

# **MODEL INTER-AMERICAN LAW ON SECURED TRANSACTIONS**

**Sixth Inter-American Specialized Conference  
on Private International Law  
(CIDIP - VI)**

February 8, 2002

**MODEL LAW**

# MODEL INTER-AMERICAN LAW ON SECURED TRANSACTIONS

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# MODEL INTER-AMERICAN LAW ON SECURED TRANSACTIONS

## Preamble

### CIDIP-VI/RES.5/02

The Sixth Inter-American Specialized Conference on Private International Law,

#### CONSIDERING:

That, in keeping with the agenda approved by the General Assembly [AG/RES.1613 (XXIX-O/99)], this conference included the subject of international loan contracts of a private nature, in particular the uniformity and harmonization of secured transactions law, as one of the items on its agenda;

That the delegations of the United States and Mexico have co-chaired a working group on this topic, and have worked with other Member States in the development of a Model Inter-American Law on Secured Transactions; and

That the creation of a Model Inter-American Law on Secured Transactions and its adoption by Member States of the Organization will significantly reduce the cost of borrowing and facilitate international trade and investment in the region, as well as assist small and medium-sized enterprises throughout the Hemisphere,

#### RESOLVES:

1. To approve the Model Inter-American Law on Secured Transactions, annexed to this resolution.
2. To encourage the Member States of the Organization of American States to adopt legislation consistent with the Model Inter-American Law on Secured Transactions.

## CIDIP-VI/RES. 6/02

The Sixth Inter-American Specialized Conference on Private International Law,

### CONSIDERING:

That this conference has approved the Model Inter-American Law on Secured Transactions;

That the Model Inter-American Law on Secured Transactions envisages the use of electronic documents and signatures, in its registry systems and elsewhere;

That the interconnectivity of national registry systems will be an important aspect in the effective functioning of the inter-American system of secured financing; and

That the United Nations Commission on International Trade Law (UNCITRAL) adopted Model Laws on Electronic Commerce (1996) and Electronic Signatures (2001), which have served as a basis for the adoption of laws in various Member States of the Organization of American States<sup>1</sup>,

### RESOLVES:

1. To recommend that the Member States of the Organization of American States adopt legislation consistent with the UNCITRAL instruments on Electronic Commerce and Electronic Signatures adopted in 1996 and 2001.

2. To invite Member States to examine the principles embodied in the draft Uniform Inter-American Rules for Electronic Documents and Signatures prepared by the delegation of the United States, and consider the advisability of incorporating them into their national law.

*1. The UNCITRAL Model Law on Electronic Commerce (resolution 51/162 of the United Nations General Assembly, adopted on December 16, 1996) and the UNCITRAL Model Law on Electronic Signatures (adopted on July 5, 2001).*

# MODEL INTER-AMERICAN LAW ON SECURED TRANSACTIONS

(Approved by the Sixth Inter-American Specialized Conference on Private International Law (CIDIP-VI) at its third plenary session, held on February 8, 2002)

## Introduction

The Sixth Inter-American Specialized Conference on Private International Law (CIDIP-VI) was convoked by the General Assembly of the Organization of American States at its twenty-sixth regular session, through resolution AG/RES. 1393 (XXVI-O/96). The Specialized Conference, held at OAS headquarters in Washington, D.C. in 2002, included international loan contracts of a private nature, in particular, the uniformity and harmonization of secured transactions law as one of the topics for its agenda and resulted in the adoption of the Model Inter-American Law on Secured Transactions (“Model Law”).

The main objectives of the Model Law, which were agreed from the beginning by the working committee to which the topic was assigned, were:

- a) to facilitate access to credit through the maximum possible extension of the spectrum of goods which can constitute a security (in this regard, refer to Article 4);
- b) to simplify the procedures for setting up the secured transactions procuring a reduction of costs (in this regard, refer to Articles 5 to 9);
- c) to establish clear criteria for the publicity of different types of secured transactions as a functioning instrument to determine the rank of priority between creditors (in this regard, refer to Articles 10 to 34);
- d) to standardize the documentary and registry aspects concerning the security (in this regard, refer to Articles 35 to 46);
- e) to assure the efficacy of the security through the establishment of foreseeable and detailed criteria on the order of priority of the securities (in this regard, refer to Articles 47 to 53);
- f) to procure speed in execution proceedings on the security itself, avoiding unnecessary loss and offering reasonable security to the secured debtor (in this regard, refer to Articles 54 to 67).

The Model Law is designed to provide the legal certainty necessary for modern lending practices to take place and necessary to reduce the cost of credit. As a result, the Model Law serves as a model for any state seeking to modernize its secured transactions framework. Generally, these reforms are designed to create a uniform system, eliminate competing devices, provide flexibility, broaden the type of property that may serve as collateral, protect third parties and create fast and effective enforcement remedies. The Model Law seeks to create complete security interest uniformity by incorporating all existing secured transactions into a single security mechanism that may encumber any present or future, tangible or intangible movable good. States may make appropriate amendments to the Model Law to address their particular circumstances.

**MODEL LAW**



# MODEL INTER-AMERICAN LAW ON SECURED TRANSACTIONS

## TITLE I Scope and General Application

### Article 1

The objective of the Model Inter-American Law on Secured Transactions (hereinafter, the “Law”) is to regulate security interest in movable property securing the performance of any obligations whatsoever, of any nature, present or future, determined or determinable.

A State may declare that this Law does not apply to the types of collateral expressly specified in this text.

A State adopting this Law shall create a unitary and uniform registration system applicable to all existing movable property security devices in the local legal framework, in order to give effect to this Law.

### Article 2

The security interests to which this Law refers are created contractually over one or several specific items of movable property, on generic categories of movable property, or on all of the secured debtor’s movable property, whether present or future, corporeal or incorporeal, susceptible to pecuniary valuation at the time of creation or thereafter, with the objective of securing the fulfillment of one or more present or future obligations regardless of the form of the transaction and regardless of whether ownership of the property is held by the secured creditor or the secured debtor.

When a security interest is publicized in accordance with this Law, the secured creditor has the preferential right to payment from the proceeds of the sale of the collateral.

### Article 3

For purposes of this Law, the following terms mean:

- I. Registry: is the Registry of Movable Property Security Interests.
- II. Secured Debtor: the person, whether the principal debtor or a third party, who creates a security interest over movable property in accordance with this Law.
- III. Secured Creditor: the person in whose favor a security interest is

created, possessory or non-possessory, whether for its own benefit or for the benefit of other persons.

IV. Buyer [or transferee] in the Ordinary Course of Business: a third party who, with or without knowledge of the fact that the transaction covers collateral subject to a security interest, gives value to acquire such collateral from a person who deals in property of that nature.

V. Movable Property Collateral: any movable property, including receivables and other kinds of incorporeal property, such as intellectual property, or specific or general categories of movable property, including attributable movable property, that serves to secure the fulfillment of a secured obligation according to the terms of the security contract. The security interest in the collateral extends to, regardless of any mention in the security contract or in the registration form, the right to be indemnified for any loss or damage affecting the collateral during the course of the security interest, as well as to receive the product of an insurance policy or certificate that covers the value of such property.

VI. Attributable Movable Property: the movable property that can be identified as derived from the originally encumbered property, such as fruits, or property resulting from its sale, substitution or transformation.

VII. Registration Form: the form provided by the Registry referred to in Article 3.I, to register a security interest, and which will include at least the data prescribed by the regulations necessary to identify the applicant, the secured creditor, the secured debtor, the collateral, the maximum amount secured by the security interest, and the termination date of registration.

VIII. Inventory: movable property held by a person for sale or lease in the ordinary course of that person's business operations. Inventory does not include movable property held by the secured debtor for its on-going use.

IX. Acquisition Security Interest: a security interest granted in favor of a creditor -- including a supplier -- who finances the acquisition by the debtor of the moveable corporeal property over which the security interest is granted. Such security interest may secure the acquisition of present or subsequently acquired movable property so financed.

X. Receivable: the secured debtor's right (contractual or extra-contractual) to claim or receive payment of any monetary sum, currently or thereafter due, from a third party, including accounts receivable.

**Article 4**

The secured obligation, in addition to the principal debt may consist in:

I. Ordinary and default interests generated by the principal sum of the secured obligation calculated according to what is stated in the security contract, with the understanding that, if no rate has been stated, said interest will be calculated at the legal rate applicable at the time of default;

II. The commissions which must be paid to the secured creditor as provided in the Security contract;

III. Reasonable expenses incurred by the secured creditor for the maintenance and custody of the secured property;

IV. Reasonable expenses incurred by the secured debtor, generated by the acts necessary to effectuate the enforcement of the security interest;

V. Damages caused by the breach of the security contract as determined by a court, arbitration award or private settlement;

VI. The liquidated damages, if any, when these have been established.

**TITLE II  
Creation****Article 5**

A security interest is created by contract between the secured debtor and secured creditor.

**Article 6**

If the security interest is non-possessory, the contract creating the security must be in writing and the security interest takes effect between the parties from the moment of the execution of the writing, unless the parties otherwise agree.

However, a security interest in future or after-acquired property encumbers the secured debtor's rights (personal or real) in such property only from the moment the secured debtor acquires such rights.

**Article 7**

The written security contract must contain, as a minimum:

- I. Date of execution;
- II. Information to identify the secured debtor and the secured creditor, as well as the written or electronic signature of the secured debtor;
- III. The maximum amount secured by the security interest;
- IV. A description of the collateral, in the understanding that such description may be generic or specific;
- V. An express indication that the movable property described is to serve as collateral to a secured obligation; and
- VI. A generic or specific description of the secured obligations.

The writing may be manifested by any method of communication that leaves a permanent record of the consent of the parties to the creation of the security interest, including telex, telefax, electronic data interchange, electronic mail, and any other optical or similar method, according to the applicable norms on this matter and taking into account the resolution of this Conference attached to this Model Law (CIDIP-VI/RES. 6/02).

#### **Article 8**

If the security interest is possessory, it takes effect from the moment the secured debtor delivers possession or control of the collateral to the secured creditor or a third person designated on its behalf, unless the parties otherwise agree.

#### **Article 9**

If the security interest is non-possessory, the secured debtor or any person that acquires the collateral subject to the security interest, unless otherwise agreed, has the following rights and obligations:

- I. The right to use and dispose of the collateral and any proceeds derived from the original collateral in the ordinary course of the debtor's business;
- II. The obligation to discontinue the exercise of such right when the secured creditor notifies the secured debtor of its intention to enforce the security interest in the collateral under the terms of this Law;
- III. The obligation to prevent damage and loss of the collateral and do what ever is necessary for such purpose;

IV. The obligation to allow the secured creditor to inspect the collateral to verify its quantity, quality and state of conservation; and

V. The obligation to adequately insure the collateral against destruction, loss or damage.

## **TITLE III Publicity**

### **Chapter I General Rules**

#### **Article 10**

The rights conferred by the security interest take effect against third parties only when the security interest is publicized. A security interest may be publicized by registration in accordance with this Title and Title IV or by delivery of possession or control of the collateral to the secured creditor or to a third person on its behalf in accordance with this Title.

A security interest in any type of collateral may be publicized by registration, except as provided in Article 23. A security interest may be publicized by delivery of possession or control only if the nature of the collateral so permits or delivery is effected in the manner contemplated by this Title.

A security interest publicized by one method may later be publicized by another method and, provided there is no intermediate lapse without publicity, it will be considered that the security interest was continuously publicized for the purposes of this Law.

#### **Article 11**

A security interest may cover attributable movable property if this consequence is mentioned in the registration form.

### **Chapter II Acquisition Security Interest**

#### **Article 12**

An acquisition security interest must be publicized by filing of a registration form that refers to the special character of this security interest and that describes the collateral thereby encumbered.

## Chapter III Receivables

### Article 13

The provisions of this Law concerning security interests over receivables are applicable to every type of assignment of receivables. If the assignment is not for security it must comply only with the publicity provisions of this Law; if it fails to so comply, it will be subject to the priority rules of this Law.

### Article 14

A security interest granted by the secured debtor in receivables owed to the secured debtor is publicized by registration.

### Article 15

Except as otherwise provided in this Law, a security interest granted in receivables shall not modify the underlying legal standing nor increase the obligations of the account debtor without this party's consent.

### Article 16

The account debtor of a receivable assigned in security has the rights and is subject to the obligations stated in this Chapter.

### Article 17

The account debtor of the assigned receivable may discharge its obligation by paying the secured debtor or the assignor as the case may be. However, any outstanding amount owed to the secured debtor or assignor at the time or after the account debtor of the assigned receivable receives notice from the secured creditor to make payment to the secured creditor, the outstanding amount must be paid to the secured creditor. The account debtor may request the secured creditor to provide reasonable proof of the existence of the security interest, and, if reasonable proof is not provided within a reasonable time, the account debtor may make payment to the secured debtor.

The notice to the account debtor may be given by any generally accepted means of communication. In order for such notice to be effective, it must identify the receivable in respect of which payment is requested, and include sufficient payment instructions to enable the account debtor to comply. Unless otherwise agreed, the secured creditor shall not deliver such notice before the occurrence of an event of default that entitles the secured creditor to enforce the security interest.

**Article 18**

If an account debtor receives notice of more than one security interest of the same receivable, the account debtor shall make payment of the obligation in conformity with the payment instructions contained in the first notification received. Any actions between secured creditors designed to give effect to the priority provisions of Title V of the Law are preserved.

**Article 19**

A security interest in a receivable, other than a claim under a letter of credit, is effective notwithstanding any agreement between the account debtor and the secured debtor limiting the right of the secured debtor to grant security in or assign the receivable. Nothing in this Article affects any liability of the secured debtor to pay damages to the account debtor for breach of any such agreement.

**Article 20**

The account debtor may raise against the secured creditor all defenses and rights of set-off arising from the original contract, or any other contract that was part of the same transaction, that the account debtor could raise against the secured debtor.

The account debtor may raise against the secured creditor any other right of set-off, provided that it was available to the account debtor when notification of the security interest was received by the account debtor.

The account debtor may agree with the secured debtor or assignor in a writing not to raise against the secured creditor the defenses and rights of set-off that the account debtor could raise pursuant to the first two paragraphs of this Article. Such an agreement precludes the account debtor from raising those defenses and rights of set-off.

The account debtor may not waive the following defenses:

- I. Those arising from fraudulent acts on the part of the secured creditor or assignee; or
- II. Those based on the account debtor's incapacity.

## **Chapter IV** **Non-Monetary Claims**

**Article 21**

A security interest granted by the secured debtor in a claim that is a non-monetary obligation, owed to the secured debtor, is publicized by registration.

**Article 22**

When the collateral is a claim that is a non-monetary obligation, the secured creditor has the right to notify the person obligated on the claim to render performance of the obligation to or for the benefit of the secured creditor and to otherwise enforce the obligation to the extent that the nature of the obligation permits. The person obligated on the claim may refuse only based on reasonable cause.

**Chapter V  
Letters of Credit****Article 23**

A security interest in a letter of credit the terms and conditions of which require that it be presented in order to obtain payment shall be publicized by the beneficiary's (secured debtor's) delivery of the letter of credit to the secured creditor, provided that such a letter of credit does not forbid its delivery to a party other than the paying bank. Unless the letter of credit has been amended to permit the secured creditor's draw, the delivery to the secured creditor does not entitle the latter to draw on the letter of credit and solely prevents the beneficiary's (secured debtor's) presentment of the letter of credit to the paying or negotiating bank.

**Article 24**

A beneficiary (secured debtor) may transfer or assign its right to draw on a letter of credit to a secured creditor by obtaining the issuance of a credit transferable to the name of the secured creditor as a transferee-beneficiary. The validity and effect upon third parties of such a transfer is governed by the applicable provisions of the prevailing version, at the moment in which it takes place, of the Uniform Customs and Practices for Documentary Credits of the International Chamber of Commerce.

**Article 25**

The existence of a security interest in the proceeds of a letter of credit is conditioned upon the beneficiary complying with the terms and conditions of the letter of credit thereby becoming entitled to payment thereon. To be publicized, such a security interest must be filed in the registry but not be enforceable against the issuing or confirming bank until the date and time on which this party accepts, under the terms and conditions governing the payment of the letter of credit.

**Article 26**

If the secured obligation consists of a future extension of credit or the giving of value in the future to the beneficiary (secured debtor), the



secured creditor must extend such credit or value no later than 30 days from the date on which the issuing or confirming bank accepts the terms and conditions of the security interest in the proceeds of the letter of credit, unless otherwise agreed. If such credit is not extended or value is not given within this period, the security interest terminates, its registration, if any, may be cancelled, and the secured creditor must execute a signed release to the issuing or confirming bank allowing them to pay the beneficiary (secured debtor) according to its original terms and conditions.

## **Chapter VI**

### **Instruments and Documents**

#### **Article 27**

Where the collateral is an instrument or document, the title to which is negotiable by endorsement and delivery, or delivery alone, the security interest may be publicized by delivery of possession of the instrument or document with any necessary endorsement.

#### **Article 28**

When the transfer or a pledge of a document of title has taken place in an electronic format, or its transfer or pledge has been effectuated in an electronic registry, the special rules governing such electronic registry shall apply.

#### **Article 29**

If the secured creditor publicizes its security interest by possession and endorsement of the document but subsequently delivers it to the secured debtor for any purpose including withdrawing, warehousing, manufacturing, shipping or selling the movable property represented by the document, the secured creditor must register its security interest before the document is returned to the secured debtor in accordance with Article 10 of this Law.

When the movable property represented by a document is in the possession of a third party depository or a bailee, the security interest may be publicized by the delivery of a written notice to the third party.

## **Chapter VII**

### **Property in Possession of a Third Party**

#### **Article 30**

The secured creditor, with the consent of the secured debtor, may hold the property through a third person; detention by a third person effects

publicity only from the time the third person receives evidence in writing of the security interest. The third person must at the request of any interested person disclose forthwith whether or not it has received notice of a security interest covering property in its possession.

## **Chapter VIII Inventory**

### **Article 31**

A security interest over inventory, comprised of present and future property, and its attributable movable property, or any part thereof, may be publicized by a single registration.

## **Chapter IX Intellectual Property Rights**

### **Article 32**

A security interest in intellectual property rights, such as patents, trademarks, trade-names, goodwill, royalties and other attributable movable property derived therefrom, is governed by this Law, including Article 37.

## **Chapter X Obligations of a Creditor in Possession of Collateral**

### **Article 33**

A creditor in possession of the collateral:

I. Shall exercise reasonable care in the custody and preservation of the collateral. Unless otherwise agreed, reasonable care implies the obligation to take the necessary steps to preserve the value of the collateral and the rights derived therefrom.

II. Shall maintain the collateral in such a way that it remains identifiable, unless it is fungible.

III. May use the collateral only as provided in the security contract.

### **Article 34**

A possessory security interest may be converted into a non-possessory security interest and retain its priority provided that the security interest is publicized by registration before the collateral is returned to the secured debtor, in accordance with Article 10.

## **TITLE IV**

### **Registry and Related Matters**

#### **Article 35**

The security interest publicized by registration takes effect against third parties from the moment of its registration.

#### **Article 36**

Any person may effect a registration authorized by the secured creditor and the secured debtor, and any person may register a continuation of an existing registration with the authorization of the secured creditor.

#### **Article 37**

Where another law or an applicable international convention requires title to movable property to be registered in a special registry, and contains provisions relating to security interests created over such property, such provisions shall have precedence over this Law, to the extent of any inconsistency between the two.

#### **Article 38**

The registration form shall be in the standard form and medium prescribed by regulation. Such form shall provide for entry of the following data:

- I. The name and address of the secured debtor;
- II. The name and address of the secured creditor;
- III. The maximum amount secured by the security interest;
- IV. The description of the collateral, which can be generic or specific.

When there is more than one secured debtor granting a security interest over the same movable property, all secured debtors must be separately identified in the registration form.

#### **Article 39**

The registration in the Registry will be valid for a term of five years, renewable for three-year terms, preserving the original priority.

#### **Article 40**

In order for an acquisition security interest to be publicized and have priority over previous creditors with security interests over property of

the same type, the secured creditor of the acquisition security interest must comply with the following requirements, before the debtor takes possession of such property:

I. Register in the registration form a notation that indicates the special character of the acquisition security interest; and

II. Notify the holders of previously perfected security interests over property of the same kind that the secured creditor has or expects to acquire an acquisition security interest in the collateral described in the notice.

#### **Article 41**

The registration data may be amended at any time by the registration of an amendment form; the amendment shall take effect only from the time of its registration.

#### **Article 42**

The secured creditor may cancel the original registration by filing a cancellation form.

If a cancellation is made in error or in a fraudulent manner, the secured creditor may reregister the registration form in substitution of the cancelled form. Such secured creditor retains its priority in relation to other secured creditors that registered a security interest during the time of validity of the erroneously cancelled registration form, but not against secured creditors who registered their security after the date of cancellation and before the date of reregistration.

#### **Article 43**

The entity designated by the State will operate and administrate the Registry, which will be public and automated and in which there will be an electronic folio, which will be indexed by the name of the secured debtor.

#### **Article 44**

The Registry will have a central database constituted by the registration records of the security interests inscribed in the State.

#### **Article 45**

For the registration and searches of information, the Registry will authorize remote and electronic access to users who so request.

#### **Article 46**

The users will have a confidential key to access the Registry system

in order to register security interests by sending the registration form via electronic means or via any other method authorized by the legislation of this State, as well as in order to conduct the searches that are requested.

## **TITLE V**

### **Priority Rules**

#### **Article 47**

The right conferred by a security interest in respect of the collateral is effective against third persons only when the publicity requirements have been fulfilled.

#### **Article 48**

The priority of a secured interest is determined by the time of its publicity.

A security interest confers on the secured creditor the right to follow the collateral in order to exercise its rights under the security.

#### **Article 49**

Nevertheless, a buyer or transferee of collateral in the ordinary course of the transferor's business takes free of any security interest in the collateral.

The secured creditor cannot interfere with the rights of a lessee or a licensee under a lease or a license granted in the ordinary course of the lessor's or licensor's business after the publication of the security interest.

#### **Article 50**

The priority of a security interest can be modified by written agreement between the secured creditors involved, unless it affects the rights of third parties or is prohibited by law.

#### **Article 51**

An acquisition security interest will have priority over a previous security interest that encumbers future movable property of the secured debtor, as long as it is created according to the provisions of this Law and even when it was publicized after the previous security interest. The acquisition security interest will cover exclusively the specific movable property acquired with it and the cash proceeds attributable to their sale, provided the secured creditor has complied with the conditions set out in Article 40.

## Article 52

I. A possessory security interest in a document of title has priority over a security interest in the property covered by such document of title if the latter is publicized after the document of title is issued.

II. The holder of money or a transferee of negotiable instruments who takes possession with any necessary endorsement in the ordinary course of the transferor's business takes free of any security interests.

III. The secured creditor who received notice of acceptance by the issuing or confirming bank, of its publicized security interest over the proceeds of a letter of credit, has priority over any security interest over such proceeds, regardless of the time of its publicity, obtained by another secured creditor who did not receive such acceptance or who received it at a later date. Where the security interest covers the proceeds of a letter of credit, the ordinary rule of priority set out in this Law applies.

IV. A publicized security interest in a movable that is affixed to an immovable, without losing its identity as a movable, has priority over security interests in the relevant immovable, provided the security interest over the movables has been registered in the immovable registry before affixation.

## Article 53

The secured creditor may authorize the secured debtor to dispose of the collateral free of encumbrance, subject to any terms and conditions agreed to by the parties.

## TITLE VI Enforcement

### Article 54

A secured creditor who intends to commence enforcement, in case of default of the secured debtor, shall register an enforcement form in the Registry and deliver a copy to the secured debtor, to the principal debtor of the secured obligation, to the person in possession of the collateral and to any person who has publicized a security interest in the same collateral.

The enforcement form shall contain:

I. A brief description of the default by the secured debtor;

II. A description of the collateral;

III. A statement of the amount required to satisfy the secured obligation and to pay the secured creditor's enforcement expenses as reasonably estimated;

IV. A statement of the rights provided by this Title to the recipient of the enforcement form; and

V. A statement of the nature of the remedies provided by this Title that the secured creditor intends to exercise.

#### **Article 55**

In case of default on the secured obligation, the secured creditor shall require the payment from the secured debtor. Notice of this requirement shall be issued in a notarized or judicial form, at the creditor's option, to the debtor's address as indicated in the registration form. In the requirement or notification process, the debtor shall be given a copy of the enforcement form filed with the registry.

#### **Article 56**

The debtor shall have a period of three days from the day following receipt of the enforcement form to object by giving evidence to the Judge or the Notary involved that full payment of the amount and its accessories has been made. No exception or defense, other than full payment, will be admitted.

#### **Article 57**

In case of a non-possessory security interest over corporeal property, once the period indicated in the previous Article has elapsed, the secured creditor may ask the Judge to issue an order of repossession, which shall be enforced forthwith, without granting a hearing to the debtor. In accordance with a Judge's order the collateral shall be delivered to the secured creditor, or to a third party at the request of the secured creditor. Any exception or defense that the debtor wishes to make against such order, other than that indicated in the previous Article, shall be initiated through an independent judicial action, as provided for in local procedural law; such independent judicial action shall not prevent the secured creditor from exercising its enforcement rights against the collateral.

#### **Article 58**

At any time before the secured creditor disposes of the collateral, the secured debtor, as well as any other interested person, has the right to terminate the enforcement proceedings by:

I. Paying the full amount owed to the secured creditor, as well as the reasonable enforcement costs of the secured creditor; or

II. If the secured obligations are installment obligations, reinstating the security contract by paying the amounts actually in arrears together with the secured creditor's reasonable enforcement expenses and remedying any other act of default.

### **Article 59**

With respect to a possessory security interest, or with respect to a non-possessory security interest in incorporeal property, or with respect to a non-possessory security interest in corporeal property after repossession:

I. If the collateral is movable property that is customarily priced in the market in the State where enforcement takes place, it may be sold directly by the secured creditor at a price in accord with such market.

II. If the collateral consists of receivables, the secured creditor has the right to collect or enforce the receivables against the third person obligated on the receivable in accordance with the provisions of Title III of this Law.

III. If the collateral consists of stocks, bonds or similar types of property, the secured creditor has the right to exercise the secured debtor's rights in relation to the collateral, including redemption rights, rights to draw, voting rights and rights to collect dividends or other revenues derived from the collateral.

IV. The collateral may be sold privately, or taken in payment against the debt, provided that it has been previously appraised by a single qualified appraiser designated by the secured creditor, for the price of the appraisal. The secured creditor may elect to sell the collateral in a public auction previously announced in two daily publications of major circulation, at least five days before the sale, without minimum bid, to the highest bidder.

### **Article 60**

The proceeds of the sale or auction will be applied in the following manner:

I. The costs of enforcement, storage, repair, insurance, preservation, sale or auction, and any other reasonable cost incurred by the creditor;

II. The payment of any outstanding taxes owing by the secured debtor if they are secured by a lien on the collateral provided by operation of law;



- III. The payment of the outstanding amount of the secured obligation;
- IV. The payment of secured obligations stemming from security interests with a secondary priority; and
- V. Any remainder will be returned to the debtor.

If the outstanding loan amount owed by the secured debtor exceeds the proceeds of the disposition of the collateral, the secured creditor shall have the right to demand payment for any deficiency from the debtor of the obligation.

#### **Article 61**

The possible appeals of any judicial decision mentioned in this Title will not have suspensive effect.

#### **Article 62**

At any time, before or during the enforcement proceeding, the debtor may reach an agreement with the creditor on terms other than those previously established, either for the delivery of the goods, the terms of the sale or auction, or any other matter, provided that said agreement does not affect other secured creditors or buyers in the ordinary course of business.

#### **Article 63**

In any event, the debtor retains the right to claim damages against a creditor that abuses its enforcement rights.

#### **Article 64**

Any subsequent secured creditor may subrogate the rights of a preceding secured creditor by paying the secured obligation of the secured debtor.

#### **Article 65**

The secured debtor's right to sell or transfer collateral in the ordinary course of business operations is suspended from the moment the secured debtor receives notice of the commencement of enforcement proceedings against the secured debtor, pursuant to the enforcement rules of this Law. This suspension will continue until the completion of the enforcement proceedings, unless the secured creditor otherwise agrees.

#### **Article 66**

Secured creditors are entitled to exercise their enforcement rights and to assume control of the collateral in the order of their priority rank.

**Article 67**

A person who purchases the collateral at a sale or auction, takes the property subject to the real rights with which it is encumbered, with the exception of the security interest of the creditor who sold the property and the security interests or claims which were subordinate to such security interest.

**TITLE VII  
Arbitration****Article 68**

Any controversy arising out of the interpretation and fulfillment of a security interest may be submitted to arbitration by the parties, acting by mutual agreement and according to the legislation applicable in this State.

**TITLE VIII  
Conflict of Laws and Territorial Scope of Application****Article 69**

In cases where a security interest has contacts with more than one State, the law of the State in which the collateral is located at the time the security interest is created shall govern issues relating to the validity, publicity and priority of:

- I. A security interest in corporeal movable property other than movable property of the kind referred to in the next Article; and
- II. A possessory security interest in incorporeal movable property.

If the collateral is moved to a different State than that in which the security interest was previously publicized, the law of the State to which the collateral has been moved governs issues relating to the publicity and priority of the security interest as against unsecured creditors and third persons who acquire rights in the collateral after the relocation. However, the priority of the security interest acquired under the law of the previous location of the collateral is preserved if the security interest is publicized in accordance with the law of the State of the new location within 90 days after the relocation of the property.

**Article 70**

In cases where a secured transaction has contacts with more than one State, the law of the State in which the secured debtor is located when

the security interest is created governs issues relating to the validity, publicity and priority of:

I. A non-possessory security interest in incorporeal property; and

II. A security interest in movable corporeal property if the property is held by the secured debtor as equipment for use in the secured debtor's business, or as inventory for lease.

If the secured debtor changes its location to a different State than that in which the security interest was previously publicized, the law of the State of the secured debtor's new location governs issues relating to the publicity and priority of the security interest as against unsecured creditors and third persons who acquire rights in the collateral after the relocation. However, the priority of the security interest acquired under the law of the previous location of the secured debtor is preserved if the security interest is publicized in accordance with the law of the State of the secured debtor's new location within 90 days after the relocation of the debtor.

#### **Article 71**

The priority of a non-possessory security interest in negotiable incorporeal property as against third persons that acquire a possessory interest in the property is governed by the law of the State where the collateral is located when the possessory interest is acquired.

#### **Article 72**

For the purposes of applying Article 70, a secured debtor is considered located in the State where the secured debtor maintains the central administration of its business.

If the secured debtor does not operate a business or does not have a place of business, the secured debtor is considered located in the State of its habitual residence.