

IX. CONCLUSION

263. Legislators in many jurisdictions in the world recognize that secured transactions law is essential to the development of their economies. These laws provide a mechanism through which secured creditors can reduce the risk associated with granting loans or credit to businesses and consumers by taking charges on assets of their debtors. It is not commercially realistic or practically possible in most situations for secured creditors to take possession of the assets offered by debtors as security. Consequently, modern systems universally provide for nonpossessory charges on these assets. However, in order to protect third persons from deception by the debtors in possession of assets subject to such charges, these systems of law require credit grantors to register notices of their charges in public movables registries.

⁵⁴ For example, see section 33 of the New Zealand *Personal Property Securities Act* in Appendix B.; *The Saskatchewan Personal Property Security Act*, 1993, c. P-6.1, s. 7. This legislation is reproduced at: www.qp.gov.sk.ca.

⁵⁵ For further information, see: www.acol.ca.

264. Movables registries for charges on movables have existed in some jurisdictions for many years. However, important innovations in the design and operation of registries have been implemented during the last 30 years, with the result that a modern movables registry can be very efficient and cost effective for its users. The most important development in this respect has been the use of computerization and electronic communications in registry operations.

265. The most efficient and cost effective registries are almost completely electronic. Registrations, amendments to and discharges of registrations and searches of the registry are carried out through electronic communication, using the Internet, between remote computer terminals operated by secured creditors or private service providers and the registry database. Time delays are so small as to be insignificant. There is very little human intervention in the process with the result that the scope for human error in dealing with registration data is very small or nonexistent. Since these systems are very reliable, the issue of loss by users as a result of malfunctions in the system is of minor significance.

266. However, it may not be feasible to attempt to implement a totally electronic system of this kind in every jurisdiction that requires a movables registry. Conditions prevailing in a jurisdiction may dictate a design that is less reliant on computer technology and electronic communications. Such a system can effectively address the need for public disclosure of charges on movables, and in so doing, stimulate the lending activity that supports economic growth. Indeed, some of the jurisdictions, such as the provinces of Canada that now have electronic systems, successfully employed manual, paper based systems for most of the last century. Manual paper based systems that provide for registration through the delivery to a registry of registration notices containing essential features of charge agreements or potential charge agreements can work well so long as volumes of registration are low. This is likely to be the case for a few years after a movables registry system is first adopted in a country. Furthermore, as noted earlier in this Guide, experience in Canadian provinces demonstrates that the transition from a paper-based system (even one that provide for the registration of copies of charge agreements) to an electronic system can be accomplished with little disruption or difficulty.

267. The design of a movables registry involves consideration of a wide range of legal and logistical issues. The way in which these issues are addressed will be affected by conditions existing in the jurisdiction in which the registry is to operate. However, modern movables registries have some universal design features.

268. As noted above, the use of computer technology is likely to be an important consideration where the volume of registrations rises to levels found in a developed economy. A modern movables registry should provide for notice registration. Generally, registration notices contain very basic information concerning the relationship or potential relationship between the secured creditor and debtor. Notice registration can be effectively used in both a paper-based, manual system and an electronic system.

269. A modern system should employ a clearly defined registration-search criterion. This is the factor that is used to index and retrieve registration data. The debtor's name or its equivalent is generally employed for this purpose. The effectiveness of a system can be enhanced if collateral identifiers, such as serial numbers, are used as a registration-search criterion in cases where high value movables, such as motor vehicles or other equipment, are taken as collateral.

270. Many modern systems employ approaches that, while not essential to the proper functioning of a registry system, provide enhanced flexibility for secured creditors. These include the ability to effect a registration before an agreement exists between the secured creditor and

the chargor. They recognize that a single registration can relate to more than one charge or charge agreement and to any amount of credit granted by the secured party to the debtor after the registration has been effected. The potential for abuse of these facilities is addressed through special features which permit a debtor to force the secured party to change a registration to accurately reflect the terms of their of the charge agreement between them.

271. Since both legal and commercial rights are affected by the operation of a movables registry, the issue of liability of the registry (i.e., that of the governmental or private agencies operating it) should be addressed. The approach that is adopted will be conditioned by the design of the registry. Experience has demonstrated that systems can be designed with safeguards that reduce the potential for errors or omissions in the operation of the system to a negligible level. The central feature of this design is minimization or elimination of human involvement in the handling of registry data (a completely electronic, open-access registry). When the potential for loss to users of the system is very low, it is possible to offer very generous compensation for the very few users who are affected by a malfunction of the system.

272. It must be recognized, however, that, particularly in a country that has little or no experience with movables registries and that decides to begin with manual paper-based system, state guarantees against errors or omissions in the operation of the registry may be unrealistic. In this context, users of the system must be prepared to provide self-insurance through due diligence measures.

273. While the optimal approach is to have a single movables registry for all charges on movable property, this may be unrealistic in most jurisdictions. It may be inappropriate to require that charges on property such as motor vehicles or intellectual property rights be registered in a movables registry when title registries (or their equivalent) for interests in this property exist. In such cases, coordination of registration requirements will be important.

274. The constitutional design or geography of some states may necessitate provincial or regional movables registries. Experience has demonstrated that regional registry systems can be efficient if no doubt exists as to where a charge must be registered and, in case where this is practicable given the nature of the collateral, registration in one registry is recognized as effective in all other registries.

275. Modern, efficient movables registry systems operating as part of modern secured transactions regimes will play an increasingly important role in the growth of national and international economic activity. Before the end of 2003, the International Civil Aviation Organization will establish the first international registry for charges, title retention agreements and equipment leases involving aircraft pursuant to *The Convention on International Interests in Mobile Equipment, 2001* and associated *Protocol on Matters Specific to Aircraft Equipment*. This registry will embody most of the features of a modern, electronic movables registry described in this Guide. The design of this registry can provide a pattern for future national and international movable registries.