

UNIFORM ACT ORGANISING SECURITIES



ADOPTED ON 15 DECEMBER 2010 AT LOMÉ

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

Mindful of the Treaty on the Harmonization of Business Law in Africa signed at Port Louis on October 17, 1993, as amended in Quebec on October 17, 2008 particularly Articles 2, 5, 6, 7, 8, 9, 10, 11 and 12 thereof;

Mindful of the report of the OHADA Permanent Secretariat and the observations of the State Parties;

Mindful of the opinion of the Common Court of Justice and Arbitration reference n°002/2010 dated 3 August 2010;

The States Parties here present and voting have deliberated upon and unanimously adopted the Uniform Act set out below:

V



PRELIMINARY TITLE
DEFINITION AND SCOPE OF APPLICATION OF
SECURITIES – SECURITIES AGENTS

CHAPTER 1
DEFINITIONS AND SCOPE OF APPLICATION OF SECURITIES

ARTICLE. 1

A security shall be the allocation of an asset or property in favour of a creditor to guarantee the discharge of an obligation or obligations, whatever their legal nature, provided that such obligation or obligations is existing, prospective, ascertained or ascertainable, conditional or unconditional and of a fixed or changing amount.

ARTICLE 2

Except as otherwise provided for by this Act the securities concerned shall be accessory to the obligation whose discharge they guarantee.

ARTICLE. 3

By this Act, a debt shall be considered professional where it is contracted in the course of any professional activity or where it has a direct link to any one of the professional activities of the debtor even if such activity is not the debtor's principal activity.

ARTICLE. 4

By this Act, a personal security shall consist in the undertaking by an obligor to discharge an obligation in default of the principal debtor or at the earliest request of the obligee.

Except otherwise provided for by this Act, the only real securities validly constituted shall be those governed by this Act. These shall consist of, either the right of the creditor to insist on his preferential right of payment from the proceeds of sale of the secured property, or the right to freely dispose of same acquired by virtue of the security agreement.

Subject to the special provisions of this Uniform Act, real securities may be constituted by the debtor himself or by a third party to secure an obligation.

Securities in the domain of fluvial, maritime and air space law, legal securities other than those governed by this Uniform act, as well as securities to guarantee the execution of contracts existing exclusively between financial institutions may be regulated by specific legislation.

CHAPTER 2
SECURITIES AGENT

ARTICLE 5

Any security or other guarantee to secure the discharge of an obligation may be made, registered, managed and executed by a financial institution or a national or foreign credit company acting in its own name and as surety agent appointed for that purpose by the creditor of the secured debt.

ARTICLE 6

Under pain of nullity the deed appointing the surety agent shall include:

- 1°) the secured debt or debts, or where they are prospective, information to enable their identification such as details relating to the identity of the debtor, place of payment, the amount of the debt or its valuation and its maturity date;
- 2°) the identity of the creditor or creditors on the day the agent was appointed;
- 3°) the identity and head office of the agent;
- 4°) the duration of his mission, the scope of his powers of administration and degree of availability;
- 5°) the conditions under which the agent gives account of his mission to the creditor or creditors of the secured debt or debts.

ARTICLE 7

Where the agent acts for the benefit of creditors of the secured debt or debts, he shall so expressly state and every registration of a security done in the course of his assignment shall make mention of his name and status as agent.

ARTICLE 8

Except otherwise provided for and for everything relating to secured debts, the creditors shall be represented by the surety agent in their dealings with their debtors, sureties, as well as with all persons who have allocated or transferred property as security, and with any other third party.

Within the powers conferred by the creditors of the secured debt or debts, the agent may bring any action including court proceedings to defend the interests of the said creditors. The mere indication that he does so as an agent shall suffice.

ARTICLE 9

Where the constitution or the realization of a security results in a transfer of the property to the surety agent, the property so transferred shall form part of the capital allocated for his mission and shall be kept separate from his personal estate. The same shall be for payments received by the agent in the course of his mission.

Subject to the eventual exercise of the creditor's right to pursue the debtor's property and, outside the cases of fraud, such property may be seized only by the holders of claims arising from the preservation and management of the said property including collective proceedings for the discharge of debts against the surety agent.

ARTICLE 10

The deed appointing the agent may provide for the conditions under which the agent may employ a third party to accomplish, under his responsibility, his mission. In that case, the creditor may take action directly against such third party.

The said deed may equally provide for conditions under which the agent may be replaced where he neglects his mission or where he puts into jeopardy the interests entrusted in him, or again,

where collective proceedings have been instituted against him. In the absence of any contractual provisions to this effect, the creditor may, in the above-cited circumstances, pray the competent court to urgently appoint a temporary agent or have the agent replaced.

Where the agent is replaced either as a result of a contractual clause or by order of court, all the rights and all the shares he held on behalf of the creditor shall be transferred as of right and with no other formality to the new agent.

ARTICLE 11

In the absence of any contrary clause in the deed appointing him, the responsibility of the agent with regard to the creditors shall be considered as that of a paid agent.

TITLE 1 PERSONAL SECURITIES

ARTICLE 12

Personal securities governed by this Uniform Act shall be the surety-bond and the autonomous guarantee.

CHAPTER 1 SURETY-BOND

ARTICLE 13

A surety-bond shall be a contract whereby the surety undertakes, and the creditor accepts, to discharge an existing or future debt contracted by the debtor in the event of the latter failing to do so.

This undertaking may be in the absence of any order by the debtor.

Section 1 Formation of a Surety-bond

ARTICLE 14

A surety-bond shall not be presumed no matter the nature of the secured debt. It shall be proved by a deed signed by the surety and the creditor. Mention shall also be made in the deed, in the surety's handwriting, and in words and figures of the maximum secured amount covering the principal, interest and other accessories. In case of disparity the amount in words shall be deemed the secured sum.

The surety who does not know or cannot write shall be assisted by two witnesses who shall attest in the deed to his identity and presence and to the fact that the nature and the effects of the deed were explained to him. The presence of attesting witnesses shall exempt the surety from complying with the formalities provided for in the preceding paragraph.

The provisions in this article shall equally apply to surety-bonds required by the laws of each State Party or by a court decision.

ARTICLE 15

Where a debtor either by agreement or by the laws of each State Party or by a court decision shall provide a surety, the said surety shall be resident or choose an address within the area of jurisdiction of the court of the place where he shall be needed unless the said requirement is waived by the creditor or the competent court.

The said surety shall show proof of solvency which shall be assessed taking into account all the elements of his estate.

The debtor who cannot find a surety may in replacement thereof provide real security of a value acceptable to the creditor.

ARTICLE 16

Where the surety voluntarily accepted by the creditor or appointed by the court later becomes insolvent, the debtor shall provide another surety or allocate real property of the same value acceptable to the creditor.

The exception to this rule shall be where the creditor's acceptance of the main contract was conditioned on the debtor providing a particular surety.

ARTICLE 17

There shall be no surety-bond unless the secured principal debt is valid. However, any person having full knowledge of the facts may stand surety for a person who lacks capacity. The ratification of a voidable debt by the debtor shall only be binding on the surety where he expressly waives his right to challenge same.

The surety may invoke the lack of authority of the representative to commit the principal indebted legal person if the principal debt is not properly constituted unless the indebted legal person has ratified the debt and the surety has expressly waived his right to challenge the said debt.

Where the responsibility of the surety is engaged under more exacting conditions than the principal debt the said responsibility shall be reduced to the amount of the debt. It shall also not exceed the amount owed by the principal debtor at the time proceedings are taken.

The principal debtor shall not increase the liability of the surety by any subsequent agreement.

ARTICLE 18

Unless otherwise provided, the surety-bond shall cover, in addition to the principal debt and within the limits of the maximum amount secured, accessories and recovery charges incurred after the surety has been notified.

At the request of the surety, the deed constituting the principal debt shall be annexed to the surety bond.

The surety bond may equally, under less exacting conditions, be contracted for part of the debt only.

ARTICLE 19

Unless otherwise provided, a general surety bond covering the debts of the principal debtor, in the form of a security for all liabilities, the debit balance of a current account or in any other form shall refer only to direct contractual debts. Under pain of nullity, it shall be made for a maximum amount including the principal debt, interest and other accessories which shall be freely determined by the parties.

The general surety bond may be renewed where the maximum amount is reached. The renewal shall be express. Any clause to the contrary shall be disregarded.

It may be revoked at any time by the surety before the maximum secured amount is reached. Any commitment of the debtor made before such revocation shall remain secured by the surety.

Unless otherwise provided, the general surety bond shall not secure the debts of the principal debtor contracted before the date of the surety bond.

Section 2 Terms and Conditions of a Surety-Bond

ARTICLE 20

The surety-bond shall be deemed joint and several.

It shall be deemed single when so expressly provided by the laws of each State Party or by agreement between the parties.

ARTICLE 21

The surety may himself have a counter surety duly named in the contract.

Unless otherwise stated, the liability of the counter surety or counter sureties shall not be joint and several.

ARTICLE 22

The surety may secure his commitment by providing as security one or more of his assets.

The surety may also limit his commitment to the value in cash of the assets so provided as security.

Section 3 Effects of the Surety bond

ARTICLE 23

The surety shall only settle the debt where the principal debtor fails to do so.

The creditor may not commence any action against the surety unless the principal debtor fails to comply with a formal notice to pay.

The creditor shall give notice to the surety of any extension of time he grants the principal debtor to pay his debt. The surety may object to such extension and institute proceedings against the debtor to compel him to pay or provide security or protective measures

Notwithstanding any clause to the contrary, any decision to accelerate payment shall not automatically be binding on the surety who shall only be required to pay on the date fixed at the

time the security was given. However, the surety may lose this right where he, having been duly served, fails to discharge his obligation on the agreed date.

ARTICLE 24

In the month when the notice to pay is served on the principal debtor and he fails to comply, the creditor shall inform the surety of the default of the principal debtor stating the unpaid amount including the principal, interest and other accessories on the due date of payment.

Failing that, the surety shall not be liable for penalties or late payment interest accruing from the due date of payment to the date he was given notice of the default.

Any clause contrary to the provisions of this article shall be disregarded.

ARTICLE 25

The creditor shall within the month following the end of each semester of the calendar year as from the date of signature of the surety-bond communicate to the surety the account of the debts of the principal debtor giving details of their origin, the due dates of payment, the various amounts in terms of principal, interest and other accessories still unpaid at the end of the past semester, and reminding him of his option to revoke by literally reproducing the provisions of article 19 of this Uniform Act.

Where the creditor fails to comply with the prescriptions of this article, he shall vis a vis the security lose the contractual interest which accrued from the date of the preceding information up to the date the latest information was communicated to him without prejudice to the provisions of article 29 of this Uniform Act.

Any clause contrary to the provisions of this article shall be disregarded.

ARTICLE.26

The liability of the surety shall be the same as that of the principal debtor. Any surety whose liability shall be joint and several shall in the same manner as the principal debtor be bound to discharge the main debt subject to any special provisions of this Uniform Act.

However, the creditor may pursue the surety only by instituting an action against the principal debtor.

ARTICLE.27

The court appointed surety and the surety whose liability is joint and several shall have no benefit of discussion. Unless he has expressly waived this benefit, the surety with single liability may once action has been commenced against him, require that the creditor exhaust his recourse against the principal debtor identifying the said debtor's assets which can immediately be attached within the national territory and which are likely to yield sufficient funds for the full settlement of the debt. The surety shall also advance money to cover the cost of this exercise or deposit the necessary sum of money as may be fixed by the competent court for that purpose.

Where the surety has identified these assets and deposited sufficient funds for the discussion, the creditor shall with regard to the surety be responsible up to the value of the identified assets for the insolvency of the debtor resulting from the creditor's failure to pursue the said assets.

ARTICLE 28

Where there are many sureties for the same debtor and for the same debt, unless their liability is joint or the benefit thereof is waived, each surety may upon the institution of proceedings by

the creditor, request that the debt be shared among the sureties who are credit worthy at the time the issue is raised.

One surety shall not be responsible for the insolvency of the other sureties after the debt has been shared.

The creditor who decides to institute an action against any one or more of the sureties may not go back on that decision and shall bear the insolvency of the said sureties without the possibility of transferring their insolvency to the other sureties.

ARTICLE 29

Any surety or counter surety may in relation to the debt raise the issues which the principal debtor would have raised to reduce, set-off, or defer the said debt subject to the provisions of Articles 17 and 23(3) and (4) of this Uniform Act and the special provisions of the Uniform Act on collective proceedings for the wiping off debts.

A surety shall be discharged when the subrogation to the rights and guarantees of the creditor no longer operates in his interest through the fault of the creditor. Any contrary clause shall be disregarded.

Where the fault attributed to the creditor limits solely the said subrogation, the liability of the surety shall be limited to the same extent.

ARTICLE 30

The surety shall notify the principal debtor or implicate him in the action instituted by the creditor before paying the debt to the said creditor.

Where the surety settles the debt without giving notice to the principal debtor of the action against him or fails to implicate him in it, he shall forfeit his right of action against the said debtor who at the time of payment of the said debt or before it was contracted, had grounds for declaring the said debt bad or had paid the said debt in ignorance of the payment made by the said surety. Nevertheless, the surety shall retain a recovery action against the creditor.

ARTICLE.31

The surety shall be subrogated to the rights and privileges of the pursuing creditor for every payment made to the latter.

Where there are many principal debtors who are jointly liable for one and the same debt, one surety shall be subrogated to the rights of the creditor against each of the said debtors in respect of all the payments he made even where he stood surety for only one of the debtors. He shall separate his actions where the liability of the debtors is joint and several.

ARTICLE 32

A surety who has settled the debt may also institute an action against the principal debtor in recovery of the money paid as principal debt, interest and all the costs he incurred since he notified the said debtor of the proceedings instituted by the creditor. He may also claim compensation for the damages suffered as a result of the action instituted against him by the creditor.

Where only a part of the debt was secured preference may not be given to the creditor for the outstanding amount over a surety who paid and acted by virtue of his personal action. Any contrary clause shall be disregarded.

ARTICLE 33

Any action instituted by the counter surety against the surety shall be according to the provisions of articles 30, 31 and 32 of this Uniform Act.

ARTICLE 34

Where there are many sureties who are jointly or severally liable for one and the same debt, and one of the said sureties settles the debt within time, he may institute an action against the others in recovery of their respective portions of the debt.

ARTICLE 35

The surety may commence proceedings against the principal debtor in recovery of the debt or request that his interests in the estate of the debtor be preserved even before he settles the debt in the following circumstances:

- as soon as proceedings are instituted against him; or
- where the debtor is in default of payment or fails to meet his liabilities; or
- where the debtor fails to release the surety of his obligations within the agreed time limit; or
- where payment of the debt has become due pursuant to the agreement between the creditor and the debtor.

Section 4**Termination of the Surety-bond****ARTICLE 36**

The partial or total settlement of a principal debt shall to the same extent lead to the termination of the surety's commitment. Where there is accord and satisfaction (*datio in solutum*) the surety shall unconditionally be discharged even where the creditor thereafter loses possession of the property he had accepted in satisfaction of the debt. Any contrary clause shall be disregarded.

The novation of the principal obligation by a change of subject or consideration, the modification of terms and conditions or of the securities attached thereto shall discharge the surety unless he agrees to transfer his security to the new debt. Any contrary clause stipulated before the said novation shall be disregarded.

The heirs of the surety shall only be responsible for any debts contracted prior to the death of the said surety.

ARTICLE 37

The responsibility of the surety shall end regardless of the main obligation:

- where in an action against him the said surety successfully pleads a set-off; or
- where the creditor allows the sole surety a remission; or
- where there is a merger between the creditor and the surety.

ARTICLE 38

However, any merger between the debtor and his surety resulting from any one of them becoming the heir of the other shall not be a bar to any possible action by the creditor against the counter surety.

CHAPTER 2 AUTONOMOUS GUARANTEE AND AUTONOMOUS COUNTER GUARANTEE

ARTICLE 39

An autonomous guarantee shall mean an agreement by which, the guarantor undertakes, following an obligation signed by the principal and on his instructions, to pay a fixed sum of money to a beneficiary either at the earliest demand of the latter or as per the agreed terms.

The autonomous counter guarantee shall mean the agreement by which the counter guarantor undertakes, following an obligation signed by the principal and on his instructions, to pay a fixed sum of money to a guarantor either at the earliest demand of the latter or as per the agreed terms.

Section 1

Formation of Autonomous Guarantees and Autonomous Counter Guarantees

ARTICLE 40

Under pain of nullity, natural persons shall not enter into autonomous guarantee and counter-guarantee contracts.

They shall create obligations distinct from the agreements, acts and facts which are likely to be the basis of such obligations.

ARTICLE 41

The existence of the autonomous guarantee contract and the autonomous counter guarantee contract shall not be presumed. Under the pain of nullity, they shall be in writing and contain the following information:

- designation of the autonomous guarantee or autonomous counter-guarantee;
- name of the principal;
- name of the beneficiary;
- name of the guarantor or the counter guarantor;
- the basic agreement, act or event leading to the signing of the contract;
- the maximum amount of the guarantee or counter guarantee;
- the date or event that may cause the expiration of the guarantee;
- where necessary, the conditions under which payment may be demanded;
- the impossibility for the guarantor or the counter guarantor to raise any objection on the security.

Section 2

Effects of autonomous guarantee and autonomous counter guarantee

ARTICLE 42

Except otherwise provided, the beneficiary's right to a guarantee shall not be assignable. However, the non-transferability of this right shall not affect the beneficiary's right to transfer any amount of money he may be entitled to following the presentation of a demand which

conforms to the guarantee bond.

ARTICLE 43

The autonomous guarantee and the autonomous counter guarantee shall take effect at the date of issue unless a later date is stated.

The principal's orders, the autonomous guarantee and the autonomous counter guarantee shall be irrevocable where they are of a fixed duration.

Where the duration is not fixed, the autonomous guarantee or the autonomous counter guarantee may be revoked respectively by the guarantor or the counter guarantor.

ARTICLE 44

After deduction of prior payments made respectively by the guarantor or the counter guarantor in conformity with the terms of their obligation, the liability of the guarantor and the counter guarantor shall be to the extent of the sum stated in the autonomous guarantee or autonomous counter guarantee bond.

The autonomous guarantee and autonomous counter guarantee bonds may stipulate that the amount of the debt shall be reduced by a determined or determinable amount on definite dates or on presentation to the guarantor or counter guarantor of documents stated for that purpose in the obligation.

ARTICLE 45

The demand for payment on the basis of the autonomous guarantee shall take the form of a written document executed by the beneficiary accompanied by any other document provided for in the obligation. This demand shall state the duties the principal failed to perform in the discharge of his obligation with regard to the subscribed guarantee.

The demand for payment on the basis of the autonomous counter guarantor shall take the form of a written document executed by the guarantor stating that he has received the said demand from the beneficiary in conformity with the terms of the counter guarantee bond.

A demand for payment shall be in accordance with the terms of the autonomous guarantee or autonomous counter guarantee regarding the purpose for which it is made and shall, except otherwise stipulated, be presented in the place of issue of the autonomous guarantee or, in the case of the autonomous counter guarantee, in the place of its issue.

ARTICLE 46

The guarantor and the counter guarantor shall each have five working days to examine the conformity of the demand for payment with the terms of the autonomous guarantee or autonomous counter guarantee. They may only reject the demand on condition that they give notice of all the irregularities justifying the rejection to the beneficiary or, in the case of counter guarantor, to the guarantor, latest, at the expiration of this time limit.

The guarantor shall forward a copy of the beneficiary's demand for payment and its annexures to the principal or, in the case of a counter guarantee, to the counter guarantor who shall in turn forward them to the principal.

The guarantor shall notify the principal or, in the case of a counter guarantee, the counter guarantor, who shall in turn notify the principal of any reduction of the amount of the guarantee

and of any other act or event the guarantee to an end other than the date ending its validity.

ARTICLE 47

The principal may not object paying the guarantor unless the demand for payment of the beneficiary is manifestly excessive or fraudulent. The same shall be between the counter guarantor and the guarantor.

The principal may not object to paying the counter guarantor unless the guarantor knew or had reasons to know that the beneficiary's demand for payment is manifestly excessive or fraudulent.

ARTICLE 48

The guarantor or the counter guarantor who pays in accordance with the terms of the autonomous guarantee or autonomous counter guarantee shall have the same cause of action the surety has against the principal.

ARTICLE 49

The autonomous guarantee or autonomous counter guarantee shall cease to exist in any of the following cases:

- on the specified calendar day or at the expiration of the time limit;
- on the presentation to the guarantor or counter guarantor of discharging documents specified in the autonomous guarantee or counter guarantee;
- on the written declaration of the beneficiary discharging the guarantor of his obligation regarding the autonomous guarantee or the written declaration of the guarantor discharging the counter guarantor of his obligation regarding the autonomous counter guarantee.

TITLE – 2 TRANSFERABLE SECURITIES

ARTICLE 50

Transferable securities shall consist of possessory lien, assets held or transferred as security, pledge of real property, pledge of intangible assets and privileges.

Except otherwise provided, transferable securities subject to publicity shall be registered in the Trade and Personal Property Rights Register in conformity with the provisions of chapter 1 of this title.

CHAPTER 1 REGISTRATION OF TRANSFERABLE SECURITIES IN THE TRADE AND PERSONAL PROPERTY RIGHTS REGISTER

ARTICLE 51

Registration shall be at the instance of the creditor, the surety agent or settlor.

The registration of the general privilege of the Treasury, Customs and Excise and of the Social Security Institutions shall be at the instance of the public accountant of the concerned creditor administration.

ARTICLE 52

Registration shall be in the Trade and Personal Property Rights Register respecting the following rules:

- the competent Trade and Personal Property Rights Registry to register transferable securities shall be that of the area of jurisdiction where the settlor of the security is registered or if he is not bound to be registered, that of his head office or residence;
- the competent Trade and Personal Property Rights Registry to register pledges of debt or the transfer of a financial claim as a security shall be that of the area of jurisdiction where the debtor is registered or if he is not bound to register, that of his head office or residence;
- the competent Trade and Personal Property Rights Registry to register pledges of partnership rights and the personal securities of a trading company or a corporate person subject to registration shall be that of the area of jurisdiction where the said company or corporate person is registered;
- the competent Trade and Personal Property Rights Registry to register the pledge of business property and the privileges of the vendor of business property shall be that of the area of jurisdiction where the natural person or legal person owning the business is registered;
- the competent Trade and Personal Property Rights Registry to register the general privileges of the Treasury, Customs and Excise and of Social Security Institutions shall be that of the area of jurisdiction where tax payer concerned is registered, or if he is not subject to registration, that in whose area of jurisdiction he has his head office or residence.

These same rules shall apply to the registration of securities concerning the small scale entrepreneur.

ARTICLE 53

For the purposes of registration, the creditor, surety agent, settlor or where necessary the public accountant shall present to the Trade and Personal Property Rights Registry or to the competent official in the State Party a registration form carrying the following information:

- a) name, first name, company name, address or head office and where necessary, e-mail address and registration number or declaration of activities, of the creditor or of the surety agent, the debtor of the secured financial claim and of the settlor if he is not the debtor;
- b) the nature and the date of the deed giving rise to the security;
- c) where necessary, the duration of the registration as agreed by the parties;
- d) the maximum amount of the secured debt including the principal, interest and other accessories, the date due and the existence of a forfeiture agreement. For future debts, the form shall make mention of elements leading to the determination of the said debts;
- e) where necessary, the option for the settlor to dispose the fungible assets encumbered by securities under conditions laid down in article 102 of this Uniform Act;
- f) the designation of the encumbered asset with indication of the elements leading to its identification, notably the nature of the asset, its location, and where necessary, its make or serial number, or, where it concerns a group of future or actual assets, their nature, quality, quantity or value.

Where the object of the security is a debt or a series of actual or future debts, the designation of the encumbered asset or assets shall indicate the elements naturally leading to the identification of the said debt or debts such as, the indication as to the debtor, the place of settlement, the amount of the debts or their valuation and date of settlement.

In the case of a pledge of partnership rights and transferable securities of a trading company and those which are transferable from any other legal person, the form shall in addition to the afore mentioned information, contain the registration number of the firm whose partnership rights and transferable securities are pledged.

In the case of a pledge or sale of business property, the form for the registration of the pledge or the privilege of the vendor, shall also include the registration number or the declaration of activities of the natural or legal person owning and running the business for which the registration of the pledge or privilege of the vendor is required.

ARTICLE 54

Upon verification that the entry form contains all the information prescribed by article 53 of this Uniform Act, the registrar in charge of the competent Trade and Personal Property Right Register or the competent authority in the State Party shall forthwith chronologically register the deposited securities. He shall immediately issue the applicant an acknowledgement receipt containing the date, type of formality carried out and the registration number. Registration or of any refusal thereof shall be notified by the registry or the competent authority in the State Party to the debtor or to the settlor of the security where the latter is different from the debtor. Such registration or any refusal thereof may within eight days from the date of notification be challenged by the debtor or the settlor before the competent court or before the competent authority in the State Party which shall rule without delay.

Where the form is irregular, the registrar or the competent officer in the State Party shall reject the registration. Such rejection shall be motivated. The registrar or the competent officer in the State Party shall forthwith notify the applicant and make mention of such rejection in the margin of the chronological register. Any rejection may within eight days from the date of service of notification be challenged before the competent court or authority in the State Party which shall rule without delay.

The decision delivered by virtue of paragraphs (1) and (2) of this article may be appealed against within fifteen days of notification before the competent appeal court which shall rule without delay.

ARTICLE 55

Where no notification of the rejection is made, the registrar or the competent officer in the State Party shall without delay:

- i) make mention thereof in the individual file opened in the name of the natural or legal person against whom the entry was made;
- ii) put in the said individual file the declaration form with its date of entry and entry number;
- iii) forward to the National Index Card of the to Trade and Personal Property Rights Register a note of the entry to which shall be annexed a copy of the entry form and an extract of the individual file opened in the name of the person against whom the entry was made.

ARTICLE 56

In the case of a pledge of partnership rights and transferable securities of a trading company and all those which are transferable from any other legal person, the registrar or the competent official in the State Party shall also make mention thereof in the individual file of the natural or legal person whose rights or transferable securities are concerned with the registration of the pledge.

ARTICLE 57

Any duly registered transferable security subjected to publicity shall be binding on any third party from the date of entry in the chronological register of the Trade and Personal Property Right Register.

Where the registration of competing securities encumbering one and the same asset are due on the same date, the entry with the earliest date shall be deemed to have been registered first irrespective of the order of the register mentioned above.

Where the registration of competing securities encumbering one and the same asset are due on the same date by virtue of the title deeds having the same date, the securities shall be deemed to be of the same rank except where the transfers were made as security with an ownership reserve clause which shall then be deemed registered before the other securities irrespective of the order of the register mentioned above.

Where the registration of an ownership reserve clause and any transfer made as security over one and the same asset are due on the same date, the ownership reserve clause shall be deemed to have been registered first irrespective of the order of the register mentioned above.

Where the registration of transfers made as security over one and the same asset are due on the same date by virtue of the title deeds bearing the same date, the said asset shall be deemed to belong to the creditors in proportion to the amount of their financial claims irrespective of the order of the register mentioned above.

ARTICLE 58

The registration of the general privileges of the Treasury, the Department of Customs and Excise and of the Social Security Institutions shall preserve the right of the creditor for three years as from the date of entry.

As for the other transferable securities subject to publicity, the parties may in the deed establishing the said security agree on the validity period of registration in the Trade and Personal Property Right Register not exceeding ten years.

Where the registration is not renewed before the expiration date, it shall no longer be valid and shall of right be struck off by the registrar or by the competent officer in the State Party.

Registration guarantees in the same rank as the principal debt, two years of interest.

ARTICLE 59

The initial registration shall be renewed under the same conditions it was made.

Any valid renewal shall be binding on third parties from the date of entry in the chronological register of the Trade and Personal Property Right Register. The claimant shall retain the benefits of such registration where the renewal is made before the expiration of the initial registration.

An attestation of renewal containing the date of registration and its number in the chronological deposit register of the Trade and Personal Property Right Register shall forthwith be given to the claimant.

ARTICLE 60

No change in the initial registration in the Trade and Personal Property Right Register by a contractual subrogation of an after-acquire clause of the security or the transfer of a postponement agreement of the right of priority shall take effect unless the said change is entered in the margin of the initial register.

Any contractual or judicial modification of the floating charge or a secured claim shall be subject to registration under the same terms and in the same form prescribed for the initial registration.

ARTICLE 61

Any natural or legal person against who one or more of the entries set out in this Title is made may at any time move the competent court or the competent official in the State Party to set aside, or change or limit the number of entries.

The competent court or the competent official in the State Party may whatever the circumstances and even before deciding on the merits of the application strike off the whole or part of entry where the applicant presents a well-founded case.

ARTICLE 62

Any partial or total cancellation of the entry in the Trade and Personal Property Right Register shall take effect from the date of entry in the margin of the initial registration.

ARTICLE 63

Any judicial cancellation of an entry may only be by the competent court or by the competent official in the State Party.

ARTICLE 64

The cancellation of an entry by agreement shall take effect only where the creditor or his assignee substituting him deposits or transmits by electronic means an instrument drawn up by a competent authority or a private deed attesting to the cancellation of his rights. This shall be accompanied by a filled form containing the following information:

i) names, company name, address or head office and where need be, the registration number of the natural or legal person against whom the was required, or in the case of registration of partnership rights and transferable securities, registration number of the legal person whose partnership rights are subject of the registration;

ii) nature and the date of the deposited deed or deeds.

The cancellation shall be registered in the Trade and Personal Property Right Register after verifying that the form is in conformity with the deposited deed or deeds.

A certificate of cancellation shall be issued to anyone who applies for it.

ARTICLE 65

Any fraudulent registration of a transferable security or any registration containing false

information shall be punishable with the penalty provided for by the national criminal law.

The competent court or the competent official in the State Party may in its decision order the correction of the wrong information on terms it may deem fit.

ARTICLE 66

All inquiries shall be contained in a form prepared for that purpose by the Trade and Personal Property Right Register.

The registrar or the competent official in the State Party shall reply promptly or at least within two working days from the date of inquiry to all inquiries made in conformity with the preceding paragraphs by issuing the person making the inquiry either a certificate attesting that no registration was made, or giving a general statement of the existing registrations including relevant information in the margin or one or more statements relating to a particular aspect where the application refers to an asset or a category of assets belonging to a debtor or a settlor.

The Registrar or the competent official authority in the State Party shall be liable for any entry, modification or cancellation, as the case may be, which shall not be in accordance with this law. He shall also be liable for the delivery of any incomplete or inaccurate extracts.

CHAPTER 2 POSSESSORY LIENS

ARTICLE 67

A creditor in lawful possession of an asset belonging to the debtor may, regardless of any other security, continue to hold the said asset pending payment in full of the debt due, without prejudice to the provisions of Article 107 (2) of this Uniform Act.

ARTICLE 68

A possessory lien may only be exercised under the following conditions;

- where the claim of the possessor is unquestionable, liquid and due;
- where there is a nexus between the origin of the claim and possession of the asset withheld;
and
- where there was no attachment prior to the withholding of the asset.

ARTICLE 69

The nexus shall be deemed established:

- 1) where possession of the asset withheld was transferred in full satisfaction of the claim of the possessor;
- 2) where the unpaid debt results from a contract which requires the possessor to relinquish that possession;
- 3) where the unpaid debt has arisen from the possession of the asset withheld.

ARTICLE 70

The creditor shall be bound to keep the asset withheld in good state.

Notwithstanding the preceding paragraph, he may by order of the competent court given upon an urgent application proceed to sell the asset where the state or the perishable nature of the said asset so requires or where the cost of keeping the asset is disproportionately higher than its value. In that case, the possessory lien shall be transferred to the proceeds of sale which shall be consigned.

CHAPTER 3

PROPERTY WITHHELD OR TRANSFERRED AS SECURITY

ARTICLE 71

Ownership of an asset may be withheld to secure a loan by operation of an ownership reserve clause.

The said ownership may equally be transferred to secure a loan under the terms provided for in this chapter.

Section – 1

Title Retention

ARTICLE 72

Title over personal property may be withheld as security by operation of an ownership reserve clause which shall have the effect of suspending the execution of a contract until the debt is fully settled.

ARTICLE 73

Under pain of nullity, the ownership reserve clause shall be acknowledged in writing at the latest, when the asset is transferred. It may be a clause in a written document governing existing or future transactions between the parties.

ARTICLE 74

An ownership reserve clause shall not be binding on third parties unless it was duly published in the Trade and Personal Property Right Register in accordance with the provisions of articles 51 to 66 of this Uniform Act.

ARTICLE 75

An ownership reserve clause in respect of fungible goods may be brought into operation to the limit of the amount of the due balance of the debt, on assets of the same nature and quality held by the debtor or on his behalf.

ARTICLE 76

The incorporation of assets forming part of the reserved property into another asset shall not be an obstacle to the rights of the creditor where the said assets can be separated without being damaged.

On the contrary, ownership of the whole property shall be given the party with the principal share who shall pay off the other party the value of his incorporated share on the date payment shall be due.

ARTICLE 77

Where full payment is not be made on the due date, the creditor may ask for the restitution of

the asset in order to regain the right to sell it.

For the purpose of payment the value of the said asset shall be deducted from the balance of the secured debt.

Where the value of the asset recovered is more than the said balance, the creditor shall owe the debtor an amount equal to the difference.

Any clause contrary to paragraphs 2 and 3 above shall be disregarded.

ARTICLE 78

Where the asset is sold or destroyed, the right of ownership shall be transferred as the case may be, to the debtor's claim against the sub purchaser or to the insurance benefit replacing the asset.

Section 2

Property transferred as Security

ARTICLE 79

The actual or future ownership of an asset or assets may be transferred as security for the settlement of a current or future debt or of debt on the conditions laid down in this section.

Subsection 1

The Assignment of a Debt as Security

ARTICLE 80

Any debt owed by a third party may be assigned to a national or foreign legal person as security for a loan it may granting the course of its normal banking and credit professional operations.

The non-assignability of the debt shall not be relied upon by the debtor-assignor against the assignee where it arises from a contract and in the course of the exercise of the profession of the debtor-assignor or where the debt has a direct link with one of his professional activities even if the said activity is not the debtor's main activity.

ARTICLE 81

Under pain of nullity the assignment of a debt as a security shall be executed in a written instrument containing the following information:

- 1) The names or company name of the assignor and the assignee;
- 2) Date of the assignment; and
- 3) The designation of the secured debts and assigned debts.

Where these are future debts, the instrument shall permit their identification or contain elements permitting their identification such as information identifying the debtor, the place of payment, the amount of the debts or their value and where necessary, their maturity date.

ARTICLE 82

A contract assigning an existing or future debt shall immediately take effect between the parties from the date of signature irrespective of the date the debt arose, maturity date or the date the assigned debt may be due, and it may be binding on third parties from the date it shall be registered in the Trade and Personal Property Right Register irrespective of the law applicable

to the said debt and the law applicable where the debtor resides.

From the date of assignment the assignor may not without the consent of the assignee modify the rights attached to the assigned debt.

ARTICLE 83

Unless otherwise agreed by the parties, the assignment shall extend to accessories of the debt and shall by right be binding on third parties without any other formality apart from that prescribed in the preceding article.

ARTICLE 84

The assignment of a debt may not be binding on the debtor himself unless he was given notice of the said assignment or he was a party thereto.

Failing this, the assignor shall legitimately receive payment for the debt.

ARTICLE 85

Where 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 commit himself to pay directly by accepting the said assignment.

In that case, the debtor may not set up against the assignee any defense based on his personal relationship with the assignor unless the assignee on acquiring or receiving the loan acted knowingly to the detriment of the debtor. Under pain of nullity, the said commitment shall be by an instrument titled “Deed of Acceptance of an Assignment of a Debt as Security” reproducing in sufficiently clear letters the provisions of this article.

ARTICLE 86

All sums of money paid to the assignee in respect of an assigned debt shall be charged on the secured debt when it matures. Any surplus shall be paid back to the assignor.

Any clause to the contrary shall be disregarded.

Subsection 2 Fiduciary Transfer of Money

ARTICLE 87

The fiduciary transfer of a sum of money shall mean the agreement whereby a settlor transfers funds as security for the performance of an obligation.

The said funds shall be entered into a blocked account opened in the name of the creditor in the books of an approved finance company.

ARTICLE 88

Under pain of nullity, the agreement shall determine the secured loan or loans as well as the amount of the funds transferred as security and shall identify the blocked account.

ARTICLE 89

The fiduciary transfer of money shall be binding on third parties as soon as notice is given to the credit establishment holding the funds, provided the said funds are put in the blocked account.

ARTICLE 90

Except otherwise agreed, the interest accruing from the said funds shall be credited to the blocked account.

ARTICLE 91

On the maturity date and where the secured debt is fully paid, the said funds shall be paid back to the settlor.

Where the debtor fails to pay and eight days after due notice shall have been served on the settlor, the creditor may have the funds transferred to him within the limit of the amount of the unpaid secured debt.

**CHAPTER 4
THE PLEDGE OF TANGIBLE PROPERTY**

ARTICLE 92

A pledge shall mean a contract whereby the settlor grants a creditor a right of preference to have himself paid from a personal asset or a set of existing or future assets.

**Section 1
Constitution of a Pledge**

ARTICLE 93

A pledge may be made to secure one or more existing or future debts provided they are certain or ascertainable.

ARTICLE 94

In the course of the execution of the pledge the parties may agree on the subrogation of the collateral by another asset.

The pledge may equally bear on sums of money or bonds deposited as security by civil servants, sworn officers of court or any other person, to insure against any abuses for which they may be liable, and to secure loans obtained to make up the said security.

ARTICLE 95

The pledgor shall be the owner of the pledged asset. Where he is not, a bona fide pledgee may challenge any action for recovery by the rightful owner under the rules applicable to persons who hold property in good faith.

ARTICLE 96

Under pain of nullity the contract of pledge shall be in writing with the indication of the secured debt, the quantity of assets given on pledge as well as their type and nature.

Unless otherwise agreed, where the pledge bears on an asset or a set of future assets the right of the creditor on the collateral shall be exercised as soon as the settlor acquires ownership.

ARTICLE 97

The contract of pledge shall be binding on third parties either by its registration in the Trade and Personal Property Rights Register or by the handing over of the collateral to the pledgee-creditor or to any third party agreed upon by the parties.

Where the pledge is regularly published the specific legatees or devisees of the settlor may not be regarded as bona fide possessors and the pledgee-creditor may pursue the collateral in their hands for the enforcement of his claim.

ARTICLE 98

Except otherwise provided, the settlor shall not demand the cancellation of the registration or the return of the collateral until full payment of the secured debt, interest and other accessories.

Section 2 Effects of a Pledge

ARTICLE 99

Where, following the contract, the pledgor is not in possession of the collateral, the pledgee-creditor may, subject to the application of article 107 (2) of this Uniform Act invoke his possessory lien on the collateral directly or through the instrumentality of the third party agreed upon until full payment of the principal, interest and other accessories of the secured debt.

ARTICLE 100

Where the creditor loses possession of the collateral against his will, he may assert his rights as a bona fide possessor.

ARTICLE 101

Where the collateral in the possession of the creditor consists of fungibles he shall, except otherwise provided, hold them separately or cause them to be held separately from other things of the same kind held by him or by the third party agreed upon. Failing this, the settlor may demand the return of the collateral without prejudice to his claim for damages.

Where the agreement exempts the creditor from the said obligation, he shall acquire the right of ownership of the collateral on condition that he returns the same quantity of equivalent things. Where possession is given to a third party in escrow the right of ownership so acquired by the creditor may be exercised on assets of the same kind and quality held by the third party agreed upon.

ARTICLE 102

Where the collateral in the possession of the debtor consists of fungibles, the contract may authorize the settlor to dispose of them on condition that he replaces them with the same quantity of equivalent things. The authorization given to the settlor shall amount to a waiver by the creditor of his right to pursue this property in the hands of a subsequent buyer for the enforcement of his claim.

ARTICLE 103

Except otherwise provided, the pledgee-creditor may neither use the collateral nor derive any benefit therefrom. Where he has authority to derive benefit there from, he shall charge such benefit on the interest he is entitled to or, failing this, on the capital of the debt.

ARTICLE 104

Where payment has not been made on the due date, the pledgee-creditor in possession of a writ of execution may proceed to the forceful sale of the collateral eight days after notice has been duly served on the debtor and, where necessary, on the third party settlor under the conditions laid down by the provisions organizing measures of execution from which no pledge may derogate. In this case, he shall exercise his right of preference on the price of the thing sold under the terms of article 226 of this Uniform Act.

The creditor may also cause the competent court to order that the collateral be given to him in payment of the balance of his debt and following the valuation at current market or as determined by an expert.

Where the collateral is a sum of money or an asset whose value has been officially fixed, the parties may agree that the collateral be allotted to the pledgee-creditor where there is default in payment. The same shall be for other tangible assets where the debtor of the secured debt is a professional debtor. In this case, the value of the collateral shall be estimated by the parties or by an expert agreed upon by the parties or chosen by the court on the day it is transferred. Any contrary clause shall be regarded.

ARTICLE 105

Where the collateral results from a court order or an agreement, and the value of the asset exceeds the amount due, the pledgee-creditor shall deposit the balance if there are other creditors who have a lien on the same asset, or failing which, he shall pay it to the settlor. Any clause to the contrary shall be disregarded.

ARTICLE 106

In case of an unintentional loss, partial or total damage of the collateral, the pledgee-creditor shall exercise his right of preference on the insured amount, and where necessary for the secured amount in principal, interest, and other accessories in accordance with the provisions of article 226 of this Uniform Act.

ARTICLE 107

Where one and the same asset is the subject of many and successive non-possessory pledges the ranking of the creditors shall be determined by the order of their registration.

Where an asset which is the subject of a non-possessory pledge subsequently becomes the subject of a possessory pledge, the right of preference of the first pledgee shall be binding on the subsequent pledgee where the first pledge was regularly published notwithstanding the possessory lien of the latter.

Where an asset which is the subject of a possessory pledge subsequently becomes the subject of a non-possessory pledge the possessory lien of the first pledgee shall be binding on the subsequent creditor who shall exercise no right over the asset as long as the first creditor has not been fully paid.

ARTICLE 108

Where there is a possessory pledge, the pledgee creditor or the third party agreed upon by the parties shall keep the collateral and ensure its conservation as a paid bailee does.

Similarly, where the settlor retains possession of the collateral, he shall keep same as a responsible person and in particular by insuring same against of loss, partial or total damage.

ARTICLE 109

Where the pledge is possessory, the settlor may demand the return of the collateral without prejudice to a claim in damages, where the creditor or the third party agreed upon fails to take proper care of the collateral.

Where the pledge is non-possessory the creditor may rely on the expiration of the time limit for payment of the secured debt or ask for additional security where the settlor fails to take appropriate steps for the preservation of the pledge.

ARTICLE 110

Where the contract of pledge, irrespective of its terms and conditions, has a set of fungibles as subject, the creditor may demand that the settlor maintain their value under pain of the pledge becoming payable before maturity.

The creditor may at any time and at the debtor's expense obtain from the settlor or the third party agreed upon a statement of the totality of the collaterals as well as an account of all transactions involving them. Where the constitution of the security gives rise to the issue of a note of the pledged stocks, the same power shall be vested on the institution having custody of the said pledge note.

Any institution empowered to receive deposits from the public shall within the meaning of this Uniform act be considered the paying institution.

ARTICLE 111

Where a collateral of a non-possessory pledge is in danger of perishing, the pledgee-creditor or the third party agreed upon may by order of the competent court made on the basis of a simple application cause it to be sold upon giving notice of the said court order to the settlor. The effects of the pledge shall then be transferred to the proceeds of sale.

ARTICLE 112

The third party agreed upon and where necessary, the party who in bad faith purchases the collateral and the pledgee-creditor shall be jointly and severally liable for the nonperformance of the obligations mentioned in articles 103, 108 (1) and 111 of this Uniform Act.

ARTICLE 113

Where the pledgee-creditor is paid the full debt, interest and other accessories he shall return the collateral and all its accessories. The settlor shall in turn pay back to the pledgee-creditor or to the third party agreed upon the needed and necessary expenses he had to incur for the preservation of the pledge.

ARTICLE 114

The pledge shall be indivisible notwithstanding the possibility of sharing the debt between the heirs of the debtor or those of the creditor.

As long as the whole debt is not fully paid any heir of the debtor who has paid his portion of the said debt may not demand any portion of the collateral even where the said collateral may be divisible by nature.

Any heir of the creditor who shall receive his portion of the debt may not return any part of the collateral to the detriment of the co-heirs who shall not have been paid even where the said collateral shall be divisible by nature.

ARTICLE 115

The pledge of goods which the debtor may dispose of by pledge note of stocks, bill of lading, transportation or custom receipt shall be constituted in accordance with the provisions peculiar to each of these deeds or documents.

Section 3 Termination of a Pledge

ARTICLE 116

The pledge shall be terminated whenever the secured debt is fully settled in terms of the capital, interest and other accessories.

ARTICLE 117

The non-possessory pledge shall cease to exist regardless of the secured debt, where the collateral is voluntarily returned to the settlor, or where the collateral through the fault of pledgee-creditor is lost, or where the competent court orders its restitution for a fault committed by the pledgee-creditor, unless a sequestrator is appointed to act as a third party agreed upon by the parties.

Section 4 Special Provisions relating to Certain Pledges

Subsection 1

Pledge of Professional Equipment and Motor Vehicles

ARTICLE 118

Without prejudice to the provisions of this subparagraph, professional equipment and motor vehicles whether registered or in circulation may be pledged in application of articles 92 to 117 of this Uniform Act.

Any professional equipment which is part of the business property may also be pledged at the same time as the other elements of the business property in conformity with the provisions of articles 162 to 165 of this Uniform Act.

ARTICLE 119

Concerning any motor vehicle subject to a declaration of circulation and official registration, mention of the pledge shall be made on the document registering and permitting it to circulate. Failure to make mention of this shall not vitiate the pledge or its binding force where it is duly registered in the Trade and Personal Property Rights Register.

Subsection 2
Pledge of Stocks

ARTICLE 120

Without prejudice to the provisions of this subsection, raw materials, agricultural produce or industrial products or goods may be pledged in pursuance of the provisions of articles 92 to 117 of this Uniform Act.

ARTICLE 121

The constitution of a non possessory pledge of stocks, may give rise to the issue by the registrar or the competent official in the State Party of a pledge note.

In that case, the deed establishing the pledge shall under pain of nullity, contain in addition to the information provided for in article 96 of this Uniform Act, the name of the insurers covering the pledged stocks against theft, fire and total or partial damage as well as the designation of company responsible for the payment.

ARTICLE 122

The pledge note given to the debtor upon registration in the Trade and Personal Property Rights Register shall clearly mention the following:

- the words “Pledge of Stocks”;
- the date of issue which shall correspond to the date of registration in the Trade and Personal Property Rights Register;
- the entry number in the Chronological Deposit Register;
- the signature of the Debtor.

The said note shall be signed dated and endorsed by the debtor to the creditor.

It may be endorsed and guaranteed under the same conditions as a promissory note and shall have the same effects.

In the absence an agreement to the contrary, the note shall, unless renewed be valid for five years as from the date of issue.

ARTICLE 123

Any endorsement shall confer to the holder of the note the status and rights of a pledgee-creditor.

ARTICLE 124

The debtor issuing the pledge note shall retain the right to sell the pledged stocks.

He may only deliver the sold stocks after depositing the proceeds of sale with the receiving institution.

CHAPTER 5 PLEDGE OF INTANGIBLE PROPERTY

ARTICLE 125

The pledge of intangible property shall mean a contract whereby existing or future intangible property is allocated as security for one or more existing or future debts on condition that the said debts are certain or ascertainable.

Such pledge may be by agreement or imposed by the court.

ARTICLE 126

The following may be pledged:

- Debts;
- Bank accounts;
- Partnership rights, transferable securities, Portfolios
- Business property;
- Intellectual property rights.

Section 1 Pledge of Debt

ARTICLE 127

Under pain of nullity, the pledge of a debt shall be in a writtendocument containing the designation of the secured debts and the pledged debts or where they shall be future debts, elements permitting their identification such the name of the debtor, the place of payment, the amount of the debt or its valuation and the latest date of payment.

ARTICLE 128

Where the subject of the pledge is a future debt the secured creditor shall acquire a right over such debt as soon as it is contracted.

ARTICLE 129

Part of the debt may be pledged unless it is indivisible.

ARTICLE 130

The pledge shall extend to the accessories of the secured debt unless the parties otherwise decide.

ARTICLE 131

On the date the contract is signed, the pledge of an existing or future debt shall take effect between the parties irrespective of the date of signature, date of maturity or payability of the secured debt and may be binding on third parties upon registration in the Trade and Personal

Property Rights Registry irrespective of the law applicable to the debt or the law of the country of residence of the debtor.

ARTICLE 132

The contract of pledge may not be binding on the debtor of the secured debt unless he was given due notice thereof in writing, or was a party thereto.

Failing that, only the settlor shall rightfully receive payment of the debt on condition that he pays the amount received to the secured creditor unless otherwise provided and without prejudice to the provisions of article 134 of this Uniform Act.

ARTICLE 133

Upon notification or intervention of the deed executed by the debtor of the secured debt, only the secured creditor may rightfully receive payment of this debt both in capital and interest and other accessories even where payment was not pursued by him.

ARTICLE 134

Where the maturity date of the pledged debt is due before that of the secured debt, the secured creditor shall keep the money as security in an account opened in an institution empowered to receive the said money on condition of refunding same to the settlor when the secured debt shall be paid. Failing this, and eight days after due notice unheeded to by the debtor of the secured debt, the secured creditor shall transfer, an amount equal to his unpaid debt.

Where the maturity date of the secured debt is due before that of the pledged debt, the creditor may by court order or by operation of the terms of the contract, be granted the secured debt and all other rights attached thereto. The creditor of the pledged debt may also wait for the maturity date of the pledged debt.

Except otherwise agreed, the creditor of the pledged debt shall in addition receive the interest charged on the amount due in capital, interest and other accessories.

ARTICLE 135

Where an amount higher than the secured debt is paid to the creditor of the pledged debt, he shall be deemed to hold the surplus as agent of the settlor. Any clause to the contrary shall be void ab initio.

Section 2 Pledge of Bank Account

ARTICLE 136

The pledge of a bank account shall be a pledge of a claim. The rules governing the latter shall also be applicable to the former subject to the provisions of this section.

ARTICLE 137

Where the pledge concerns a bank account, the pledged claim shall cover the provisional or final credit balance on the date the security is realized subject to the regularization of current

transactions in accordance with the terms and conditions provided for by the Uniform Act on the Organization of Simplified Recovery Procedures and Measures of Execution on matters of attachment and assignment of debts in the custody of a credit institution.

Subject to the same reservation, where collective proceedings are started against the debtor of the secured debt, the creditor of the pledged debt shall have the right to claim the credit balance of the account on the day the said proceedings are commenced.

ARTICLE 138

The parties may agree on the terms on which the settlor may continue to dispose of the money in the pledged account.

ARTICLE 139

Even after realization, the pledge shall continue to subsist as long as the account is not closed and the secured debt is not fully settled.

Section 3

Pledge of Partnership Rights, Transferable Securities and Portfolios

Subsection 1

Pledge of Partnership Rights and Transferable Securities

ARTICLE 140

Partnership rights and transferable securities of commercial companies and those which are transferrable from any other legal person subjected to registration in the Trade and Personal Property Rights Register may be subjects of a conventional or judicial pledge.

ARTICLE 141

Under pain of nullity, partnership rights and transferable securities shall be in writing and shall contain the following information:

- 1°) the designation of the creditor, debtor, and settlor of the pledged sum where he is different from the debtor;
- 2°) the head office and the registration number in the Trade and Personal Property Rights Register of the legal person issuing the partnership rights and transferable securities;
- 3°) the number or the means of determining this number and where necessary, the serial numbers of the collaterals;
- 4°) the elements permitting the identification of the secured debt such as its amount or valuation, duration and settlement date.

ARTICLE 142

The competent court may authorize the creditor to register the pledge on the partnership rights and transferable securities. The judicial pledge shall be governed by the provisions relating to the sequestration of company stocks and shares regulated by the Uniform Act on the organization of Simplified Recovery Procedures and Measures of Execution.

The court decision shall contain the information provided for in article 141 of this uniform Act.

ARTICLE 143

Subject to the special provisions relating to the law on commercial companies and the corporate persons concerned, a conventional or judicial pledge may only be binding on third parties to the extent and following the conditions provided for by articles 51 to 66 above if it is registered in the Trade and Personal Property Rights Register.

The provisional or final registration shall be done respectively, after the decision authorizing the pledge and after the decision validating it has become final.

Besides the aforementioned registration, a conventional or judicial pledge may be served or notified on the commercial company or on the corporate person issuing the partnership rights and transferable securities or title-deeds acknowledging the partnership rights.

ARTICLE 144

The pledge of partnership rights and transferable securities shall confer on the creditor:

- The right to pursue the collateral in the possession of any third party which shall be exercised in conformity with the provisions of article 97(2) of this Uniform Act;
- The right to the realization of a pledge which shall be exercised in conformity with the provisions of articles 104 and 105 of this Uniform Act;
- Right of preference which shall be exercised in conformity with the provisions of article 226 of this Uniform Act;
- The right to reap benefits from shares and pledged transferable securities where the parties so agree.

ARTICLE 145

In addition to the revenue received in advance subjected to the rules governing securities, financial and credit institutions may, if they are so authorized by the regulations in force, grant three months loan on the listed transferable securities which the pledgee-creditor may, in the absence of reimbursement, distrain any day after the default in the stock exchange without formality.

Subsection 2

Pledge of Account of Financial Bonds

ARTICLE 146

The pledge of a financial bond shall be an agreement whereby the settlor shall allocate as security for a debt any transferable securities and other financial bonds appearing in the account.

ARTICLE 147

The pledge of financial bonds may be constituted between parties and also between the legal person issuing them and third parties by a declaration dated and signed by the holder of the account.

Under pain of nullity the notice constituting the pledge shall contain the following information:

- 1) The designation of the creditor, debtor and settlor of the pledge;

- 2) The number and nature of the financial bonds forming the initial basis of the pledge;
- 3) The elements which shall permit the identification of the secured debt such as its amount or valuation, duration and maturity date;
- 4) The identification items of the pledged special account.

ARTICLE 148

The financial bonds initially appearing in the pledged credit account, those substituting or in any manner completing them as well as the benefits accruing from them shall be included in the assessment of the pledge.

Any financial bond and any sum of money put in the pledged credit account prior to the date the pledge is declared shall be deemed to have been put on the date of the said declaration.

By a simple demand, the secured creditor may obtain from the holder of the pledged account an attestation of pledge of financial bonds comprising the inventory of the bonds and sums of money put in that account on the date of the said attestation.

ARTICLE 149

The pledged account shall take the form of a special account opened in the name of the holder and kept by the legal person or the financial middleman.

ARTICLE 150

Where the account is held by a person not authorized to receive funds from the public, the benefits and produce aforementioned in article 148 of this Uniform act shall be credited in a special account opened in the name of the holder of the pledged account in the books of any institution empowered to receive these funds.

The said account shall be deemed to form an integral part of the pledged account on the date the pledge is declared.

By a simple application the secured creditor may obtain from the holder of the special account an attestation comprising the inventory of sums of all money credited in the said account on that date.

ARTICLE 151

The secured creditor and the holder of the pledged account shall define the conditions under which the holder of the said account may have at his disposal the financial bonds and the sums of all the money appearing in the pledged account.

Where the secured creditor not being the holder of the pledged account authorizes the holder of the said account to dispose of any security and any sum of money appearing in the pledged account, the holder of the account and the secured creditor shall in writing let the keeper of the account know the conditions of such disposition. The keeper of the account may not disregard the instructions he receives without the consent of the secured creditor.

ARTICLE 152

Any secured creditor who is holder of an unquestionable liquid and due claim may, concerning any financial bond and any sum of money appearing in the pledged account, after notice is served personally or by registered mail on the debtor, liquidate the security within eight days or at the

expiration of any other time limit he and the holder of the account had beforehand agreed upon. The said notice shall also be served on the settlor of the pledge where he is not the debtor and to the keeper of the account where he is the secured creditor of the pledged debt.

ARTICLE 153

Under pain of nullity the notice referred to the article above shall contain the following information:

- 1) "Failing to pay, the security may be liquidated by the creditor within eight days or at the expiration of the time limit agreed beforehand with the holder of the secured account."
- 2) The holder of the pledged account may, up to the expiration of the time limit mentioned above, make known to the keeper of the account the order in which sums of money or any financial bond shall be given in full ownership or sold according to the creditor's choice".

ARTICLE 154

Within the limits of the amount of the debt secured and where necessary, with respect to the order indicated by the holder of the pledged account the realization of the pledge of this account shall take place;

- 1) For any sum of any money present in the pledged account directly by transfer of full ownership to the secured creditor of the pledge;
- 2) For financial bonds accepted for negotiation in the regulated market which the holder of the pledged account or failing that, the secured creditor of the pledge has chosen, by sale in the regulated market or by transfer of ownership of a determined quantity by the secured creditor. The said quantity shall be determined by the secured creditor on the basis of the latest quotations available in the regulated market.

The holder of the pledged account shall bear the costs resulting from the realization of the security. The said costs shall be charged on the amount realized.

ARTICLE 155

Where not being the keeper of the pledged account the secured creditor considers that all the requirements have been met for the liquidation of the security, he shall in writing ask the keeper of the account to proceed with the liquidation as provided for in article 154 of this Uniform Act.

Section 4 Pledge of Intellectual Property Rights

ARTICLE 156

A pledge of intellectual property rights shall mean an agreement whereby the settlor allocates as security for a debt all or any part of his existing or future intellectual property rights such as letters patent, trade mark and trade name, design and registered pattern.

The said pledge may be conventional or judicial.

ARTICLE 157

Under pain of nullity, the pledge of intellectual property rights shall be in writing containing the following information:

- 1) Designation of the creditor, debtor and settlor of the pledge where he is not the debtor;
- 2) Elements identifying or permitting the determination of the rights allocated as security;
- 3) The elements permitting the identification of the secured debt such as its amount or valuation, duration and settlement date.

ARTICLE 158

A court of competent jurisdiction may authorize the creditor to register the pledge on intellectual property rights. The judicial pledge shall be governed by the provisions relating to sequestration of company stocks regulated by the provisions of the Uniform Act organizing Simplified Recovery Procedures and Measures of Execution.

The decision of the court shall comprise the information stated in the preceding article.

ARTICLE 159

Unless otherwise agreed by the parties, the pledge of intellectual property rights shall not extend to accessories and benefits emanating from the exploitation of the intellectual property rights pledged.

ARTICLE 160

The conventional or judicial pledge may only be binding on third parties to the extent of and following the conditions provided for in articles 51 to 66 of this Uniform Act only if it is registered in the Trade Personal Property Rights Register.

Provisional or final registration shall be done respectively after the decision authorizing the pledge and the decision validating it has become final.

Where the subject of the pledge is a right registered in any of the registers governed by the regulations applicable in matters of intellectual property, the pledge shall in addition fulfill the requirements of publicity provided for by those regulations.

ARTICLE 161

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

- A right to pursue the pledged property in accordance with article 92(2) of this Uniform Act ;
- A right to liquidate the pledged property in accordance with articles 104 and 105 of this Uniform Act;
- A right of preference over the pledged property in accordance with article 226 of this Uniform Act.

Section 5

Pledge of Business Property and the Preferential Rights of the Vendor

Subsection 1

Pledge of Business Property

ARTICLE 162

The pledge of business property shall mean the agreement whereby the settlor allocates as security for a debt intangible elements which constitute his business property, namely the clientele and trade sign or the trade name.

Other intangible elements of the business such as the right to a commercial lease, exploitation licenses, letters patent, trade mark and trade name, designs and models and other intellectual property rights may be the subject of a pledge. It may be extended to professional equipment.

This extension of the pledge shall be contained in a special clause designating the elements so pledged and specially mentioned in the Trade and Personal Property Rights Register. The said clause shall have no effect unless it is published according to article 160 of this Uniform Act.

There shall be no pledge on real property rights conferred or stated in the leases or in agreements subject to registration in the real property publicity register.

Where the pledge is on the business property and its branches, they shall be designated by a precise indication of their head office.

ARTICLE 163

Under pain of nullity, the pledge of business property shall be in writing and shall contain the following information :

- 1) The designation of the creditor, debtor and the settlor where he is not the debtor;
- 2) The precise name and head office and where necessary, its branches;
- 3) The elements of the pledged business property;
- 4) The elements which shall permit the identification of the secured debt such as the amount or its valuation, its duration and settlement date.

ARTICLE 164

The court of competent jurisdiction may authorize the creditor to register the pledge on the business property of his debtor. The judicial pledge shall be governed by the provisions relating to sequestration of company stocks regulated by the Uniform Act organizing Simplified Recovery Procedures and Measures of Execution.

The court decision shall contain all the information stated in the preceding article.

ARTICLE 165

The conventional or judicial pledge shall be binding on third parties to the extent and following the conditions provided for in articles 51 to 66 above only if it is registered in the Trade and Personal Property Rights Register.

Provisional and final registration shall be done respectively after the decision authorizing the pledge and after the decision validating it has become final.

Subsection 2 Preferential Rights of the Vendor of Business

ARTICLE 166

For any sale to be effective and binding on third parties, it shall be registered in the Trade and Personal Property Rights Register at the request of the registered purchaser in accordance with the terms prescribed by the Uniform Act relating to the General Commercial Law.

ARTICLE 167

Subject to the preceding article, the vendor of business property shall register the sale and his preferential rights in the Trade and Personal Property Rights Register in order to benefit from the said privilege and the resolute clause provided for by the provisions relating to the sale of business property.

ARTICLE 168

Any demand tending towards an amicable, judicial or as of right cancellation of the sale of the business property shall be the subject of a prenotation in the Trade and Personal Property Rights Register at the initiative of the vendor.

The said prenotation shall be authorized by the court of competent jurisdiction of the place where the sale was registered through a ruling made in chambers on condition that it may be referred back to the court.

The prenotation made, the validity of the previous registration shall be subordinated to the decision to be given upon the cancellation of the sale.

ARTICLE 169

Where the sale is cancelled amicably, or by a court order, or as of right by virtue of a resolute clause, the said cancellation shall be published in the Trade and Personal Property Rights Register.

Subsection 3Rules of Publicity common to the Pledge of Business Property and the Preferential Rights of the Vendor**ARTICLE 170**

Where the conventional or judicial pledge or the preferential rights of the vendor of business property is on letters patent, trade mark, service mark or trade name, designs and models and other intellectual property rights or professional equipment, it shall, in addition to being registered in the Trade and Personal Property Rights Register, be in conformity with the rules of publicity prescribed for deeds transferring ownership of intellectual property rights and the rules of this Uniform Act relating to the pledge of any equipment forming part of the business property.

ARTICLE 171

Where the business property subject of a pledge or a right comprises one or more of its branches, the registration provided for in articles 164 to 167 of this Uniform Act shall be done in the Trade and Personal Property Rights Register where the principal business is registered.

ARTICLE 172

The lessor of the premises where the business property is used shall be served notification of the registration slip or the modification slip of the original registration. Failing that, the secured creditor shall not rely on the provisions of article 176 of this Uniform Act.

ARTICLE 173

The sale either private or by court order, of business property or of any part thereof shall not be effected unless the vendor or the auxiliary officer of justice produces a statement of entries concerning the business property.

Subsection 4
Effects of Registration

ARTICLE. 174

Where there is a sale or liquidation of business property, any unsecured creditor may obtain from the court the fore closure of the debt and to bring about the distribution of the proceeds from the said liquidation.

ARTICLE 175

Where the business property is to be relocated, the owner shall at least fifteen days prior to the relocation give notice to the registered creditors by extrajudicial means of his intention to relocate the said business property indicating the new location.

Where the business property is relocated without the said notification, settlement of the debt shall be immediately due.

Any registered creditor who refuses to consent to the relocation may within fifteen days following notification demand immediate payment if his collateral security is reduced thereby.

Any registered creditor consenting to the relocation shall retain his collateral security if he makes mention of his consent on the margin of the initial registration.

Where the business property is transferred to another State Party, the initial registration shall at the demand of the registered creditor be transferred in the Trade and Personal Property Rights Register of the new location.

ARTICLE 176

Any lessor wishing to terminate a lease on property housing business property with a registered encumbrance shall give notice by extrajudicial means to the registered creditors.

No court decision or private agreement or resolute clause as of right shall have the effect of cancelling a lease except after two months following notification.

ARTICLE 177

A registered creditor shall have the right to a higher bid in accordance with the provisions of the law relating to the sale of business property.

ARTICLE 178

The registered creditor shall be entitled to:

- A right to pursue in accordance with article 97(2) of this Uniform Act;
- A right to liquidate in accordance with article 104(1) of this Uniform Act;
- A right of preference in accordance with article 226 of this Uniform Act.

CHAPTER 6 PREFERENTIAL RIGHTS

Section 1 General Liens

ARTICLE 179

A general lien shall confer on the holder a right of preference in accordance with the provisions of articles 225 and 226 of this Uniform Act.

The special law creating general liens shall specify their ranks while classifying them in relation to the dispositions of article 180 of this Uniform Act. Failing that, these liens shall be ranked lowest following the said article 180 of this Uniform Act.

ARTICLE 180

Without any publicity, the following shall be preferred in this order;

- 1) Burial expenses and medical expenses for the last illness of the debtor prior to the seizure of his property;
- 2) Provisions made to the debtor for his subsistence in the last year prior to his death, the seizure of his property, or the court decision ordering collective proceedings;
- 3) Sums owed workers and apprentices for work done or as severance allowances during the last year prior to the debtor's death, the seizure of his property or the court decision ordering collective proceedings;
- 4) Sums owed the authors of intellectual, literary and artistic works for the last three years prior to the debtor's death, the seizure of his property or court decision ordering collective proceedings;
- 5) Social insurance contributions owed by the debtor to social welfare insurance institutions up to the amount legally fixed for the provisional enforcement of court decisions;
- 6) Sums owed by the debtor as custom duty and taxes up to the amount legally fixed for the provisional enforcement of court decisions.

ARTICLE 181

Unpaid taxes, custom duties and unpaid social insurance contributions shall be preferred beyond the amount fixed by article 180(5) and (6) of this Uniform Act.

These rights of preference shall be effective only where they are registered in the Trade and Personal Property Rights Register within six months of the payable date. However, where there is a violation of fiscal, customs or social insurance law, time shall start running from the notification of the distress, tax payment notice or of any other form of recovery notice.

Registration shall confer preferential rights to the public Treasury, Custom and Excise department and social insurance institutions for three years from the date the registration was done; the right shall cease to be effective on the expiration of this period unless renewed before the expiration period.

Section 2 Special Liens

ARTICLE 182

Any creditor who holds a special lien shall have a right of preference over any asset legally transferred to him as a base which he shall exercise upon distraint in conformity with the measures provided for in article 226 below.

As long as the insured amount of the asset is unpaid the right of preference may also be exercised by subrogation of that amount where the asset has perished or disappeared.

ARTICLE 183

Where any sold asset is still in the possession of the debtor, the vendor shall have on the said asset a lien as security for the payment of the unpaid price or on the price still owed by the sub purchaser.

ARTICLE 184

The lessor shall have a lien on the assets stocked in the leased premises.

In addition to securing any compensation the creditor may be awarded, the privilege also secures his rents overdue for twelve months prior to the distraint and those for the twelve months to fall due thereafter.

The lease holder or whosoever by fraudulent means shall deprive the lessor of all or any part of his preferential rights shall be prosecuted under the national laws of the State Party.

Where the assets are relocated without his consent, the lessor may again proceed to have them distrained and so retain his lien on them where the said lien is declared in the distress warrant.

ARTICLE 185

The road transporter shall have a lien on the goods he carries in respect of the payment he is due provided that there is a nexus between the said goods and the amount due.

ARTICLE 186

The worker of a performing party employed to do work in a home shall have a lien on the sum owed by the employer to secure any claim arising from the labour contract provided the said claim is for work done.

ARTICLE 187

The workers and the firm supplying labour to an enterprise shall have a lien on the balance owed the said firm, for the work done as security for the wages owed in respect of the said work.

The payment of the workers' wages shall be given preference over the debts owed the said supplier.

ARTICLE 188

A commission agent shall have a lien over the goods he holds on behalf of the principal, as security for his commission arising from the agency.

ARTICLE 189

Any person who incurs expenses or provides services to avoid the loss of an asset or to ensure that it continues to serve its intended purpose shall have a lien on the said asset.

**TITLE 3
MORTGAGES**

**CHAPTER 1
GENERAL PROVISIONS**

ARTICLE 190

A mortgage shall mean the transfer of any determined or determinable real property belonging to a settlor to secure one or more existing or future debts provided the said debts are certain or ascertainable.

A mortgage may be legal, conventional or judicial.

ARTICLE 191

Except otherwise provided, the rules applicable to conventional mortgages shall apply to forcible mortgages.

ARTICLE 192

Except otherwise provided, only existing and registered real property may be the subject of a mortgage.

The following may be the subject of a mortgage:

- Built-on or non-built-on property and improvements or additional structures thereon except movables affixed thereto;
- Real property rights duly registered following the law on land tenure.

ARTICLE 193

A mortgage shall be indivisible by nature and shall remain wholly on the mortgaged property until full payment of the debt notwithstanding that title to the said property has devolved by succession.

ARTICLE 194

Any holder of a right subjected to a condition, cancellation or rescission regularly published may only consent to a mortgage subject to the same condition, cancellation or rescission.

The mortgage of a joint property shall maintain its effect irrespective of the outcome of the partitioning provided that the mortgage was consented to by the co-owners. Otherwise, it shall maintain its effect only to the extent where the co-owner who consented to it shall, in the event of partitioning be allotted the joint property or where the said property is sold by auction to a third party, the said co-owner is allotted the proceeds of such auction.

The mortgage of a portion within one or more joint real property shall maintain its effect only to the extent where the co-owner who consented to the mortgage is during the partitioning allotted the whole property; it shall then maintain this effect to the full extent of the allotment without being limited to the portion of the co-owner who consented to it; where the property is sold to a third party by auction, the mortgage shall also maintain the same effect if the proceeds are allotted to the said co-owner.

ARTICLE 195

Any conventional or judicial deed constituting a mortgage shall be registered in conformity with the rules of publicity enacted for that purpose by the State Party where the encumbered property is situated.

A regularly published mortgage shall take its rank on the date of registration.

Where the real property rights subject of a mortgage consists of other proprietary rights such as usufruct, surface rights, long lease or building lease, notice of the registration of the mortgage shall be given to the usufructuary, to the owner of the soil and subsoil or to the lessor.

ARTICLE 196

Except otherwise provided by national law, registration shall have a fixed duration and shall maintain the right of the creditor up to a date to be fixed by agreement or by court order within the limit of thirty years from the date of this formality. It shall cease to have effect where it is not renewed for a fixed duration before the expiration of this time limit.

The same shall apply where the mortgage is constituted for an undetermined duration.

ARTICLE 197

The mortgage shall confer on the mortgagee the right to pursue the debtor's property and the right of preference.

The right of preference shall be exercised in accordance with article 225 of this Uniform Act to secure the principal, costs and interest for three years on the same rank, except particular registrations of mortgages are taken from their date, for interests other than those maintained by their initial registration.

The right of preference shall also be exercised by subrogation on the insured amount of the damaged property.

ARTICLE 198

The mortgagee-creditor whose debt has not been paid may bring an action for the transfer of the mortgaged property in his name unless he proceeds to sell the said property in accordance with the rules governing the attachment of real property which a mortgage contract shall not circumvent.

He shall however not avail himself of this option where the mortgaged property is the principal residence of the settlor.

ARTICLE 199

Provided that the settlor is a legal or natural person duly registered in the Trade and Personal Property Rights Register and that the mortgaged property is not a dwelling house, it may be agreed in the mortgage contract that ownership of the said house shall be transferred to the creditor.

After the thirty days' time limit following an unheeded notice to pay by an extrajudicial act, the mortgagee-creditor may cause the transfer to be recorded by deed made in accordance with the manner and form required by the State Party for the transfer of real property.

ARTICLE 200

In the cases provided for in the two preceding articles the property shall be valued by an expert appointed by the parties or by the court.

Where the value exceeds the secured debt, the mortgagee-creditor shall owe the settlor an amount equal to the difference. Where there are other mortgagee-creditors the mortgagee-creditor shall hold the difference on their behalf. Any contrary clause shall be disregarded.

ARTICLE 201

Any deed relating to a mortgage and concerning transfer, change of rank, subrogation renunciation, termination shall be established by a notary or by a private deed in accordance with the national law of the place where the property is situated following a model which conforms to the rules applicable in the State Party concerned and published as a proof the mortgage was consented to or constituted.

The termination of a mortgage shall result from the following:

- The extinction of the principal debt;
- Renunciation of the mortgage by the mortgagee-creditor;
- The lapse of the registration certified, under his responsibility, by the Conservator of the land publicity register;
- The redemption of a mortgage resulting from a report of award on a forced expropriation and on the payment or the deposit of the final compensation for an expropriation based on public interest.

ARTICLE 202

The mortgage shall be cancelled in accordance with the rules applicable to publicity in the State Party where the property is encumbered.

Where the creditor refuses to consent to it or where the Conservator refuses to proceed to the cancellation of the mortgage, the debtor or his beneficiary may obtain a court order releasing this security. If the order made against the creditor or claimant is final the conservator shall proceed to the said cancellation.

CHAPTER 2 CONTRACTUAL MORTGAGES

ARTICLE 203

The contractual mortgage may only be consented to by the holder of a regularly registered real property right which he can transfer.

As an exception to the preceding paragraph, the mortgage may be taken on future acquired property in the following cases and under the following conditions:

- 1) Whoever does not own existing and free property or who may not have sufficient property to secure a debt may agree that each time property is acquired such property shall be allocated for the payment of the debt;
- 2) The person whose mortgaged property has perished or suffered damage to the point that it is insufficient to secure a debt may also do so without prejudice to the right of the creditor to immediately start proceedings for repayment;
- 3) Whoever possesses a right on the real property of another, on public property or on national lands permitting him to build structures for himself may mortgage the said structures or construction works just commenced or simply projected; where these are destroyed, the mortgage shall be transferred as of right to new structures constructed on the same site.

ARTICLE 204

The conventional mortgage shall be made for a fixed sum or a sum at least ascertainable in principal and brought to the knowledge of third parties by registration of the deed. The debtor shall where necessary have a right later to ask for a reduction of this sum in compliance with the landed property publicity rules provided to this effect.

ARTICLE 205

The conventional mortgage shall be made in accordance with the national laws of the place where the property is situated by the following:

- By an instrument drawn up by the competent notary or administrative or judicial official vested with the powers to draw up such deeds; or
- By a private deed drawn up following a model accepted by the conservator of lands.

Any power of attorney given to a third party to establish a mortgage in the notarial form shall be drawn up in the same form.

ARTICLE 206

As long as the mortgage deed is not registered, it shall not be binding on third parties and shall constitute to the parties thereto an exchange of promises which shall impose on them the obligation to have the deed registered.

ARTICLE 207

The publication of any conventional mortgage securing a short term loan may be deferred for a period not longer than ninety days without the creditor losing the rank he has acquired.

For this purpose, the creditor shall comply with the special provisions laid down to that effect by the rules governing the publication of matters of land tenure in respect of mortgages to secure short term loans provided for by the national laws of the place where the property is situated.

ARTICLE 208

A mortgage granted as security for a credit not exceeding a fixed sum shall be ranked on the date it shall be published regardless of the successive dates the provider of the credit discharges his obligations.

CHAPTER 3 FORCIBLE MORTGAGES

ARTICLE 209

A forcible mortgage shall be one created either by operation of the law or by a court decision irrespective of the debtor's consent.

Forcible mortgages other than those provided for by this Uniform Act shall be governed by specific provisions of the national laws of each State Party.

Section 1 Legal Forcible Mortgages

ARTICLE 210

Any mortgage created by law for the benefit of a group of creditors provided for by the Uniform Act organizing collective proceedings for the discharge of debts shall be registered at the request of the registrar or receiver within the time limit of ten days from the date of the court decision opening collective proceedings.

ARTICLE 211

The vendor, exchanger or the co-beneficiary may require from the other party to the deed a mortgage on the property sold, exchanged or distributed to secure the total or partial payment of the price, difference in value to be paid in cash or the loan arising from the distribution. In the absence of a conventional mortgage clause, the vendor, exchanger or the co-beneficiary may in pursuance of a decision of the competent court obtain a forcible mortgage on the said property.

Any action to cancel the deed of sale, exchange or of distribution based on the failure to pay the price or the difference in value shall lie with the vendor, exchanger or the co-beneficiary who holds a conventional or forcible mortgage duly published on account of having obtained this security conjointly with it.

Whoever shall provide funds for the acquisition of sold, exchanged or shared property may obtain a conventional or forcible mortgage under the same terms as the vendor, exchanger or co-beneficiary once it is formally established from the loan agreement that the funds were intended for that purpose and through a receipt issued by the vendor, exchanger or the co-beneficiary showing that payment was made from the borrowed funds.

ARTICLE 212

Any architect, contractor or any other person employed to construct, repair or reconstruct a building, may before beginning work, obtain a conventional mortgage or, through a court order, a forcible mortgage on the building on which work is done.

The said mortgage shall be temporarily registered for the estimated amount due. Such registration shall be assigned a rank at the same time for a period not exceeding one month following the completion of work attested by a bailiff. The said mortgage shall maintain its date where within the same time-limit, either by agreement between the parties or by court order the registration is made final for the total or any part of the estimated amount due.

Any person who provides funds for the payment or reimbursement of the architects, contractors

and any other persons employed to construct, repair or reconstruct a building may obtain a conventional or forcible mortgage under the same conditions as the creditor once it is formally established from the loan agreement that the said amount was intended for that purpose and, from the receipt issued by the architects, or the contractors and any other persons that payment was made from the borrowed funds.

Section 2

Judicial Forcible Mortgages

ARTICLE 213

Apart from the cases provided for by Articles 210 to 212 of this Uniform Act, the creditor, in order to secure his debt, may by a decision of the competent court of the area where the debtor resides or where the property to be attached is situated, be authorized to seek a temporary registration of a mortgage on the property of the debtor.

The said decision shall state the sum for which the mortgage is authorized.

It shall give the creditor a time-limit within which, under pain of nullity of the said authorization, he shall bring an action for the validation of the mortgage before the competent court or for the said court to rule on the merits of his debt. Such action may be through an application for an injunction to pay. The decision may in addition prescribe a period within which the creditor shall be barred from bringing an action in court.

Where the creditor acts in violation of the provisions of the preceding paragraph, the court which authorized the mortgage may withdraw its decision.

ARTICLE 214

The decision may compel the creditor to first show proof of his credit worthiness, or in default, sign an undertaking in the Registry of the court or in the office of a receiver with or without an obligation to comply with the rules on the reception of securities.

ARTICLE 215

Where any difficulties shall arise the matter shall be referred back to the court which authorized the mortgage. The decision of the said court shall be immediately enforceable notwithstanding any objection or appeal.

ARTICLE 216

The creditor shall be allowed to make a temporary registration upon presentation of the said decision that shall contain:

- 1) the name of the creditor, his chosen address, the name of the debtor;
- 2) the date of the decision;
- 3) the origin and amount of the secured debt including the principal, interest and costs;
- 4) the description by number of the land certificate of each property for which registration was ordered; in the absence of a land certificate and subject to the provisions of Article 192 of this Uniform Act, the description of the unregistered property shall be done in conformity with the provisions of the national law specifically laid down for that purpose.

The provisions of this article shall not exclude the publication formalities prescribed by the rules

governing land tenure.

ARTICLE 217

The creditor shall give notice of the court decision ordering the forcible mortgage to the debtor by giving the said debtor the writ of summons relating to the action for the validation of the mortgage or the decision the court gave on the merits. He shall equally give notice of the registration within a period of fifteen days of this formality.

He shall choose an address within the area of jurisdiction of the competent court or the land registry service.

ARTICLE 218

The President of the competent court who had authorized the mortgage, may at short notice order that the said mortgage be discharged or reduced subject to the debtor depositing with a court appointed receiver sums covering the principal debt, interest and costs specifically allocated to the debt. Any application for the discharge or reduction of the mortgage shall be made within the month the writ of summons relating to the action for the validation of the mortgage or to the debt was served on the debtor.

Where an action over the debt in dispute is finally determined by the court, all sums relating to that debt deposited with the receiver shall be specifically allocated to the payment of the debt owed the plaintiff in preference to all others. The said sums shall remain sequestered throughout the duration of the proceedings.

ARTICLE 219

The court hearing the dispute may at any time, and even before it delivers its final judgment order the total or partial discharge of the mortgage where the debtor provides compelling and reasonable grounds for such discharge.

Where an action is time-barred, or where the plaintiff applies to withdraw his claim, an interim order shall be made by the court which had authorized the said registration to temporarily release the mortgage. The mortgage shall be cancelled upon the presentation of a final court order.

ARTICLE 220

Where it is proved that the value of the various real properties is twice the total amount of the sums registered, the debtor may seek to limit the scope of the first registration to the properties which he shall choose for that purpose.

ARTICLE 221

Where the debt is admitted, the judgment given on the merits shall maintain the totality or part of the mortgage which is already registered or shall grant a final mortgage.

Within the period of six months following the final judgment, the ensuing mortgage shall be registered in conformity with the publicity formalities prescribed by the laws governing land tenure. The portion that has been maintained shall acquire a rank from the date of its provisional registration; the mortgage shall acquire a rank from the date of final registration.

Where the final registration is not done within the period referred to above, or where the debt is not acknowledged in a final court decision, the initial registration shall be void ab initio and its cancellation may be demanded by any one of the interested parties before the court which authorized the said registration at the expense of the person who did it.

CHAPTER 4 EFFECTS OF A MORTGAGE

ARTICLE 222

Where the mortgaged property as a result of destruction or deterioration becomes inadequate to secure the debt, the creditor may claim payment before the due date of the debt or obtain another mortgage.

ARTICLE 223

The right to pursue the debtor's property may be exercised against any third party who holds property whose title-deed was published prior to the mortgage contract.

While the holder of the said property may not be responsible for the debt, he may subrogate himself for the creditor-claimant by paying to the latter the total amount of the debt in capital, interest and other accessories.

TITLE 4 DISTRIBUTION OF FUNDS AND THE CLASSIFICATION OF SECURITIES

ARTICLE 224

Subject to the provisions relating to the order of distribution here below, the procedure for distributing the proceeds obtained from a sale shall be fixed by the rules governing measures of execution.

ARTICLE 225

Proceeds obtained from the sale of real property shall be distributed in the following order:

- 1) To creditors owed statutory costs incurred in the realization of the real property sold and in the distribution itself of the proceeds;
- 2) To creditors of super privileged wages;
- 3) To creditors who have a conventional or forcible mortgage, and to separate creditors who are registered in the land publication register within the legal deadline, each according to the rank of his registration;
- 4) To creditors with a general privilege which is subjected to publication, each according to the rank of his registration in the Trade and Personal Property;
- 5) To creditors with a general privilege which is not subjected to publication in accordance with the order laid down by article 180 of this Uniform Act;
- 6) To unsecured creditors with a writ of execution issued in their favour when they intervened in attachment proceedings or objected to the procedure.

Where the funds to pay the creditors of the same rank mentioned in 1, 2, 5 and 6 of this article are inadequate, the funds shall be distributed in proportion to their total claims and on a pro-rata basis.

ARTICLE 226

Without prejudice to the exercise of an eventual possessory lien or the exclusive right to payment, the proceeds obtained from the sale of personal property shall be distributed in the following order:

- 1) To creditors owed statutory costs incurred in the realization of the personal property sold and in the distribution itself of the proceeds;
- 2) To creditors who bore the cost of preserving the debtor's property in the interest of creditors with older debts;
- 3) To creditors of super privileged wages;
- 4) To creditors secured by a general privilege subject to publicity, a pledge, or security each one of them depending on the date it became binding on third parties;
- 5) To creditors with a special privilege each depending on the movable property concerned; in the event of a conflict between the debts covered by a special privilege on one and the same property, preference shall be given to the first distrainor;
- 6) To creditors with a general privilege which is not subject to publicity in accordance to the order established by article 180 of this Uniform Act;
- 7) To the unsecured creditors with a writ of execution issued in their favour when they intervened by way of attachment proceedings or objected to the distribution procedure.

Where the funds to pay the creditors of the same rank mentioned in 1, 2, 3, 6 and 7 of this article are inadequate, the funds shall be distributed in proportion to their total debts and on a pro-rata basis.

TITLE 5 TRANSITORY AND FINAL PROVISIONS

ARTICLE 227

This Uniform Act which repeals the Uniform Act of 17 April 1997 on the organization of securities shall apply only to securities granted or constituted after its entry into force.

Any security granted or constituted or created prior to this Uniform Act and in conformity with the laws in force at the time shall remain subjected to the said laws until its extinction.

ARTICLE 228

This Uniform Act shall be published in the Official Gazette of OHADA within sixty days from the date of its adoption. It shall also be published by any appropriate means or in the Official Gazette of each State Party. It shall enter into force ninety days as from the date of publication in the Official Gazette of OHADA in conformity with article 9 of the Treaty relating to the harmonization of business law in Africa signed in Port Louis on 17 October 1993 as amended in Quebec on 17 October 2008.

Done in Lome, This 15th day of December 2010