

SECURITY OVER MOVABLES IN MEXICO:
MEXICO'S NEW *REGISTRO ÚNICO*
DE GARANTÍAS MOBILIARIAS ("RUG")

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SUMMARY: I. *Against this background, let us consider the rug. Why do i think the rug is the best registry in latin america?* II. *Some further details about the rug system, particularly inscription of registrations.* III. *Some further details about the rug system, particularly searching the record.*

This paper is presented at the 16th Biennial Conference of the International Academy of Commercial and Consumer Law, generously hosted by the Universidad Nacional Autónoma de México. This provides me the happy opportunity to publicize and praise the achievement by Mexico of the establishment of the RUG, its single nationwide registry for security rights in movables, organized and operated by the Secretaría de Economía and which became operational in October, 2010. The RUG is one of the best movables security registries functioning in the world.

The RUG is one of the two best registries in Latin America, the other being that of Honduras, which became operational effective January, 2011, and is operated by the Chamber of Commerce of Tegucigalpa; see <http://www.garantiasmobiliarias.hn>. It is searchable via the internet, free of charge,

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24/7; registrations bear a small fee; all registrations to date, have been submitted through the Chamber as no member of the public has applied for an electronic user account. I will provide additional comments about the Honduran registry. I also mention, in passing, that Guatemala, Chile and Peru are the three other Latin American countries that have made some reform efforts in the field of security rights in movables during the past decade, subsequent to the promulgation of the OAS Model Law (Org. of Am. States, Model Inter-American Law on Secured Transactions (2002); see http://www.oas.org/dil/cidip-vi-secured_transactions_eng.htm). In addition, there is presently pending in Colombia a bill modernizing the substantive law and providing for a modern electronic registry, expected to pass within the next few months.

Most modern efficient secured transactions laws depend on the support of a modern efficient registry. A registry must, of course, be consistent with and implement substantive law rules, but even a conceptually superb body of substantive law is unlikely to be efficient if it is dependent on an unsatisfactory registry. Mexico has been struggling over the modernization of its secured transactions substantive law for two decades. Indeed, much of the credit for the advances that have been made to date belongs to our Academy colleague, Boris Kozolchyk, and his National Law Center for Inter-American Free Trade (see <http://www.natlaw.com>). I recall coming to Mexico to participate in a conference in Hermosillo (Sonora) in March, 1995, with Boris and Ron Cuming, another Academy colleague. Indeed, much of what has been accomplished in Mexico may be attributed in no small part to Boris' perseverance and dogged efforts.

Although this paper does not include an in-depth study of the development of Mexican substantive law relating to security over movables, some description of that somewhat tortured history is necessary, particularly since the establishment of the RUG has finally made the current underlying substantive law much more usable, more despite that body of law than because of its halting modifications. It is necessary to have a picture of the substantive law to understand what the RUG has accomplished.

Over the past two decades, many efforts were made to modernize Mexico's substantive law. These were vigorously resisted, in particular, by those with vested interests in the status quo, such as the notaries, who, under the pre-existing law and practice, played a key role in drafting and registering commercial documents and effectively functioned (much to their profit) as gatekeepers to secured status and to such registration as existed. They would seem still somewhat to be gatekeepers, not to the RUG but to a creditor's gaining secured status, at least insofar as Ley General de Títulos y Op-

eraciones de Crédito (General Law on Negotiable Instruments and Credit Transactions (“LGTOC”) arts. 365 and 404, respectively, require ratification before them of signatures on *prendas sin transmisión de posesión* and *fideicomisos de garantía* when the secured obligation exceeds 250,000 Mexican Pesos [this figure is subject to a daily inflation adjustment, the UDI (*unidad de inversión*); currently that is a multiple of almost 5, so the current figure is a value of approximately US\$75,000]. And, naturally, the state level registries were not eager to lose the registrations they serviced prior to the initiation of the RUG. Also, financial leasing companies resisted a requirement that such leases be registered.

A brief comment about *Notarios* (functionaries appointed by the states who perform the roles traditional for notaries in the civil law world; see <http://www.notarios.com.mx>) and *corredores públicos* (generally translated as public brokers, these are federally appointed persons who, although dating back to decree of Emperor Carlos V of Spain, today function under the Federal Law of Public Brokerage in force since 1993; they provide public faith and play various roles in the commercial marketplace; see <http://www.correduríapública.gob.mx>). There are about 5,000 *notarios* and 370 *corredores*.

Significant modernization of Mexican substantive law proved difficult also, or at least so it was argued by opponents, because modern substantive secured transactions law seemed impossibly inconsistent with historic concepts of incompatibility of security rights without dispossession of the debtor and “notice filing” seemed unacceptable in light of the historic operation of registries, which served to validate the underlying legal document itself, to constitute the transaction embodied in the document, to give the arrangement “public faith”, and to provide publicity vis-à-vis third parties. This traditional function involved the participation of notaries as well as the *análisis y calificación* by registry officials (rigorous screening examination to assure completeness and validity of documents submitted for registration), for which services both the notaries and the registrars charged fees. It is important to note, however, that the OAS Model Law, designed for use in countries with legal traditions similar to those of Mexico, demonstrates that these are not insurmountable obstacles; Honduras did a fine job of adopting a comprehensive modern movables security law based largely on the OAS Model Law. It should also be noted that Mexican delegates to the OAS played a significant role in the OAS deliberations. Indeed, the diplomatic conference that approved the 2009 OAS Model Registry Regulations was chaired by a Mexican, Rodrigo Labardini, who also is the current chair of Uncitral Working Group VI’s effort to produce a Technical Legislative Guide on the Implementation of a Security Rights Registry Guide intended

to assist countries wishing to implement the U.N. Comm'n on Int'l Trade Law, UNCITRAL Legislative Guide on Secured Transactions, U.N. Sales No. E.09.V.12 (2010) herein "Uncitral Legislative Guide".

Unlike the Uniform Commercial Code, in the states of the United States of America, and the Personal Property Security Acts, in the Canadian provinces, and unlike the OAS Model Law and the Uncitral Legislative Guide, Mexican substantive law, to this day, has not adopted a unitary security interest based on a functional approach. Rather, it embraces a variety of different security devices, which were developed over time, under Mexican federal or state law, to provide modes of financing particular activities, and which had/have different rules concerning not only collateral coverage but whether a public registration was required; where it was to take place (even registrations with respect to a particular device that were required under the federal Commercial Code, were filed in a state-run registry pursuant to a Coordination and Cooperation Agreement between the Mexican Ministry of the Economy and each individual state); and what was achieved by such registration (including priority vis-à-vis competing creditors). For example, there was no specific statutory purchase-money super priority similar to the that found in the North American laws; the need to facilitate purchase-money credit, first introduced legislatively in a very rudimentary form by the Mexican 2000 legislation, was theretofore managed either in a "secret lien" form, in that registration was not required, or by using title-based devices such as conditional sales, title reservation or financial leases, or by specific priority rules inhering in particular security devices that functioned, at least in part, as purchase money transactions (*créditos refaccionarios, avíos* or *habilitación* are essentially production credit vehicles, although not strictly confined to pure purchase money transactions).

Mexican substantive and registry law moved forward in a poorly-coordinated series of major and minor legislative and regulatory actions during the first decade of this century, primarily in 2000 and 2003, until finally the actions establishing the RUG were taken during 2009. These actions are identified in fn. 1 of Dale Beck Furnish, Mexico's Emergent New Law of Secured Transactions: Recent Developments 2000-2010, 28 Ariz. J. of Int. and Comp. Law 143 (2011).

The reforms in the actions of 2000 did produce a few modernizations. For example, they added two new statutory security devices, the *prenda sin transmisión de posesión* (pledge without transfer of possession) and the *fideicomiso de garantía* (security trust), the latter of which featured a form of summary execution that was extremely attractive when compared with the expensive and lengthy enforcement procedures available in the case of other security

devices. These two new devices and the other modifications were placed in the LGTOC, the Commercial Code and other related statutes.

By means of the *Reglamento del Registro Público de Comercio* issued in 2003, there was instituted a national *Sistema Integral de Gestión Registral* (“SIGER”). This did not create a new registry but in essence provided a national electronic data transmission and storage system, replacing paper and producing a national uniformity. While this did not constitute a single national registry, it was a first step towards “notice filing”, by providing for a simple “pre-codified” form for electronic registration; this form, however, was applicable only with respect to the new statutory *prenda* and the new rules did not require such registration for all forms of security devices. Moreover, the form was in addition to, not in lieu of, submission of the underlying documentation for *calificación* by the registrar.

Registration with respect to the new security trust device required the submission of the entire trust document (eventually, a pre-codified form was added for this device). This contrast illustrates the difficulty Mexico had to depart from the traditional registration. On the other hand, the legislation declared explicitly that the new *prenda*, a nonpossessory right in movables, was a “real right.” While the new law required registration of the new *prenda* in order to achieve effectiveness against third parties, it did not award priority over the other security devices then in use. The trust (*fideicomiso*) had long been known in Mexican law and was used, *inter alia*, for security purposes. The 2000 act introduced a statutory version of this device, better tailored specifically for security purposes and making it a more reliable device. Although it became commonly used, it was expensive to create (among other things, only financial institutions and warehouse operators are eligible to act as such trustees, allowing them to charge monopolistic fees), making it to a great extent unavailable for widespread use to support credit to sme’s. The trust document was to be registered under the name of the debtor/trustor, with the creditors who were the beneficiaries being designated by the trustor to the trustee but not necessarily being identified in the trust document (and creditors were eligible to be trustees).

Under the reforms enacted during the first decade of this century, a financial lease (*arrendamiento financiero*), a device theretofore not required to be registered, was required to be registered in the *Registro Público de Comercio* or another “applicable registry.” Now, that device must be registered in the RUG. Also, during that time, in 2007, Mexico ratified the Cape Town Convention, accepting the notion of registration of title retention and financial leases of aircraft.

Thus, even after almost a decade of reform efforts, Mexico lacks a coherent clear structure of one or more security devices, with a clear system of priorities, and, until the establishment of the RUG, lacked a single registry covering all such devices.

Finally, three actions during September and October, 2010 (*Decreto, Acuerdo* and *Aclaración al Acuerdo*) resulted in the RUG as it is operational today. The final Regulations that established the RUG specify a list of security and security-like devices, under the general heading of *garantías mobiliarias*, which continue to be available and are not superseded by a unitary security interest, but are required to be registered in the RUG in order to be effective against third parties. Thus, a single national registry was established in which one would find substantially all types of effective competing security rights over movables and in which registration would itself render the creditor's security right, regardless of type, effective against third parties.

The enumerated list of security devices covered by registration in the RUG is specified by a drop-down element on the mandatory "pre-codified" form (a form that, in the RUG, exists only electronically), the last of which is a catch-all of "other special privileges" (although it is not clear to what this refers, possibly to some privileges that appear to exist under Mexican insolvency law, but it is clearly an expansive element, not a limiting one). The list comprises: *prenda sin transmisión de posesión* (nonpossessory pledge); *la derivada de un crédito refaccionario o de habilitación o avío* (the derivative of [rights arising under] types of production credit agreements); *la derivada de una hipoteca industrial* (the derivative of an industrial mortgage [this device is available only to banks]); *la constituida sobre una aeronave o embarcación* (rights in airplanes or vessels); *la derivada de un arrendamiento financiero* (rights arising under financial leases); *cláusula de reserva de dominio en una compraventa mercantil de bienes muebles que sean susceptibles de identificarse de manera indubitable* (title reservation clause in a commercial purchase and sale agreement covering movable goods which are capable of being indubitably identified); and *la derivada de un fideicomiso de garantía, derechos de retención, y otros privilegios especiales conforme al Código de Comercio o las demás leyes mercantiles* (rights arising under guaranty trust agreements, rights of retention [possessory liens] and other special privileges in accordance with the Code of Commerce and the other commercial laws". These devices do not appear to be inapplicable to any particular type of personal property. Registration in the RUG constitutes "public notice" for purposes of the RUG legislation and "other legal regimes."

Moreover, there is currently pending further legislation, prepared by the Ministry of Economy, to improve certain elements. For example, the cur-

rent draft of the legislation adds a requirement of registration of sales of accounts (n.b., the statement of motives refers to “*cesión de créditos (derechos de cobro) incluyendo al factoraje financiero*”, while the operative statutory text refers only to such financial factoring. Current Mexican law, art. 426 of LGTOC, provides that “transmisión de derechos de crédito” done with the purpose of financial factoring becomes effective against third persons upon notification to the account debtor, without the need for a registration in any registry or a grant made before a *fedatario público*. Also, the proposed legislation may provide for registration against non-Mexican entities that are not matriculated under Mexican law. The RUG is not presently well-suited to deal with U. S. cross-border financing of *maquiladora* production, as the entity that ships the goods south and then receives the goods after processing in Mexico is the owner, and, if a legal person, is not an acceptable grantor. It is anticipated that this legislation will be adopted this coming December.

I. AGAINST THIS BACKGROUND, LET US CONSIDER THE RUG,
WHY DO I THINK THE RUG IS THE BEST REGISTRY
IN LATIN AMERICA?

1. *The RUG is an all-electronic system.*

This avoids delays, costs and risk of data entry or other error and other intervention by registry staff that inhere in systems involving paper registrations. This feature makes possible the speed, low-cost and other advantages of the RUG. Registrations are immediately effective and immediately indexed and searchable. Experience in North America indicates that users migrate toward electronic filing when that is offered if the system design is user-friendly and efficient. Honduras has a well-designed electronic system but is also designed to accept paper registrations.

2. *The RUG is available 24/7 for both searching and registering.*

It provides registrants, immediately upon registration, with a certificate of registration bearing a time stamp and electronic signatures of both the registrant and the RUG in a form admissible in court, and a registration is immediately automatically indexed so as to become searchable immediately upon registration. This speeds up credit decisions and funding in the marketplace. In Honduras, the registration is also immediately indexed and becomes immediately searchable. The registrant obtains an acknowledgment

of the registration which includes the registered data, the date and time of registration and the registration number assigned by the registry.

3. *The RUG provides a single nationwide secured transactions database.*

[único is sometimes mistranslated as “unique”, suggesting it is different from all others; in this context, it means “sole” or “single”, the only one.] This feature avoids all the legal, logistical and other issues which would otherwise result from having multiple registries (by geographic subdivisions or otherwise). This was no mean feat—prior to the initiation of the RUG, there were 269 local registration databases and the average time for achievement of registration was 17 days. These registration offices still exist and may, inter alia, provide assistance to would-be registrants at the RUG. Honduras has a single registry operated by the Chamber of Commerce of Tegucigalpa, which has an office open to the public in Tegucigalpa. While there continues to be only one database, the Chamber of Commerce of San Pedro Sula (the second largest but primary commercial city in Honduras), now functions as an ancillary office for receiving registration data on paper. Neither office retains paper; once the data is entered into the database electronically, the paper is returned to the registrant. Thus, in Honduras, the database is fully electronic and intake can be transmitted from account holders electronically (although to date there has been no application for an account by anyone and all registrations to date have been made via the Chamber, so effectively the system provides a data entry service to those wishing to submit the data on paper).

4. *Accessibility to the RUG, both for registering a security right and for searching, is available to all.*

Statistics indicate that by June 30, 2012, over 85% of registrations had been transmitted directly to the RUG by creditors themselves, with the remainder being transmissions by a notary, a *corredor*, other federal and state officials and the judiciary (who are empowered to cancel or modify registrations, e.g., upon determination that the grantor is entitled to cancellation, by means of an electronically transmitted *Anotación*). The Honduras system deals with the latter situation in a slightly different manner. The judiciary does not have such a direct access to the system; it is the debtor, having obtained a cancellation order from a judge, who submits the cancellation form.

With respect to searching the RUG, there is no requirement that a searcher establish a legitimate interest in order to gain access to the RUG data, as is the case in many land and other “traditional” registries (including some recently established movables security registries, *e.g.*, New Zealand and Australia).

5. *Searching and registering at the RUG are both FREE OF COST.*

The government agency responsible for government revenues and for determination of fees charged for government services in Mexico (in the registry context, it is wise not to leave this matter to the registry itself, so as to discourage empire-building), conducted a study that indicated that, based on an all-electronic system, with minimal need for employees other than monitoring operations and occasional IT work and a few clerks to answer telephone calls, the incremental cost of a registration transaction was less than US\$0.05. This left the capital cost of the software and hardware to create and operate the system, which effectively the government decided to subsidize in order to achieve the goal of facilitating credit for *sme*'s. Previously, fees were set by each Mexican State and were typically based on a percentage of the registered amount of the secured debt (averaging 2%)—essentially imposing a tax on secured credit, inconsistent with the goal of the reform to reduce the cost of credit. Not charging a fee has the added benefit of eliminating the need to deal with collections and avoids the cost of building a financial element into the software for the system. Charging a high amount, whether as a flat fee or a percentage of the credit, is likely to thwart the goal of increased availability of credit at lower cost, as it often results in either the failure to register (which then reduces the revenue anticipated by the government), forcing the secured party to either deny or reduce the desired credit, or to go forward on an unsecured basis. Not charging a fee based on the secured amount also removes a justification for including a field in the registration data for the maximum secured amount—whether mandatory or, as in Mexico, voluntary— inclusion of which then requires provisions in the law regarding the consequences of inclusion or failure to include this data.

In contrast, Guatemala imposes very high registration fees, fixed to produce revenue for the government; this clearly has made the registry far less useful and is clearly counterproductive to the underlying goal of making more credit available to *sme*'s. In 2009, Guatemala had only 566 registrations. Honduras avoided the temptation to emulate Guatemala; it charges a

fee of only the equivalent of approximately US\$12.00, not enough to deter use of the system; and searches in Honduras are free. As of August 1, 2012, Honduras had over 6,500 registrations.

6. *Substantially all-inclusive scope of security rights required to be registered at the RUG.*

Registration at the RUG covers substantially all types of de facto security rights and substantially all types of collateral, including motor vehicles (although in Mexico, creditors claiming cars as collateral often utilize a technique of blank endorsement of transfer documents to enhance enforcement in the event of default; Honduras has a car registry that issues license plates and collects taxes, but this does not appear to be a registry for owners or secured parties). I must say substantially because there are still some items not included in the RUG's coverage (*e.g.*, financial factoring).

The electronic registration screen calls for a designation of not only the type of security right but also of collateral type (selected by the registrant from a drop-down menu; gathered by the RUG for statistical purposes) and a description of the collateral. RUG statistics re types of collateral subject of registrations through June 30, 2012, indicate the following distribution: about 50% agricultural products, about 25% machinery and equipment, 13% motor vehicles, 4% livestock, 2% rights and receivables, 1% inventory and 1% consumer products. [N.b., some of these categories might be overlapping.] The User Guide recommends that registrants copy and paste the collateral description from the underlying document on which the registration is based. This advice may not only be prudent to prevent unintentional discrepancy, but also provides assurance that the registrant will not be accused of providing misleading data—an issue raised by certain Mexican lawyers, though not a likely issue in the North American systems.

7. *The RUG is very user-friendly.*

A Guía del Usuario para el uso del sitio (a user's guide, in Spanish, of course) is accessible at the RUG website. In addition, items on various screens have a question mark, which, when clicked, provide examples and explanations and cite to the Reglamento. The Honduras system is likewise very user-friendly—each screen has instructions, as do the backs of the paper forms.

II. SOME FURTHER DETAILS ABOUT THE RUG SYSTEM, PARTICULARLY INSCRIPTION OF REGISTRATIONS

The registration requires identification by name (*nombre, denominación o razor social*), as well as by the *folio electrónico* of the *otorgante* (the grantor of the security right) and, if the *otorgante* is not also the *deudor* (the person who owes the secured obligation), identification of the *deudor*. The RUG creates an id# for individuals—for RUG purposes—if they don't have one. In contrast, in Honduras, the only official search, and the only one with legal consequences, is by the id# (although a search by name is possible for informational purposes). [In the U.S., UCC Article 9 also distinguishes between an obligor and a debtor; the latter is defined as “*A person having an interest...in the collateral, whether or not the person is an obligor.*”, i.e. the grantor of the security interest; there is no separate identification of the obligor on the UCC financing statement and U.S. citizens do not have official national id#'s (thus, for searchers and filers, the weight on the debtor's name is much greater).]

Multiple creditors may be identified on a single registration (*fideicomisos*, for example, often involve more than one creditor).

Duration of the registration's effectiveness (*vigencia*) is designated by the registrant (*e.g.*, 60 months). The system accommodates designation of up to 9999 months (surely the need for such a lengthy duration is highly improbable and might be subject to attack, at least by the grantor, as false information). The period initially designated by the registrant is modifiable by the subsequent registration of a renewal or decrease. In the absence of a designation by the registrant, the registration is nevertheless processed, and the RUG automatically assigns one-year duration.

III. SOME FURTHER DETAILS ABOUT THE RUG SYSTEM, PARTICULARLY SEARCHING THE RECORD

In the course of preparing this paper, a search was run via the internet from a personal computer in the U.S. It was fast, simple and cost-free, and, apparently, comprehensive; indeed, it offered a complete image of each discovered registration for immediate viewing and/or downloading. All that was required—a one-time procedure—was becoming a Registered User; this required only an e-address and designation of a password created by the prospective user. An account was authorized within seconds by return e-mail, conferring Registered User status. This enabled proceeding with a search, and no electronic signature or other requirements were imposed.

To become a user eligible to submit registrations, an electronic signature is required. I was advised that obtaining an electronic signature is easy and inexpensive, and that the Tax Office has issued thousands of digital keys that people can easily carry on a USB in their pockets, and that there are also five companies that issue these privately. In Honduras, searches can be done directly on the website without any previously established account (but to submit registrations electronically a user account must first be established).

Available search criteria are: the grantor's name, the grantor's *folio electrónico* (id#; for individual Mexican nationals, this is usually that person's CURP [Social Security] #), collateral description, and the number assigned by the RUG to a particular registration (*número de garantía o asiento*). A search request can include more than one criterion. This feature is especially useful if a response to an initial inquiry by grantor's name or by collateral description produces a large number of potential hits, since it results in a narrower more focused search. Submission of a grantor name consisting of only a given name and a surname (patronymic), produced a report indicating results found for three persons with those same names but also an additional name element (most likely matronymics). This suggests that the search logic is not a literally 'exact match' (as is the case in some U.S. filing offices) but responded with at least some matches that include the requested name but have at least certain additions. The three additional registrations reported were identified by: the number assigned by the RUG to the registered security right (*número de garantía o asiento*), the transaction number assigned by the RUG to that filing (*número de operación*), the type of the transaction (*e.g.*, an initial registration (*inscripción*)), the name of the grantor, the grantor's id# (or when the grantor does not have one, the number assigned by the RUG to the grantor for RUG purposes), the date and time of the reported transaction and the collateral type (to see the collateral description would require calling up a copy of the registration). This data might allow disregard of any or all of the three discovered registrations, and, alternatively, it enables the searcher to extend the search by calling up a copy of one or more of the indicated filings showing all of its information, including an identification of the specific security right that is the subject of the registration. Other search logic information derived from that computer session is that a search request that submitted only a surname was not rejected, and, as to be expected, the report identified many potential hits (in this case, a fairly common name produced thirteen potential hits). Thus, in virtually a matter of seconds, or at most minutes, much useful data could be obtained at no cost. Also learned was that the system does not strip out accents, *i.e.*,

a search of Sanchez without an accent will produce different, non-overlapping, results from a search of Sánchez. The system is not case-sensitive.

A printout can be generated of any of the screens referred to above. However, a prudent searcher will take the further step of requesting a *Certificación*, obtainable without delay and at no cost. This produces a pdf, displayed on the screen and available for download by the searcher, which constitutes legal evidence of the registration in the RUG's records; certifications issued by the RUG facilitate presentation of documentary evidence in legal proceedings. The *Certificación* will be needed, at the very least, in the event of litigation, judicial enforcement or bankruptcy.

Some additional comments on the RUG:

It should be noted that registration in the RUG relates to a particular document/legal act (*acto o contrato*) which creates a particular type of security right, identifying the type of right, the date of the underlying document, the details concerning the *Instrumento Público* (number and identity of the notary or corredor) who formalized the document (required if the secured amount exceeds a statutory minimum), and, at the option of the registrant, the terms and conditions of the document. The document and its details are neither submitted to nor examined by the RUG; it is the registrant who supplies this data to the public record (without verification by the RUG). This feature is consistent with Mexico's preservation, at the substantive law level, of different types of security rights rather than put them all into one functionally-defined "security interest" (along the lines of UCC Article 9 and the Canadian PPSA's). This is consistent with the traditional notion of the registry as a place where an existing legal right is being registered, rather than using the registry as a notice board or warning flag that a right may exist now or may come into existence in the future which will enjoy a priority based on the date of the filing. This feature also precludes the submission to the RUG for inscription of a registration until the right has been legally created by the specified legal *acto* or *contrato*. To facilitate the possibility of a pre-creation warning flag, often valuable for legitimate business reasons, the RUG permits the registration of an *aviso preventivo*, a preventive notice that warns searchers of the intention to register a right shortly which will have a priority dating back to the time of the registration of the *aviso*. The *aviso* is effective for only a short period. As is apparent, this arrangement is less flexible than that of the North American systems.

On the other hand, the RUG system provides more information to searchers and more certainty concerning the particular secured transaction, but these benefits come at the price of the flexibility provided by the North American systems, where the filing is effective to perfect with respect to one or more transactions, limited not to a single underlying document but only by the collateral description.

The RUG registration provides a field for a statement of the maximum amount secured (and currency). The value of this field is far from clear, and it may well function as a trap for the unwary secured creditor. This is not a mandatory item, and its voluntary nature is clearly labeled as such. Moreover, the form also calls for an indication whether or not the underlying document foresees “*incrementos, reducciones o sustituciones*” of the collateral or the secured amount. Such an indication should suffice to put the world on notice that any stated amount cannot be relied on. Unless clarified by legislation, the effect of including an amount that turns out to be less than the actual debt will have to await judicial development. Moreover, as noted above, in some other countries, unfortunately, this item, by reason of traditional practice in real property registries (in which context it is often useful), is mandatory, and, regrettably, often becomes the base for calculating the registration fee.