX.] A Secured Creditor that effected Registration without proper authorization of the Secured Debtor and a Secured Creditor that failed to cancel or amend Registration upon legitimate demand of the Secured Debtor may be subject to administrative action, statutory damages, actual damages or criminal penalties.

[Optional: X.] A Secured Debtor who makes an unjustified demand for amendment or cancellation of a Registration may be subject to administrative action, statutory damages, actual damages or criminal penalties.

Article 20 - Payment of Registry Fees

The Registry may charge a fee for, the costs of the service it provided.

Article 21 – Registration Form

The Registry shall adopt and provide uniform Registration Forms.

COMMENT: Article 1*

1. It will be noted that the definition of “form” does not specify whether the form is paper-based or electronic. All jurisdictions that have modern Registry systems provide that registration information may be transmitted to the Registry in electronic form. A few systems permit the use of paper-based or electronic forms. See also the definition of “Screen”. The Model Law is a flexible instrument that takes into account the possibility of using both paper and electronic registrations. This recognizes that many countries in Latin America may not be properly equipped and capable of supporting a fully automated electronic registration system. While the access to the registration system may accommodate forms, whether electronic or paper-based, the internal operations of the Registry will be entirely electronic. For instance, in cases where a paper-based registration form is submitted to the Registry, the relevant registration information will be extracted from the form, but the form will not be retained by the Registry and entered into an electronic database.

2. The extent to which computerization of access to the Registry is possible varies from jurisdiction to jurisdiction and depends on many factors (e.g., availability of start-up capital, access to IT expertise, reliability of local communication infrastructure, etc.).

3. A jurisdiction that establishes its Registry using only paper-based form for registration should plan to move as quickly as possible to an electronic system. The full use of electronic technology is consistent with the overall objective of the Model Law to make the registration and searching process as simple, transparent, efficient, inexpensive and accessible as possible.

4. The definition of “name of the secured debtor” assumes that the jurisdiction enacting these Regulations has a system under which all persons are assigned a unique identification number that may not be changed. Where this is not the case, the name of the debtor is the legal name.

5. The definitions “serial numbered property” and “serial number” are optional indicating that this feature of the system is optional. An inherent weakness in a registry system that is based solely on the debtor-identifier (that is, registrations stored and retrieved using the name of the debtor or identification number of the debtor) is that the person searching must be aware of the debtor’s name or number. Consequently, this type of registry will not be an effective risk avoidance tool to persons who deal with someone who has acquired possession of the collateral from a transferee from the debtor. This problem is displayed in the following scenario:

Secured Debtor gives a security interest in his car to Secured Creditor who registers the security interest using Secured Debtor’s name as the registration criterion.

Secured Debtor, acting fraudulently, sells the car to Buyer 1 who neglects to search the Registry. This is not a sale in the ordinary course of business of the Secured Debtor with the result that Buyer 1 acquires the car subject to Secured Creditor’s interest.

* The Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII) approved the Model Registry Regulations under the Model Inter-American Law on Secured Transactions. The Comments to the Articles of the Model Regulations are provided only as a tool in interpretation and implementation of the approved text.

Buyer 1 offers the car for sale to Buyer 2. Buyer 2 (who is unaware of the security interest given to Secured Creditor) searches the Registry using Buyer 1's name as the search criterion. He/she will not find Secured Creditor's security interest which was registered using Secured Debtor's name as the registration criterion. In effect, the Registry system has failed Buyer 2.

An effective solution to this problem is to require a secured creditor who has taken a security interest in collateral that can be described by a collateral identifier to include that identifier in the registration information as a supplementary but compulsory registration-search criterion. The registration can be discovered by anyone (e.g. Buyer 2) who has access to that identifier. The use of collateral-identifiers as registration-search criteria is feasible and workable where the collateral comprises tangible assets that possess a unique, reliable identifier (manufacturer serial number or government issued identification markings). The use of a collateral-identifier in this context is particularly effective where the collateral is property for which there is an active resale market in which ownership changes over the life of the collateral. Motor vehicles, aircraft, boats, mobile construction and farming machinery are examples of property of this kind.

6. A requirement that all registrations relating to security interests in tangible movable property contain collateral identifiers is not feasible, even where manufacturers purport to assign unique identifiers to products such as personal computers and bicycles. Modern secured financing arrangements involving business borrowers provide for security interests on a full range of the debtor's assets including existing and future-acquired movable property. A requirement to include the collateral identifier in all registrations would be unworkable where the collateral is property of a kind that is constantly being received and disposed of or changed by debtors. This would apply to inventory, raw materials and other supplies consumed in the course of production. Furthermore, not all items of movable property have unique, reliable identifiers such as serial numbers. As a practical matter, assets of this kind cannot be described in a registration other than by a generic description. Consequently, it is not feasible to require collateral-identifiers as the registration-search criteria for registrations of the security interests in these types of property. What is required in this context is a registration-search criterion that enables a single search to capture a security interest in the debtor's movable property generally, or in generic categories of property. Consequently, a debtor-identifier must be used.

7. The definition of serial numbered property includes "permits and licenses issued by the relevant authorities and identified by a unique number found on their permits and licenses.

8. A jurisdiction that enacts the Model Law and these Regulations may now have registry systems for ownership and charges on some types of high-value items such as motor vehicles, boats and aircraft. If so, the Model Law and these Regulations will be modified to accommodate these systems. It may be feasible to link the Registry established under the Model Law with an existing registry. The purpose of such linkage is to provide for validation of existence and title to such assets.

COMMENT: Article 2

1. In most jurisdictions that have implemented modern secured transactions registries, the administration of the registry is the responsibility of a designated government department or an organization owned by the government. In some jurisdictions the entire registry or some of its

features are operated by private commercial enterprises under strict government supervision. In a few jurisdictions the registry is administered by a private sector entity (*e.g.*, Chamber of Commerce) that acts independently of the government.

2. In some jurisdictions private services providers assist registry users to effect registrations and obtain searches from the registry. Where private service providers are involved, the fees payable for their services should be controlled by the government. One of the key principles of the Model Law is that the Registry should be easily accessible and inexpensive for users.

3. Submission of paper-based registration forms in person, by regular mail or fax may result in a delay in the processing of the registration. While in the case of electronic submissions the registration is almost instantaneous, for paper-based submissions the moment of delivery will not coincide with the moment of registration.

4. Clause II will be included only if the Registry provides for paper-based forms and Clause III will be included only if the Registry provides for electronic registrations and searches.

COMMENT: Article 3

1. The general approach to Registry administration is that all of the costs of the Registry, including its creation and administration are recoverable from fees paid by Registry users.

2. This Article contemplates creation of user accounts with the Registry against which the fees for Registry services are charged. This avoids the administrative cost and inconvenience involved if high-volume users of the system must tender payment for each service as it is provided. However, provision should be made for conventional methods of payment including payment with cash, certified checks and, possibly, credit cards, to facilitate infrequent users of Registry facilities who do not have user accounts.

3. Clause V is not a necessary feature of a Registry system. Whether or not fees are charged for either or both electronic or paper-based searches is a matter to be determined by each enacting jurisdiction. Some registries charge for searches and some do not. Electronic searches entail very little operational cost to the Registry. The absence of a fee may encourage loans that the lender would not even bother considering unless he or she could take a “preliminary” look at what has been filed against a particular debtor and potential borrower. In addition, the charge for searches ultimately affects the costs of the credit given to the borrower. In many Latin American countries, business company registries and real estate registries are freely searchable.

4. However, some jurisdictions have found that the most convenient solution might be to set a low, fixed fee that is affordable but that prevents frivolous searches and serves to ensure a steady income that will enable the jurisdiction to improve the system. It is noteworthy that fees for searches are charged by registries in some countries. While in others only 50% of the registries charge for searches and 50% do not.

COMMENT: Article 5

1. An essential aspect of a modern, electronic registry system is lack of any power or responsibility given to the Registry with respect to the source or veracity of registration information transmitted to the Registry. The registry system functions on the principle that what is submitted to the registry as registration information by registrants is what is entered into the Registry database so long as that information is in a form that is acceptable to the system. Persons who use the system must determine whether that information accurately reflects an existent agreement between the parties identified in the registration.

2. Furthermore, when a registration is effected, the Registry has no legal obligation to ensure that the registration was authorized or to verify that amendments or cancellation of the registration are authorized. This is so even though Article 36 of the Model Law requires authorization by the parties.

3. A State considering the adoption of these Regulations may wish to address the issue as to the extent (if any) the operator of the Registry (whether a government agency or a private company) is liable for loss resulting from an error or omission of the Registry or from a malfunction of the Registry system. Each enacting jurisdiction must determine whether or not it will provide to Registry users insurance against such losses. Those jurisdictions willing to provide this insurance may decide to place an upper limit on the amount recoverable in any single claim against the Registry. This approach has been adopted by Canadian jurisdictions.

COMMENT: Article 6

1. Clause I addresses a very important feature of the Registry system. It precludes the possibility that a registration relating to a security interest will be treated in law as effective even though it cannot be searched. Since the function of the Registry is to disclose to persons who access the searchable index for information relating to prior existing or potentially existing security interests, it is unacceptable that a registration be treated as effective when it cannot be searched. See Model Law, Article 35. The Registry, on request, may provide information on cancelled registrations maintained in the non-searchable database.

2. Clause II is stated in the alternative. A jurisdiction that wishes to permit registrants to file transaction documents when effecting a registration will adopt the alternative form of the clause. Jurisdictions adopting this alternative may further provide a list of acceptable documents to be filed with the registration (*e.g.*, only security agreements) or may allow the filing of any documents. Those jurisdictions which establish a pure notice registration system, will adopt the first version of the clause. No jurisdiction should require that transaction documents be filed with the Registry. Such a requirement would defeat a central feature of the Model Law which requires the creation of a “notice registration system.” In addition, the requirement to file attachments would prevent advance registrations (that is to say, registrations that are effected before the security interest is created pursuant to the Law).

3. Extensive experience in other countries that have adopted modern secured financing law demonstrates that a modern, notice registration system can handle large number of registrations and provide public access to registered information with efficiency and cost-effectiveness. Unlike a document-filing registry, a notice-registration system does not require the actual security agreement or any related documents to be filed or even tendered to the registry. Instead, secured creditors submit

registration information in standard format (digital or hardcopy). This information is little more than the basic factual particulars needed to alert third parties to the potential existence of a security interest in the identified items or kinds of movable property of the named debtor. These Regulations incorporate separate rules to address the right of third parties to request access to security agreements and other documentation outside the Registry

4. A notice registration system significantly reduces the registry's administrative and archival costs since the data are stored in electronic format and the volume of data relating to individual registrations is small. This type of system also reduces transaction costs for users of the system.

5. A problem endemic to any registry system is the potential for fraudulent conduct on the part of persons who, without authority, effect registrations, or amend or cancel registrations. These Regulations make it clear that it is not the responsibility of the Registry to ensure that a person who deals with registrations has full authority to do so from the appropriate person. When a purely electronic system is involved, the problem is insignificant. Only the person who has the user identification number and password issued by the Registry may access the database to amend or cancel a registration. When registrations can be amended or cancelled using paper forms delivered to the Registry, the problem is much larger. The Registry does not have the facilities to determine whether the person requesting an amendment or cancellation of a registration is the secured party identified in the registration or someone authorized by the secured party to act on his or her behalf. Consequently, Article 4 makes it clear that the Registry has no responsibility in this respect.

6. A Registration, amendment or cancellation effected by use of a User Identification Number and Password is conclusively deemed to have been effected by the person assigned the number and password. This does not preclude the liability of a person who obtained them or used them fraudulently.

7. However, these Regulations provide some measures designed to minimize the negative effects of unauthorized amendments or cancellations of Registrations. See Articles 8-9.

COMMENT: Article 7

1. Article 39 of the Model Law provides for a fixed, 5-year period of registration that is renewable for 3-year terms. Most modern registry systems, with only one exception, provide that the registrant may select the period of registration in years between one and 25 years. In addition, the secured party may choose infinity registration. The registration fee is based on the number of years chosen by the registrant. This discourages unjustifiably long registrations. In addition, debtors are protected by rules similar to Article 19 of these Regulations, empowering them to force cancellation of registrations that do not reflect existing security interests.

2. A jurisdiction that enacts the Model Law may decide to adopt the approach described in the preceding paragraph. This would require an amendment to Article 39 of the Model Law.

COMMENT – Article 8

1. Article 8 relates to Article 42 of the Model Law.

2. Article 8 provides a facility that can be very important to secured creditors. The Registrant and the Secured Creditor, if different than the registrant, is sent a verification notice by the Registry. This informs the registrant that a registration has been effected or cancelled and sets out the precise form of the registration information. A registrant who received the verification can check to determine that the registration information is correct or has been properly cancelled.

COMMENT: Article 9

1. Article 9 provides a special system to deal with situations where a Registration has been cancelled in error or without authorization of the secured creditor. Under this Article, the secured creditor can reinstate the Registration if a notice of reinstatement is delivered to the Registry not later than 30 days from the day that the Registry sent the notice of cancellation.

2. The important effect of Article 9 is that, upon reinstatement, the priority position of the security interest to which the cancelled registration relates is recovered. However, the reinstatement does not affect the priority of advances made by the competing secured creditor after the cancellation and before the reinstatement. Furthermore, reinstatement is not effective to re-establish priority if, before it occurs, a third security interest is published after the cancellation and before the reinstatement. See Model Law, Article 42.

COMMENT: Article 10

1. The optional clause in clause III(c) will be included only in a system that provides for registrations using the collateral serial number as the registration-search criterion.

2. The reference in Clause IV(h) to maximum amount of the security interest is optional to indicate that each enacting jurisdiction will determine whether or not to adopt this feature. While the Model Law provides for it, in many jurisdictions disclosure in a registration of the maximum amount secured by a security interest is not required.

3. Clause VI will be included only in systems that permit filing of transaction documents.

COMMENT: Article 12

1. The name of the debtor is the universal Registration-search criterion, viz., the factor on which archiving and retrieving Registration information occurs in a Registry. If a jurisdiction opts for collateral serial number Registration, an additional registration-search criterion is provided. Whether the serial number is to be treated as alternative criterion rather than a supplementary criterion is a matter to be determined when the Registry is established.

2. Article 12 requires that both the Unique Personal Identification Number and the name of the Secured Debtor be included in the Registration information. A jurisdiction may decide that there is no need to include the name of Secured Debtors who have Unique Personal Identification Numbers. Where Secured Debtors have Unique Personal Identification Numbers, these, and not the name of the

Secured Debtors, will be the Registration-search criterion. The result is that a serious error or omission in the name of a Secured Debtor will not invalidate a Registration if the Unique Personal Identification Number is correct. Of course, a serious error or omission in the name of the Secured Debtor will invalidate the Registration if the Registration was effected using only the name of the debtor because the debtor (e.g., a non-citizen) does not have a Unique Personal Identification Number.

COMMENT: Article 13

The name of the legal entity as recorded in the registration information, may, but need not, include words such as “Limited, Ltd, Inc. etc.” indicating that the secured debtor is a legal person.

COMMENT: Article 14

Optional Clauses III and IV are a single joint alternative that must be used jointly.

The term acquisition security interest is defined Article 3 (IX) of the Model Inter-American Law on Secured Transactions.

If the parties do not include the termination date, said date will be determined by Article 39 of the Model Law.

COMMENT: Article 15

The reference in Clause III to changing the maximum amount of the security interest is optional to indicate that each enacting jurisdiction will determine whether or not to adopt this feature.

COMMENT: Article 17

There is no provision in the Model Law for registration of security interests created under prior law but still in effect when the Model Law is enacted. An enacting jurisdiction may decide to add new provisions to the Model Law providing for the registration of prior interests and setting their priority position in relation to security interests created after the Model Law is enacted. This Article provides for the Registration of interests arising under prior law.

COMMENT: Article 18

1. A pure notice registration system provides for the registration of a simple notice rather than a copy of the security agreement. Only a limited amount of information is contained in a registration. This is only enough to put an inquiring party on notice that another person may be claiming a security interest in specified kinds or items of property of the person named as debtor. Details of the security agreement, such as the particular items of collateral (other than collateral that must be described by serial number), the amount of the indebtedness and the terms of repayment, are not in the public

record. This information may be demanded directly from the secured creditor. This Article provides a mechanism by which this may be accomplished.

2. Under this Article, a debtor or a person authorized in writing to act as his agent for this purpose may demand from the secured creditor information concerning a security agreement between that debtor and the secured creditor including a copy of the security agreement. For example, a potential credit grantor who has not yet advanced any money to the debtor does not have the right to demand information under this Article. He or she must get information concerning the extent of the security interest through the debtor. This can be done by requiring the debtor to demand the information and instruct the secured creditor to respond to the demand by sending the information directly to the potential creditor.

3. Where the Registry system provides for the filing of security agreements with the Registry, the inquiring party is expected to obtain a copy of the agreement from that source. However, this does not limit the inquiring party's right to demand other information under this Article.

4. The second sentence in Clause III is optional because if the system provides for filing a copy of the agreement with the registry, the inquiring party can obtain it from the registry. Of course, this would not apply where filing of attachments is not permitted.

5. The reference in Clause IV to summary judicial proceedings is optional. The purpose of the reference is to indicate the importance of being able to obtain an expedited order of the court. What constitutes summary proceedings in each enacting jurisdiction will be determined in accordance with the existing law of that jurisdiction.

COMMENT: Article 19

1. A registration should not be maintained in the Registry after all of the obligations secured by the security interest have been satisfied, unless there are commercially valid reasons for doing so. For example, if there is an ongoing relationship between a secured debtor and secured creditor that is likely to result in additional agreements, there may be a commercial basis for retaining a registration after the security interest ceases to exist. Often there are periods in the course of business relations between a financier and business enterprise during which the obligations of the business to the financier are discharged. However, the parties may wish to maintain a registration to facilitate future dealings between them and to maintain the priority status that the registration affords.

2. There will be circumstances in which the former secured debtor who has consented to the maintenance of a registration after obligations have been discharged as provided in paragraph I does not want to enter into a new agreement with the secured creditor and wants to have the registration cancelled. There are other circumstances in which it is commercially important to a debtor that information in a registration be amended. For example, the collateral description in the registration may be much broader than that contained in the security agreement or the parties may have agreed that some of the property described in the security agreement is to be released from the security interest.

3. Paragraph II of this Article sets out the circumstances in which a secured debtor, former debtor or person who has rights to the property that falls within the collateral description in a

registration is entitled to demand that the registration be cancelled or amended so as to accurately reflect the legal relationship (if any) between that person and the person identified in the registration as Secured Creditor.

4. There is no reference in the Model Law to penalties for non-compliance as provided in Paragraphs VII and VIII. Enacting jurisdictions may decide to incorporate this provision into their Law if it is not otherwise addressed in the existing law of that jurisdiction.

5. The reference in Clause IV to summary judicial proceedings is optional. The purpose of the reference is to indicate the importance of being able to obtain an expedited order of the court. What constitutes summary proceedings in each enacting jurisdiction will be determined in accordance with the existing law of that jurisdiction.

COMMENT: Article 20

The Registry should not be used as an additional source of income for the government. Registry fees should reflect the cost of the services provided. Under this approach the amount of the fee will not be calculated on the basis of the amount of credit involved in the transaction to which the registration relates.

In order to promote electronic registrations and reduce the time and costs associated with the processing of paper-based registrations, enacting jurisdictions may set the fees for paper-based registrations higher than those specified for electronic registrations.

COMMENT: Article 21

The forms (including computer screens) to be used in accessing the various functions of the Registry will be set out under this heading. The content of these forms will be determined once the detailed structure of the Registry is determined and operating.

Pursuant to Article 38 of the Model Law, the registration form must contain the following information:

- a) the name and address of the secured debtor;
- b) the name and address of the secured creditor;
- c) the maximum amount secured by the security interest; and
- d) the description of the collateral, which can be specific or generic.

Enacting jurisdictions are urged to standardize their registration forms by periodical regional meetings of the registrars as practice develops.