



# MODEL INTER-AMERICAN LAW ON SECURED TRANSACTIONS Model Registry Regulations

Department of International Law  
Secretariat for Legal Affairs



Foreign Affairs, Trade and  
Development Canada

Affaires étrangères, Commerce  
et Développement Canada

Organization of  
American States



# MODEL INTER-AMERICAN LAW ON SECURED TRANSACTIONS

## Model Registry Regulations



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## **Introduction**

The Organization of American States (OAS) has promulgated legal instruments governing security interests in personal property for the purpose of securing transactions and financing practices. Under this initiative to modernize the secured transactions laws in the Americas, the Model Inter-American Law on Secured Transactions (“Model Law”) was approved by the Sixth Inter-American Specialized Conference on Private International Law (CIDIP-VI) on February 8, 2002.

In particular, the Model Law provides in Article 1 that a State which adopts the Model 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.” In this context, the Model Law has been supplemented by the Model Registry Regulations, which were prepared and approved by the Seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII) on October 9, 2009.



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

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

February 8, 2002



# 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 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 an 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.



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

**Seventh Inter-American Specialized Conference  
on Private International Law  
(CIDIP-VII)**

October 9, 2009



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

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

## Preamble

### CIDIP-VII/RES.1/09

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

#### CONSIDERING:

That this conference includes the subject of Secured Transactions: Electronic Registries for Implementation of the Model Inter-American Law on Secured Transactions as one of the items on its agenda, approved by the General Assembly by its resolution AG/RES. 2065 (XXXV-O/05), which was analyzed from October 7 to 9, 2009; and

#### WHEREAS:

A specially formed working group, jointly coordinated by the delegations of Canada, Mexico, and United States, prepared Draft Model Registry Regulations under the Model Inter-American Law on Secured Transactions;

The Permanent Council of the Organization of American States and its Committee on Juridical and Political Affairs approved that draft, as a working document, in May 2009;

It is hoped that enactment at the local level of the Model Inter-American Law on Secured Transactions by the member states of the Organization will significantly reduce the cost of loans, facilitate international trade in the region, and assist small and medium-sized businesses throughout the Hemisphere;

Some member states have begun to amend their trade legislation based on the Model Inter-American Law on Secured Transactions; and

The proper and full implementation of a local legal framework based on the Model Inter-American Law on Secured Transactions requires supplementary registration rules, such as those contained in the Draft Model Registry Regulations,

**RESOLVES:**

1. To adopt the Model Registry Regulations under the Model Inter-American Law on Secured Transactions attached hereto.

2. To encourage the member states of the Organization of American States to enact legislation consistent with the Model Inter-American Law on Secured Transactions adopted at CIDIP-VI, and to adopt administrative rules consistent with the Model Registry Regulations adopted herein during CIDIP-VII.

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

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

## 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.

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

## 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 [*sic*] 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.

## Comments to the Articles\*

### 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

*\*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.*

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.

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 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.







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