



Secured Transactions Registries

Current Landscape and Reform
Projects in Latin America



National Law Center for Inter-American Free Trade

Model International Legal Frameworks

- 1994 EBRD Model Law on Secured Transactions and Guiding Principles for the Development of a Charges Registry;
- 2002 ADB Guide to Movable Registries;
- 2002 OAS Model Law on Secured Transactions and 2009 Model Registry Regulations;
- 2008 UNCITRAL Legislative Guide and upcoming project on the Registry Regulations.



Implementation of the EBRD Model

- Non-uniformity of registration systems in EBRD countries;
- Differences from UCC filing systems in
 - excluding certain transactions;
 - validation of registration documents;
 - high fees;
 - excessive details;
 - restricted access; and
 - special protections against bogus filings.



OAS Registry Regulations – System Features Part 1

- Inspired by the Canadian PPSA and the IACA MARS Rules;
- Core features:
 - Identification of debtors by unique numbers, if available;
 - Flexible access [Mexico wanted access solely by electronic means];
 - [Non] free searches [Canada argued that all searches should be subject to a nominal fee];
 - [Non] governments as administrators [Chambers of Commerce in Latin America].



OAS Registry Regulations – System Features Part 2

- Establishment of user accounts to file and pay fees;
- Transparency laws prevent “removal” of records;
- PPSA *“in the opinion of the registrar, the registration information is ambiguous”* ground for refusal not included;
- Attachments may be filed [Mexico objected];
- PPSA reinstatement function, and termination that renders the record unsearchable.



OAS Registry Regulations – Registration Form Features

- Names of legal entities correspond with the proposed amendments to UCC 9;
- Proceeds must be described;
- Includes serial-numbered collateral (cars);
- Maximum amount secured;
- Indication of the PMSI nature;
- Notice of enforcement must be filed;
- Compulsory termination and debtor protection rules follow PPSA.



Implementation in Latin America

- Registration reforms, among other states, in Mexico, Peru, Guatemala and Honduras;
- Attempt to achieve uniformity in Central America and Mexico patterned after the UCC model;
- In the majority of countries – business registries record security interests;
- Consumer and many business transactions (e.g., leases) are not subject to registration.



Mexico

- August 2009 reform to the Commercial Code provides for a single registry for all security interests;
- SIGER is a commerce registry system for business entities and security interests;
- Registration forms must be signed by the creditor and notarized;
- Exclusive e-filers, elimination of one validation step at the registry office.



Peru

- Registration form is 3 pages long, must be signed by both parties and notarized;
- Value of the collateral and a description of the secured debt must be included;
- The type of enforcement (e.g., public sale) in case of default must be indicated;
- Registrars have 3 days for validation;
- Notaries must issue notifications to creditors whenever the collateral is transformed.



Guatemala

- Implemented the OAS Model Law on secured transactions in 2007;
- World Bank Doing Business Report - Guatemala is ranked 4 in “Getting Credit” in the world;
- The Registry of Property temporarily accepts registration forms, extremely high fees - \$1,200;
- Difficulties (lack of funding) to create a secured transactions registry;
- IADB project to develop a new registry that conforms to notice-filing standards.



Honduras

- Secured transactions reform project funded by the Millennium Challenge Corporation;
- New law, new registry, accounting forms, guides to use the new framework;
- Honduras project was singled out in the Pathways to Prosperity [U.S. Department of State program for economic development] by Secretary Clinton as the model for the Americas.



Honduran Registry of Secured Transactions

- Operated by the Chamber of Commerce [already operates the Business Registry];
- Developed by Thomas Ose, the NLCIFT and the Tegucigalpa Chamber of Commerce;
- Implements the OAS Registry Regulations with modifications compliant with UCC 9 and IACA MARS Rules;
- The closest equivalent to U.S. filing systems and the UCC+IACA MARS legal framework.



Thank You!

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