

# UNIFORM ACT ON SECURITY INTERESTS

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The Council of Ministers of the Organization for the Harmonization in Africa of Business Law (OHADA);

- Having regard to the Harmonization of Business Law in Africa signed in Port Louis on 17 October 1993, as revised in Québec on 17 October 2008, notably in its Articles 2, 5 to 10 and 12;
- Having regard to the report of the office of the Permanent Secretary and comments made of the States parties;
- Having regard to Opinion N° 002/2010 dated 03 August 2010 of the Common Court of Justice and Arbitration;

After deliberations, has adopted unanimously by States parties present and voting the uniform Act worded as follows:

## **PRELIMINARY TITLE - DEFINITIONS AND SCOPE OF SECURITY INTERESTS – SECURITIES TRUSTEE**

### **CHAPTER 1 - DEFINITIONS AND SCOPE OF SECURITY INTERESTS**

#### **Article 1**

A security interest is the pledge, for the benefit of a creditor of an asset, a set of properties or assets to secure performance of an obligation or a set of obligations, irrespective of their legal nature whether existing or future, determined or determinable, conditional or unconditional, and whether their amount is fixed or fluctuating.

#### **Article 2**

Unless otherwise provided for in this Uniform Act, security interests governed by uniform Act shall be accessory to the underlying obligations they secure.

#### **Article 3**

Is considered a professional debtor within the meaning of this uniform Act, a debtor whose debt was originated from the performance of his professional duties or the debt is connected directly to one of his professional activities, even when such professional activity is not his principal professional activity.

## **Article 4**

Personal security interests, within the meaning of this uniform Act, consist of the commitment of an individual to satisfy the obligation of the debtor in the event of default of the debtor or at the first request of the beneficiary of the guarantee.

Unless otherwise provided for by this uniform Act, the only security interests validly created are those governed by this Act. They shall consist of either the preferential right of the creditor to be paid from the price of the liquidation of a collateral as a performance guarantee of his debtor, or the right to recover unrestricted disposal of an asset acceptable as security for such an obligation.

Real securities may be granted by the debtor himself or by a third party to secure the obligation subject to special provisions of this uniform Act.

Security interests governed by waterway, sea and air law, legal security interests other than those governed by this uniform Act, as well as securities warranting the performance of agreements entered into exclusively between financing institutions, may be subject to specific legislations.

## **CHAPTER 2 - SECURITIES TRUSTEE**

### **Article 5**

Any security interest or any other collateral pledged for the performance of an obligation may be created, registered, managed and realized by a financial or credit institution, domestic or foreign, acting, in its name and as a securities trustee for the benefit of the secured creditors who appointed him for that purpose.

### **Article 6**

The instrument appointing the securities trustee shall state, under penalty of nullity, the following particulars:

- 1°) the secured obligation (s) or, if it is or they are future, elements enabling their individualization, as per the statement of their debtor, their place of payment, amount or evaluation of the latter, and their maturity date;
- 2°) the identity of the secured creditors as of the date of the appointment of the securities trustee;
- 3°) the identity and registered office of the securities trustee;
- 4°) the duration of the mandate of the security trustee and the scope of his administration and disposal powers;

*Translation subject to further correction (December 2016)*

5°) terms under which the securities trustee reports his activities to the secured creditors.

### **Article 7**

When the securities trustee acts for the benefit of the secured creditors, he shall expressly state so, and any registration of a security interest made during his mandate shall state his name and role as security agent

### **Article 8**

Unless otherwise provided, for all dealings related to secured obligations, the creditors shall be represented by the securities trustee in their dealings with their debtors, their sureties as well as individuals who have granted or assigned an asset as collateral for such obligations, and third parties.

Within the limits of the powers conferred by the secured creditors, the securities trustee may undertake all actions to defend their interests, including in court, him mentioning his role as securities trustee shall be sufficient.

### **Article 9**

When the creation or liquidation of a security interest entails transfer of asset for the benefit of the securities trustee, the asset or assets so transferred shall form separate assets assigned to the accomplishment of the securities trustee's mandate and shall be kept them separately from securities trustee's personnel assets. The same shall apply to payments made to the securities trustee for performing his duties.

Subject to potential exercise of a resale right on such assets and excluding cases of fraud, they can then only be seized by the holders of debts arising from the withholding and management of such assets, including in the event of collective insolvency proceedings against the securities trustee.

### **Article 10**

The instrument appointing the securities trustee may set the terms under which the securities trustee may be replaced by a third party in the performance of his duties. In this case, the secured creditors may directly contest the replacement of the securities trustee.

Such instrument may also prescribe the terms for the replacement of the securities trustee in case of poor performance or, if he imperils interests entrusted to him or if collective insolvency proceedings are instituted against him. Absent contractual provisions to that effect, the secured creditors may, in the aforementioned cases, petition the competent court, ruling expeditiously, for the appointment of a provisional securities trustee or seek the replacement of the securities trustee.

In the event of replacement of the securities trustee, be it contractual or court-ordered, all rights and all shares that he holds in the interest of the secured creditors shall be automatically assigned, and without any further formality, to the new securities trustee.

#### **Article 11**

The absence of a provision to the contrary in the instrument appointing the securities trustee, the responsibility of the securities trustee towards the secured creditors shall be assessed in the same manner as that of a salaried agent.

### **TITLE 1 – PERSONAL SECURITIES**

#### **Article 12**

Personal securities governed by this uniform Act are suretyship and independent guarantee.

### **CHAPTER 1 – SURETYSHIP**

#### **Article 13**

Suretyship is an agreement whereby the surety undertakes to perform an existing or future obligation contracted by the debtor in the event the debtor defaults.

The surety's obligation may be contracted without the debtor's order.

#### **Section 1 – Creation of suretyship**

#### **Article 14**

The suretyship shall not be presumed, regardless of the nature of the obligation secured. It shall be evidenced by an instrument signed by the surety and the debtor and contain a hand-written annotation by the surety, in all letters and digits, of the maximum secured amount covering the principal, the interest and other fees. In the event of discrepancy as to the amount of the obligation, the suretyship shall only be liable for the amount written in letters.

The surety who does not know how to write or is unable to do so must be assisted by two witnesses who shall certify in the surety instrument his identity and his presence and shall attest further that the nature and effects of the instrument have been explained to the surety. The presence of certifying witnesses shall provide the surety proof of the completion of formalities prescribed in the foregoing.

The provisions of this Article shall apply also to the suretyship required by the law of each State party or by a court decision.

*Translation subject to further correction (December 2016)*

## **Article 15**

When the debtor is obligated by contract, applicable law of the State party or by court decision to provide a surety, the security shall be domiciled or shall elect domicile in the territorial jurisdiction of the court where the surety has to be granted, except in case of a waiver of the creditor or the competent court.

The surety must offer solid solvency guarantees by taking into account all the elements of his assets.

The debtor who is unable to find a surety may replace him by any real security offering the same guarantees to the creditor.

## **Article 16**

When the surety given for an obligation, voluntarily or in court, later becomes insolvent, the debtor must provide another surety or pledge a real security offering the same guarantees to the creditor.

There may be an exception to such rule only when the creditor required a surety namely designated in the underlying agreement as a condition of his obligation to the debtor.

## **Article 17**

The suretyship only exists if the principal secured obligation is validly created. However, it is possible to guarantee, knowingly the obligation of an incompetent person. The confirmation, by the debtor, of a relatively null and void obligation, shall not bind the surety, except when the surety expressly renounces to such nullity.

The lack of authority of the representative to bind the legal entity debtor may only be used by the surety if the principal obligation is not validly created, except when the legal entity debtor has confirmed such obligation and the surety has expressly renounced to use the nullity of the said obligation.

The obligation of the surety may not be contracted under more onerous terms than the principal obligation under penalty of reducing proportionally the obligation of the surety to the extent of that of the debtor, or exceed what is owed by the debtor during the proceedings.

The debtor shall not increase the obligation of the surety by an agreement entered into after the suretyship.

## **Article 18**



Unless otherwise agreed, the suretyship of an obligation shall extend to the principal, fees and recovery costs to the extent of the maximum amount secured, including fees incurred after the renunciation of suretyship by the surety.

At the request of the surety, the constituent instrument of the principal obligation shall be appended to the suretyship agreement.

The suretyship may also be contracted for only one portion of the debt and under less onerous conditions.

### **Article 19**

The general suretyship of the debts of the debtor, in the form of a surety bond of all obligations, of the negative balance of a checking account or in any other form, shall only include the guarantee of direct contractual debts, unless otherwise provided. It shall be contracted, under penalty of nullity, for an unrestricted maximum amount determined by the parties, including the principal, the interests and other fees.

The general suretyship may be renewed when the maximum amount is reached. The renewal should be express; any clause to the contrary shall be deemed unwritten. It may be revoked at any time by the surety before reaching the secured maximum amount. All liabilities of the secured debtor contracted before the revocation of the suretyship shall remain guaranteed by the surety.

Unless otherwise provided, the general suretyship shall not secure the debts of the debtor prior to the date of the suretyship.

## **Section 2 – Suretyship arrangements**

### **Article 20**

The suretyship is considered joint and several.

The suretyship is deemed single when it is expressly provided for by the law of the State party or by the agreement of the parties.

### **Article 21**

The surety may ask to be secured, for himself, by a certifier appointed as such in the agreement.

Unless otherwise provided, the certifier (s) shall be single sureties of the certified surety.

### **Article 22**

The surety may secure his obligation by granting a real security on one or several of his assets.

The surety may also limit his obligation to the value of the liquidation of the assets pledged as security.

### **Section 3 – Effects of suretyship**

#### **Article 23**

The surety shall be bound to pay for the debt only in case the debtor defaults.

The creditor may only commence legal proceedings against the surety after he addresses a formal notice of default to the debtor and the debtor fails to cure the default.

The debtor shall notify the surety about the extension of the term granted to him by the creditor. The surety shall be entitled to refuse the benefit of such extension and undertake proceedings against the debtor to demand payment or obtain a guarantee or a provisional measure.

Notwithstanding any clause to the contrary, the close-out granted to the debtor shall not automatically extend to the surety who may be bound to pay only at maturity set at the time he was appointed. However, the surety shall be liable for the close-out if, after a formal notice, he fails to meet his own obligations at the set time limit.

#### **Article 24**

Within one month of the time the formal notice to pay was served to the debtor and the notice had gone unheeded, the creditor must inform the surety of the default of the debtor indicating the remaining amount due by the latter in principal, interests, and other fees at the date of the payment default.

Otherwise, the surety shall not be liable for the payment of penalties or interest accrued between the date of the default and the date on which he was notified thereof.

Any clause contrary to the provisions of this Article shall be deemed unwritten.

#### **Article 25**

The creditor shall be bound, within the month following the end of each civil semester from the signing of the suretyship agreement to send to the surety a statement of the debts of the debtor specifying their causes, their maturity and their amounts in principal, interests, and other fees remaining due at the end of the last six months, reminding him the revocation option by copying every word of the provisions of article 19 of this uniform Act.

Absent formalities provided for in this Article, the secured creditor shall not be entitled to contractual interests accrued from the date on which he received the previous communication up to the date of the communication of the new information, without prejudice of the provisions of article 29 of this uniform Act.

Any clause contrary to the provisions of this Article shall be deemed unwritten.

#### **Article 26**

The surety shall have the same obligations as the principle debtor. The joint surety is liable for the principal obligation under the same conditions as a joint debtor subject to special provisions of this uniform Act.

However, the creditor may only undertake legal proceedings against the single or joint surety if he joins the debtor to the proceedings.

### **Article 27**

The surety created by court order and the joint surety lack the benefit of seizure and sale. The single surety, unless he has expressly waived such benefit, may, upon the commencement of the first proceedings against him, require seizure and sale of the debtor, identifying the assets likely to be seized immediately on the national territory and to generate adequate funds for full payment of the debt. Furthermore, he shall advance money for seizure and sale or put down the necessary amount ordered by the competent court to that effect.

When the surety has identified the assets and furnished sufficient funds for the seizure and sale to be carried out, the creditor is, to the extent of the assets pointed out, liable towards the surety for the insolvency of the debtor's insolvency occurred due to his failure to undertake legal proceedings.

### **Article 28**

Where several persons have become sureties of the same debtor for the same debt, unless there is a stipulation of joint liability among them or they have renounced to such benefit, each one of them may, upon the commencement of the first proceedings, request the division of the debt among solvent sureties on the day the exception is claimed.

The surety is not liable for the insolvabilities of other sureties that occurred after the severance of the obligations of the sureties.

The creditor, who voluntarily divides his action, may not go back on such division and shall carry the burden of the insolvability of the sureties being sued without encumbering the other sureties.

### **Article 29**

Any surety or any certifier of the surety may raise against the creditor all defenses inherent in the debt of the debtor and likely to reduce, extinguish, or defer the debt subject to the provisions of articles 17 and 23, paragraphs 3 and 4 of this uniform Act and the provisions of the uniform Act on bankruptcy proceedings.

The single or joint surety is discharged when the surety cannot benefit from the subrogation of the rights and guarantees of the creditor in his favor, due to the creditor's action. Any clause to the contrary shall be deemed unwritten.

Where the alleged offense against the creditor restricts only the subrogation, the surety shall be discharged in proportion to the inadequacy of the retained guarantee.

### **Article 30**

The surety shall notify the debtor or shall impugn him before paying the debt to the creditor who undertook legal proceedings.

Where the surety has paid without informing or impugning the debtor, he shall lose his remedy against him if, at the time he makes the payment or after such payment, the debtor found resources to extinguish the debt or if he performed his obligation not knowing that the surety has made the payment. Nevertheless, the surety shall retain his action for reimbursement of sums paid against the creditor.

### **Article 31**

The surety shall be granted all the rights and guarantees of the creditor who took legal action for all payments made to the latter.

Where there are several joint debtors of the same debt, the surety is subrogated against each of the joint debtors to the extent of the amount he paid, even if the surety has only pledged the debt of one of the joint debtors. Where the debtors are spouses, he shall divide his remedies.

### **Article 32**

The surety who paid shall also have a personal remedy against the debtor for what he paid in principal, interests of such amount and expenses incurred from the time he informed the debtor of the proceedings instituted against him. In addition, he may claim damages to compensate the loss suffered due to the litigation brought by the creditor.

Where there was partial suretyship, the creditor shall not, for the remainder, be preferred to the surety who has paid and acted under his personal remedy. Any clause to the contrary shall be deemed unwritten.

### **Article 33**

The remedies of the certifier of the surety against the certified surety shall be regulated by the provisions of articles 30, 31 and 32 of this uniform Act.

### **Article 34**

When there are several single or joint sureties liable for the same debt, where one of them satisfies the debt, he has a remedy against the other sureties, each for his share and portion.

### **Article 35**

Even before having paid the creditor, the surety may undertake legal proceedings against the debtor or claim retention of his rights to the assets of the debtor :

- as soon as he is sued in court by the creditor;
- when the debtor is insolvent or is under a court-ordered arrangement;
- when the debtor has not discharged him within the agreed time period;

- when the debt has become payable at the maturity date set in the agreement.

#### **Section 4 - Extinction of suretyship**

##### **Article 36**

Partial or total extinction of the principal obligation shall result, to the same extent, in the extinction of the obligation of the surety.

When the surety makes a payment, he is definitively discharged even if the creditor thereafter loses his right to the payment he accepted. Any clause to the contrary shall be deemed unwritten.

The novation of the principal obligation by changing the object or the cause, the modification of the arrangements and conditions or security interests attached thereto shall discharge the surety unless he agrees to secure the new debt. Any clause to the contrary stipulated prior to the novation shall be deemed unwritten.

The obligations of the single or joint surety shall pass to his heirs only for debts arising prior to the death of the surety.

##### **Article 37**

The obligation of the surety shall disappear irrespective of the principal obligation when:

- due to proceedings instituted against him, the surety pleads for compensation for a personal debt;
- the creditor has consented to a remission of debt to a single surety;
- there is confusion between the creditor and the surety.

##### **Article 38**

However, the confusion that exists between the debtor and his surety when one becomes heir of the other, shall not extinguish the proceedings of the creditor against the certifier of the surety.

### **CHAPTER 2 – INDEPENDENT GUARANTEE AND COUNTER-GUARANTEE**

##### **Article 39**

Independent guarantee is an undertaking by which the guarantor compels himself, in relation with an obligation subscribed by a principal and under his instructions principal, to pay a fixed amount to the beneficiary either at the first request of the beneficiary, or subject to terms agreed upon.

An independent counter-guarantee is the undertaking by which the counter-guarantor compels himself in respect of an obligation subscribed by a principal and on the instructions of that party, to pay a fixed amount to the guarantor, either on the first request, or subject to terms agreed upon.

## **Section 1 – Creation of independent guarantees and counter-guarantees**

### **Article 40**

Independent guarantees and counter-guarantees may not be subscribed by natural persons, under penalty of nullity.

They create independent obligations, separate from the underlying agreements, deeds and facts likely to constitute the basis of their obligations.

### **Article 41**

Independent guarantees and counter-guarantees are not presumed. They must be reduced to writing and shall state, under penalty of nullity:

- the designation of the independent guarantee or counter-guarantee;
- the name of the principal;
- the name of the beneficiary;
- the name of the guarantor or the counter-guarantor;
- the basic agreement, the deed or the fact, for which the independent guarantee or counter-guarantee is issued;
- the maximum amount of the independent guarantees and counter-guarantees;
- the date or the fact entailing the expiry of the guarantee;
- the terms of payment, where applicable;
- The impossibility, for the guarantor or the counter-guarantor, to benefit from the exceptions of the surety.

## **Section 2 – Effects of independent guarantees and counter-guarantees**

### **Article 42**

Except for an express clause or agreement to the contrary, the right to a guarantee of the beneficiary is not assignable. However, the non-assignability of the right to a guarantee shall not affect the right of the beneficiary to assign any amount to which he would be entitled following the submission of an application for guarantee.

### **Article 43**

Independent guarantees and counter-guarantees shall take effect on the date on which they are

issued unless it is stipulated that they take effect at a later date.

The instructions of the principal, the independent guarantee and counter-guarantee shall be irrevocable in the case of a fixed term independent guarantee or counter-guarantee.

Indefinite term independent guarantees or counter-guarantees may be revoked by the guarantor or the counter-guarantor respectively.

#### **Article 44**

The guarantor and the counter-guarantor shall be bound only to the extent of the amount stipulated in the independent guarantee or counter-guarantee subject to deduction of previous payments made respectively by the guarantor or the counter-guarantor pursuant to their obligations.

The independent guarantee and counter-guarantee may stipulate that the amount of the obligation will be reduced by a fixed amount or an amount to be fixed on specified dates or against presentation to the guarantor or the counter-guarantor of documentation indicated for this purpose in the obligation.

#### **Article 45**

The request for payment for the independent guarantee shall originate from a written document of the beneficiary accompanied by any other document provided for in the guarantee. Such request must specify the alleged breach by the principal in the performance of the obligation in respect of which the guarantee was subscribed.

The request for payment for the independent counter-guarantee shall originate from a written document from the guarantor stating that the guarantor has received a request for payment from the beneficiary and that it complies with the provisions of the guarantee.

Any request for payment shall comply with the provisions of the independent guarantee or counter-guarantee for which it is established and shall, unless otherwise provided, be submitted at the place where the independent guarantee was issued or, in case of a counter-guarantee, where the independent counter-guarantee was issued.

#### **Article 46**

The guarantor and the counter-guarantor shall have five business days to examine the compliance of the request for payment with the provisions of the independent guarantee or counter-guarantee. They may only reject the request for payment if they notify the beneficiary, or in the case of the counter-guarantor by notifying the guarantor before the expiration of the five-day period.

The guarantor shall transmit a copy of the request of the beneficiary and all support documents to the principal, or in case of a counter-guarantee, to the counter-guarantor, and the latter shall be responsible for sending them to the principal.

The guarantor shall notify the principal, or in case of a counter-guarantee, the counter-guarantor of any reduction of the amount of the guarantee and any act or incident causing an end to the latter other than the date of the end of validity.

#### **Article 47**

The principal may not prevent the guarantor from paying only if the request for payment of the beneficiary is manifestly troublesome or fraudulent. The counter-guarantor shall have the same option against the guarantor under the same conditions.

The principal may not prevent the counter-guarantor from paying if the guarantor knew or ought to have known that the request for payment of the beneficiary was clearly troublesome or fraudulent.

#### **Article 48**

The guarantor or the counter-guarantor who has made a payment in accordance with the provisions of the independent guarantee or counter-guarantee shall have the same remedies as the surety against the principal.

#### **Article 49**

The independent guarantee or the counter-guarantee shall expire:

- either on the specified calendar day or at the expiry of the set deadline; or
- at the submission to the guarantor or the counter-guarantor of discharging documents specified in the independent guarantee or counter-guarantee; or
- pursuant to the written statement of the beneficiary discharging the guarantor from his obligation towards the independent guarantee or a written statement discharging the counter-guarantor of his obligation with respect to the independent counter-guarantee.

### **TITLE 2 – SECURITY INTERESTS ON PERSONAL PROPERTY**

#### **Article 50**

Security interests on personal property consist of: right of retention, retention or assignment of title as security, pledge over tangible assets, and pledge over intangible assets and liens.

Unless otherwise provided, security interests on personal property subject to registration shall be registered at the Register of Commerce and Securities in accordance with the provisions of chapter 1 of this title.



## **CHAPTER 1 – REGISTRATION OF SECURITY INTERESTS ON PERSONAL PROPERTY AT THE REGISTER OF COMMERCE AND SECURITIES**

### **Article 51**

The registration of security interests on personal property shall be carried out at the request of the creditor, the securities trustee or the grantor of the security interest.

The registration of general liens at the Treasury, Customs Administration and Social Security institutions shall be done at the behest of the public accountant of the credit administration.

### **Article 52**

Registration shall take place at the Register of Commerce and Securities pursuant to the rules of the territorial jurisdiction below:

- the Register of Commerce and Securities empowered to receive the registration of security interests is the register in the jurisdiction where the grantor of the security interest is registered or, if it is not bound by registration, the jurisdiction in which the registered office or the domicile of the grantor is located, as the case may be;
- the Register of Commerce and Securities empowered to receive the registration of debt mortgages or pledging or assignments of debts as security is in the jurisdiction where the debtor of such debt is registered or, if it is not subject to registration requirement, where the registered office or the domicile of the debtor is located, as the case may be;
- the Register of Commerce and Securities empowered to receive the registration of the pledge of rights of partners and security interests of a commercial company or a legal entity subject to registration is in the jurisdiction in which such company or legal entity is registered;
- the Register of Commerce and Securities empowered to receive the registration of the pledge of the business capital contribution and the lien of the seller of the business is in the jurisdiction in which the natural person or the legal entity, owner of the funds, is registered;
- The Register of Commerce and Securities empowered to receive the registration of general liens of the Treasury, Customs Administration and Social Security Institutions is the jurisdiction in which the taxpayer or, if not bound by registration, the jurisdiction in which the registered office or domicile of the taxpayer, as the case may be, is located.

Jurisdiction rules related to the registration of securities for entrepreneurs shall be the same as those applicable to the entity subject by registration.

### **Article 53**

For the purposes of registration, the creditor, the securities trustee, the grantor of security interest or any public accountant shall submit to the Registrar in charge of the Register of Commerce and

Securities, or to the competent body in the State party, a registration form stating the following particulars:

- a) Full names, trade name, domicile or registered office as the case may be, electronic address and registration number or the declaration of activity of the creditor or securities trustee, the debtor of the secured debt and of the grantor if he is not the debtor;
- b) the nature and the date of the title generating the security interest;
- c) where appropriate, the duration of the registration as agreed by the parties;
- d) the maximum amount of the secured debt including the principal, interests and other fees, the due date and the existence of a binding pact. For future debts, the form shall set forth the criteria to help determine the future debt;
- e) where applicable, the option of the grantor to transfer fungible assets encumbered with security interests under the conditions set out in Article 102 of this Uniform Act;
- f) The designation of the encumbered asset with the necessary information in order to identify it, including its nature, location and, where applicable, its brand or serial number, or, when there is a set of existing or future assets, their nature, quality, quantity or value.

When the purpose of the security is to secure a debt or a set of debts, existing or future, the designation of the encumbered asset requires an indication of elements that allow the individualization of such debt or debts, namely the name of the debtor, the place of payment, the amount of debts or their assessment and maturity.

In the event of pledge by a member of his rights of and security interests in a commercial company, where such rights are assignable to any other legal entity, the form shall, in addition, contain the registration number of the company whose rights of members and securities are the subject of this pledge.

In case of pledge or sale of a business, the form for the registration of the pledge or the seller's lien shall, in addition, contain the registration number or the declaration of activity of the natural person or legal entity owner or operator of the business for which the registration of the pledge or the seller's lien is required.

#### **Article 54**

After checking that the registration form contains the mandatory particulars prescribed in article 53 of this uniform Act, the clerk of the court, custodian of the Register of Commerce and Securities, or the person in charge of the competent body in the State party, shall immediately enter the registration into a chronological register of filings. He shall immediately issue to the applicant an acknowledgment of registration indicating the date of the performed formality and order number in the chronological register of filings. Registration or refusal of registration shall be also notified by the Registry, or by the competent authority in the State party, to the debtor or the

grantor of the security if he is not the debtor. This registration or refusal of registration may, within eight days of its notification, be subject to appeal by the debtor or the grantor as the case may be, before the competent court, or before the competent authority in the State party, ruling expeditiously.

In case the form is incomplete, the Registrar, or the person in charge of the competent body in the State party, shall reject the registration. Such rejection shall be justified. The Registry, or the competent authority in the State party shall immediately notify the applicant and shall make annotations on the margins of the chronological register of filings. The rejection may, within a period of eight days from its notification, be subject to appeal by the person who has requested the registration before the competent court, or the competent authority in the State party, ruling expeditiously.

The decision rendered pursuant to paragraphs 1 and 2 of this article may be subject to appeal, within a period of fifteen days from its notification before the competent court of appeal, ruling expeditiously.

### **Article 55**

In the event of a failure to notify the applicant of the rejection of the registration, the clerk, or the person in charge of the competent authority in the State party shall, forthwith:

- 1°) record the registration in the individual file opened in the name of the natural person or legal entity against whom the registration is taken;
- 2°) add to the said file the declaration form, indicating the registration date and its order number;
- 3°) communicate the registration to the National Registry of the Register of Commerce and Securities by transmitting a copy of the registration form and an extract of the individual file open in the name of the individual against whom the registration is done.

### **Article 56**

In the event of a pledge by a member of his rights and securities of a commercial company, where such rights are assignable, the Registrar, or the person in charge of the competent body in the State party, shall, in addition, indicate the registration in the individual file opened in the name of the company or the legal entity whose securities and rights are subject of the pledge.

### **Article 57**

A regularly taken registration of a security interest on personal property subject to registration shall be enforceable against third parties on the date of its registration in the chronological Register of Commerce and Securities.

Where the registration of concurrent security interests encumbering the same asset is required on the same day, the one that is required for a security interest registered at an earlier date shall be deemed to have been registered first, irrespective of the order in the above-mentioned register.

Where the registrations of concurrent security interests encumbering the same asset are required on the same day for securities registered on the same date, the securities are deemed to be of the same rank with the exception of assignments for collateral and title retention purposes, which are then deemed registered before the other securities whose registration has been required on the same day, irrespective of the order in the above-mentioned register.

Where the registration of a title retention and an assignment for collateral performance for the same asset are required on the same day, retention of title shall be deemed to have been registered first, irrespective of the order in the above-mentioned registry.

Where the registration of assignments for collateral purposes for the same asset are required on the same day by virtue of securities with the same date, the asset shall be deemed to belong to these creditors in proportion with the amount of their claim, irrespective of the order in the above-mentioned registry.

#### **Article 58**

The registration of general liens of the Treasury, the Customs Administration and the Social Security Institutions shall retain the rights of the creditor for a period of three years from its date.

For other security interests over personal property subject to registration, the parties may agree on the validity term of the registration in the Register of Commerce and Securities in the constituent instrument of the said security interest provided that such time period does not exceed ten years from the date of the registration.

Where the registration has not been renewed before the expiry of the time limit within which it is valid , it shall then expire and be automatically removed by the Registry or by the competent authority in the State party.

The registration shall warrant two years of interests as the principal.

#### **Article 59**

The renewal of a registration shall be carried out under the same conditions as the initial registration.

The renewal, validly effected, shall be enforceable against third parties from the date of its registration in the chronological Register of Commerce and Securities. Before the expiration of the initial registration period, it shall allow the applicant to retain the benefit thereof.

A renewal certificate indicating the registration date and the serial number in the chronological register of filings in the Register of Commerce and Securities shall immediately be transmitted to the applicant.

#### **Article 60**

Any change in the initial registration in the Register of Commerce and Securities by contractual subrogation in the benefit of the security interest or assignment of precedence shall be effected only if it is entered on the margins of the initial registration.

Any contractual or court-ordered change of the scope of the security interest or the secured debt shall be subject to an amending entry under the conditions and forms provided for the initial registration.

#### **Article 61**

The natural person or legal entity against whom one or several registrations referred to in this Title were taken, at any time, may petition the competent court or the competent authority in the State party to obtain the discharge, the amendment or the suretyship of the registration.

The competent court or the competent authority in the State party may, in any case and even before ruling on the merits of the case, partially or totally discharge the registration if the applicant has reasonable and legitimate grounds.

#### **Article 62**

Any partial or total removal of the registration in the Register of Commerce and Securities shall have an effect only if it is entered in the margins of the initial registration.

#### **Article 63**

The judicial removal of a registration shall be ordered by the competent court or by the competent authority in the State party.

#### **Article 64**

The contractual cancellation shall be performed only upon electronic filing or transmission of an authentic instrument or under a private signed deed of consent to cancel given by the creditor or his assignee regularly subrogated and justifying his rights, as well as submission of a form with the following particulars:

1°) full names, trade name, domicile or registered office, as well as, where applicable, the registration number of the natural person or legal entity against whom the registration is required, or in the event of registration on the rights of partners and securities, the registration number of the legal entity whose rights of partners and securities are covered by this registration;

2°) the nature and date of the filed instruments.

The cancellation shall be entered in the Register of Commerce and Securities after verifying whether the form complies with the content of the instrument submitted.

A certificate of cancellation shall be issued to anyone who makes a request.

### **Article 65**

Any fraudulent registration of a security interest over personal property, or any registration with inaccurate and bad faith data, shall be punished by sanctions prescribed by domestic criminal laws.

The competent court or the competent authority in the State party, in pronouncing the sentence, may order the correction of incorrect entries by using words determined by the same court.

### **Article 66**

Any request for information shall be written on a form designed for that purpose by the Register of Commerce and Securities.

To any request for information made pursuant to the preceding paragraph, the Registrar, or the person in charge of the competent body in the State party, must respond immediately, or at the latest, within a period of two business days from the receipt of the application in the Register of Commerce and Securities, by issuing the applicant either a certificate stating that no registration has been taken, or a general statement of the existing entries with their references in the margins, or one or several special statements when the request relates to an asset or a class of assets belonging to the debtor or the grantor.

The Registrar or the person in charge of the competent body in the State party shall be accountable for any registration, amendment or cancellation which does not fall within the legal guidelines as well as any issuance of incomplete or erroneous extracts, as the case may be.

## **CHAPTER 2 – RIGHT OF RETENTION**

### **Article 67**

The creditor, legitimate holder of a personal property owned by his debtor, may withhold it until full payment of his debt, independently to any security interest, subject to the application of article 107, paragraph 2 of this uniform Act.

### **Article 68**

The right of retention may only be exercised if:

- the debt of the retainer is certain, of a fixed amount and due;
- there is an associative link between the raising of the claim and the detention of the retained property;
- and if the property was not seized before being withheld by the retainer.

### **Article 69**

The connection is presumed established:

- 1°) when the property retained was returned until full payment of the debt to the retainer;
- 2°) when the unpaid debt results from an agreement that binds the retainer to return the property withheld;
- 3°) when the unpaid debt rose from withholding the asset retained.

### **Article 70**

The creditor has the obligation to preserve the asset retained.

By derogation of the foregoing, the creditor may, with the authorization of the competent court ruling expeditiously, proceed with the sale of such asset due to its condition or the perishable nature of the latter or if expenses incurred due to its conservation exceed its value. In this case, the right of retention shall have an incidence on the sale price that will be recorded.

## **CHAPTER 3 – PROPERTY RETAINED OR ASSIGNED AS SECURITY INTEREST**

### **Article 71**

Ownership of a personal property may be retained as security interest for the repayment of an obligation by virtue of a clause of title retention.

It may also be assigned as security of an obligation under the conditions provided for in this Chapter.

### **Section 1 – Title retention**

#### **Article 72**

Ownership of a property may be retained as security through a clause of retention of title which states that title is transferred until payment in full of the obligation it secures.

#### **Article 73**

Under penalty of nullity, the retention title shall be agreed upon in writing, the latest on the day of the delivery of the property. It may be included in the instrument regulating all the existing or future transactions between the parties.

#### **Article 74**

The retention title shall be enforceable against third parties if such title has been properly registered in the Register of Commerce and Securities pursuant to the provisions of articles 51 to 61 of this uniform Act.



### **Article 75**

The reserved title of a fungible asset may be performed, up to the due remaining amount, on the property of the same nature and quality withheld by the debtor or on his behalf.

### **Article 76**

The registration of a property subject to a retention title to another property shall not bar the rights of the creditor when such properties may be separated without suffering damage.

Failing that, all shall belong to the owner of the asset that forms the principal, provided that he pays the other the value of the asset attached thereto, estimated on the date of payment.

### **Article 77**

In the event the debtor fails to pay the debt in full on the due date, the creditor may claim the restitution of the property in order to recover the right of disposal thereof.

The value of the recovered property shall be appropriated on the balance of the secured debt as payment.

When the value of the recovered property exceeds the amount of such balance, the creditor shall owe the debtor a sum equal to the difference.

### **Article 78**

When the property is sold or destroyed, the ownership right shall burden the debtor's debt with respect to the sub-purchaser or to the indemnity of an insurance policy subrogated to the property.

## **Section 2 – Assignment of title as security**

### **Article 79**

Ownership of a property, existing or future, or a set of properties, may be assigned as security for payment of a debt, existing or future, or a set of claims under the conditions provided for in this Section.

#### ***Sub-Section 1: Assignment of debts as security***

### **Article 80**

A debt owed to a third party may be assigned as security for any credit granted by a national or a foreign legal entity conducting banking or credit operations in the regular course of business for its own account.

The non-assignability of the debt cannot be enforceable against the assignee by the assigned debtor when it is contractual, and that the debt rose due to the exercise of the profession of the assigned debtor or is in direct connection with one of his professional activities, even if it is not his principal activity.



## **Article 81**

The assignment of a debt as security shall be recorded in an instrument that sets forth, under penalty of nullity, the following particulars:

- 1°) the name or trade name of the assignor or the assignee;
- 2°) the date of assignment;
- 3°) and the designation of secured debts and assigned debts.

Where such debts are future, the instrument should allow their individualization or contain elements allowing it such as the name of the debtor, the place of payment, the amount of debts or their assessment and, where applicable, their maturity.

## **Article 82**

On the date of its signature, the existing or future agreement of assignment of a debt as security, shall immediately take effect between the parties, irrespective of the date on which it arose, its maturity or payment of the assigned debt and shall become enforceable against third parties as from its registration in the Register of Commerce and Securities and regardless of the law governing the debt and the law of the country of residence of the debtor.

From the date of assignment, the assignor shall not, without the consent of the assignee, change the scope of the rights in the assigned debt.

## **Article 83**

Unless the parties agree otherwise, the assignment shall extend to fees of the debt and shall automatically entail their assignment and enforceability against third parties without any other formality than the one stated in the foregoing.

## **Article 84**

To be enforceable against the debtor of the assigned debt, the assignment of the debt shall be notified to the debtor or the debtor shall be a party to the assignment.

Failing this, the assignor shall validly receive the payment of the debt.

## **Article 85**

When the debtor of the assigned debt is a professional debtor within the meaning of article 3 of this uniform Act, he may, at the request of the assignee, undertake to pay directly by accepting the assignment.

In this case, the debtor may not raise against the assignee the defenses based on his personal relationship with the assignor, unless the assignee, by acquiring or receiving the debt, acted knowingly at the expense of the debtor. Under penalty of nullity, such obligation shall be

evidenced by a written document entitled “Act of acceptance of an assignment for security purposes” and shall reproduce the provisions of this Article in enough legible characters.

### **Article 86**

Sums paid to the assignee with respect to the assigned debt shall be charged on the secured debt when it is overdue. Where applicable, the surplus shall be returned to the assignor. Any clause to the contrary shall be deemed unwritten.

### ***Sub-Section 2 – Fiduciary assignment of a sum of money***

### **Article 87**

The fiduciary assignment of a sum of money shall be the agreement whereby a grantor transfers money as security for the performance of an obligation.

Such funds shall be lodged in a blocked account, open in the name of the creditor of such an obligation in the books of a credit institution authorized to receive such funds.

### **Article 88**

Under penalty of nullity, the agreement shall determine the secured debt (s) as well as the amount of funds assigned as security, and shall identify the blocked account.

### **Article 89**

The fiduciary assignment shall become enforceable to third parties on the date of its notification to the institution that lodges the account provided that the funds are registered in the blocked account.

### **Article 90**

If the transferred funds produce interest, they shall be credited to the account, unless agreed otherwise.

### **Article 91**

At maturity and in the event of full payment of the secured debt, the funds on the account shall be returned to the grantor.

In the event of default of the debtor, and eight days after the grantor has been duly warned, the creditor may cash in the funds assigned within the limit of the remaining unpaid amount of the secured debts.

Any clause contrary to this Article shall be deemed unwritten.

## **CHAPTER 4 – PLEDGE OVER TANGIBLE ASSETS**

## **Article 92**

The pledge is the agreement whereby the grantor grants a creditor preferential right to get paid on a tangible asset or an existing or future set of tangible assets.

### **Section 1 – Creation of pledge**

## **Article 93**

The pledge may be established as security for one or several existing or future debts provided that the debts are determined or determinable.

## **Article 94**

Parties may agree on subrogation of the pledged asset by another during the term of the agreement.

The pledge may also cover sums or securities consigned for custody purposes by civil servants, ministries' officials, or any other person to secure abuses for which they might be responsible, and loans contracted to constitute the consignment.

## **Article 95**

The grantor of existing assets ought to be the owner of the pledged asset. If he is not, the secured creditor may object to the owner's claim under the conditions set forth for a good faith owner,

## **Article 96**

Under penalty of nullity, the pledge agreement shall be evidenced in writing and shall name the secured debt, the quantity of assets pledged as well as their specifications or nature.

When the pledge is attached to an asset or a set of future assets, the right of the secured creditor is exercised on the pledged asset as soon as the grantor acquires the asset, unless agreed otherwise.

## **Article 97**

The pledge agreement shall be enforceable against third parties either by registering it in the Register of Commerce and Securities, or by delivery of the pledged asset to the hands of the secured creditor or a third party agreed upon by the parties.

When the pledge complies with registration formalities, the holders of special rights-of-claims against the grantor cannot be regarded as possessors of good faith and the pledgee may immediately exercise his right against them.

## **Article 98**

Unless otherwise agreed, the grantor may require the cancellation of the registration or the restitution of the pledged asset only after payment in full of the secured debt guaranteed including the principal, interest and other fees.

### **Section 3 – Effects of the pledge**

#### **Article 99**

When the pledge is possessory, the secured creditor may, subject to the application of article 107, paragraph 2 of this uniform Act, enforce his right of retention on the property pledged, directly or through the agreed third party, until payment in full of the principal, interest and other fees of the secured debt.

#### **Article 100**

Where the pledged asset was removed against his will, the creditor may claim the pledged asset as a possessor in good faith.

#### **Article 101**

When the possessory pledge covers fungible assets, the creditor shall, unless otherwise provided, keep them or keep them separately from the assets of the same nature withheld by him or by the agreed third party. Otherwise, the grantor may demand the restitution of the pledged asset, without prejudice to damages.

When the agreement exempts the creditor from this obligation, he shall acquire ownership of assets pledged provided that he returns the same quantity of equivalent assets. In case of escrow, the property thus acquired by the creditor may be exercised on assets of the same quality and nature held by the agreed third party.

#### **Article 102**

When the possessory pledge covers fungible assets, the pledge agreement may enable the grantor to alienate them provided that he replaces them by equivalent assets of the same quantity. That authorization granted to the grantor is considered as a waiver by the creditor to exercise his right towards the third acquirer of such assets.

#### **Article 103**

Unless otherwise agreed, the secured creditor shall neither use the pledged property nor take advantage of the benefits. He shall apply them on what is owed to him in interests or, failing this, on the principal of the debt.

#### **Article 104**

In the event the debtor fails to pay the debt by the due date, the secured creditor, in possession of a writ, may conduct the forced sale of the pledged asset, eight days after a summons had been sent to the debtor and, where applicable, to the third-party grantor of the pledge under the conditions set forth by the provisions organizing enforcement proceedings from which the pledge agreement may not derogate. In this case, he shall exercise his preferential right on the price of the asset sold, under the conditions set forth in article 226 of this uniform Act.

The creditor may also have the competent court order that the pledged asset be awarded to him in payment up to the balance of his debt and according to estimates reflecting the current price or following the estimates of an expert.

Where the pledged asset is a sum of money or an asset whose value is officially listed, the parties may agree that the pledged asset be assigned to the secured creditor for non-payment. The same shall apply to the other tangible assets when the debtor of the secured debt is a professional debtor. In this case, the pledged asset must be estimated on the day of the assignment by an expert appointed amicably or judicially, and any clause to the contrary shall be deemed unwritten.

#### **Article 105**

In case of a court-ordered or contractual allocation, when the value of the asset exceeds the amount owed, the secured creditor shall record an amount equal to the difference where there are other creditors benefiting from a pledge on the same asset or, failing that, he shall pay that amount to the grantor. Any clause to the contrary shall be deemed unwritten.

#### **Article 106**

In the event of loss or total or partial damage of the pledged asset not caused by the secured creditor, he shall exercise his preferential right on the insurance indemnity, where applicable, for the amount of the secured debt with the principal, interest and other fees, in accordance with the provisions of article 226 of this uniform Act.

#### **Article 107**

When the same property is subject of several successive nonpossessory pledges, the rank of creditors shall be determined by the order of their registration.

When a particular nonpossessory asset is later subject of a possessory pledge, the preferential right of the senior secured creditor shall be enforceable against the subsequent secured creditor when it was regularly registered and notwithstanding the right of retention of the latter.

When an asset pledged as possessory is later made the subject of a nonpossessory pledge, the right of retention of the previous secured creditor shall be enforceable against the subsequent secured creditor who cannot pretend to exercise his rights over the property, insofar as the previous secured creditor has not made the payment in full.

#### **Article 108**

When the pledge is possessory, the secured creditor or the agreed third party shall be responsible for the asset and conserve it as a paid custodian will do.

Similarly, when the grantor keeps the pledged asset in his possession, he should keep it as a good father would and, in particular, secure it against risks of loss and total or partial damage.

#### **Article 109**

*Translation subject to further correction (December 2016)*

When the pledge is possessory, the grantor may demand the restitution of the pledged asset, without prejudice to damages, if the creditor or the agreed third party does not comply with his obligation to keep the pledged asset.

When the pledged asset is nonpossessory, the creditor may use the creditor of the close-out of the secured debt or seek a complement of pledge if the grantor does not meet his obligation to keep the pledge.

#### **Article 110**

Where the pledge, irrespective of the arrangements, consists of a set of fungible assets, the creditor may demand from the grantor that he maintains the value of the fungible assets under penalty of nullity.

The creditor may, at any time and at the expense of the debtor, obtain from the grantor or the agreed third party, the condition of the set of pledged assets as well as the accounts of all transactions thereof. If the creation of the security resulted in the issuance of a slip of an inventory pledge, the paying institution also has such powers.

Any institution authorized to accept deposits from the public shall be considered as a paying institution.

#### **Article 111**

When an asset, subject to a possessory pledge is about to perish, the secured creditor or the agreed third party may sell, under his responsibility, the pledged asset upon a notification to the grantor of the competent court seized on a simple petition. The effects of the pledge shall then be put on to the price.

#### **Article 112**

The agreed third party and, where applicable, the bad faith purchaser of the pledged asset shall be jointly liable with the secured creditor for non-performance of the obligations referred to in articles 103, 108, paragraph 1 and 111 of this uniform Act.

#### **Article 113**

When the principal, interest and other fees are paid in full, the secured creditor shall remit the asset with all its accessories. The grantor must then refund the secured creditor or the agreed third party for useful or necessary expenses incurred for the conservation of the pledge.

#### **Article 114**

The pledge shall be indivisible notwithstanding the divisibility of the debt to the heirs of the debtor or those of the creditor.

The heir of the debtor who has paid his share of the debt cannot claim restitution of his portion in the pledge, even where it is divisible by nature, as long as the debt is not paid in full.

The heir of the creditor who has received his share of the debt cannot remit the pledge, even if it is divisible, to the prejudice of the co-heirs who are not paid.

#### **Article 115**

The pledging of goods which the debtor may dispose of using the slip of pledge of the inventory, bill of lading, transport or customs receipt, shall be carried out pursuant to provisions specific to each of these titles or documents.

### **Section 3 – Extinction of the pledge**

#### **Article 116**

The pledge shall extinguish when the obligation it secures is entirely extinguished including the principal, interests and other fees.

#### **Article 117**

The possessory pledge shall disappear regardless of the secured obligation when the asset is voluntarily returned to the grantor, if it is lost by an act of the secured creditor, or when the competent court orders the restitution thereof due to the secured creditor's misconduct, unless a receiver, who will play the role of the agreed third party, is appointed.

### **Section 4 – Special provisions to some pledges**

#### ***Sub-Section 1 - Pledge of professional equipment and motor vehicles***

#### **Article 118**

Without prejudice of the provisions of this Sub-Section, professional equipment and motor vehicles, subject or not to a declaration of release into circulation and administrative registration may be subject to a pledge pursuant to the provisions of articles 92-117 of this uniform Act.

Professional equipment as part of a business may be secured at the same time as the other elements of the business, in accordance with the provisions of articles 162 to 165 of this uniform Act.

#### **Article 119**

With regard to motor vehicles subject to a declaration of release into circulation and administrative registration, the pledge must be indicated on the administrative title establishing release into circulation and registration. The absence of this reference shall have no effects on the validity or the enforcement of the pledge registered in the Register of Commerce and Securities.

#### ***Sub-Section 2 – Pledge of inventories***

#### **Article 120**

Without prejudice of the provisions of this Sub-Section, raw materials, agricultural and industrial products, goods may be subject of a pledge pursuant to the provisions of articles 92-117 of this uniform Act.

### **Article 121**

The establishment of a nonpossessory pledge of inventories may give rise to the issuance of a pledge slip of inventories issued by the Registrar, or by the head of the competent authority in the State party.

In this case, the instrument creating a pledge must include, under reserve of nullity, in addition to the particulars provided for in article 96 of this uniform Act, the name of the insurer who covers the inventories pledged against the risks of theft, fire and total or partial damage as well as the designation of the paying institution of the pledge slip of inventories.

### **Article 122**

The slip delivered to the debtor after registration shall clearly contain:

- the reference “pledge of inventories”;
- the date of its delivery which corresponds to the registration date in the Register of Commerce and Securities;
- the registration number in the chronological register of filings;
- the debtor’s signature.

The debtor shall deliver it to the creditor as a signed and dated endorsement.

The slip may be endorsed and approved under the same conditions as a promissory note with the same effects.

Absent an agreement to the contrary, the slip shall be valid for five years from the date of its issuance, except for renewal.

### **Article 123**

The endorsement shall confer the bearer of the slip the role and the rights of a secured creditor.

### **Article 124**

The issuing debtor of the pledge slip of inventories shall keep the right to sell the pledged inventories.

He may only deliver the sold assets after recording the price with the paying institution.

## **CHAPTER 5 – PLEDGE OVER INTAGIBLE ASSETS**



### **Article 125**

The pledge of intangible assets is the assignment of an intangible asset or a set of intangible assets, existing or future, as security of one or several debts, existing or future, provided that they are specified or determinable.

The pledge of intangible assets may be contractual or judicial.

### **Article 126**

The following may be pledged:

- receivables;
- bank account;
- rights of partners, securities and financial instruments accounts;
- business/goodwill;
- intellectual property rights.

## **Section 1 – Pledge of debts**

### **Article 127**

Under penalty of nullity, the pledge of debt must be evidenced in a written document containing the name of the secured debts and pledged debts or, if they are future, elements enabling their individualization, such as reference to the debtor, place of payment, amount of debts or their evaluation and maturity date.

### **Article 128**

When the pledge covers a future debt, the secured creditor shall acquire a right on the debt as soon as it rises.

### **Article 129**

The pledge of a debt may cover a fraction of the debt unless it is indivisible.

### **Article 130**

The pledge shall extend to the accessories of the pledged debt unless the parties agree otherwise.

### **Article 131**

On the date of its signature, the pledge of a debt, existing or future, shall take effect among the parties, regardless of the date of its creation, maturity date or payment of the pledged debt and shall become enforceable against third parties as from its registration in the Register of Commerce

and Securities and irrespective of the law governing the debt and the law of the country of residence of the debtor.

### **Article 132**

For the pledge to be enforceable against the debtor of the pledged debt, the pledge of the debt shall be notified to the debtor in writing or the debtor shall intervene in the act.

Failing this, the grantor shall validly receive payment of the debt provided that he pays that amount to the secured creditor unless provided otherwise and subject to compliance with the provisions of article 134 of this uniform Act.

### **Article 133**

After notification or intervention in the act of the debtor of the pledged debt, only the secured creditor shall validly receive the payment of such debt both in principal, interest and other fees, even when the payment was not sought by him.

### **Article 134**

Where the maturity date of the pledged debt occurs prior to the maturity date of the secured debt, the secured creditor shall retain the money as collateral in an account open with an institution authorized to receive it, provided that he gives it back to the grantor if the secured obligation is satisfied. In the event of default by the debtor of the pledged debt and, eight days after a formal notice remains unheeded, the secured creditor shall assign funds to repayment of his debt, within the limits of the unpaid amounts.

Where the maturity of the pledged debt is prior to that of the secured debt, the creditor may obtain the pledged debt as well as all the rights relating thereto from the competent court or under the conditions set forth by the agreement. The secured creditor may also wait for the maturity date of the pledged debt.

Unless otherwise agreed, the secured creditor shall also collect interests by computing on what is owed to him in principal, interests and other fees.

### **Article 135**

Where the secured creditor has been paid a sum higher than the pledged debt, he shall be liable for surplus collected as an agent of the grantor. Any clause to the contrary shall be deemed unwritten.

## **Section 2 – Pledge of bank account**

### **Article 136**

The pledge of a bank account is a pledge of debt. Rules governing the pledge of debt shall be applicable subject to the provisions of this section.

### **Article 137**

When the pledge is over a bank account, the secured debt means the credit balance, provisional or definitive, on the day of the liquidation of the security interest subject to the regularization of ongoing transactions, in the manner prescribed by the uniform Act on simplified recovery and enforcement proceedings on seizure-award of debts carried out by a credit institution.

Under this same reservation, in the event of collective proceedings against the debtor of the secured debt, the secured creditor's rights shall be over the credit balance of the account on the day the proceedings commence.

### **Article 138**

Parties may agree on the conditions under which the grantor may continue to hold the sums deposited into the pledged account.

### **Article 139**

Even after the liquidation, the pledge of the bank account shall survive insofar as the account was not closed and the secured debt has not been paid in full.

## **Section 3 – Pledge of members’ rights, securities and financial instruments accounts**

### ***Sub-Section 1 – Pledge of members’ rights and securities***

### **Article 140**

The rights of partners and securities of commercial companies and assignable securities of other legal entities subject to registration in the Register of Commerce and Securities may be subject to a contractual or judicial pledge.

### **Article 141**

On pain of nullity, the pledge of the rights of partners and securities shall be recorded in a written document containing the following particulars:

1°) the designation of the creditor, the debtor and the grantor of the pledge if the latter is not the debtor;

2°) the registered office and the registration number in the Register of Commerce and Securities of the legal entity issuing the rights of partners and securities;

3°) the number and the way to determine the latter and, where applicable, the numbers of the pledged instruments;

4°) elements enabling the individualization of the secured debt as well as its amount and evaluation, its duration and maturity date.

### **Article 142**

The competent court may authorize the creditor to register a pledge on the rights of partners and securities. The court-ordered pledge shall be governed by the provisions relating to the preventive seizure of the company shares regulated by the provisions of the uniform Act on simplified recovery and enforcement proceedings.

The court decision shall bear the particulars provided for in the foregoing.

### **Article 143**

Subject to the special provisions relating to the right of commercial companies and legal entities involved, the contractual or court-ordered pledge shall be enforceable against third parties only to the extent and under the conditions provided for in articles 51 to 66 of this uniform Act if it is registered in the Register of Commerce and Securities.

Provisional and final registration must be done, respectively, after the decision authorizing the pledge and the final validation decision.

In addition to the registration provided above, the contractual or court-ordered pledge may be served or notified to the commercial company or the legal entity issuing the rights of partners and securities or financial instruments evidencing the rights of partners.

### **Article 144**

The pledge of the rights of partners and securities shall confer the creditor:

- a resale right that he exercises in accordance with the provisions of article 97, paragraph 2 of this uniform Act;
- a right of liquidation that he exercises in accordance with the provisions of article 104 and 105 of this uniform Act;
- a preferential right that he exercises in accordance with the provisions of article 226 of this uniform Act;
- the right to benefit from the benefits of social rights and pledged securities if the parties have agreed on it.

### **Article 145**

Besides advances on instruments subject to the rules of the pledge, financial and credit institutions may, if they are authorized by the applicable law, grant three-month loans on listed securities that the secured creditor may liquidate on the stock exchange without formality on the day after the due date if no payment was made.

## *Sub-Section 2 – Pledge of Financial Instruments Accounts*

### **Article 146**

The pledge of financial instruments accounts is the agreement whereby the grantor pledges a set of securities and other financial instruments deposited in the account for an obligation.

### **Article 147**

The pledge of financial instruments accounts shall consist of a dated and signed declaration of the account holder whether it is between the parties or the issuing legal entity and third parties.

The declaration establishing the pledge shall include, under penalty of nullity, the following particulars:

1°) the name of the creditor, the debtor and the grantor of the pledge;

2°) the number and nature of financial instruments the constitute the subject of the pledge;

3°) elements enabling the individualization of the secured debt as well as its amount and evaluation, its duration and maturity;

4°) elements for the identification of the special pledged account.

### **Article 148**

Financial instruments initially deposited in the pledged account, those that are substituted to them or complement them in any way whatsoever as well as their benefits and products shall be included in the pledge base.

Financial instruments and any currency money listed in the pledged account subsequent to the date of the constituent declaration of the pledge shall be deemed to have been remitted on the date of such declaration.

On a mere request, the secured creditor may obtain from the pledged account holder, a certificate of pledge of financial instruments accounts that sets forth the inventory of the financial instruments and any currency money subscribed as of the date the certificate was issued.

### **Article 149**

The pledged account shall take the form of a special account open in the name of the holder and maintained by the issuing legal entity or a financial intermediary.

### **Article 150**

*Translation subject to further correction (December 2016)*

When the account is held by a person not authorized to receive funds from the public, the benefits and products referred to in article 148 of this uniform Act shall be registered as credit of a special account opened in the name of the pledged account holder in the books of an institution authorized to receive such funds.

Such special account is deemed to be an integral part of the pledged account as of the date of the declaration of pledge.

The secured creditor may obtain, upon request to the special account's keeper, a certificate listing any currency money credited to such account as of the date of the request.

### **Article 151**

The secured creditor and the holder of the pledged account shall prescribe the conditions under which the latter may dispose of the financial instruments and any currency money in that account. The secured creditor shall benefit, under any assumption, from a right of retention on the financial instruments and any currency money in the account.

When, the secured creditor, who is not the custodian of the pledged account, has authorized the account holder to dispose of securities and any currency money in the pledged account, the account holder and the secured creditor shall inform the account keeper in writing of the conditions of such disposal. The account custodian may not derogate from the instructions he received without the secured creditor's authorization.

### **Article 152**

The secured creditor of a debt that is certain, of a fixed amount and due may, with regards to the financial instruments as well as any currency money in the pledged account, realize the pledge within eight days or at maturity or any other deadline previously agreed upon with the account holder after a formal notice of the debtor has been hand-delivered or sent by registered mail. The formal notice to the debtor shall also be sent to the grantor of the pledge when he is not the debtor as well as to the account custodian when the latter is not the secured creditor.

### **Article 153**

The formal notice provided for in the foregoing shall contain the full reproduction of the following particulars, under penalty of nullity:

1° ) “Due to non-payment, the pledge may be realized by the creditor within eight days or upon the expiry of any time limit previously agreed with the pledged account holder”;

2° ) “The pledged account holder may, until the expiry of the time limit mentioned above, communicate to the account custodian the order in which the sums or financial instruments will be allocated in full ownership or sold, as the creditor chooses”.

### **Article 154**

Within the limit of the amount of the secured debt and, where applicable, with respect of the order indicated by the pledged account holder, the liquidation of the pledge of this account shall occur:

1°) for any currency money in the pledged account, directly through transfer of full ownership to the secured creditor;

2°) for financial instruments admitted to trading on a regulated market that the holder of the pledged account, or failing that, the secured creditor has designated for sale on a regulated market or allotment with ownership of the quantity determined by the secured creditor. This amount is fixed by the secured creditor, on the basis of the last available closing price on a regulated market.

The pledged account holder shall pay for all expenses incurred in the liquidation of the pledge. Such expenses shall be recorded against the amount generated by such liquidation.

#### **Article 155**

When the secured creditor, who is not the keeper of the pledged account, believes that the conditions of the liquidation of the pledge are met, he shall request, in writing, that the keeper of the account proceeds with such liquidation as set out in article 154 herein.

#### **Section 4 – Pledge of intellectual property rights**

##### **Article 156**

The pledge of intellectual property rights is the agreement whereby the grantor attaches as security for an obligation any part of his existing or future intellectual property rights, such as patents, trademarks, drawings and models.

Pledge of intellectual property rights may be contractual or judicial.

##### **Article 157**

Under penalty of nullity, the pledge of intellectual property rights shall be recorded in a written document which contains the following particulars:

1°) the designation of the creditor, the debtor and the grantor of the pledge if the latter is not the debtor;

2°) identifying elements or elements enabling to determine the rights pledged as security;

3°) elements enabling the individualization of the secured debt as well as its amount or its evaluation, its term and its maturity date.

##### **Article 158**

The competent court may authorize the creditor to register a pledge on intellectual property rights. The court-ordered pledge shall be governed by the provisions relating to the preventive seizure of company shares regulated by the provisions of the uniform Act on simplified recovery and enforcement proceedings.

The court decision shall bear the particulars provided for in the foregoing.

#### **Article 159**

Unless otherwise agreed by the parties, the pledge of intellectual property rights shall not extend to accessories and benefits resulting from the exercise of the intellectual property right which is the object of the pledge.

#### **Article 160**

The contractual or court-ordered pledge shall be enforceable against third parties to the extent and under the conditions provided for by articles 51 to 66 of this uniform Act provided that the pledge is registered in the Register of Commerce and Securities.

Provisional and final registration must be completed respectively after the decision authorizing the pledge and after the final decision validating the pledge has been issued.

Where the pledge is attached to a right registered in one of the registers governed by regulations applicable to intellectual property, it shall comply with the registration rules set forth by such regulation.

#### **Article 161**

The pledge of intellectual property rights shall confer the creditor with:

- a resale right that he exercises in accordance with the provisions of article 97, paragraph 2 of this uniform Act;
- a right of liquidation that he exercises in accordance with the provisions of article 104 and 105 of this uniform Act;
- a preferential right that he exercises in accordance with the provisions of article 226 of this uniform Act;

### **Section 5 – Pledge of business assets and lien of the seller of business**

#### ***Sub-Section 1 – Pledge of business***

#### **Article 162**

The pledge of business is an agreement whereby the grantor attaches as security for an obligation intangible assets which make up the business including the list of customers, the brand name or trade name.



The pledge may also attach to other intangible elements of a business such as the right to a commercial lease, operation license, patents, trademarks, designs and other intellectual property rights. It can also be extended to professional equipment.

Such extension of the pledge must be subject to a special provision designating assets pledged and a special reference in the Register of Commerce and Securities. Such a clause shall have an effect only if the registration provided for in article 160 of this uniform Act has been carried out.

The pledge may not be attached to the rights in intangible assets conferred or evidenced by leases or agreements subject to registration in the Register of Commerce and Securities.

Where the pledge is attached to a business and its subsidiaries, they should be designated by the precise name of their registered office.

### **Article 163**

On pain of nullity, the pledge of the business shall be recorded in a written document containing the following particulars:

1°) the name of the creditor, the debtor and the grantor of the pledge if he is not the debtor;

2°) the precise name and registered office of the business, and where applicable, of its subsidiaries;

3°) elements of the pledged business;

4°) elements enabling the individualization of the secured debt such as its amount or its evaluation, its duration and maturity date.

### **Article 164**

The competent court may authorize the creditor to register the pledge on the business of his debtor. The Court-ordered pledge is governed by the provisions relating to preventive seizure of company shares regulated by the provisions of the uniform Act on simplified recovery and enforcement proceedings.

The court-ordered decision must include all the particulars provided for in the preceding article.

### **Article 165**

The contractual or court-ordered pledge shall be enforceable against third parties to the extent and under the conditions set forth in articles 51 to 65 of this uniform Act provided that the pledge is registered in the Register of Commerce and Securities.

The provisional and final registration shall be completed respectively after the decision authorizing the pledge and the final validation decision.

*Sub-Section 2 – Lien of the seller of a business*

**Article 166**

In order to produce its transfer effect and to be enforceable against third parties, the sale must be registered in the Register of Commerce and Securities at the request of the registered purchaser and within the requirements of the uniform Act on general commercial law.

**Article 167**

Subject to the provisions of the preceding article, the seller of the business shall have the sale and the lien registered in the Register of Commerce and Securities in order to benefit from his lien and cancellation action provided for by the terms of the sale of the business.

**Article 168**

Any request for an amicable, court-ordered and automatic cancellation of the sale of business shall be subject to prior entry in the Register of Commerce and Securities at the initiative of the seller.

Such prior entry shall be authorized by the competent court of the place where the sale is registered, by a decision rendered upon a petition, provided that the seller makes reference thereto.

Once the prior entry is made, the validity of subsequent entries shall be conditional upon the decision to intervene in the cancellation of the sale.

**Article 169**

When the sale is cancelled amicably, judicially or automatically, the cancellation shall be registered in the Register of Commerce and Securities.

*Sub-Section 3 – Common registration rules for pledge of business and seller's lien*

**Article 170**

When the contractual or court-ordered pledge or lien of the seller of the business is attached to patents, trademarks, service and trade, designs and other intellectual property rights as well as professional equipment, apart from the registration of the security interest of the creditor in the Register of Commerce and Securities, registration rules set forth for acts attached to the ownership of intellectual property rights and the rules of this Uniform Act on the pledge of the equipment that is part of a business shall be complied with.

**Article 171**

Where the business subject of a pledge or lien includes one or more subsidiaries, the registrations provided for in articles 164-167 of this uniform Act shall be completed at the Register of Commerce and Securities where the business is first registered.

**Article 172**

The landlord of the building in which the business operates must receive notification of the registration slip or the amendment of the initial registration. Otherwise, the secured creditor cannot avail himself of the provisions of article 176 of this uniform Act.

### **Article 173**

Any amicable or court-ordered sale of the business or of one of its components cannot occur unless the seller or the officer of the court responsible for the sale produces a statement of registrations of the business.

#### ***Sub-Section 4 - Effects of registrations***

### **Article 174**

In case of sale or liquidation of the business, unsecured creditors may petition the court to obtain close-out on their debts in order to carry out the awarding.

### **Article 175**

If the business relocates, the owner shall, fifteen days at least in advance, notify the registered creditors, by an extrajudicial act, his intention to relocate the business and shall indicate the new location.

A relocation carried out without proper notice shall result in a close-out for the debtor.

The registered creditor who refuses to consent to the moving may, within fifteen days following the notification, request a close-out if there is a decrease in his security interest.

The registered creditor who consented to the moving shall retain his security interest if he enters his agreement, within the same period, on the margins of the initial registration.

If the business is relocated to another State party, the initial registration shall be entered in the Register of Commerce and Securities of the new location of the business at the request of the registered creditor.

### **Article 176**

The lessor, who intends to terminate the lease of the building in which operates a business encumbered with registration, shall address his request to the registered creditors by an extrajudicial act.

The court-ordered termination may not intervene; the amicable termination decision or an automatic cancellation clause may produce its effects only after the expiration of the period of two months following the notification.

### **Article 177**

Registered creditors shall be entitled to a higher bid right that they shall exercise in accordance with the provisions relating to the sale of the business.

## **Article 178**

Registered creditors shall benefit from:

- a resale right that he exercises in accordance with the provisions of article 97, paragraph 2 of this uniform Act;
- a right of liquidation that he exercises in accordance with the provisions of article 104 and 105 of this uniform Act;
- a preferential right that he exercises in accordance with the provisions of article 226 of this uniform Act;

## **CHAPTER 6 – LIENS**

### **Section 1 – General liens**

#### **Article 179**

General liens confer a preferential right exercised by their holders pursuant to the provisions of articles 225 and 226 of this uniform Act. Special texts creating general liens must specify the rank thereof by determining them in respect of the provisions of article 180 of this uniform Act. Otherwise, the rank of these liens shall be the last of the one established by article 180.

#### **Article 180**

General liens are established without registration and in the following order:

- 1°) burial expenses, medical expenses of the debtor prior to the seizure of assets;
- 2°) subsistence supplies made to the debtor in the last year prior to his death, the seizure of assets or the court-ordered decision to commence collective proceedings;
- 3°) money owed to workers and apprentices for performance and termination of their agreement during the last year preceding the death of the debtor, the seizure of assets or the court-ordered decision to commence bankruptcy proceedings;
- 4°) money owed to authors of intellectual, literary and artistic works for the last three years preceding the death of the debtor, the seizure of assets or the court-ordered decision to commence collective proceedings;

5°) within the limits of the legally fixed amount for provisional enforcement of court-ordered decisions, money owed to security and welfare agencies;

6°) within the limit of the legally fixed amount for provisional execution of court-ordered decisions, money for which the debtor is liable to tax and customs claims.

### **Article 181**

Are encumbered beyond the amount fixed in article 180, paragraphs 5 and 6 of this uniform Act, tax, customs and security and social security agencies claims.

Such liens shall have an effect only if they are registered within six months of the payment of such claims in the Register of Commerce and Securities. However, if there was infringement of fiscal, customs and social legislation, the time period starts to run as from the notification of the obligation or the perception deed or any other recovery instrument.

The registration shall retain the lien of the Public Treasury, the tax and customs Administration and the social security and social security agencies for three years from the day on which it was established; its effect shall cease except when a renewal is requested before the expiration of this period.

## **Section 2 – Special liens**

### **Article 182**

Creditors holding special liens shall have, on assets legally attached to those special liens and may exercise such rights after seizure in according to the provisions set forth in article 226 of this uniform Act.

The preferential right shall also be exercised by subrogation on the insurance indemnity of the asset which has perished or disappeared, as long as it is not paid.

### **Article 183**

On a sold asset, the seller shall have a lien thereon to secure payment of the price not paid, if it is still in the possession of the debtor or on the price still owed by the sub-purchaser.

### **Article 184**

The lessor of real property shall have a lien on the furniture installed in the leased premises.

Such a lien guarantees, in addition to damages that could be attributed thereto, the claims of the lessor against the lessee for the overdue twelve months before the seizure and for the twelve months accruing after that.

The lessee or any person who, by fraudulent maneuvers, completely or partially deprives the lessor of his lien, commits a criminal offence punishable by the domestic law of each State party.

In the event the furniture installed in the leases premises is displaced without the lessor's consent, the lessor may still proceed with their seizure and retain his lien on them if he has made a statement of claim thereon in the seizure instrument.

#### **Article 185**

The land carrier has a lien on the property transported, for all that is due to him provided that there is a connection between the property transported and the debt.

#### **Article 186**

The worker of a home service contractor shall have a lien on the amounts owed by the work provider in order to secure receivables arising from the employment agreement if the latter arose from work performance.

#### **Article 187**

Workers and suppliers of construction companies shall have a lien on the remaining amounts owed to them for the work performed, as security for claims arising for their benefit for performing such work.

Wages due to workers shall be paid prior to paying money owed to suppliers.

#### **Article 188**

Brokers shall have a lien on goods that they hold for the account of the principal in order to secure their debts arising from the agreement of commission.

#### **Article 189**

The person who has disbursed money to cover costs or provided services to avoid its disappearance of a personal property or to safeguard its intended usage shall have a lien on such personal property.

### **TITLE 3 – MORTGAGES**

#### **CHAPTER 1 – GENERAL PROVISIONS**

#### **Article 190**

The mortgage is the transfer of a determined or determinable real property owned by the grantor to secure one or several, existing or future debts provided that they are determined or determinable.

A mortgage may be statutory, contractual or judicial .

#### **Article 191**

Unless otherwise provided, the rules governing contractual mortgages shall also apply to forced mortgages.

### **Article 192**

Unless otherwise provided, only existing and registered real properties may be subject to a mortgage.

May be the subject of a mortgage:

1°) structures built or not built and improvements thereon or construction, excluding tangible assets which constitute the accessory;

2°) Real property rights duly registered according to the rules of the State party.

### **Article 193**

The mortgage shall be indivisible by nature and shall remain totally attached to the real properties until full payment of the obligation despite the occurrence of a succession in fee title.

### **Article 194**

Those who have registered a right subject to a condition, cancellation, or rescission on the real property which was properly registered shall grant a mortgage subject to the same conditions, cancellations or rescissions.

The mortgage of an undivided real property shall retain its effect regardless of the result of the sharing, if it was granted by all joint owners. In the contrary, it shall retain its effect only insofar as the interest holder, who has granted it, is, during the sharing, allotted the undivided real property or, when the real property is legally auctioned to a third party, if the holder is allotted the price of the auction.

The mortgage of a share in one or several joint real properties shall retain its effect only insofar as the interest holder who has granted it is, during the sharing, allotted one or several of such joint real properties; it shall then keep it in the extent of such an allotment, without being limited to the share owned by the interest holder who has granted it; when the real property is auctioned to a third party, it shall retain it also if this interest holder is allotted the proceed of the auction.

### **Article 195**

Any contractual or court-ordered instrument constituent of a mortgage must be registered pursuant to the registration rules enacted for this purpose by the State party where the encumbered property is located.

The mortgage properly registered shall be assigned a rank on the day of its registration. When the real property, subject of the mortgage, consists of a strip of a property ownership right such as usufruct, surface right, emphyteutic lease or leasehold, the registration of the mortgage must also be notified through an extrajudicial act to the owner, the owner of the sub-soil or the lessor.

### **Article 196**

Registration shall have a fixed term and shall preserve the right of the creditor until a date that has to be set by an agreement or a court-ordered decision within thirty years from the day of the formality, unless otherwise provided by domestic laws. Its effect shall cease if it is not renewed before the expiration of this period, for a fixed term.

The same shall apply when the mortgage was created for an indefinite period.

#### **Article 197**

The mortgage shall confer the resale and preferential right to his holder.

The preferential right shall be exercised pursuant to the provisions of article 225 of this uniform Act in order to secure the principal, charges and three year-worth of interest on the same level, except to take specific registrations on mortgages from their dates for interests other than those preserved by the initial registration.

The preferential right shall also be exercised, by subrogation, on the insurance payment for a damaged real property.

#### **Article 198**

Unless the unpaid mortgagee seeks the sale of the mortgaged real property in accordance with the rules applicable to property repossession, to which the mortgage agreement cannot derogate, he may petition in court that the property remains in payment.

Such option shall, however, not be offered to him if the real property is the main residence of the grantor.

#### **Article 199**

Unless the grantor is a legal entity or a natural person duly registered in the Register of Commerce and Securities and that the mortgaged real property is not used for residential purposes, the mortgage agreement may stipulate that the creditor will become the owner of the mortgaged property.

At the end of the thirty day time limit following the formal notice to pay by an extrajudicial act that has gone unheeded, the creditor may have the transfer ownership be recorded in a deed established within the requirements on real property assignment of each State party.

#### **Article 200**

In cases referred to in the two preceding articles, the real property must be appraised by an expert appointed amicably or judicially.

Where its value exceeds the amount of the secured debt, the creditor shall owe the grantor an amount equal to the difference. If there are other mortgagees, he shall record it. Any clause to the contrary shall be deemed unwritten.

#### **Article 201**



Any act relating to a mortgage and attached to an assignment, change in rank, subrogation, waiver, extinction, shall be established, according to domestic laws of the location of the real property, by a notarial act or a private signed deed in accordance with a model conform to the rules of the State party concerned and registered as the instrument by which such mortgage is granted or created.

The extinction of the contractual or judicial mortgage shall be the result of:

- the extinction of the principal obligation;
- the waiver of a mortgage by the creditor;
- the expiration of the certified registration, under his responsibility, by the custodian of the register of the real estate registration, and such certificate shall mention that no extension or new registration shall affect the abatement;
- The extinction of mortgages resulting from the minutes of the tender on enforced expropriation and payment or recording of the final indemnity of expropriation for public use.

#### **Article 202**

The mortgage shall be cancelled pursuant to registration rules of the State party where the encumbered property is located.

In case the creditor refuses to consent or the custodian declines to proceed with the cancellation of the mortgage, the debtor or the person entitled to it may obtain a court-ordered discharge of such security. The court-ordered discharge decision pronounced against the creditor or his rightful heirs and becoming final shall oblige the custodian to proceed with the cancellation.

## **CHAPTER 2 – CONTRACTUAL MORTGAGES**

#### **Article 203**

Contractual mortgages may only be granted by the individual owner in fee title of the real property regularly registered and who is able to dispose thereof. As an exception to the preceding paragraph, the mortgage may be granted on future real properties under the following conditions:

1°) the individual who does not own existing or free real properties or does not own enough to form the collateral of the debt may agree that each of the properties that he will acquire subsequently shall be allocated to the payment thereof as he acquires them;

2°) the individual whose existing real property subject to mortgage has perished or suffered damage in a way it cannot secure the debt may similarly be granted mortgage, without prejudice to the right of the creditor to seek its repayment as from that moment;

3°) the individual who has a real property right allowing him to build, on his favor, using other people's funds, in the public or national domain, may mortgage property buildings and structures on which construction has begun or is simply planned; in the event of destruction thereof, the mortgage shall be automatically attached to new properties built in the same location.

#### **Article 204**

The contractual mortgage must be granted for a fixed amount or at least determinable in principal and brought to the knowledge of third parties by registering the instrument. The debtor shall be entitled, where applicable, thereafter, to require the reduction of such a sum in accordance with the land registration rules set forth for this purpose.

#### **Article 205**

The contractual mortgage shall be granted, in accordance with the domestic law of the place where the real property is located:

- by an authentic deed established by the territorially competent notary or the administrative or court authority empowered to make such acts;
- or by a private signed deed drawn up according to a design approved by the Land Registry.

The power of attorney given to a third party to create a mortgage in the notarial form must be established in the same way.

#### **Article 206**

In the event the mortgage is not registered, it shall not be enforceable against third parties and shall constitute, among the parties, a reciprocal promise that binds them to perform the required registration.

#### **Article 207**

The publication of the contractual mortgage guaranteeing a short-term loan may be deferred for a maximum period of ninety days unless the creditor loses his vested rank.

The creditor shall, therefore, comply with the provisions specifically enacted for this purpose by the registration rules concerning mortgages guaranteeing short term loans, provided by the domestic law of the place where the real property is located.

#### **Article 208**

The mortgage granted as a security for a credit of a specified amount to be paid shall be ranked on the date of its publication irrespective of the successive dates for the execution of the commitments made by the credit provider.

## CHAPTER 3 – FORCED MORTGAGES

### Article 209

Forced mortgages are mortgages which are conferred without the consent of the debtor, either by law or by a court decision.

Forced mortgages other than those provided for by this uniform Act shall be governed by the provisions of the domestic law of each State party.

### Section 1 – Statutory forced mortgages

#### Article 210

The statutory mortgage of the mass of creditors under the uniform Act on bankruptcy Procedures shall be registered within the period of ten days from the day of the court decision commencing the collective proceedings at the request of the Registrar or the trustee.

#### Article 211

The seller, the merchant or the co-partitioner may require from the other party to the deed a mortgage on real properties sold, exchanged or shared to secure the total or partial payment of the price, the cash adjustment from the exchange or the debts resulting from the sharing. Absent provisions of a contractual mortgage, the seller, merchant or co-partitioner may, pursuant to a decision of the competent court, obtain the forced mortgage on the said real properties.

Action for cancellation of the sale, exchange, and sharing deed for non-payment of the award or the balance belongs to the seller, the merchant, or the co-partitioner holder of a contractual or forced mortgage properly registered due to the fact of obtaining this warranty and concurrently with it.

The individual who provides money to purchase a sold, exchanged or shared real property, may obtain a contractual or forced mortgage under the same conditions as the seller, the merchant or the co-partitioner as soon as the borrowing instrument authentically established that the money was intended for such purpose and, by the receipt of the seller, merchant or co-partitioner, that the payment has been made using the borrowed money.

#### Article 212

Architects, contractors and other persons employed to build, repair or rebuild buildings may, before commencement of the work, obtain a contractual mortgage or obtain, by a court-ordered decision, a forced mortgage on the real estate subject of the agreement.

The mortgage shall be registered provisionally for the amount of money that will be estimated as due. This registration shall be assigned a rank on that date, but for a period not exceeding one month after the completion of works verified by a bailiff. The mortgage shall keep its date if, within the same period, with the parties' agreement or a court-ordered decision, the registration becomes final for the whole or portion only of the estimated amount.

The individual who provides the funds to pay or reimburse the architects, contractors and other persons employed to build, repair or rebuild buildings, may obtain a contractual or forced mortgage under the same conditions as those creditors once it is formally recorded in the borrowing instrument that that the money was intended for such purpose and, by the receipt of the architects, contractors or other persons, that the payment has been made from the borrowed money.

## **Section 2 – Judicial forced mortgages**

### **Article 213**

To secure his debts, besides the cases provided for by articles 210 to 212 of this uniform Act, the creditor may be authorized to take a provisional registration of a mortgage on the real properties of his debtor pursuant to a decision of the competent court of the domicile of the debtor or in the jurisdiction in which are located the real properties to be seized.

The decision shall state the amount for which the mortgage is granted.

It shall indicate to the creditor a time limit within which he must, under penalty of the authorization being declared void, sue, before the competent court, for the validity of the provisional mortgage or the claim on the merits of the case, even if presented in the form of an order to pay. Further, it shall set the time limit during which the creditor may not petition the court to consider the merits of the case.

If the creditor violates the provisions of the preceding paragraph, the decision may be retracted by the court which has authorized the mortgage.

### **Article 214**

The decision may require the creditor to, first prove a satisfactory level of his solvency or, failing that, to give a collateral by filing an instrument with the Clerk or a receiver, with or without obligation to observe the rules concerning the granting of sureties.

### **Article 215**

The competent court shall rule provided that it contacts him in case a problem arises. Its decision shall be enforceable immediately, notwithstanding objection or appeal.

### **Article 216**

The creditor shall be entitled to take a provisional registration of a mortgage upon presentation of the decision containing:

1°) the designation of the creditor, his election of domicile, the name of the debtor;

2°) the date of the court order;

3°) the cause and the amount of the secured debt with principal, interest and fees;

4°) the designation, by the number of the land title of each of the real properties on which the registration was ordered; without the land title, subject to the application of article 192 of this uniform Act, the designation of unregistered properties shall be made in accordance with the provisions of the national legislation specifically provided for this purpose.

The provisions of this article do not preclude the registration formalities provided for by the land laws.

#### **Article 217**

The creditor must notify the decision ordering the court-ordered mortgage by issuing summons for the validity instance or the instance on the merits. He shall also notify the registration within fifteen days of performing this formality.

He must elect domicile within the jurisdiction of the competent court or the property registry.

#### **Article 218**

Discharge or reduction of the mortgage may be granted by the competent court which has authorized it, ruling expeditiously, against consignment, in the hands of a receiver whom he appointed, of the sums with principal, interest and fees, with special allocation to the debt. The discharge or reduction of the mortgage must be requested within one month of the notification of the assignment in validity or the instance on merits.

When the contested claim was the subject of a final decision, the sequestered amounts shall be specially allocated, above all others, to the payment of the debt of the plaintiff. They are subject to preventive seizure during the duration of the proceeding.

#### **Article 219**

The court seized may, in any case, even before ruling on the merits of the case, order a total or partial discharge of the mortgage if the debtor presents reasonable and legitimate grounds.

In the case of abatement of the instance, proceeding or action, the discharge not granted of the provisional registration shall be given by the court which authorized such registration and the cancellation shall be completed upon the filing of its final decision.

#### **Article 220**

When it is established that the value of the real properties is double the amount registered, the debtor may obtain the limitation of the effects of the first registration on the real properties that he registered for such purpose.

#### **Article 221**

*Translation subject to further correction (December 2016)*

Where the debt is acknowledged, the decision on the merits shall maintain in whole or in part the already registered mortgage or shall grant a final mortgage.

Within six months following the day on which that decision became final, the registration of the subsequent mortgage is required in accordance with the legislation of the State party where is located the encumbered property. What was kept shall be assigned a rank on the provisional registration date; the mortgage shall be assigned a rank on the final registration date.

Failing to perform a final registration within the time limit set above, or if the debt is not recognized by a decision which became final, the first registration shall become retroactively ineffective and its cancellation may be requested by any interested party, at the expense of the registrant, to the court which allowed the said registration.

## **CHAPTER 4 – EFFECTS OF MORTGAGES**

### **Article 222**

Where the mortgaged real property can no longer adequately secure the debt, as a result of destruction or degradation, the creditor may seek payment of his debt before the end of the term or may get another mortgage.

### **Article 223**

The resale right shall be exercised against any third party holder of the property whose title is published subsequently to the mortgage.

Although the third party holder is not personally bound by the debt, he may pay off the creditor seeking payment of the full amount of his debt, in principal, interest and other fees, by becoming the creditor.

## **TITLE 4 – DISTRIBUTION OF MONEY AND CLASSIFICATION OF SECURITY INTERESTS**

### **Article 224**

Procedures for distribution of the proceeds of the distress sales shall be prescribed by the rules governing enforcement proceedings subject to the provisions that follow with regards to the order of distribution.

### **Article 225**

The proceeds of the liquidation of real properties shall be distributed in the following order to:

1°) creditors of court fees incurred in order to achieve the liquidation of the real property sold and the distribution of proceeds;

2°) creditors with super-privileged salaries;

3°) creditors holding a contractual or forced mortgage and separatist creditors registered within the legal time limit, each according to the rank assigned to its registration in the register of real estate registration;

4°) creditors with a general lien subject to registration, each according to the rank of its registration in the Register of Commerce and Securities;

5°) creditors with a general lien not subject to registration according to the order established by article 180 of this uniform Act;

6°) unsecured creditors in possession of an enforceable title when they intervened by way of seizure or opposition to the procedure.

In case of insufficient funds to pay off creditors of equal rank referred to paragraphs 1°), 2°), 5°) and 6°) of this article, they shall distribute proportionally to their total debts on a pro rata basis.

#### **Article 226**

Without prejudice to the exercise of a potential right of retention or of an exclusive right to the payment, the proceeds from the liquidation of personal property shall be distributed in the following order to:

1°) creditors of the court fees incurred in order to achieve the liquidation of the property sold and the distribution of its price;

2°) creditors of costs incurred for the preservation of the property of the debtor in the interest of the creditors whose title has an earlier date;

3°) creditors with super-privileged salaries;

4°) creditors secured by a general lien subject to registration, pledge, or suretyship, each on the date of its enforceability against third parties;

5°) creditors with a special lien, each according to the personal property on which the lien is attached; in case of conflicts between secured debts for a special lien on the same personal property, preference is given to the first petitioner;

6°) creditors with a general lien not subject to registration according to the order established by article 180 of this uniform Act;

7°) unsecured creditors in possession of an enforceable title when they intervened by way of seizure or opposition to the procedure of distribution.

In case of insufficient funds to pay off creditors of equal rank referred to paragraphs 1°), 2°), 3°), 6°) and 7°) of this article, they shall distribute in the proportion of their total debts on a pro rata basis.

## **TITLE 5 – TRANSITIONAL AND FINAL PROVISIONS**

### **Article 227**

This uniform Act, which repeals the Uniform Act on security interests of 17 April 1997, shall govern security interests granted or created after its entry into force.

Security interests granted or created prior to this uniform Act, and in accordance with the legislation in force then, shall continue to be governed by that legislation until their extinction.

### **Article 228**

This Uniform Act shall be published in the Official Journal of OHADA within a period of sixty days from the date of its adoption. It shall also be published in the States Parties, in the Official Journal or by any appropriate means. It shall become applicable ninety days from the date of its publication in the Official Journal of OHADA pursuant to article 9 of the Treaty on the Harmonization in Africa of Business Law, signed in Port Louis on 17 October 1993, as revised in Quebec City on 17 October 2008.

Done in Lomé on 15 December 2010



**For the Republic of BENIN**

Mr. AKOFODJI Grégoire  
Minister of Justice

**For BURKINA FASO**

Mr. DA MWINZE Eric  
Representative of the Keeper of Seals,  
Minister of Justice

**For the Republic of CAMEROON**

Mr. KAMTO Maurice  
Minister Delegate of Justice

**For the CENTRAL AFRICAN  
REPUBLIC**

Mr. NGON BABA Laurent  
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Mr. MOUSSA Abderemane  
Minister of Industry, Labor and Employment

**For the Republic of CONGO**

Mr. MABIALA Pierre  
Minister of Land Affairs and Public Domain

**For the Republic of GABON**

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**For the Republic of EQUATORIAL  
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Mr. Martin NDONG NSUE  
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**For the Republic of MALI**

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M. TOZOUN Kokou Biossey  
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Institutions