

APPENDIX A

DEFINITIONS OF TECHNICAL TERMS

1. The following paragraph offers an explanation of terms used to describe the basic features of a secured financing system that relate to registration. These terms do not all come from any single legal system. They have been selected principally for their descriptive value. Their role is to describe generic concepts and structures.

Account (Receivable)

2. The terms “account” and “receivable” refer to a debt obligation (usually of short duration) owed by one person (account debtor) to another person. Most systems of law recognize that a debt can be transferred or be collateral under a secured financing arrangement. Consequently, it is very common for businesses that generate accounts by granting short term credit to their customers to sell their accounts to financing organizations (factors) that purchase accounts or to grant charges on their accounts to secure loans from banks or other financing organizations.

Charge

3. The generic term “charge” is used in this Guide to refer to any encumbrance against a debtor’s movable property granted by the debtor in order to secure an obligation (ordinarily a debt) owed by him or her. An interest in the same property acquired from the debtor by a third person would presumptively be subject, under applicable property law, to a pre-existing “charge”. In other words, the third person could not ordinarily acquire that part of the debtor’s property that is affected by an existing “charge” free of the claim of the charge holder.

4. As explained later in the Guide, movables registries are also used in some jurisdictions to provide public disclosure of the ownership interests of lessors, sellers and consignors of movable property who retain title to the property after its delivery to lessees, buyers and consignors, as well as of nonconsensual liens such as tax and judgment enforcement liens. In a regime that elects to adopt this broad approach, the term ‘charge’ in this Guide should be read to include these types of title-based security rights or interests in movable property.

Collateral

5. As used in this Guide, the term “collateral” refers to the movable property on which a charge is created as security for an extension of sale or loan credit or any other obligation (ordinarily, a monetary obligation). In essence, the purpose of the charge is to give to the secured creditor an alternative source of repayment of the loan or credit granted in the event of default by the debtor (the recipient of the loan or grant of credit). The secured creditor is entitled to have specified property of the debtor (the collateral) seized and sold, thereby generating funds to satisfy the outstanding debt or obligation.

Consignment

6. A “consignment” is an arrangement under which a person (consignor) who owns property gives possession of that property to another person (consignee) and authorizes that person to sell it. Ownership of the property does not transfer to the consignee. It remains with the consignor until the property is sold. It then transfers to the buyer from the consignee.

Generally, the consignee is an agent of the consignor and must account to the consignor for the proceeds of the sale.

Debtor

7. This Guide uses the term “debtor” to denote both the person who owes the obligation (or debt) secured by a charge and the person who owns the collateral and grants the charge to secure the obligation. As a practical matter, the person who owes the obligation that is secured is usually the person who grants the charge. However, the person who owes the obligation and the grantor of the charge are not necessarily the same person in all cases. Most legal systems recognize and support the common commercial practice of permitting a debt owed by one person to be secured by a charge granted by another person in his or her property. This operates as a form of guarantee given by the owner of the property charged to the secured creditor (that is, the holder of the charge). The charge secures satisfaction of the debt owed, even though that debt is owed by a person other than the person who has given the charge. Under this arrangement, the owner of the collateral is differentiated from the debtor who received the loan or grant of credit. For example, it is common for the owners of a company that has few assets to be required to grant security in their individual personal assets to supplement security granted by the company to secure a loan. The company as borrower is a distinct legal entity from the owners of the company who grant charges on their personally owned property. However, either or both the company and the owners of the company in such an instance may be referred to as a “debtor” for purposes of the secured transactions law, and its supporting registry.

Financing Lease

8. The term “financing lease” is used in this Guide to refer to a transaction in the form of a lease of movable property that functions as a secured financing arrangement. Generally, the effect of a financing lease is that the lessee pays the equivalent of the purchase price of the leased property (plus a credit charge) and acquires most of the rights of ownership. Financial leases come in many forms. The following factors indicate a financing lease:

- the period of the lease is substantially equal to or greater than the period during which the property is suitable for the purposes for which it was designed and the period cannot be terminated at the election of the lessee;
- upon the expiry of the one or more initial periods, the lessee is bound to renew the lease for the balance of the period during which the property is suitable for the purposes for which it was designed or is obligated to purchase the property;
- at the expiry of one or more initial periods, the lessee has the option to renew the lease for the balance of the period during which the property is suitable for the purposes for which it was designed for no additional value or for a value that is significantly below the market lease rate for the property at the time the option is exercised, unless the market lease rate is greater than the amount payable by the lessee under the option because of changes in the market for the property that could not reasonably have been contemplated by the parties at the time of execution of the lease;

- at the expiry of one or more initial periods, the lessee has the option to become the owner of the property for no additional consideration or for a consideration that is significantly below the fair market value for the property at the time the option is exercised, unless the fair market value is greater than the amount payable by the lessee under the option because of changes in the market for the property that could not reasonably have been contemplated by the parties at the time of execution of the lease;
- prior to execution of the lease, the property was owned and used by the lessee and thereafter sold to the lessor;
- at the expiry of one or more initial periods the leased property is to be sold and the lessee, whether or not entitled to be paid a surplus, is obligated to pay to the lessor a deficiency, when the deficiency or surplus is calculated by comparing the amount recovered from the sale and an amount specified in the contract.

Immovable Property

9. The term “Immovable property” is used in this Guide to refer to land. The term also includes structures and items attached to land.

Title Retention Sales Contract

10. As used in this Guide, the term “title retention sales contract” refers to a sale of tangible movables (goods) under which the buyer obtains possession of the goods but seller retains ownership until the buyer discharges all his or her obligations under the contract (payment of purchase price and any credit charges). The function of a title retention sales contract is to facilitate the sale of goods but at the same time provide to the seller security (in the form of retained ownership) for the obligations of the buyer under the contract.

Lease

11. For the purposes of this Guide, the term “lease” is a contract under which one person (lessor) grants a temporary right to possession of his or her movable property to another person (lessee). At the end of the term of the lease, the property must be returned to the lessor. A lease should be distinguished from a “financing lease” defined above.

Lien

12. The term “lien” is used in this Guide to refer to three types of interests. One of these is an encumbrance against property of a debtor that arises by operation of law. For example, in many countries, when a person fails to pay taxes owing to the state, the law provides that that person’s property is encumbered with a lien to secure payment of the taxes. The state has the power under the lien to seize and sell sufficient property to discharge the tax obligation. In some cases, the lien gives to the state priority over any prior or subsequent charge or interest in the defaulting taxpayer’s property.

13. A second type of lien is one that affects specific property and arises by operation of law in favor of a repairer, storer or transporter of the property.

14. The term is also used in the Guide to refer to an interest that creditors obtain under some legal systems once they obtain court judgments ordering an debtor to pay an amount of money. A judgment lien may give priority to the creditor over subsequent interests in the debtor's property.

Movable Property

15. The term "movable property" or "movables" is used in this Guide to refer to property traditionally classified in common law legal systems as "personal property". The term movables as used here is best explained as encompassing all property rights recognized by a legal system other than rights in immovable property in the narrow sense of land and any buildings or other structures meant to be permanently affixed to that land. It is presumed to include:

- tangible "goods" (corporeal movables): for example, cars, furniture, cash currency;
- documents representing valuable rights: for example, checks, documents of title such as bills of lading, investment security certificates;
- pure intangible (incorporeal) rights: for example, intellectual property such as copyrights or patents of invention, the accounts receivable owed to a business by its customers, or, indeed, any other "claim" held by a person against somebody else; for example, a right to take legal action against a person.

16. Some assets sit at the juncture of movable and immovable property. The most commonly encountered examples are:

- fixtures or accessions to land; that is, tangible movables that are affixed to land in such a manner that they are considered by the particular legal system to have been transformed from movable to immovable property. In effect, they are viewed as part of the land. Typical examples are a heating system for a building, or heavy machinery in a purpose-built industrial plant;
- growing crops that are intended ultimately to be harvested and thereby transformed from immovables (as part of the land upon which they are growing) into movables;
- rights to payment that are connected to an interest in land; for example, the stream of rental payments due under a lease of land.

17. In this Guide, it is assumed that the term movable includes these kinds of borderline assets in the sense that a charge taken in them would be registerable in the movables registry. However, it is common for modern secured transactions regimes to require registration of charges on this type of property in both a movables charges registry and a land registry to ensure that the rights of the charge-holders do not prejudice those who rely on a search of the land registry to disclose interests in property that is considered part of the land.

Pledge

18. The term "pledge" as used in both common law and civil law systems traditionally referred to an arrangement under which a debtor transferred possession of movable property to a creditor to be held as security for performance of an obligation of the debtor. If the debtor

defaulted, the creditor was entitled to sell the property and apply the proceeds toward discharge of the obligation.

19. The term “nonpossessory pledge” or “pledge without disposition” is used in some systems (almost exclusively civil law systems) to refer to a form of security agreement under which the debtor retains possession of his or her property but grants to the creditor the power to seize the property (either with or without court order) and sell it in the event of nonperformance by the debtor.

20. References to this Guide to a possessory charge can be read as a reference to a possessory pledge.

Secured Creditor

21. In this Guide the term “secured creditor” is used to describe two types of creditors: (i) those, such as banks and government lending agencies, that grant loans to debtors and that secure repayment of those loans with charges on their debtors’ property; and (ii) those that extend credit in the form of deferred payment of the price of movable property being purchased by debtors. In the latter case, the extension of credit is secured by the secured creditor retaining title to the property purchased or by taking a charge in that property (and, perhaps, other property) from the debtor. In some circumstances, the term can be used to refer to lessors and consignors of movable property.

Secured Credit

22. The term “secured credit” is used to refer to any transaction, whether in the form of a loan or a contract providing for deferred payment, that creates a charge on the property of the debtor or involves retention of ownership by a seller under a title retention sales contract, a consignor under a consignment agreement or a lessor under a financing lease.

APPENDIX B**EXCERPTS FROM THE NEW ZEALAND PERSONAL
PROPERTY SECURITIES ACT, 1999****as amended**

(Headings are not part of the Act but have been included to facilitate readers. The references to Canadian Acts are found in the published version of the Act)

Types of Transactions Governed By The Act**17. Meaning of "security interest"—**

(1) In this Act, unless the context otherwise requires, the term "security interest"—

(a) Means an interest in personal property created or provided for by a transaction that in substance secures payment or performance of an obligation, without regard to—

- (i) The form of the transaction; and
- (ii) The identity of the person who has title to the collateral; and

(b) Includes an interest created or provided for by a transfer of an account receivable or chattel paper, a lease for a term of more than 1 year, and a commercial consignment (whether or not the transfer, lease, or consignment secures payment or performance of an obligation).

(2) A person who is obligated under an account receivable may take a security interest in the account receivable under which that person is obligated.

(3) Without limiting subsection (1), and to avoid doubt, this Act applies to a fixed charge, floating charge, chattel mortgage, conditional sale agreement (including an agreement to sell subject to retention of title), hire purchase agreement, pledge, security trust deed, trust receipt, consignment, lease, an assignment, or a flawed asset arrangement, that secures payment or performance of an obligation.

Choice of Law Provisions – Where to Register**26. When New Zealand law applies—**

(1) Except as otherwise provided in this Act, the validity, perfection, and the effect of perfection or nonperfection of a security interest in goods or a possessory security interest in chattel paper, an investment security, money, a negotiable document of title, or a negotiable instrument, is governed by the law of New Zealand if,—

(a) At the time the security interest attaches to the collateral, the collateral is situated in New Zealand; or

(b) At the time the security interest attaches to the collateral, the collateral is situated outside New Zealand but the secured party has knowledge that it is intended to move the collateral to New Zealand; or

(c) The security agreement provides that New Zealand law is the law governing the transaction; or

(d) In any other case, New Zealand law applies.

(2) For the purposes of subsection (1), an investment security that is not in the form of a security certificate is situated where the records of the clearing house or securities depository are kept.

Cf. Personal Property Security Act 1993, s. 5 (1), (2) (Saskatchewan)

27. Continuity of perfection where goods are moved to New Zealand—

(1) A security interest in goods that is perfected under the law of the jurisdiction in which the goods are situated when the security interest attached and before the goods are brought into New Zealand continues to be perfected in New Zealand if it is perfected in New Zealand by the earliest of the following:

(a) Not later than 60 days after the day on which the goods are brought into New Zealand; or

(b) Not later than 15 days after the day on which the secured party has knowledge that the goods have been brought into New Zealand; or

(c) Before perfection ceases under the law of the jurisdiction in which the goods were situated when the security interest attached.

(2) A security interest that is not perfected as provided in subsection (1) may be otherwise perfected in New Zealand under this Act.

Cf. Personal Property Security Act 1993, s. 5 (3), (4) (Saskatchewan)

28. Temporary perfection of security interest in collateral moved to New Zealand in other cases—

(1) A security interest in collateral that is moved to New Zealand is temporarily perfected by registration until the expiration of 30 working days after the day on which the collateral was moved to New Zealand, if the security interest was not perfected under the law of the jurisdiction in which the collateral was situated when the security interest attached.

(2) If a security interest referred to in section 26 is not perfected under the law of the jurisdiction in which the collateral was situated when the security interest attached and before the collateral was brought into New Zealand, it may be perfected under this Act.

Cf. Personal Property Security Act 1993, s. 5 (5) (Saskatchewan)

29. Location of debtor for purposes of sections 30 to 33—

For the purposes of sections 30 to 33—

(a) A debtor that is a body corporate is located in the country of incorporation; and

(b) A debtor that is not a body corporate is located at---

(i) The debtor's place of business; or

(ii) The debtor's principal place of business (if the debtor has more than 1 place of business); or

(iii) The debtor's principal residence (if the debtor has no place of business).

30. Validity, perfection, etc, of security interests in intangibles, movable equipment, etc.—

The validity, perfection, and effect of perfection or non-perfection of a security interest is governed by the law, including the conflict of laws rules, of the jurisdiction where the debtor is located when the security interest attaches, if the security interest is—

(a) A security interest in an intangible:

(b) A security interest in goods that are of a kind that are normally used in more than 1 jurisdiction, if the goods are equipment or inventory leased or held for lease by a debtor to others:

(c) A nonpossessory security interest in chattel paper, an investment security, a negotiable document of title, money, or a negotiable instrument.

Cf. Personal Property Security Act 1993, s. 7 (2) (Saskatchewan)

31. Position where debtor relocates to another jurisdiction, etc—

If a debtor relocates to another jurisdiction or transfers an interest in the collateral to a person located in another jurisdiction, a security interest perfected in accordance with the law applicable, as provided in section 30, continues to be perfected in New Zealand if it is perfected in the other jurisdiction by the earliest of the following:

(a) Not later than 60 days after the day on which the debtor relocates or transfers an interest in the collateral to a person located in the other jurisdiction; or

(b) Not later than 15 days after the day on which the secured party has knowledge that the debtor has relocated or transferred an interest in the collateral to a person located in the other jurisdiction; or

(c) Prior to the day on which perfection ceases under the law of the first jurisdiction.

Cf. Personal Property Security Act 1993, s. 7 (3) (Saskatchewan)

32. **Position where no public record, etc, of perfection of security interest—**

(1) If the law governing the perfection of a security interest referred to in section 30 or section 31 does not provide for public registration or recording of the security interest or a notice relating to it, and the collateral is not in the possession of the secured party, the security interest is subordinate to---

(a) An interest in an account receivable that is payable in New Zealand; or

(b) An interest in goods, an investment security, a negotiable instrument, a negotiable document of title, money, or chattel paper, acquired when the collateral was situated in New Zealand.

(2) Subsection (1) does not apply if the security interest is perfected under this Act before the interest referred to in paragraph (a) of that subsection or paragraph (b) of that subsection arises.

(3) A security interest to which subsection (1) applies may be perfected under this Act.

Cf. Personal Property Security Act 1993, s. 7 (4), (5) (Saskatchewan)

33. **Validity, perfection, etc, of security interest in minerals—**

(1) Despite section 30, the validity, perfection, and the effect of perfection or nonperfection of a security interest in minerals, or in an account receivable resulting from the sale of the minerals at the minehead, is governed by the law of the jurisdiction in which the minehead is located if the security interest--

(a) Is provided for in a security agreement signed, or assented to by letter, telegram, cable, telex message, facsimile, electronic mail, or other similar means of communication, before the minerals are extracted; and

(b) Attaches to the minerals on extraction or attaches to an account receivable on the sale of the minerals.

(2) For the purposes of subsection (1),—

"Minehead" includes a wellhead:

"Minerals" include petroleum and gas.

Cf. Personal Property Security Act 1993, s. 7 (6), (7) (Saskatchewan)

Protection of Buyers or Lessees of Goods

53. **Buyer or lessee of goods sold or leased in ordinary course of business takes goods free of certain security interests—**

(1) A buyer of goods sold in the ordinary course of business of the seller, and a lessee of goods leased in the ordinary course of business of the lessor, takes the goods

free of a security interest that is given by the seller or lessor or that arises under section 45, unless the buyer or lessee knows that the sale or the lease constitutes a breach of the security agreement under which the security interest was created.

(2) This section prevails over section 3 of the Mercantile Law Act 1908 and section 27 of the Sale of Goods Act 1908 where this section applies and either or both of those sections apply.

Cf. Personal Property Security Act 1993, s. 30 (2) (Saskatchewan)

54. Buyer or lessee of consumer goods of certain value takes goods free of security interest—

(1) A buyer or lessee of goods that are acquired as consumer goods takes the consumer goods free of any security interest, if—

(a) The value of the consumer goods did not exceed \$2,000 at the time the security interest in the goods attached, or, if there is more than 1 security interest in those goods, at the time the security interest with priority over all other security interests attached; and

(b) The buyer or lessee—

- (i) Gave new value for the interest acquired; and
- (ii) Bought or leased the goods without knowledge of the security interest.

(2) The Governor-General may, from time to time, by Order in Council, alter the amount specified in subsection (1).

Cf. Personal Property Security Act 1993, s. 30 (3), (4) (Saskatchewan).

58. Buyer or lessee of motor vehicle sold by dealer takes motor vehicle free of security interests—

A buyer or lessee of a motor vehicle who acquires the motor vehicle for value takes the motor vehicle free of any security interest in the motor vehicle if—

(a) The buyer or lessee is a consumer who acquires the motor vehicle from a dealer; and

(b) The security interest was not created or provided for in a transaction to which the buyer or lessee is a party; and

(c) The security interest was not disclosed to the buyer or lessee in writing.

Protection of Persons to Whom Money, Negotiable Instruments or Negotiable Securities are Transferred

94. When holder of money takes money free of perfected security interest in money—

A holder of money takes the money free of a perfected security interest if the holder—

- (a) Acquired the money without knowledge of the security interest; or
- (b) Is a holder for value, whether or not the holder knew of the security interest at the time the holder acquired the money.

Cf. Personal Property Security Act 1993, s. 31 (1) (Saskatchewan)

96. Priority of purchaser of negotiable instrument—

(1) The interest of a purchaser of a negotiable instrument has priority over a perfected security interest in the negotiable instrument if the purchaser—

- (a) Gave value for the negotiable instrument; and
- (b) Acquired the negotiable instrument without knowledge of the security interest; and
- (c) Took possession of the negotiable instrument.

(2) For the purposes of subsection (1), the purchaser of a negotiable instrument who acquired it under a transaction entered into in the ordinary course of the transferor's business has knowledge only if the purchaser acquired the interest with knowledge that the transaction is a breach of the security agreement to which the security interest relates.

Cf. Personal Property Security Act 1993, s. 31 (4), (6)

97. Priority of purchaser of investment security—

(1) The interest of a purchaser of an investment security has priority over a perfected security interest in the investment security if the purchaser—

- (a) Gave value for the investment security; and
- (b) Acquired the investment security without knowledge of the security interest; and
- (c) Took possession of the investment security.

(2) For the purposes of subsection (1), the purchaser of an investment security who acquired it under a transaction entered into in the ordinary course of the transferor's business has knowledge only if the purchaser acquired the interest with knowledge that the transaction is a breach of the security agreement to which the security interest relates.

Cf. Personal Property Security Act 1989, s. 31 (4), (6) (Saskatchewan)

Essential Characteristics of the Personal Property Registry

139. Personal property securities register—

- (1) The Registrar must ensure that a register of personal property security interests known as the personal property securities register is kept in New Zealand.
- (2) The register is to be—
 - (a) An electronic register; and
 - (b) Maintained for the purposes of registrations under this Act; and
 - (c) Operated at all times, unless—
 - (i) The Registrar suspends the operation of the register, in whole or in part, in accordance with section 138; or
 - (ii) Otherwise provided in the regulations.

Cf. Personal Property Security Act 1993, s. 42 (1) (New Brunswick).

Identification of Debtors and Secured Parties in a Registration

140. Contents of register—

The register contains the following data:

- (a) The name and address of the debtor and, if the debtor is an individual, the debtor's date of birth, or, if the debtor is an organization, the name of the organization and the name and address of the person acting on its behalf;
- (b) If the debtor is an organization that is incorporated, the unique number assigned to it on its incorporation;
- (c) The name and address of the secured party or, if the secured party is an organization, the name of the organization and the name and address of the person acting on its behalf;
- (d) A description of the collateral, including its serial number if required or authorized by this Act or by the regulations;
- (e) The date of prior registration, if prior registration law (as defined in section 193) applies in respect of the security interest;
- (f) Any other data specified in the regulations.

Who May Register

141. Person may register financing statement—

A person may register a financing statement in accordance with this Act and the regulations.

Cf. Personal Property Security Act 1993, s. 43 (1) (New Brunswick).

Data to be Included in a Financing Statement

142. Data required to register financing statement—

The following data must be contained in the financing statement in order to register it:

- (a) The name and address of the debtor or, if the debtor is an organization, the name of the organization and the name and address of the person acting on its behalf;
- (b) The debtor's date of birth (if the debtor is an individual);
- (c) If the debtor is an organization that is incorporated, the unique number assigned to it on its incorporation;
- (d) The name and address of the secured party or, if the secured party is an organization, the name of the organization and the name and address of the person acting on its behalf;
- (e) A description of the collateral, including its serial number if required or authorized by this Act or by the regulations;
- (f) The date of prior registration, if prior registration law (as defined in section 193) applies in respect of the security interest;
- (g) Any other data required by this Act or the regulations to be contained in the financing statement.

Requirements for Registration

143. When financing statement or financing change statement not to be registered—

A financing statement or financing change statement must not be registered if—

- (a) It is not submitted in the prescribed manner or in a form that enables the data to be entered directly by electronic means;
- (b) The prescribed fee has not been paid to the Registrar, unless arrangements for its payment have been made in accordance with the regulations.

Cf. Personal Property Security Act 1993, s. 43 (3) (Saskatchewan).

144. When financing statement or financing change statement registered—

A financing statement or financing change statement is registered at the time that a registration number, date, and time is assigned to it in the register.

145. Verification statement to be forwarded to person who registered financing statement, etc—

A verification statement must, as soon as reasonably practicable after a financing statement or financing change statement has been registered, be given to the person who registered the financing statement or financing change statement.

Pre-Agreement Registration Permitted

146. When financing statement may be registered—

A financing statement may be registered before or after—

- (a) A security agreement is made; or
- (b) A security interest has attached.

One Registration may Relate to More than One Agreement

147. Financing statement may relate to 1 or more security agreements—

A financing statement may relate to 1 or more security agreements.

Cf. Personal Property Security Act 1993, s. 43 (6) (New Brunswick).

Debtor to be Notified of Registration

148. When secured party to notify debtor about registration of financing statement—

The secured party who registered a financing statement or financing change statement must, not later than 15 working days after the day on which the verification statement was received, give to the debtor a copy of the verification statement in accordance with the regulations, unless that person has waived in writing the right to receive it.

When Registration is Invalid

149. Registration of financing statement invalid only if seriously misleading—

The validity of the registration of a financing statement is not affected by any defect, irregularity, omission, or error in the financing statement unless the defect, irregularity, omission, or error is seriously misleading.

Cf. Personal Property Security Act 1993, s. 43 (7) (New Brunswick).

150. When financing statement seriously misleading—

Without limiting the circumstances in which a registration is invalid, a registration is invalid if there is a seriously misleading defect, irregularity, omission, or error in—

(a) The name of any of the debtors required by section 142 to be included in the financing statement other than a debtor who does not own or have rights in the collateral; or

(b) The serial number of the collateral if the collateral is consumer goods, or equipment, of a kind that is required by the regulations to be described by serial number in a financing statement.

Cf. Personal Property Security Act 1993, s. 43 (8) (New Brunswick).

151. Proof that person actually misled not necessary—

In order to establish that a defect, irregularity, omission, or error is seriously misleading, it is not necessary to prove that any person was actually misled by it.

Cf. Personal Property Security Act 1993, s. 43 (9) (New Brunswick).

152. Validity of registration when description of part of collateral is omitted—

Failure to include a description of any item or kind of collateral in a financing statement does not affect the validity of the registration in respect of the description of other collateral included in the financing statement.

Duration of a Registration

153. Duration of registration of financing statement—

(1) Except as otherwise provided in this Act or in the regulations, a registration of a financing statement under this Act is effective until whichever is the earlier of—

(a) The expiration of the term specified in the financing statement; or

(b) The expiration of 5 years commencing on the date on which and at the time at which the financing statement was registered.

(2) Subsection (1) does not apply if the registration of the financing statement is discharged or removed before the expiration of the relevant period referred to in that subsection.

Discharge of Registration

161. Discharge of registration relating only to consumer goods—

If a registration relates exclusively to a security interest in consumer goods, the secured party must discharge the registration within 15 working days after all obligations under the security agreement creating the security interest are performed, unless the registration lapses before the expiration of that period.

Cf. Personal Property Security Act 1993, s. 50 (2) (New Brunswick).

Compulsory Discharge of Registration

162. **When debtor, etc, may demand registration of financing change statement—**

The debtor or any person with an interest in property that falls within the collateral description included in a registered financing statement may give a written demand to the secured party if—

- (a) All of the obligations under the security agreement to which the financing statement relates have been performed;
- (b) The secured party has agreed to release part or all of the collateral described in the collateral description included in the financing statement;
- (c) The collateral described in the collateral description included in the financing statement includes an item or kind of property that is not collateral under a security agreement between the secured party and the debtor;
- (d) No security agreement exists between the parties;
- (e) The security interest is extinguished in accordance with this Act.

Cf. Personal Property Security Act 1993, s. 50 (3) (New Brunswick)

163. **Matters that may be required by demand—**

A demand under section 162 may require the secured party to register, within 15 working days after the demand is given, a financing change statement—

- (a) Discharging the registration in a case within paragraph (a) or paragraph (d) or paragraph (e) of section 162; or
- (b) Amending or discharging the registration so as to reflect the terms of the agreement in a case within paragraph (b) of section 162; or
- (c) Amending the collateral description to exclude items or kinds of property that are not collateral under a security agreement between the secured party and the debtor in a case within paragraph (c) of section 162.

Cf. Personal Property Security Act 1993, s. 50 (4) (New Brunswick).

164. **Application of sections 165 to 167 in cases not involving security trust deeds—**

Sections 165 to 167 do not apply to the registration of a security interest provided for in a security trust deed if the registration discloses that the security agreement providing for the security interest is a security trust deed.

Cf. Personal Property Security Act 1993, s. 50 (8) (New Brunswick)

165. Procedure where noncompliance with demand and no court order in cases not involving security trust deed—

- (1) The person giving the demand under section 162 may enter in the register the financing change statement referred to in section 163 if the secured party—
- (a) Fails to comply with the demand within 15 working days after it is given; or
 - (b) Fails, within 15 working days after the demand is given, to give to that person a court order maintaining the registration.
- (2) The Registrar must ensure that the secured party is given a notice stating that the financing change statement will be registered unless a court order maintaining the registration is served on the Registrar within 15 working days of the notice being given to the secured party.
- (3) The notice referred to in subsection (2) must be given to the secured party as soon as reasonably practicable after the financing change statement is entered in the register.

Cf. Personal Property Security Act 1993, s. 50 (5) (New Brunswick).

166. Consequences of nonreceipt, and receipt, of court order in cases not involving security trust deed—

- (1) If a court order maintaining the registration is served on the Registrar within 15 working days of the notice referred to in section 165 (2) being given to the secured party, the financing change statement will not be registered and may be removed from the register by the Registrar.
- (2) The financing change statement will be registered in accordance with section 144, if a court order maintaining the registration is not given to the Registrar within 15 working days of the notice referred to in section 165 (2) being given to the secured party.

167. Secured party may obtain court order in cases not involving security trust deed—

- (1) At any time before the financing change statement referred to in section 163 is registered, the Court may, on application by the secured party, and if the Court is satisfied that 1 or more of the grounds for making a demand under section 162 exist, order that the registration—
- (a) Be maintained on any condition, and subject to sections 153 and 154, for any period of time; or
 - (b) Be discharged or amended
- (2) The Court may make any other orders it thinks proper for the purpose of giving effect to an order under subsection (1).

(3) The Registrar must amend or discharge a registration of a financing statement in accordance with a court order made under subsection (1) as soon as reasonably practicable after receiving the order.

Cf. Personal Property Security Act 1993, s. 50 (7) (New Brunswick).

168. Procedure where non-compliance with demand and security trust deed involved—

(1) The Court may, on application by the person making the demand under section 162, and if the Court is satisfied that 1 or more of the grounds for making a demand under that section exist, make an order directing that the registration be amended or discharged if—

(a) The registration of a security interest discloses that the security agreement providing for the security interest is a security trust deed; and

(b) The secured party fails to comply with the demand within 15 working days after it is given.

(2) The Court may make any other orders it thinks proper for the purpose of giving effect to an order under subsection (1).

(3) The Registrar must amend or discharge a registration of a financing statement in accordance with a court order made under subsection (1) as soon as reasonably practicable after receiving the order.

Cf. Personal Property Security Act 1993, s. 50 (8), (9) (New Brunswick).

169. No fee for compliance with demand—

A secured party may not charge any fees for compliance with a demand given under section 162, unless the parties otherwise agree.

Information to be Supplied by Secured Party

177. Secured party to provide certain information relating to security interest—

(1) The debtor, a judgment creditor, a person with a security interest in personal property of the debtor, or an authorized representative of any of them, may request the secured party to send or make available to any specified person, at an address specified by the person making the request, any of the following:

(a) A copy of a security agreement that creates or provides for a security interest held by the secured party in the personal property of the debtor;

(b) A statement in writing of the amount of the indebtedness and of the terms of payment of the indebtedness;

(c) A written approval or correction of an itemized list of personal property indicating which items are personal property, unless the security interest is over all of the personal property of the debtor;

(d) A written approval or correction of the amount of indebtedness and of the terms of payment of the indebtedness.

(2) Subsection (1) does not apply if the information requested under that subsection must be, or has already been, made available under any other Act or rule of law, to the person who made the request.

Cf. Personal Property Security Act 1993, s. 18 (2) (Saskatchewan).

178. Time for complying with request—

A secured party who is required to comply with a request made under section 177 (1) must comply with the request within 10 working days of the receipt of the request, unless the secured party has been exempted under section 179.

Cf. Personal Property Security Act 1993, s. 18 (6) (Saskatchewan).

179. Exemption from complying with request—

The Court may, on application by a secured party, make an order exempting the secured party from complying with a request made under section 177 in whole or in part or extending the time for compliance if the Court is satisfied that, in the circumstances, it would be unreasonable for the secured party to comply with the request.

Cf. Personal Property Security Act 1996, s. 18 (13) (Saskatchewan).

180. Secured party may recover costs arising from request—

(1) A secured party, who is required under section 177 to provide certain information, may charge the person requesting the information reasonable costs for providing the information, unless the person who has requested the information is the debtor.

(2) A debtor who has requested information under section 177 is entitled to be supplied free of charge with that information.

181. Application to court for compliance with request—

The Court may, on application by the person who made a request under section 177, make an order requiring the secured party to comply with the request if, without reasonable excuse, the secured party failed to comply with the request.

Cf. Personal Property Security Act 1993, s. 18 (8) (Saskatchewan).

182. Consequences of not complying with court order—

If a person fails to comply with a court order made under section 181, the Court may, on the application of the person who made the request under section 177—

(a) Make an order—

- (i) Declaring that the security interest to which the request relates is to be treated as unperfected or extinguished; and
- (ii) Directing the Registrar to remove the registration of the security interest.

(b) Make such other orders as it thinks proper for the purpose of giving effect to an order under this section.

Cf. Personal Property Security Act 1993, s. 18 (12) (Saskatchewan).

183. Obligation to disclose successor in security interest when request made—

Where a person makes a request under section 177 and the person to whom the request was made no longer has an interest in the obligation or collateral, that person must send or make available to the person making the request the name and address of the immediate successor in interest and the latest successor in interest, if known.

APPENDIX C

CHECKLIST FOR THE DESIGN OF A MODERN MOVABLES REGISTRY

The following are the features of modern, efficient registry systems of the kind that have operated in Canada for a sufficient period of time to demonstrate their efficiency and functionality. Many of the features set out below are also contained in the registry created under the *New Zealand Personal Property Securities Act, 1999*. Possible alternative features are separately noted.

1. Registry Operation

Recommended:

A registry operated by a government department or a government corporation

Alternative

A registry under the control of a government department but managed under contract with a competent, solvent private organization capable of providing insurance against errors omissions in the operation of the system or system failure.

2. Notice Registration

Recommended:

A registration is effected when the following data are entered in to the database of the registry:

- the name and address of the secured creditor or potential secured creditor;
- the name (or other reliable identifier such as government issued identification number) and address of the person named as debtor in the registration;
- a description of the collateral or potential collateral (see below).

The secured creditor (or potential secured creditor) is under a legal obligation to facilitate searching parties obtaining the details of any charge agreement to which the registration relates through the debtor.

3. Methods of Effecting a Registration

Recommended:

A registration can be effected in either of the following ways:

- transmission of the registry data directly to the database of the registry when prior arrangements for this have been made with the registry;
- transmission of registry data in hardcopy form (delivery, telecopies or fax) to the registry. The data are entered into the registry database by registry staff.

Alternative:

Registration may be effected through a registry agent who has direct access to the database of the registry (assuming an electronic registry that is accessible from remote locations).

4. Advance Registration

Recommended:

A registration can be effected before a charge agreement has been executed between the person identified in the registration as the secured creditor and the person identified in the registration as the debtor. However, the latter person must consent to (or must be informed of) the registration.

Under the applicable law, subject to specified exceptions, the priority of a charge to which the registration relates dates from the time of the registration and not from the time the charge comes into existence.

Alternative:

A registration can be effected only after a charge agreement is executed. Priority of the charge dates from the time of registration and not from the time the charge is created.

5. Multiple-Agreement Registration

Recommended:

A single registration can relate to any number of separate agreements between the parties identified in the registration so long as the collateral description in the registration is sufficient to identify the collateral under each agreement.

Alternative:

A separate registration is required for each agreement creating a charge.

6. Time and Duration of a Registration

Recommended:

A registration is deemed to have been effected when it can be discovered through a search obtained by a third person.

The registration remains effective for the period specified by the secured creditor or prospective secured creditor, but can be discharged at the demand of the person named as debtor if it does not relate to an extant charge.

Alternative:

A registration remains effective for a period of time specified in regulations and must be renewed prior to the expiry of that period.

7. Collateral Description

Recommended:

All collateral other than specified, uniquely identifiable collateral, may be described either on a detailed item basis or in generic terms. Where the charge is on all present and future movable property of the debtor, an all-inclusive description may be used. Specified uniquely identifiable collateral must be described using the prescribed identifier (e.g., serial number or mandatory government-issued registration number) except where the collateral is inventory.

Alternative 1:

No collateral description is required.

Alternative 2:

No separate collateral description requirement for uniquely identifiable collateral.

8. Registration-Search Criteria*Recommended:*

The registration-search criteria are: the debtor's name (or other reliable identifier, such as government-issued identification number) and the prescribed identifier in case of uniquely identifiable collateral and the debtor's name (or other reliable identifier such as government issued identification number).

Alternative:

The debtor's name is the sole registration-search criterion.

9. Errors in Registry Data*Recommended:*

A registration is invalidated by an error or omission in the registration data when the registration data cannot be retrieve by using the correct form of the registration-search criterion.

Alternative:

A registration is invalidated by an errors or omission in the registration data only when the error or omission would mislead a hypothetical, reasonable person who searches the registry.

10. Amendments and Discharges*Recommended:*

Amendments and discharges can be effected in either of the following ways:

- transmission of the registry data directly to the database of the registry when prior arrangements for this have been made with the registry;
- transmission of registry data in hardcopy form (delivery, telecopies or fax) or by electronic transfer to the registry. The data are entered into the registry database by registry staff.

Amendments and discharges are legally effective when they are reflected in the database of the registry. Measures are available to allow reinstatement of unauthorized amendments or discharges. These measure function in the context of priority rules that protect third parties who rely on search of the registry occurring after the amendment or discharge and before reinstatement.

Alternative:

The amendment or discharge is recorded as data in the registration but is not treated as being effective unless it has been authorized by the secured creditor.

11. Liability of Registry*Recommended:*

The registry is liable for reasonable foreseeable, direct loss suffered by a person who obtained a search result from the registry when the loss resulted from an error or omissions in the operation of the system or for malfunctions in the system. The registry is not liable for corruption

or changes in data during transmission to the registry or for unauthorized amendments or discharges of registrations.

Alternative 1:

The extent of liability of the registry for loss referred to in the recommended approach is limited to an amount specified in regulations.

Alternative 2:

The registry is not liable for loss suffered by users of the system resulting from errors or omissions in the operation of the system, for malfunctions in the system, for corruption or changes in data during transmission to the registry or for unauthorized amendments or discharges of registrations.

12. Scope of the Registry

Recommended:

Charges on all types of movable property, other than property for which there exists a title registry capable of recording charges, are registered in the registry.

Leases (of a specific duration), financing leases, consignments and title retention sales agreements are treated as charges for registry and priority purposes.

Alternative:

Only charges in the strict sense are within the scope of the registry and subject to related priority rules.

APPENDIX D

STEPS IN THE CREATION OF A MODERN MOVABLES REGISTRY

Note: The following list of steps address two situations: (i) a state in which circumstances permit the creation of a modern, electronic registry; and (ii) a state where the circumstances require the jurisdiction creating the registry to start with a manual paper-based system. A country may begin with a manual, paper-based system but conclude that, after a few years of operation, conditions warrant the conversion to an electronic system. The following steps describe the measures that should be undertaken when developing an electronic system as part of the original design of a system or as a new feature to be implemented as an aspect of transition from a manual to an electronic system.

1. Obtain governmental approval in principle for the drafting and implementation of a comprehensive modern secured transactions law for movable property containing integrated priority rules designed to function in the context of a notice based registry system.
2. Make a preliminary determination based on a study of the relevant factors (e.g., whether the country has a federal or unitary state structure, or whether the country is large and communication systems are not highly developed) as to whether the registry system to support the new law is to provide for a single central national registry or a number of regional registries.
3. Appoint a team of legal drafters with substantive theoretical and practical expertise in the secured transaction area. Test the draft law on an ongoing basis through periodic seminars and workshops with national and international experts, and with representatives of the legal, financial, business and consumer communities. Continue to refine the draft based on this input.
4. If regional registries are required because the country has political subdivisions (provinces) with legislative jurisdiction over secured financing, seek to ensure that mirror-image legislation is enacted in each subdivision. This may entail a multi-regional drafting team or the preparation of a model law (and model registry structure) that can be the basis for harmonization among the various subdivisions.
5. Once a penultimate draft of the new law is complete, create an implementation team composed of the legal drafters and other persons with expertise in the subject matter of the draft law, in registry-related administrative and operational structures, and, where a computerized system is to be implemented, persons with expertise in the design of information access and retrieval computer software and hardware.
6. Determine the required database capacity of the registry taking into account: (i) current volume and predicted growth in the incidence of secured business financing; (ii) past experience with any existing registries; (iii) the extent to which charges on consumer assets are to be covered by the new law and registry system taking into account the potential credit market for high-value consumer goods as collateral and the existence of a reliable motor vehicle certificate of title or equivalent system that provides a reliable substitute to registration of charges; (iv) the extent of the transactions, in addition to charges, that are to be covered by the new law and registry (e.g., long-term leases, financing leases, title retention sales agreements and consignments).

7. Determine if the registry is to be designed and operated by a governmental agency alone or under an arrangement with a private company capable of providing the necessary guarantees of solvency, competence and accountability.

8. Determine if the registry is to be: (i) purely paper based; (ii) a combination of paper registrations with data ultimately scanned or keyed into an electronic database that can be searched on site or remotely; (iii) a combination of paper registrations and electronic registrations with both on-site and remote electronic search capability using a web or specialized computer communications; (iv) purely electronic in the sense that all data is entered and searched by the registry clientele directly or through their own lawyers or own specialized private agents. In making this decision, take into account: (a) reliability of the electrical supply to the registry (this will condition the decision as to the extent that the operations of the registry can be computerized.); and (b) the predicted nature of the registry clientele, including the relative incidence of frequent and one-time users (the latter will vary depending on the extent to which charges in consumer goods and notices of judgments are to be included in the registry); the extent to which clientele are likely to have access to computer facilities and internet connections to the registry or sufficient funds to hire an agent to perform registration and search services on their behalf.

9. Based on the decisions made on the issues identified in para. 8, determine access venues and media (e.g. access through regional government offices or through private service providers or both); walk-in access or direct electronic on-line access or both; use of fax registrations and search requests.

10. Prepare the design specifications for the registry based on the additional factors set out paras. 8 and 9 and in Appendix C. Whether the system is to be paper or electronic based, the most significant design specification issues are: (i) the required contents of the registered notice; (ii) whether a general debtor-identification registration-search criterion is to be supplemented for some collateral types by a collateral identifier registration-search criterion; (iii) the optimal security features of the system, from a cost benefit analysis, with due regard to safeguarding the physical integrity of the registry record or database and as well as the integrity and reliability of its contents; (iv) whether any existing databases are to migrate into the new system; and (v) the extent to which the registry is to be cross-linked with other databases, e.g., other regional registries corporate records, the land registry.

11. To the extent the registry is computerized, determine on the basis of the design specifications whether the software for the registry (including programs for the database, communications, financing accounting and statistical reporting) can be "off-the-shelf" programs appropriately modified for the registry or unique programs designed for the registry and the governing law.

12. Determine on the basis of the predicted volumes of registrations the capacity of the hardware required for the system.

13. If the registry is to be constructed outside a government agency, tender for the software and hardware and all related construction and training services. If the registry operations are to be maintained by a private operator in the future, verify whether the tendering firms will be able to provide this potential service post-construction.

14. Arrange for physical facilities for the registry office. If registry services are to be available to "walk-in" users, the size of the registry office, and the need for any branch offices, will be an

important consideration. To conserve resources, consider whether the registry operations can be combined with existing government public government offices and personnel (e.g., real estate registries, vital statistics office).

15. Draft the regulations that will provide the detailed rules applicable to the entry and retrieval of information in and from the registry, and registry administration, services and operation. Once the system is operational, these regulations along with a users' manual should be made available to the public in hardcopy format and on a registry web page.

16. Design the necessary forms (paper and/or electronic fields as the case may be) and the computer user interfaces to support operating systems and procedures. Draft the necessary contractual documents and prepare the necessary informational and software in cases where frequent clients are to have the facility for direct entry and searching. Ensure the software includes an appropriate field for entering authorized user data at the registration level.

17. Develop internal operating procedures and prepare an operations manual for administrative staff.

18. Prepare a users' manual. Refer to step 15.

19. Develop an administrative strategy including an organizational structure and job descriptions for registry staff. The size and required expertise of the staff will vary dramatically depending on the earlier decisions made with respect to access venues and access media.

20. Establish appropriate financial accounting and reporting systems, including a facility for frequent users of the system to deposit amounts with the registry against which the costs of registry services can be charged.

21. Arrange for training of registry staff, preferably including an on-site training visit to an established registry that has operational features similar to those of the registry.

22. Once electronic hardware and software (if any) are acquired and installed, provide for an extensive testing period before the registry becomes operational. Solicit feedback from expected users and refine the design and capabilities of the system accordingly.

23. Design and implement an educational program on the new law and the supporting registry for potential users of the system both at the registration and search levels, and for members of the legal community, both lawyers and judges. If security in consumer goods is to be included, invest in a public media campaign to inform consumers of the benefits of the system and the risks if they fail to search.

24. Based on the extent to which ongoing maintenance and administration of the system is to be supplied outside government, tender and enter into the appropriate contractual arrangements.

25. Develop a revenue strategy designed to ensure recovery of operating costs and initial capital investment while avoiding the use of the system as a tax revenue source.

26. Fine-tune regulations and law to ensure they are compatible with the ultimate design and intended operation of the system. After an appropriate period of advance publicity to affected users to make necessary adjustments, enact law and put regulations into force.

27. Provide for ongoing assessment of the system once it is operational to ensure that it is meeting the objectives of the law in an efficient manner and is addressing the needs of users.

APPENDIX E

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APPENDIX F

OVERVIEW OF THE REGISTRATION SYSTEM FOR SECURED TRANSACTIONS IN VIET NAM

Introduction

1. The purpose of the following overview is to highlight the salient components of the newly-established registration system for secured transactions in Viet Nam and to analyse these components considering the characteristics of a modern registration system for movable property discussed in the Guide.⁵⁶

2. The essential rules pertaining to registration of secured transactions in Viet Nam are set out in Decree No. 08/2000/ND-CP of the Government on Registration of Secured Transactions dated March 10, 2000 (“Decree No. 8”).⁵⁷ This decree also deals with the organisation of five specialized registries and the duties and powers of the registrars. Circular No. 01/2002/TT-BTP (“Circular No. 1”), issued by the Minister of Justice, with effect on 1 February 2002, is applicable to secured transactions registered at the National Registrar for Secured Transactions, the principal registration office for secured transactions in movable property. Circular No. 1 clarifies

⁵⁶ This overview of the registration system for secured transaction in Viet Nam is based upon the unofficial English versions of the decrees, circulars and decisions referred to below. It does not address problems that might arise in relation to the translation of such documents. The registration regime for secured transactions was adopted without a comprehensive reform of the substantive rules concerning secured transactions. In effect, the existing regime contained in the Civil Code of Viet Nam (“Civil Code”) was supplemented with complementary rules principally contained in Decree of the Government on Secured Transactions, No. 165/1999/ND-CP, dated November 19, 1999 (“Decree No. 165”). Decree No. 165 makes it clear that nonpossessory security is valid and that a security agreement can cover both future property and obligations. Moreover, Decree No. 165 permits multiple security over the same property. Equally important, Decree No. 165 also recognizes to some extent the right for the parties to a secured transaction to determine in the security agreement their arrangement with respect to their respective rights and obligations. Decree No. 165 was supplemented by Circular No. 06/2002/TT-BTP, which is titled “Guiding the implementation of some provisions of Decree No. 165/1999/ND-CP of the Government dated 19 November 1999 on Secured Transactions”. This circular sets out additional rules on secured transactions and provides further clarifications on the rules contained in Decree No. 165. In addition to Decree No. 165, Decree No. 178/1999/ND-CP of the Government on Security Interests for Loans extended by Credit Institutions, dated December 29, 1999, sets out additional rules on secured transactions applicable to secured loans made by credit institutions. This approach to legislative reform is complex, but presumably was adopted as an alternative to a comprehensive reform of the regime for secured transactions.

⁵⁷ Decision No. 104/2001/QĐ-TTg, issued by the Prime Minister, which is titled “Decision Of The Prime Minister of the Government on Establishment of Department for National Registration of Secured Transactions Within the Ministry of Justice”, supplements Decree No. 8 and establishes the “Department for National Registration of secured transactions under the jurisdiction of the Ministry of Justice”. This decision also confers rule making and administrative authority to the Ministry of Justice and the Department with respect to registration of secured transactions.

and supplements the provisions of Decree No. 8 and adopts sixteen prescribed forms for registration of secured transactions in movable property.⁵⁸

Public Registration for Secured Transactions

3. The purposes of the registration of secured transactions are: (i) to make available to the public information on secured transactions; and (ii) to determine the priority of conflicting claims over the same property subject to multiple security. To accomplish these objectives, Decree No. 8 provides that: (i) registrations must be based upon a name based-notice filing system; (ii) the relevant registrar must promptly proceed with the registration of applications for registration, including amendments and cancellations; (iii) applicants for registration must be responsible for the contents of their application, including for the accuracy of the information disclosed; and (iv) applicants must register secured transactions with the relevant registrar according to the nature of the property subject to the security, and the registers maintained by the registrars must be open to the public for consultation. In effect, the registration system established by Decree No. 8 allows third parties, in particular prospective lenders (or other creditors) to determine whether property of a prospective debtor (i.e., any person who owes performance of any obligation) is subject to a security in favor of an existing creditor. The registry system established by Decree No. 8 is simply a security registration system organized by reference to the grantor's name and is not an ownership (or other rights) registry system. The grantor's ownership rights (or other rights) with respect to the property subject to the security cannot be determined by reference to the recorded information in the registry system for secured transactions. In short, the registration system, as a notice system for secured transactions, is not a source of information on substantive property rights with respect to the property subject to the security.

4. Decree No. 8 establishes a single registration regime for secured transactions in Viet Nam, with a centralized general registry for movable property and four complementary specialized registries for security on sea-going vessels, aircraft, land use rights and immovable property. The requirements of the registration regime apply to all categories of property. The registries, in the same order of presentation, consist of the National Registrar for Secured Transactions, the Regional Registrars for sea-going vessels and crews, the Viet Nam Civil Aviation Administration, the Provincial Land Administration Departments (or the Land and Housing Administration Departments) and People's Committees.

5. The difficulties in coordinating the registrations in the specialized registries with the general registry (or centralized system) are attenuated to some extent through the transfer of

⁵⁸ Circular No. 1, which is titled "Guiding some issues on the authority and order of and procedures for registration of and provision of information on secured transactions at the National Registrar for Secured Transactions under the Ministry of Justice and its Branches", provides examples of the types of tangible and intangible movable property that could be used as security. This list is non-exhaustive and includes automobiles, equipment, river-going ships, raw materials, securities, intellectual property, claims under contracts, receivables, and rights to repayment of debts. Circular No. 1 applies to movable property other than aircraft and sea-going vessels. It does not apply to registration through electronic means. In addition to Decree No. 8 and Circular No. 1, in order to understand the registration system in Viet Nam, it is necessary to examine the framework for secured transactions set out in the Civil Code, as well as the Decree. Decree No. 165 supplements the rules on secured transactions contained in the Civil Code. In addition to expanding the rules contained in the Civil Code, Decree No. 165 also provides the basic rules on enforcement of secured transactions, which requires, as preliminary measure, the registration of a notice of enforcement with the registrars. The Civil Code and Decree No. 165 also contain substantive rules on registration of secured transactions. For example, see Articles 324 to 376 (pledge, mortgage, security deposit and guaranty), Articles 690 to 698 and Articles 727 to 737 (mortgage of land use rights) of the Civil Code and Articles 6, 13, 14, 15, 16, 25, 26, 27 and 40 of Decree No. 165.

the information recorded in each register maintained by the registrars in a common depository. The common depository is designated in Decree No. 8 as the “Data System”.

6. Decree No. 8 sets out the rules relating to: (i) registration of mortgage, pledge and asset-based securities; (ii) organization, duties and powers of the registrars; and (iii) the formalities for registration of secured transactions.⁵⁹

Transactions Subject to Registration

7. Decree No. 8 provides rules requiring the registration of the following secured transactions with the relevant registrar: (i) where ownership of an asset must be registered, notice of the pledge or the mortgage of the asset must also be registered; (ii) where a pledged or mortgaged asset is held by someone other than the pledgee or mortgagee, notice of the pledge or mortgage of that asset must be registered; (iii) where an asset is pledged or mortgaged as security for multiple obligations, then notice of the pledge or mortgage of such asset must be registered; and (iv) where a pledged or mortgaged asset is disposed of (presumably upon enforcement), notice of such disposition must be registered.⁶⁰ In addition, asset-based guarantees must be registered when so required by law. The registration system adopted is a pure encumbrance registration system, which is not designed to provide evidence of the grantor’s ownership rights (or other rights) with respect to the property subject to the security. The registry system does not apply to all security arrangements. The registry system extends only to security created by pledge, mortgage or asset-based guarantees (i.e., collateral surety, a form of surety secured by security) and would appear not to apply to security rights created by operation of law.⁶¹

8. Decree No. 8, along with Circular No. 1, does not contemplate the registration of the secured transaction before the actual creation of the security pursuant to a security agreement. It would, therefore, not be possible to register a security interest against any property before the actual grant of the security by the grantor in favor of the secured creditor.

Principles of Registration of Secured Transactions and Fees

9. The registration of a secured transaction requires (i) the filing and registration of a registration application on a prescribed form, which contains the required information regarding the transaction, the property subject to the security, and the parties, with the relevant registrar; and (ii) the registration of the information set out on such form in the register by the registrars. The recording of the information contained in the relevant application form, by the registrars, constitutes registration. The registration process is simplified in that it requires the filing of a simple notice setting out the basic information to inform third parties of the existence of security over property of the grantor. The registration form requires the identification of the grantor and the secured creditor and the description of the property subject to the security. The principal search criterion is the name of the grantor. The applicant is not required to file the security agreement, nor does the system contemplate such a filing. The registrars may, however, require

⁵⁹ See Article 1 of Decree No. 8.

⁶⁰ See Article 2 of Decree No. 8 and Article 13 of Decree No. 165. Decree No. 8 and Decree No. 165 confirm that nonpossessory security is valid in Viet Nam.

⁶¹ The registration requirements apply to both nonpossessory and possessory security in property. However, Article 329 of the Civil Code provides that only movable property in which the owner has registered the ownership may be the subject of a nonpossessory pledge. This raises the question of whether registration of a pledge of movable property that is not otherwise registered will constitute registration of ownership for the purposes of Article 329 without conferring greater ownership rights (in itself) in subject property.

the submission of relevant documents with respect to applications for registration from applicants. The responsibility for the completeness and accuracy of the registration form is upon the applicant who files the form.⁶²

10. The registrars have the duty to perform the registration in a timely and accurate manner on the basis of the information provided by the applicant on the registration form. In addition, the registrars have the duty to facilitate the registration of the secured transaction and to facilitate searches of the information contained in the registration application form. All information contained in the registry is publicly accessible.⁶³

11. The use of the registration system, whether for registration purposes or access to information, is subject to fees payable to the registrars. The fee structure is determined jointly by the Ministry of Finance and the Ministry of Justice.⁶⁴

Role of Government Agencies

12. The Ministry of Justice is the responsible government department with respect to the management of registration of secured transactions in movable property (other than sea-going vessels and aircraft). The Ministry of Justice has the following powers: (i) rulemaking authority, including directives; (ii) a supervisory function, including dealing with complaints; (iii) administration of the National Registrar for Secured Transactions; and (iv) authority to enter into international co-operation agreements.⁶⁵

13. The Ministry of Transportation and Communications is responsible for the registration of secured transactions where the asset secured is a sea-going vessel, while the Viet Nam Civil Aviation Administration is responsible for the registration of secured transactions where the property secured is an aircraft. To give effect to this responsibility, the Ministry of Transportation and Communications and the Viet Nam Civil Aviation Administration have the following principal powers: (i) rulemaking authority, including directives; (ii) a supervisory function; and (iii) administration of their respective registries. These powers are exercised in co-ordination with the Ministry of Justice.⁶⁶

Role of People's Committees

14. The People's Committees in the provinces and cities under central authority are responsible for the registration of secured transactions pertaining to land use rights and immovable property within the locality of the immovable property. The People's Committees and the central authority have the following principal powers: (i) rulemaking authority, including directives; (ii) a supervisory function; and (iii) administration of their respective registries. These powers are exercised in co-ordination with the Ministry of Justice.⁶⁷

⁶² See Article 3 of Decree No. 8.

⁶³ Decree No. 8 does not specify the type of registry system that it establishes. The system can function as a paper-based or electronic registry system (or a combination of both). Circular No. 1 makes it clear at the outset that the registry system is paper-based. It is assumed that the paper-based system will be converted into an electronic registry system.

⁶⁴ See Article 4 of Decree No. 8.

⁶⁵ See Article 5 of Decree No. 8.

⁶⁶ See Article 6 of Decree No. 8.

⁶⁷ See Article 7 of Decree No. 8.

Registrars for Secured Transactions

15. The agencies responsible for the registration of secured transactions consist of: (i) the National Registrar for Secured Transactions (with branches), an administrative authority of the Ministry of Justice; (ii) the Viet Nam Maritime Department regional registrars for sea-going vessels and crews; (iii) the Viet Nam Civil Aviation Administration; (iv) the land and housing departments of provinces and cities; and (v) the People's Committees.⁶⁸ Decree No. 8 attempts to establish rules that would uniformly apply to the registration of secured transactions, without regard to the registry used for registering secured transactions. The only difference between the various types of secured transactions will be where the parties to secured transactions register such transactions and where the public can have access to the information contained in the register or, in certain cases, the national data system for secured transactions (the "Data System").⁶⁹

16. The National Registrar for Secured Transactions is the general registration system for security in movable property, with the regional registrars for sea-going vessels and the Viet Nam Civil Aviation Administration as two complementary specialized registration agencies. The registry most likely to be used is the National Registrar for Secured Transactions. In this way, Decree No. 8 has met the objective of having a nation-wide system of registrations for secured transactions in respect of movable property.

17. Secured transactions pertaining to sea-going vessels are recorded in the national vessel registration book, while secured transactions pertaining to aircraft are registered in the aircraft registration book. Secured transactions pertaining to land use rights and immovable property are recorded in the immovable registration book. Registration of secured transactions is made in the name of the grantor of security.⁷⁰ Some of the complexities of maintaining diverse registries will be, to some extent, mitigated by the linkage of the recorded information to the Data System, which will serve as a national repository of information on secured transactions.

18. The other specialized registries for land use rights and immovable property give rise to special concerns that must be addressed in the Civil Code or in decrees to ensure their effective implementation. Registries for immovable property are organized generally by reference to specifically identified property (e.g., legal description or unique identification or reference number) and serve as a system to record ownership and other rights, including security, with respect to specific immovable property. The question of description of land use rights and immovable property, including mortgages, as a requirement for registration is one of the issues which the Ministry of Justice of Viet Nam and other authorities must address.

Duties of Registrars

19. The registrars have the following duties: (i) to register secured transactions; (ii) to deliver certificates with respect to registered secured transactions; (iii) to collect fees; (iv) to reject

⁶⁸ See Article 8 of Decree No. 8.

⁶⁹ See Article 16 of Decree No. 8. All information pertaining to secured transactions where the secured property consists of movable property, sea-going vessels, aircraft, land use rights and immovable property is maintained in the Data System, which is based on the name of the grantor of the security. The Data System is a single database for Viet Nam and is under the administration of the National Registrar for Secured Transactions. The registrars of the other specialized registries transfer the information from their registers to the Data System. This transfer of information should greatly simplify searches on secured transactions. Information in the Data System is available to the public for consultation.

⁷⁰ See Article 17 of Decree No. 8.

improper registration applications; (v) to cancel registrations; (vi) to provide information on registrations; and (vii) to maintain accurate records of registrations.⁷¹ It would appear that the registrars have no right of review or inquiry concerning the validity of secured transactions being registered or the underlying transactions or obligations secured or the ownership of the property subject to the secured transactions. In this regard, the duties of the registrars are purely administrative in nature.

20. The registrars are responsible for ensuring that applicants file applications for registration, amendment or cancellation in the prescribed forms and pay appropriate filing fees. When this is done, the relevant registrar is required to promptly stamp the date, time and numbers on the appropriate prescribed forms and enter the information contained in the prescribed forms in the register or Data System.

21. The registrars are liable for any damages caused by their failure to correctly record the information contained in the registration application pursuant to laws governing the liability of State officers.⁷²

Contents of Application for Registration of Secured Transactions

22. The parties to a secured transaction or an authorized representative of either party may file a registration form with the appropriate registrar. The application for registration may be made in person, by mail, or by any other means of communication.⁷³ Currently, the registration system is paper-based using the prescribed forms. It would, therefore, appear that the applicant may only file prescribed application forms and no other document, including the security agreement and title documents. The identification of the grantor is an essential component for the effectiveness of the registration system, since registrations and searches are made with reference to the grantor's name. Circular No. 1, with the attached forms, provides guidance concerning the identification of the grantor, whether an individual or an entity.⁷⁴

23. The application for registration contains basic information on the parties to the transaction and a description of the property subject to the security. The formal requisite information for registration of secured transactions is the names and addresses of the grantor and secured creditor and a description of the property subject to the secured transaction.⁷⁵ The secured transactions system is one of "notice filing" where a simple notice containing basic

⁷¹ See Article 9 of Decree No. 8.

⁷² See Section 5.3 of Circular No. 1. Circular No. 1 also provides directives concerning complaints against the registrars and other registration officers as well as the procedure that must be followed to pursue such claims.

⁷³ See Article 10 of Decree No. 8.

⁷⁴ Circular No. 1 provides the prescribed forms for registration of secured transactions with respect to movable property (other than sea-going vessels and aircraft). Form 02 must be used for an application for registering a pledge of property and Form 03 for registration of a guarantee by way of assets. The application is made on a form (i.e., paper) and can be filed either at the National Registrar for Secured Transactions (in Hanoi) or at any of its branches. If the applicant is an accredited financial institution, registration may be made by facsimile using Form 01. Payments are made at the registrars either in cash, or by fund transfers where the applicant is an accredited financial institution. In addition to the name of the grantor, the registration forms contemplate schedules for the description of property subject to the security and, presumably, cautious secured creditors will, when possible, provide specific references to the property (e.g. cars, ships with serial numbers). The signature of both the grantor and the secured creditor are required for the legal adequacy of a registration form. This is a requirement for the effectiveness of the registration.

⁷⁵ See Article 11 of Decree No. 8. Although there are no specific rules in Decree No. 8 concerning the name of the grantor for registration and searching purposes, Circular No. 1 and the applicable forms provide some guidance in this respect.

information on the parties to the secured transaction and a description of the property (or right) subject to the security is filed with the relevant registrar, which enters the information in a register or database for public consultation. Further inquiry from third parties will be necessary to discover the complete state of affairs of the grantor of the security. The notice of registration does not create any rights, including rights in the property subject to the security. The rights are created in the security agreement.

24. The relevant decrees do not establish conditions as to the adequacy of the description of the property subject to the security. A proper standard could be that a description of property is sufficient, whether or not specific, if it reasonably identifies what it describes and an application for registration which substantially complies with the requirements of Decree No. 8 would be effective as long as any errors therein are not seriously misleading. If a dispute arises, the interested parties may resolve such dispute by mutual agreement or before the courts.⁷⁶ The applicant is responsible for providing accurate information required to be disclosed in the application form and is liable for any damages resulting from any false information provided.⁷⁷ To the extent that the applicants are responsible for the accuracy of the information contained in the application form, the registrars should not be involved in any dispute.

Duration of Effectiveness of Registration

25. The registration of a secured transaction is only valid for a period of five years from the date of registration, subject to early cancellation or continuation. The effectiveness of the registration of a secured transaction will lapse upon the expiration of the 5-year period unless an application for continuation has been filed with the relevant registrar no less than 6 months prior to the expiry date.⁷⁸ The extension of the registration continues the effect of the original registration for an additional period of 5 years, unless cancelled. If the registration is not continued, it ceases to have any effect and the relevant registrar must cancel the entries of the registration in the register or Data System.

Registration of Secured Transactions

26. The registrars must record the information contained in the relevant forms in the registration system.⁷⁹ To effect this, upon presentation of a completed application for registration, the relevant registrar must stamp on the registration the date and hour of receipt and return one stamped copy of the application form to the applicant. The registrars must, within three days from the date of receipt, enter the information contained in the application for registration in the register or Data System and issue a certificate confirming the registration to the applicant. The registrars must return to the applicant applications for registration that are not properly completed with a statement clearly indicating the reasons for the refusal to register.⁸⁰

⁷⁶ Title registries for immovable property normally require specific identification of the property and the security over such property is registered and searched by reference to the specific property. The effectiveness of a grantor-name registration system for secured transactions involving immovable property is questionable.

⁷⁷ See Article 12 of Decree No. 8.

⁷⁸ See Section IV.1 of Circular No. 1.

⁷⁹ See Article 14 of Decree No. 8.

⁸⁰ See Article 14 of Decree No. 8.

Certificate of Registration of Secured Transactions

27. The registrars must record the information contained in the relevant form in the Data System or register within three days from the date of receipt of the duly completed registration application form, accompanied by payment of the requisite fees.⁸¹

28. The registrars issue to the applicant a certificate of registration that provides the following: information identifying the parties to the transaction, a description of the secured property, time of the registration, expiry of the registration, confirmation of validity of the registration, registration number and a list of secured transactions under the name of the grantor of the security.⁸² The information contained in the certificate is derived from the information contained in the registration application originally registered.

29. The registration application contains information which is very useful for a third party who needs a preliminary assessment of the status of a grantor with respect to security over the grantor's property. However, the greater the amount of information contained in a document, the greater the possibility of error in data entry. The effects of an error in registration depend upon whether the registrar or the applicant for registration committed the error. The principal consequence of such errors is the effective date of the corrections, once registered with the registrars.⁸³

Amendments and Corrections

30. An amendment to the registration can be filed with the relevant registrar to effect modifications to the original registered secured transaction.⁸⁴ The applicant for the registration of a secured transaction may request that the relevant registrar correct entries in the appropriate registry. The relevant registrar is required to make the correction within three days following receipt of the duly completed request for amendment.⁸⁵

Time of Registration

31. The basic rule concerning the time of registration of a secured transaction is that the registration will take effect upon receipt by the relevant registrar of the duly completed application and payment of required fees. To this rule, there are the following exceptions: (i) where the applicant has made an error in a registration, the time of the registration of the amendment is considered to be the time when the relevant registrar receives the application for correction; (ii) where the registrars have made an error in a certificate of registration, the effective time of the correction coincides with the time of the original filing or registration; and (iii) where an applicant files an application to effect a change in a registration (including the

⁸¹ See Article 15 of Decree No. 8. Circular No. 1 provides that the registrar issues a certificate of registration in Form 10 (registration of pledge) or Form 11 (registration of a guarantee). Oddly, Circular No. 1 prohibits the issuance of a certificate of registration by the registrars if more than one request for registration for the same pledge or guarantee agreement is made (see Section II.5).

⁸² See Article 18 of Decree No. 8.

⁸³ See Article 21 of Decree No. 8.

⁸⁴ Circular No. 1 provides that amendments to registrations are made by filing Form 04 with the registrar. The modifications include changes to the parties to the secured transactions, changes in the property covered by the security and changes in priority. The registrar confirms the changes by issuing a certificate of registration of change in Form 12.

⁸⁵ Circular No. 1 provides that corrections to the register of secured transactions are made by filing Form 08 with the registrar.

addition of secured property), the effective time of the change is the time when the relevant registrar receives the application for modifications.⁸⁶

Legal Validity of Secured Transactions Registration

32. The effects of registration are: (i) to render secured transactions effective against third parties; and (ii) to establish rules of priority among conflicting secured creditors over the same property subject to multiple secured transactions.⁸⁷ In particular, registration does not create rights in the property subject to the security. The security agreement creates the security that secures the debtor's obligations (the grantor of the security is not necessarily the debtor).

33. The registry system established by Decree No. 8 can be characterized as a movables registry, where the purposes of the system is to ensure: (i) the effectiveness of the security against third parties (and not between the grantor and the secured creditor), and (ii) the establishment of priority rules, without any effect on ownership of the property subject to the security interest.⁸⁸ Registration is not a requirement as to the validity of a secured transaction between the parties. Although not expressly stated in the Civil Code, Decree No. 165 or Decree No. 8, it is not unreasonable to conclude that a secured transaction is without effect against third parties unless registered, irrespective of any knowledge of any competing claim on the part of such third parties.

Removal of Registration

34. The grantor of security or the secured creditor may request the cancellation of the registration of the secured transaction upon the occurrence of the termination events set out in Articles 343 (termination of pledge), 362 (termination of mortgage), 375 (termination of guarantee) and 418 (termination of civil contracts) of the Civil Code. In addition, either the grantor or the secured creditor may require the cancellation of the security when there is no outstanding obligation secured.⁸⁹ The registrars must cancel the registration of the secured transaction in the appropriate register within three days following the receipt of the application for cancellation. No fee is payable for the cancellation of a registration. If the grantor makes the cancellation, the registrars must send a copy of the cancellation to the secured creditor.⁹⁰

35. Since the registration of a secured transaction is only valid for a period of 5 years, unless renewed (i.e., the effects of registration are continued), there is no compulsion placed upon the

⁸⁶ See Article 21 of Decree No. 8.

⁸⁷ See Article 22 of Decree No. 8 and Sections 14 and 16 of Decree No. 165.

⁸⁸ Decree No. 8 establishes a clear and simple rule regarding priority (i.e., time of registration of the secured transaction).

⁸⁹ Circular No. 1 provides that voluntary cancellations are made by filing an application in Form 06 with the registrar. Moreover, Circular No. 1 provides that a notice of disposition of property pledged must be filed with the registrar seven days prior to its disposition and the registrar, within three days of the filing of such notice of disposition, must issue to the applicant a certificate in Form 15 and notify the other parties who had security over the same secured property. Article 26 of Decree No. 165 provides that, prior to the disposal of secured property, the secured creditor must give written notice of such disposal to the grantor of the security and must register this notice at the registration office for secured transactions. If a specific property is used to secure several obligations, the relevant registrar must provide written notice of the disposal to all secured creditors. Conservatory measures may also be taken by the secured creditor to protect the secured property.

⁹⁰ See Article 23 of Decree No. 8. The unauthorized cancellation by the grantor of the security could give rise to difficulties, which would not be remedied by the notice of cancellation provided to the secured creditor, including problems relating to reliance by third parties. A possible solution would be for the registrars to permit a response time to the secured creditor to the notice prior to effecting the cancellation.

secured creditor to file an application for cancellation, unless requested by the grantor of the security.

Provision of Information on Secured Transactions

Upon providing the relevant registrar with the name of a grantor on a prescribed application form, with payment of the requisite fees, the registrar will provide any person, upon request, the information that is recorded under the name of such grantor.⁹¹ Any interested party, whether Vietnamese or foreign, is authorized to make inquiries and obtain information regarding registered secured transactions.⁹²

36. The fact that an application must be filed in order to obtain information concerning a secured transaction has the effect that direct access to the registry is precluded. As such, the registration system established by Decree No. 8 is a restricted access system. It is, however, important to recognise that Decree No. 8 explicitly states that anyone may search the security registries, without interference of the registrars.

Re-registration of Secured Transactions

37. As a transitional rule in respect of secured transactions existing at the time of the adoption of Decree No. 8, secured transactions relating to movable property which were registered before 25 March 2000 must be registered in compliance with Decree No. 8 with the National Registrar for Secured Transactions before 25 March 2001. The secured transactions, which are so registered, will maintain their original registration date. The secured transactions, which are registered after 25 March 2001, are considered to be new registrations for secured transactions and will take effect upon their actual registration date in compliance with Decree No. 8.⁹³

Validity and implementation

38. Decree No. 8 became effective on March 25, 2000 and, on the effective date, all regulatory provisions that were contrary to the provisions of the Decree were repealed.⁹⁴ The Ministry of Justice, with other agencies, is responsible for facilitating the implementation of Decree No. 8 by providing directives, while the Ministers and Heads of other government agencies and chairmen of People's Committees are responsible for the implementation of Decree No. 8.⁹⁵

⁹¹ See Articles 24 and 25 of Decree No. 8.

⁹² See Circular No. 1. The application for information is made by filing an application for information (Form 09) with the registrar, accompanied by the requisite fees. The registrar must provide this information, within three days of receipt of the application, in a prescribed form. Decree No. 165 provides for equal treatment of domestic and non-domestic secured creditors. However, this right may be somewhat limited by other laws of general application, especially those relating to land use rights and immovable property, which provide significant constraints applicable to foreigners.

⁹³ See Article 26 of Decree No. 8.

⁹⁴ See Article 27 of Decree No. 8. This raises questions regarding the rules on the hierarchy of laws and the effect of purporting superseding legislative instruments and provisions.

⁹⁵ See Article 28 of Decree No. 8.

APPENDIX G**REGISTRY PROVISIONS OF THE CONVENTION ON INTERNATIONAL INTERESTS IN
MOBILE EQUIPMENT, 2001***Chapter IV*

The international registration system

Article 16 – The International Registry

1. An International Registry shall be established for registrations of:
 - (a) international interests, prospective international interests and registrable nonconsensual rights and interests;
 - (b) assignments and prospective assignments of international interests;
 - (c) acquisitions of international interests by legal or contractual subrogations under the applicable law;
 - (d) notices of national interests; and
 - (e) subordinations of interests referred to in any of the preceding sub-paragraphs.
2. Different international registries may be established for different categories of object and associated rights.
3. For the purposes of this Chapter and Chapter V, the term “registration” includes, where appropriate, an amendment, extension or discharge of a registration.

Article 17 – The Supervisory Authority and the Registrar

1. There shall be a Supervisory Authority as provided by the Protocol.
2. The Supervisory Authority shall:
 - (a) establish or provide for the establishment of the International Registry;
 - (b) except as otherwise provided by the Protocol, appoint and dismiss the Registrar; Registry in the event of a change of Registrar will vest in or be assignable to the new Registrar;
 - (c) after consultation with the Contracting States, make or approve and ensure the publication of regulations pursuant to the Protocol dealing with the operation of the International Registry;
 - (d) establish administrative procedures through which complaints concerning the operation of the International Registry can be made to the Supervisory Authority;

- (e) supervise the Registrar and the operation of the International Registry;
- (f) at the request of the Registrar, provide such guidance to the Registrar as the Supervisory Authority thinks fit;
- (g) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry;
- (h) do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of this Convention and the Protocol; and
- (i) report periodically to Contracting States concerning the discharge of its obligations under this Convention and the Protocol.

Chapter V

Other matters relating to registration

Article 18 – Registration requirements

1. The Protocol and regulations shall specify the requirements, including the criteria for the identification of the object:
 - (a) for effecting a registration (which shall include provision for prior electronic transmission of any consent from any person whose consent is required under Article 20);
 - (b) for making searches and issuing search certificates, and, subject thereto;
 - (c) for ensuring the confidentiality of information and documents of the International Registry other than information and documents relating to a registration.
2. The Registrar shall not be under a duty to enquire whether a consent to registration under Article 20 has in fact been given or is valid.
3. Where an interest registered as a prospective international interest becomes an interest, no further registration shall be required provided that the registration information is sufficient for a registration of an international interest.
4. The Registrar shall arrange for registrations to be entered into the International Registry database and made searchable in chronological order of receipt, and the file shall record the date and time of receipt.

Article 19 – Validity and time of registration

1. A registration shall be valid only if made in conformity with Article 20.
2. A registration, if valid, shall be complete upon entry of the required information into the International Registry database so as to be searchable.

3. A registration shall be searchable for the purposes of the preceding paragraph at the time when:

- (a) the International Registry has assigned to it a sequentially ordered file number; and
- (b) the registration information, including the file number, is stored in durable form and may be accessed at the International Registry.

4. If an interest first registered as a prospective international interest becomes an international interest, that international interest shall be treated as registered from the time of registration of the prospective international interest provided that the registration was still current immediately before the international interest was constituted as provided by Article 7.

5. The preceding paragraph applies with necessary modifications to the registration of a prospective assignment of an international interest.

6. A registration shall be searchable in the International Registry database according to the criteria prescribed by the Protocol.

Article 20 – Consent to registration

1. An international interest, a prospective international interest or an assignment or prospective assignment of an international interest may be registered, and any such registration amended or extended prior to its expiry, by either party with the consent in writing of the other.

2. The subordination of an international interest to another international interest may be registered by or with the consent in writing at any time of the person whose interest has been subordinated.

3. A registration may be discharged by or with the consent in writing of the party in whose favor it was made.

4. The acquisition of an international interest by legal or contractual subrogation may be registered by the subrogee.

5. A registrable nonconsensual right or interest may be registered by the holder thereof.

6. A notice of a national interest may be registered by the holder thereof.

Article 21 – Duration of registration

Registration of an international interest remains effective until discharged or until expiry of the period specified in the registration.

Article 22 – Searches

1. Any person may, in the manner prescribed by the Protocol and regulations, make or request a search of the International Registry by electronic means concerning interests or prospective international interests registered therein.
2. Upon receipt of a request therefor, the Registrar, in the manner prescribed by the Protocol and regulations, shall issue a registry search certificate by electronic means with respect to any object.
 - (a) stating all registered information relating thereto, together with a statement indicating the date and time of registration of such information; or
 - (b) stating that there is no information in the International Registry relating thereto.
3. A search certificate issued under the preceding paragraph shall indicate that the creditor named in the registration information has acquired or intends to acquire an international interest in the object but shall not indicate whether what is registered is an international interest or a prospective international interest, even if this is ascertainable from the relevant registration information.

Article 24 – Evidentiary value of certificates

A document in the form prescribed by the regulations which purports to be a certificate issued by the International Registry is prima facie proof:

- (a) that it has been so issued; and
- (b) of the facts recited in it, including the date and time of a registration.

Article 25 – Discharge of registration

1. Where the obligations secured by a registered security interest or the obligations giving rise to a registered non-consensual right or interest have been discharged, or where the conditions of transfer of title under a registered title reservation agreement have been fulfilled, the holder of such interest shall, without undue delay, procure the discharge of the registration after written demand by the debtor delivered to or received at its address stated in the registration.
2. Where a prospective international interest or a prospective assignment of an international interest has been registered, the intending creditor or intending assignee shall, without undue delay, procure the discharge of the registration after written demand by the intending debtor or assignor which is delivered to or received at its address stated in the registration before the intending creditor or assignee has given value or incurred a commitment to give value.
3. Where the obligations secured by a national interest specified in a registered notice of a national interest have been discharged, the holder of such interest shall, without undue delay, procure the discharge of the registration after written demand by the debtor delivered to or received at its address stated in the registration.

4. Where a registration ought not to have been made or is incorrect, the person in whose favor the registration was made shall, without undue delay, procure its discharge or amendment after written demand by the debtor delivered to or received at its address stated in the registration.

Article 26 – Access to the international registration facilities

No person shall be denied access to the registration and search facilities of the International Registry on any ground other than its failure to comply with the procedures prescribed by this Chapter.

Chapter VII

Liability of the Registrar

Article 28 – Liability and financial assurances

1. The Registrar shall be liable for compensatory damages for loss suffered by a person directly resulting from an error or omission of the Registrar and its officers and employees or from a malfunction of the international registration system except where the malfunction is caused by an event of an inevitable and irresistible nature, which could not be prevented by using the best practices in current use in the field of electronic registry design and operation, including those related to back-up and systems security and networking.

2. The Registrar shall not be liable under the preceding paragraph for factual inaccuracy of registration information received by the Registrar or transmitted by the Registrar in the form in which it received that information or for acts or circumstances for which the Registrar and its officers and employees are not responsible and arising prior to receipt of registration information at the International Registry.

3. Compensation under paragraph 1 may be reduced to the extent that the person who suffered the damage caused or contributed to that damage.

4. The Registrar shall procure insurance or a financial guarantee covering the liability referred to in this Article to the extent determined.

APPENDIX H
UNITED NATIONS CONVENTION ON THE ASSIGNMENT OF RECEIVABLES IN
INTERNATIONAL TRADE

CHAPTER II
GENERAL PROVISIONS

Article 5

Definition and rules of interpretation

For the purpose of this Convention:

(h) A person is located in the State in which it has its place of business. If the assignor or the assignee has a place of business in more than one State, the place of business is that place where the central administration of the assignor or the assignee is exercised. If the debtor has a place of business in more than one State, the place of business is that which has the closest relationship to the original contract. If a person does not have a place of business, reference is to be made to the habitual residence of that person;

ANNEX TO THE CONVENTION

SECTION I
PRIORITY RULES BASED ON REGISTRATION

Article 1

Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable is determined by the order in which data about the assignment are registered under section II of this annex, regardless of the time of transfer of the receivable. If no such data are registered, priority is determined by the order of conclusion of the respective contracts of assignment.

Article 2

Priority between the assignee and the insolvency administrator or creditors of the assignor

The right of an assignee in an assigned receivable has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned, and data about the assignment were registered under section II of this annex, before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

SECTION II REGISTRATION

Article 3 ***Establishment of a registration system***

A registration system will be established for the registration of data about assignments, even if the relevant assignment or receivable is not international, pursuant to the regulations to be promulgated by the registrar and the supervising authority. Regulations promulgated by the registrar and the supervising authority under this annex shall be consistent with this annex. The regulations will prescribe in detail the manner in which the registration system will operate, as well as the procedure for resolving disputes relating to that operation.

Article 4 ***Registration***

1. Any person may register data with regard to an assignment at the registry in accordance with this annex and the regulations. As provided in the regulations, the data registered shall be the identification of the assignor and the assignee and a brief description of the assigned receivables.
2. A single registration may cover one or more assignments by the assignor to the assignee of one or more existing or future receivables, irrespective of whether the receivables exist at the time of registration.
3. A registration may be made in advance of the assignment to which it relates. The regulations will establish the procedure for the cancellation of a registration in the event that the assignment is not made.
4. Registration or its amendment is effective from the time when the data set forth in paragraph 1 of this article are available to searchers. The registering party may specify, from options set forth in the regulations, a period of effectiveness for the registration. In the absence of such a specification, a registration is effective for a period of five years.
5. Regulations will specify the manner in which registration may be renewed, amended or cancelled and regulate such other matters as are necessary for the operation of the registration system.
6. Any defect, irregularity, omission or error with regard to the identification of the assignor that would result in data registered not being found upon a search based on a proper identification of the assignor renders the registration ineffective

Article 5 ***Registry searches***

1. Any person may search the records of the registry according to identification of the assignor, as set forth in the regulations, and obtain a search result in writing.
2. A search result in writing that purports to be issued by the registry is admissible as evidence and is, in the absence of evidence to the contrary, proof of the registration of the data to which the search relates, including the date and hour of registration.

**SECTION III
PRIORITY RULES BASED ON THE TIME OF
THE CONTRACT OF ASSIGNMENT**

Article 6

Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable is determined by the order of conclusions of the respective contracts of assignment.

Article 7

***Priority between the assignee and the insolvency
administrator or creditors of the assignor***

The right of an assignee in an assigned receivable has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable by attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

Article 8

Proof of time of contract of assignment

The time of conclusion of a contract of assignment in respect of articles 6 and 7 of this annex may be proved by any means, including witnesses.

**SECTION IV
PRIORITY RULES BASED ON THE TIME OF
NOTIFICATION OF ASSIGNMENT**

Article 9

Priority among several assignees

As between assignees of the same receivable from the same assignor, the priority of the right of an assignee in the assigned receivable is determined by the order in which notification of the respective assignments is received by the debtor. However, an assignee may not obtain priority over a prior assignment of which the assignee had knowledge at the time of conclusion of the contract of assignment to that assignee by notifying the debtor.

Article 10

***Priority between the assignee and the insolvency
administrator or creditors of the assignor***

The right of an assignee in an assigned receivable has priority over the right of an insolvency administrator and creditors who obtain a right in the assigned receivable by

attachment, judicial act or similar act of a competent authority that gives rise to such right, if the receivable was assigned and notification was received by the debtor before the commencement of such insolvency proceeding, attachment, judicial act or similar act.

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