

# Table of Contents

## Volume 1

### PART I. OVERVIEW

#### CHAPTER 1. INTRODUCTION

- § 1:1 Introduction
- § 1:2 Structure of the guide
- § 1:3 Background of the guide
- § 1:4 Key objectives of the guide—Promote low-cost credit by enhancing availability of secured credit
- § 1:5 —Allow debtors to use full value inherent in their assets to support credit
- § 1:6 —Enable parties to obtain security rights in simple and efficient manner
- § 1:7 —Provide for equal treatment of diverse sources of credit and diverse forms of secured transactions
- § 1:8 —Validate non-possessory security rights in all types of assets
- § 1:9 —Enhance certainty and transparency by providing for registration of notice in general security rights registry
- § 1:10 —Establish clear and predictable priority rules
- § 1:11 —Facilitate efficient enforcement of creditor’s rights
- § 1:12 —Allow parties maximum flexibility to negotiate terms of their security agreement
- § 1:13 —Balance interests of all affected persons
- § 1:14 —Harmonize secured transactions laws, including conflict-of-laws rules relating to secured transactions
- § 1:15 Fundamental policies of the guide—In general
- § 1:16 —Comprehensive scope
- § 1:17 —Integrated and functional approach
- § 1:18 —Security rights in future assets of grantor
- § 1:19 —Extension of security rights into proceeds
- § 1:20 —Distinguishing effectiveness as between parties from effectiveness against third parties
- § 1:21 —Establishment of general security rights registry
- § 1:22 —Availability of and priority among multiple security rights
- § 1:23 —Priority between secured creditor and third parties other than secured creditors
- § 1:24 —Facilitative rather than formalistic regulation
- § 1:25 —Extra-judicial enforcement
- § 1:26 —Equality of treatment of all creditors that provide credit to enable grantors to acquire tangible assets

§ 1:27 Conclusion

## **PART II. COUNTRIES**

### **CHAPTER 2. ARGENTINA**

#### **I. INTRODUCTION**

- § 2:1 Legal system
- § 2:2 Security rights under Argentine law

#### **II. FEATURES OF SECURITY**

- § 2:3 Creation and publicity
- § 2:4 Filing, perfection, and registration
- § 2:5 Priority

#### **III. SECURITY INSTRUMENTS**

- § 2:6 Movable pledges
- § 2:7 Pledge on receivables
- § 2:8 Registry pledges
- § 2:9 Floating pledges
- § 2:10 Warrants
- § 2:11 Retention rights
- § 2:12 Mortgages on real estate
- § 2:13 Ship mortgages
- § 2:14 Aircraft mortgages
- § 2:15 Collateral trusts

#### **IV. ENFORCEMENT**

- § 2:16 Default
- § 2:17 Enforcement

#### **V. INSOLVENCY**

- § 2:18 In general
- § 2:19 Insolvency test
- § 2:20 Effects of insolvency
- § 2:21 Protection of refinancing agreements

#### **VI. CONFLICTS-OF-LAW RULES AND TERRITORIAL APPLICATION**

- § 2:22 In general
- § 2:23 Insolvency
- § 2:24 Treaties of montevideo

### **CHAPTER 3. AUSTRALIA**

- § 3:1 Introduction—Purpose and scope

## TABLE OF CONTENTS

§ 3:2	—Personal Property Securities Act 2009
§ 3:3	—Terminology
§ 3:4	—Key legislation governing personal property securities in non-consumer credit (other than Corporations Act)
§ 3:5	Objectives of an effective and efficient secured transactions regime—Does Australia conform?
§ 3:6	—Areas for reform
§ 3:7	Basic approaches to security—Australia’s form-based regime
§ 3:8	—Possessory security—Pledge
§ 3:9	— —Possessory lien
§ 3:10	—Non-possessory security—Mortgage
§ 3:11	— —Charge
§ 3:12	Creation—Introduction—In general
§ 3:13	— —Formalities—Consensual securities and need for writing
§ 3:14	— —Other requirements for creation of security right
§ 3:15	— —Specific Australian requirements
§ 3:16	—Summary and recommendations
§ 3:17	Publicity—Introduction—In general
§ 3:18	— —Public registration for non-possessory security in movables
§ 3:19	— —Debtor dispossession and equivalent control mechanisms
§ 3:20	—Summary and recommendations
§ 3:21	Filing system—Introduction—In general
§ 3:22	— —Other basic elements
§ 3:23	—Summary and recommendations
§ 3:24	Priority—In general—Concept of priority and its importance
§ 3:25	— —Priority rules
§ 3:26	— —Types of competing claimants
§ 3:27	— —Priority in future advances and after-acquired property
§ 3:28	— —Priority in respect of proceeds
§ 3:29	— —Voluntary alteration of priority: Subordination agreements
§ 3:30	—Summary and recommendations
§ 3:31	Pre-default rights and obligations of parties—Introduction—In general
§ 3:32	— —Party autonomy
§ 3:33	— —Default rules
§ 3:34	— —Evaluation of default rules in the guide
§ 3:35	—Summary and recommendations
§ 3:36	Default and enforcement—Introduction—In general
§ 3:37	— —Default
§ 3:38	— —Options following default
§ 3:39	— —Judicial proceedings brought by other creditors
§ 3:40	—Summary and recommendations
§ 3:41	Insolvency—In general
§ 3:42	—General concepts—In general
§ 3:43	— —Liquidation

- § 3:44 — —Voluntary administration
- § 3:45 — —Key objectives
- § 3:46 — —Security rights in insolvency proceedings
- § 3:47 — —Summary and recommendations
- § 3:48 Conflict of laws and territorial application—Introduction—  
In general
- § 3:49 — —Conflict of laws rules for creation, publicity, and  
priority
- § 3:50 — —Enforcement issues
- § 3:51 — —Summary and recommendations

## CHAPTER 4. AUSTRIA

- § 4:1 Introduction
- § 4:2 Creation—In general
- § 4:3 — —Tangible assets to be encumbered
- § 4:4 — —Basic elements of security rights—Obligations to be  
secured
- § 4:5 — —Proceeds
- § 4:6 — —Security agreement—Definition
- § 4:7 — —Minimum content
- § 4:8 — —Formalities
- § 4:9 — —Effect
- § 4:10 — —Additional requirements—Delivery and consent
- § 4:11 — —Right of disposition of grantor
- § 4:12 — —Transfer of possession, publicity, control
- § 4:13 — —Use of title for security purposes—Transfer of title to  
creditor
- § 4:14 — —Retention of title by creditor
- § 4:15 — —Rules for pledges
- § 4:16 — —Traditional security instruments—Security rights in  
tangible movable property
- § 4:17 — —Security rights in intangible movable property
- § 4:18 Publicity—In general
- § 4:19 — —Public registration for non-possessory security in  
movables—Title transactions and security transactions
- § 4:20 — —Consensual and non-consensual security rights
- § 4:21 — —Single registry and multiple registries
- § 4:22 — —Notice and document filing
- § 4:23 — —Timing of registration
- § 4:24 — —Renewal
- § 4:25 — —Required content of registered notice
- § 4:26 — —Protection of remote transferees of encumbered assets
- § 4:27 — —Linkages to registries for immovables
- § 4:28 — —Linkages between general registry and asset-specific  
registry
- § 4:29 — —Private registration or publication
- § 4:30 — —Registration and enforcement
- § 4:31 — —Debtor dispossession and equivalent control

TABLE OF CONTENTS

	mechanisms—Debtor dispossession as substitute for registration
§ 4:32	— —Quality of possession
§ 4:33	— —Symbolic possession
§ 4:34	— —Third-party notice or control
§ 4:35	— —Third-party effect of unpublicized security rights
§ 4:36	— —Third-party effect of publicized security rights
§ 4:37	Filing system—In general—Lack of registry
§ 4:38	— —Pledge on business assets
§ 4:39	— —Pledge on intellectual property rights
§ 4:40	—Other basic elements
§ 4:41	Priority—Concept and importance
§ 4:42	—Priority rules—First-to-file priority rule
§ 4:43	— —Priority based on possession or control
§ 4:44	— —Alternative priority rules
§ 4:45	—Competing claimants—Other consensual creditors
§ 4:46	— —Unsecured creditors
§ 4:47	— —Sellers of encumbered assets
§ 4:48	— —Buyers of encumbered assets
§ 4:49	— —Judgment or execution creditors
§ 4:50	— —Statutory (preferential) creditors
§ 4:51	— —Creditors adding value or storing encumbered assets
§ 4:52	— —Insolvency administrators
§ 4:53	—Priority in future advances and after-acquired property— Future advances
§ 4:54	— —After-acquired property
§ 4:55	—Priority in proceeds
§ 4:56	—Voluntary alternation of priority
§ 4:57	—Relevance of priority prior to enforcement
§ 4:58	Pre-default rights and obligations of parties—In general
§ 4:59	—Party autonomy—Principle
§ 4:60	— —Limitations
§ 4:61	—Default rules—Meaning
§ 4:62	— —Policy objectives
§ 4:63	— —Types of default rules
§ 4:64	Default and enforcement—In general
§ 4:65	—Default—Meaning
§ 4:66	— —Cure
§ 4:67	— —Notice
§ 4:68	— —Judicial or administrative review
§ 4:69	—Options after default—Judicial action to enforce security right
§ 4:70	— —Acceptance of encumbered assets in satisfaction of secured obligation
§ 4:71	— —Redemption of encumbered assets
§ 4:72	— —Authorized disposition by grantor
§ 4:73	— —Removing encumbered assets from grantor’s control
§ 4:74	— —Sale or other disposition of encumbered assets
§ 4:75	— —Finality

- § 4:76 — —Freedom of parties to agree on enforcement procedure
- § 4:77 — —Allocation of proceeds of disposition
- § 4:78 — —Variation
- § 4:79 —Judicial proceedings brought by other creditors
- § 4:80 Insolvency—In general
- § 4:81 —Scope and commercial context
- § 4:82 —Terminology
- § 4:83 —Security rights in insolvency proceedings—Inclusion of encumbered assets in insolvency estate
- § 4:84 — —Limitations on enforcement of security rights
- § 4:85 — —Participation of secured creditors
- § 4:86 — —Validity of security rights and avoidance actions
- § 4:87 — —Relative priority
- § 4:88 — —Security rights in reorganization proceedings
- § 4:89 Conflict of laws—In general
- § 4:90 —Purpose of conflict rules
- § 4:91 —Scope of conflict rules
- § 4:92 —Conflict rules for creation, publicity, and priority
- § 4:93 —Effect of subsequent change in connecting factor
- § 4:94 —Conflict rules for enforcement issues

## **CHAPTER 5. BELGIUM**

### **I. INTRODUCTION**

- § 5:1 Organization and scope
- § 5:2 Terminology
- § 5:3 Objectives of secured transactions regime

### **II. BASIC APPROACHES TO SECURITY**

- § 5:4 In general
- § 5:5 Instruments traditionally designed for security
- § 5:6 Summary and recommendations

### **III. CREATION**

- § 5:7 In general
- § 5:8 Basic elements of security right
- § 5:9 Security agreement
- § 5:10 Summary and recommendations

### **IV. PUBLICITY**

- § 5:11 In general
- § 5:12 Public registration for non-possessory security in movables
- § 5:13 Debtor dispossession and equivalent control mechanisms
- § 5:14 Summary and recommendations

### **V. FILING SYSTEM**

- § 5:15 In general

## TABLE OF CONTENTS

- § 5:16 Key design issues
- § 5:17 Summary and recommendations

### **VI. PRIORITY**

- § 5:18 In general
- § 5:19 Summary and Recommendations

### **VII. PRE-DEFAULT RIGHTS AND OBLIGATIONS OF PARTIES**

- § 5:20 In general
- § 5:21 Party autonomy
- § 5:22 Summary and recommendations

### **VIII. DEFAULT AND ENFORCEMENT**

- § 5:23 In general
- § 5:24 Key objectives
- § 5:25 Default
- § 5:26 Summary and recommendations

### **IX. INSOLVENCY**

- § 5:27 In general
- § 5:28 Security rights in insolvency proceedings
- § 5:29 Summary and recommendations

### **X. CONFLICT OF LAWS AND TERRITORIAL APPLICATION**

- § 5:30 In general
- § 5:31 Summary and recommendations

## **CHAPTER 6. BRAZIL**

- § 6:1 Introduction—Organization and scope
- § 6:2 —Terminology
- § 6:3 Basic approaches to security—In general
- § 6:4 —Instruments traditionally designed for security—Security rights in tangible movable property
- § 6:5 — —Use of title for security purposes
- § 6:6 — —Uniform comprehensive security
- § 6:7 —Assessment against recommendations of international organizations
- § 6:8 Creation—Introduction—In general
- § 6:9 — —Basic elements of security right
- § 6:10 — —Security agreement
- § 6:11 — —Additional requirements
- § 6:12 —Assessment against recommendations of international organizations
- § 6:13 Filing system—Introduction—In general

- § 6:14 — —Key design issues
- § 6:15 — —Other basic elements
- § 6:16 — —Assessment against recommendations of international organizations
- § 6:17 Priority—Concept of priority and its importance—In general
- § 6:18 — —Priority rules
- § 6:19 — —Types of competing claimants
- § 6:20 — —Priority in future advances and after-acquired property
- § 6:21 — —Priority in proceeds
- § 6:22 — —Voluntary alteration of priority: Subordination agreements
- § 6:23 — —Relevance of priority prior to enforcement
- § 6:24 — —Assessment against recommendations of international organizations
- § 6:25 Pre-default rights and obligations of parties—Introduction—In general
- § 6:26 — —Party autonomy
- § 6:27 — —Default rules
- § 6:28 — —Assessment against recommendations of international organizations
- § 6:29 Default and enforcement—Introduction—In general
- § 6:30 — —Key objectives
- § 6:31 — —Default
- § 6:32 — —Options following default
- § 6:33 — —Judicial proceedings initiated by other creditors
- § 6:34 — —Assessment against recommendations of international organizations
- § 6:35 Insolvency—Introduction—In general
- § 6:36 — —Key objectives
- § 6:37 — —Security rights in insolvency proceedings
- § 6:38 — —Assessment against recommendations of international organizations

## **CHAPTER 7. BULGARIA**

- § 7:1 Introduction
- § 7:2 Objectives of the secured transactions regime—In general
- § 7:3 — —Utilize full value of assets to obtain credit
- § 7:4 — —Obtain security in simple and efficient manner
- § 7:5 — —Validate non-possessory security rights
- § 7:6 — —Establish clear and predictable priority rules
- § 7:7 — —Facilitate enforcement of creditors' rights in predictable and timely fashion
- § 7:8 — —Provide equal treatment of domestic and non-domestic creditors
- § 7:9 Basic approaches to security—In general
- § 7:10 — —Instruments traditionally designed for security—Security rights in immovable property
- § 7:11 — —Security rights in tangible movable property
- § 7:12 — —Security rights in intangible movable property

TABLE OF CONTENTS

§ 7:13 —Use of title for security purposes—Transfer of title to creditor

§ 7:14 — —Retention of title by creditor

§ 7:15 —Uniform comprehensive security

§ 7:16 —Special securitization regime

§ 7:17 Creation of mortgages and non-possessory pledges—In general

§ 7:18 —Elements of security right—Obligations to be secured

§ 7:19 — —Assets to be encumbered

§ 7:20 — —Scope of security right

§ 7:21 —Security agreement—Definition

§ 7:22 — —Parties

§ 7:23 — —Formalities

§ 7:24 — —Minimum contents

§ 7:25 — —Effect

§ 7:26 —Additional requirements

§ 7:27 Publicity—In general

§ 7:28 —Public registration for non-possessory security—Mortgage

§ 7:29 — —Registered pledge

§ 7:30 — —Financial collateral

§ 7:31 —Debtor dispossession and equivalent control mechanisms—Debtor dispossession as substitute for registration

§ 7:32 — —Symbolic possession

§ 7:33 — —Third-party notice or control

§ 7:34 — —Third-party effects of unpublicized security rights

§ 7:35 —Third-party effect of publicized security rights

§ 7:36 Filing system—In general

§ 7:37 —Key design issues—Document Filing

§ 7:38 — —Authority to file and signature

§ 7:39 — —Grantor-based or asset-based index

§ 7:40 — —Filing process

§ 7:41 — —Duration of effectiveness of filed notice

§ 7:42 —Other basic elements—Public access to database

§ 7:43 — —Extent of detail in statutory text

§ 7:44 — —Fees

§ 7:45 — —Public or private operator

§ 7:46 — —Effect of registry error and allocation of risk of loss

§ 7:47 — —Proof of content of database

§ 7:48 — —Compliance with international model laws

§ 7:49 Priority—Concept of priority and importance

§ 7:50 —Priority rules—First-to-file priority rule

§ 7:51 — —Priority based on possession or control

§ 7:52 —Types of competing claimants—Statutory priority rules

§ 7:53 — —Unsecured creditors

§ 7:54 — —Sellers of encumbered assets

§ 7:55 — —Buyers of encumbered assets

§ 7:56 — —Judgment or execution creditors

§ 7:57 — —Preferential creditors

- § 7:58 — —Insolvency administrators
- § 7:59 — —Priority in future advances and after-acquired property—  
Future advances
- § 7:60 — —After-acquired property
- § 7:61 — —Priority in proceeds
- § 7:62 — —Voluntary alteration of priority: Subordination  
agreements
- § 7:63 Pre-default rights and obligations—Party autonomy—  
Principle
- § 7:64 — —Limitations
- § 7:65 — —Default rules—Meaning
- § 7:66 — —Policy objectives
- § 7:67 — —Types of default rules
- § 7:68 Default and enforcement—In general
- § 7:69 — —Key objectives
- § 7:70 — —Default—Meaning
- § 7:71 — —Cure of default
- § 7:72 — —Notice of default
- § 7:73 — —Options after default—Judicial action to enforce the  
security right
- § 7:74 — —Freedom of parties to agree to enforcement procedure
- § 7:75 — —Acceptance of encumbered assets in satisfaction of  
secured obligation
- § 7:76 — —Redemption of encumbered assets
- § 7:77 — —Removing encumbered assets from grantor’s control
- § 7:78 — —Sale or other disposition of encumbered asset
- § 7:79 — —Variations on general framework
- § 7:80 — —Allocation of proceeds of disposition
- § 7:81 — —Finality
- § 7:82 — —Judicial proceedings brought by other creditors
- § 7:83 — —Compliance with international model laws
- § 7:84 Insolvency—In general
- § 7:85 — —Key objectives
- § 7:86 — —Security rights in insolvency proceedings—Inclusion of  
encumbered assets in insolvency estate
- § 7:87 — —Limitations on enforcement of security rights
- § 7:88 — —Participation of secured creditors in insolvency  
proceedings
- § 7:89 — —Validity of security rights and avoidance actions
- § 7:90 — —Relative priority of security rights
- § 7:91 — —Security rights in reorganization proceedings
- § 7:92 Conflict of laws and territorial application—In general
- § 7:93 — —Choice of foreign law
- § 7:94 — —Conflict-of-laws rules for creation, publicity, and  
enforcement

## CHAPTER 8. CANADA

- § 8:1 Introduction
- § 8:2 Objectives of Canada’s Secured Transactions Regime

## TABLE OF CONTENTS

- § 8:3 Creation of Security Interests
- § 8:4 Perfection of Security Interests
- § 8:5 Priority of Security Interests
- § 8:6 Enforcement of Security Interests
- § 8:7 Conflict of Laws
- § 8:8 Recognition and Enforcement of Foreign Judgments and  
Arbitral Awards
- § 8:9 Canadian Federal Security Interests
- § 8:10 Secured Transactions Involving Property of Canadian  
Indigenous Peoples
- § 8:11 Insolvency

## **CHAPTER 9. PEOPLE'S REPUBLIC OF CHINA**

- § 9:1 Introduction—Legislative framework
- § 9:2 —Terminology
- § 9:3 Key objectives of efficient secured transactions regime—In  
general
- § 9:4 —Utilize full value of assets to obtain credit
- § 9:5 —Obtain security in simple and efficient manner
- § 9:6 —Validate non-possessory security rights
- § 9:7 —Facilitate enforcement of creditor's rights in predictable  
and timely fashion
- § 9:8 —Provide for equal treatment of domestic and non-domestic  
creditors
- § 9:9 —Recognize party autonomy
- § 9:10 —Encourage responsible behavior by enhancing  
transparency
- § 9:11 Basic approaches to security—In general—Instruments  
traditionally designed for security
- § 9:12 — —Use of title for security purpose
- § 9:13 — —Uniform comprehensive security
- § 9:14 —Summary and recommendations
- § 9:15 Creation—In general
- § 9:16 —Basic elements of security right
- § 9:17 — —Security agreement
- § 9:18 — —Additional requirements
- § 9:19 —Summary and recommendations
- § 9:20 Publicity—In general
- § 9:21 —Public registration for non-possessory and possessory  
security in movables and immovables—Title transactions  
and security transactions
- § 9:22 — —Consensual and non-consensual security rights
- § 9:23 — —Single encumbrance registry and multiple  
encumbrance registries
- § 9:24 — —Notice and document filing
- § 9:25 — —Timing of registration
- § 9:26 — —Required content of registered notice
- § 9:27 — —Need for protection of remote transferees of  
encumbered assets

- § 9:28 — —Linkages to registries for immovables
- § 9:29 — —Linkages between general encumbrance registry and asset-specific title registries
- § 9:30 — —Private registration or publication
- § 9:31 — —Registration and enforcement
- § 9:32 — —Debtor dispossession and equivalent control mechanisms—Debtor dispossession as a substitute for registration
- § 9:33 — —Quality of possession
- § 9:34 — —Symbolic possession
- § 9:35 — —Third-party notice or control
- § 9:36 — —Third-party effects of unpublicized security rights
- § 9:37 — —Third-party effects of publicized security rights
- § 9:38 — —Summary and recommendations
- § 9:39 Filing system—In general
- § 9:40 — —Key design issues—Notice filing and document filing
- § 9:41 — —Authority to file and signature
- § 9:42 — —Grantor or asset-based index
- § 9:43 — —Filing process
- § 9:44 — —Duration of validity of filed notice
- § 9:45 — —Other basic elements—Public access to database
- § 9:46 — —Detail in statutory text
- § 9:47 — —Fees
- § 9:48 — —Public or private operator
- § 9:49 — —Effect of registry error and allocation of risk of loss
- § 9:50 — —Non-discrimination
- § 9:51 — —Summary and recommendations
- § 9:52 Priority—In general—Priority rules
- § 9:53 — —Competing claimants
- § 9:54 — —Priority in future advances and after-acquired property
- § 9:55 — —Voluntary alteration of priority: Subordination agreements
- § 9:56 — —Relevance of priority prior to enforcement
- § 9:57 — —Summary and recommendations
- § 9:58 Pre-default rights and obligations of parties—In general
- § 9:59 — —Party autonomy—principle
- § 9:60 — —Limitations
- § 9:61 — —Default rules
- § 9:62 — —Summary and recommendations
- § 9:63 Default rights and enforcement—In general
- § 9:64 — —Key objectives
- § 9:65 — —Default—Meaning of default
- § 9:66 — —Cure of default
- § 9:67 — —Limitation
- § 9:68 — —Options after default—In general
- § 9:69 — —Judicial action to enforce security right
- § 9:70 — —Acceptance of encumbered assets in satisfaction of secured obligation
- § 9:71 — —Sale or other disposition of encumbered assets

## TABLE OF CONTENTS

- § 9:72 — —Allocation of proceeds of disposition
- § 9:73 — —Finality
- § 9:74 — —Transfer of title
- § 9:75 — —Summary and recommendations
- § 9:76 Insolvency—In general
- § 9:77 — —Security rights in insolvency proceedings—Inclusion of encumbered assets in insolvency estate
- § 9:78 — —Limitations on enforcement of security rights
- § 9:79 — —Participation of secured creditors in insolvency proceedings
- § 9:80 — —Validity of security rights and avoidance action
- § 9:81 — —Relative priority of security rights
- § 9:82 — —Security rights in reorganization proceedings
- § 9:83 — —Summary and recommendations
- § 9:84 Conflict of laws—In general
- § 9:85 — —Summary and recommendations

## CHAPTER 10. COLOMBIA

### I. INTRODUCTION

- § 10:1 In general
- § 10:2 Key objectives of secured transactions regime

### II. BASIC APPROACHES TO SECURED OBLIGATIONS

- § 10:3 In general
- § 10:4 Instruments traditionally designed for security
- § 10:5 Use of title for security
- § 10:6 Summary and recommendations

### III. CREATION OF SECURITY OBLIGATIONS

- § 10:7 In general
- § 10:8 Basic elements common to all contracts
- § 10:9 Basic elements of security agreements
- § 10:10 Basic elements of secured obligations
- § 10:11 Assets to be encumbered
- § 10:12 *Garantías Mobiliaria*
- § 10:13 — —Definition
- § 10:14 — —Minimum content
- § 10:15 — —Formalities and publicity
- § 10:16 — —Rights and obligations of parties
- § 10:17 — —Effects
- § 10:18 Mortgage over immovable and movable assets
- § 10:19 Guarantee trust
- § 10:20 Prohibited trust agreements
- § 10:21 Guarantee trust

### IV. FILING

- § 10:22 In general

- § 10:23 Immovable assets; filing of mortgage agreements
- § 10:24 Aircraft and ships
- § 10:25 Guarantee trust

## V. PRIORITY

- § 10:26 In general
- § 10:27 Mortgage
- § 10:28 Guarantee trust
- § 10:29 Priority over other creditors
- § 10:30 Pre-default rights and obligations of parties

## VI. DEFAULT AND ENFORCEMENT

- § 10:31 Foreclosure; enforcement procedures
- § 10:32 Mortgage foreclosure proceedings
- § 10:33 Guarantee trust enforcement

## VII. INSOLVENCY

- § 10:34 In general
- § 10:35 Secured rights in insolvency proceedings
- § 10:36 Limitations on security enforcement
- § 10:37 Relative priority

## CHAPTER 11. CYPRUS

- § 11:1 Introduction—In general
- § 11:2 —Relevant government agencies
- § 11:3 —Financing practices
- § 11:4 Objectives of secured transactions regime
- § 11:5 Basic approaches to security—In general
- § 11:6 —Types of security—Immovable property
- § 11:7 — —Tangible movable property
- § 11:8 — —Intangible movable property
- § 11:9 — —Commercial security
- § 11:10 — —Future and fungible assets security
- § 11:11 Creation of security interest—In general
- § 11:12 —Charges created outside Cyprus or on property outside Cyprus
- § 11:13 —Debentures
- § 11:14 —Pledges over bills of exchange, bonds, promissory notes, and shares in Cyprus companies
- § 11:15 Filing system—In general
- § 11:16 —Register of charges to be kept by the Registrar
- § 11:17 —Endorsement of certificate of registration on debentures
- § 11:18 —Entries of satisfaction and release of property from charge
- § 11:19 —Rectification of register of charges or record of mortgages
- § 11:20 —Duty of company with regard to charges and mortgages created by that company

## TABLE OF CONTENTS

- § 11:21 —Duty of company to register charges existing on property acquired
- § 11:22 —Duty of company to keep copies of instruments creating charges and mortgages
- § 11:23 —Duty of company to keep a register of charges and book of mortgages
- § 11:24 —Registration of enforcement of security
- § 11:25 —Application of companies law to charges and mortgages created by company incorporated outside Cyprus
- § 11:26 Publicity—In general
- § 11:27 —Right to inspect register of charges or record of mortgages held by the Registrar
- § 11:28 —Right to inspect records held by company
- § 11:29 Priority—In general
- § 11:30 —Distribution of assets in insolvency
- § 11:31 Pre-default rights and obligations—In general
- § 11:32 Consumer protection
- § 11:33 Default and enforcement—In general
- § 11:34 —Receivership
- § 11:35 Insolvency—In general
- § 11:36 —Priority in insolvency
- § 11:37 —Company arrangements
- § 11:38 Conflict of laws and territorial application—In general
- § 11:39 —Choice of law
- § 11:40 —Choice of jurisdiction
- § 11:41 —Procedural requirements
- § 11:42 —Available mechanisms for recognition and enforcement of a foreign judgment
- § 11:43 —Insolvency
- § 11:44 —Reciprocity
- § 11:45 —Enforcement of foreign judgment—Regulations 1215/2012 and 805/2004
- § 11:46 — —Common law
- § 11:47 — —Statute
- § 11:48 Conclusion

## **CHAPTER 12. CZECH REPUBLIC**

### **I. INTRODUCTION**

- § 12:1 New Civil Code
- § 12:2 Security instruments

### **II. KEY OBJECTIVES OF SECURED TRANSACTION REGIME**

- § 12:3 Relation to UNCITRAL Legislative Guide on Secured Transactions
- § 12:4 Utilize full value of assets to obtain credit
- § 12:5 Obtain security in simple and efficient manner

- § 12:6 Validate non-possessory rights
- § 12:7 Establish clear and predictable priority rules
- § 12:8 Facilitate enforcement of creditor's rights in predictable and timely fashion
- § 12:9 Provide equal treatment of domestic and non-domestic creditors
- § 12:10 Recognize party autonomy
- § 12:11 Encourage responsible behaviour by enhancing transparency

### **III. APPROACHES TO SECURITY**

- § 12:12 Rights *in Rem* and personal rights
- § 12:13 Mandatory provisions
- § 12:14 Security agreements
- § 12:15 Instruments traditionally designed for security; security rights in tangible movable assets
- § 12:16 Security rights in intangible property
- § 12:17 Ownership interest in limited-liability company
- § 12:18 Security rights in securities
- § 12:19 Security rights in immovable assets
- § 12:20 Use of title for security purposes
- § 12:21 —Security transfer of title
- § 12:22 —Retention of title

### **IV. CREATION OF SECURITY INTERESTS**

- § 12:23 In general
- § 12:24 Security agreement
- § 12:25 Minimum contents of security agreement
- § 12:26 —Secured obligation
- § 12:27 —Security in proceeds
- § 12:28 —Changes in encumbered assets
- § 12:29 —Additional requirements

### **V. PUBLICITY**

- § 12:30 In general
- § 12:31 Registration and third-party effectiveness

### **VI. FILING SYSTEM FOR SECURITY INTERESTS**

- § 12:32 In general
- § 12:33 Cadastral register
- § 12:34 Register of pledges

### **VII. PRIORITY**

- § 12:35 Priority among secured and unsecured creditors
- § 12:36 Type of competing claimants
- § 12:37 Priority in future advances and after-acquired property

## TABLE OF CONTENTS

- § 12:38 Priority in proceeds
- § 12:39 Asset-specific remarks
- § 12:40 Voluntary alteration of priority; subordination agreements
- § 12:41 Relevance of priority prior to enforcement
- § 12:42 Pre-default rights and obligations of parties

## VIII. DEFAULT AND ENFORCEMENT

- § 12:43 Meaning of default
- § 12:44 Cure of default
- § 12:45 Notice of default
- § 12:46 Judicial or administrative review
- § 12:47 Options after default
- § 12:48 Freedom of parties to agree to enforcement procedure
- § 12:49 Authorized disposition by grantor
- § 12:50 Allocation of proceeds of disposition
- § 12:51 Finality
- § 12:52 Judicial proceedings brought by other creditors

## IX. INSOLVENCY

- § 12:53 In general
- § 12:54 Inclusion of encumbered assets in insolvency estate
- § 12:55 Limitations on enforcement of security rights
- § 12:56 Participation of secured creditors in insolvency proceedings
- § 12:57 Validity of security rights and avoidance actions
- § 12:58 Relative priority of security rights
- § 12:59 Security rights in reorganization proceedings

## X. CONFLICT OF LAWS

- § 12:60 Applicable conflict-of-law rules
- § 12:61 Conflict-of-law rules for creation, publicity, and priority
- § 12:62 —Asset-specific remarks
- § 12:63 —Effect of subsequent change in connecting factor
- § 12:64 Conflict-of-law rules for enforcement issues

## CHAPTER 13. DENMARK

- § 13:1 Introduction—Organization and scope
- § 13:2 —Terminology
- § 13:3 Objectives of secured transactions regime
- § 13:4 Basic approaches to security—In general
- § 13:5 —Means of security in tangible and intangible movables
- § 13:6 —Charge in commercial immovable property in relation to financing of equipment
- § 13:7 Creation—Tangible movables—Pledge
- § 13:8 — —Negotiable documents—Investment instruments in document form
- § 13:9 — —Registered charge
- § 13:10 — —Retention of title

- § 13:11 —Intangible movables—Receivables and claims
- § 13:12 — —Intellectual rights
- § 13:13 — —Investment property dematerialized form
- § 13:14 Public notification—In general
- § 13:15 —Tangible movables—Pledge
- § 13:16 — —Retention of title
- § 13:17 —Intangible movables—Receivables
- § 13:18 — —Investment instruments—Dematerialized form
- § 13:19 Filing system—The registry
- § 13:20 —Registered charge
- § 13:21 —Car registry
- § 13:22 —Formalities
- § 13:23 —Stamp duty
- § 13:24 Priority—In general
- § 13:25 —Tangible movables—Pledge
- § 13:26 — —Registered charge
- § 13:27 —Intangible movables
- § 13:28 Pre-default rights and obligations of parties—In general
- § 13:29 —Registered charge
- § 13:30 —Retention of title
- § 13:31 Default and enforcement—Tangible movables—Pledge
- § 13:32 — —Registered charge
- § 13:33 — —Retention of title
- § 13:34 —Intangible movables
- § 13:35 —Pledge as execution document
- § 13:36 Insolvency—In general
- § 13:37 —Insolvency Act
- § 13:38 Conflict of laws and territorial application—Pledge
- § 13:39 —Registry
- § 13:40 Conclusion

## **CHAPTER 13A. EGYPT**

- § 13A:1 Introduction
- § 13A:2 Key objectives
- § 13A:3 Rules of general intent
- § 13A:4 Creation and related provisions—Inventory and equipment acquisition financing
  - Factoring
  - Securitization
  - Term-Loan financing
  - Financial leasing
- § 13A:5 Forms of security—Credit secured by transfer of title
  - Security rights in future assets of grantor
  - Subordination
  - Non-possessory security rights
  - Possessory interest rights
  - Obligations enjoying real security rights
  - Extrajudicial enforcement

## TABLE OF CONTENTS

- § 13A:16 Equality of treatment—Personal property
- § 13A:17 —Real property
- § 13A:18 Liens for construction companies, architects, and contractors
- § 13A:19 Use of title for security
- § 13A:20 Enforcement against third parties
- § 13A:21 Disposal of sold property
- § 13A:22 Real estate finance law
- § 13A:23 Insolvency
- § 13A:24 Applicable law
- § 13A:25 Jurisdiction

## CHAPTER 14. FINLAND

- § 14:1 Introduction—Organization and scope
- § 14:2 —Terminology
- § 14:3 Key objectives of secured transactions regime—Utilize full value of assets to obtain credit
- § 14:4 —Obtain security in simple and efficient manner
- § 14:5 —Validate non-possessory rights
- § 14:6 —Establish clear and predictable priority rules
- § 14:7 —Facilitate enforcement of creditor’s rights in predictable and timely fashion
- § 14:8 —Provide equal treatment of domestic and non-domestic creditors
- § 14:9 —Recognize party autonomy
- § 14:10 —Encourage responsible behavior by enhancing transparency
- § 14:11 Basic approaches to security—In general—Categories
- § 14:12 — —Instruments traditionally designed for security
- § 14:13 — —Use of title for security purposes
- § 14:14 — —Uniform comprehensive security
- § 14:15 —Summary and recommendations
- § 14:16 Creation—In general—Nature
- § 14:17 — —Basic elements of security right
- § 14:18 — —Security agreement
- § 14:19 — —Additional requirements
- § 14:20 —Summary and recommendations
- § 14:21 Publicity—In general—Nature
- § 14:22 — —Public registration for non-possessory security in movables
- § 14:23 — —Debtor dispossession and equivalent control mechanisms
- § 14:24 — —Third-party effects of unpublicized security rights
- § 14:25 — —Third-party effects of publicized security rights
- § 14:26 —Summary and recommendations
- § 14:27 Filing system—In general—Nature
- § 14:28 — —Key design issues
- § 14:29 — —Other elements
- § 14:30 —Summary and recommendations

- § 14:31 Priority—In general—Concept of priority and its importance
- § 14:32 — —Priority rules
- § 14:33 — —Types of competing claimants
- § 14:34 — —Priority in future advances and after-acquired property
- § 14:35 — —Priority in proceeds
- § 14:36 — —Voluntary alteration of priority: subordination agreements
- § 14:37 — —Relevance of priority prior to enforcement
- § 14:38 —Summary and recommendations
- § 14:39 Pre-default rights and obligations of parties—In general—Nature
- § 14:40 — —Party autonomy
- § 14:41 — —Default rules
- § 14:42 —Summary and recommendations
- § 14:43 Default and enforcement—In general—Nature
- § 14:44 — —Key objectives
- § 14:45 — —Default
- § 14:46 — —Options after default
- § 14:47 —Summary and recommendations
- § 14:48 Insolvency—In general—Nature
- § 14:49 — —Key objectives
- § 14:50 — —Security rights in insolvency proceedings
- § 14:51 —Summary and recommendations
- § 14:52 Conflict of laws and territorial application—In general—Nature
- § 14:53 — —Conflict-of-laws rules for creation, publicity, and priority
- § 14:54 — —Effect of subsequent change in connecting factor
- § 14:55 — —Conflict-of-laws rules for enforcement issues
- § 14:56 —Summary and recommendations

## CHAPTER 14A. FRANCE

### I. BASIC APPROACHES TO SECURITY INTERESTS

- § 14A:1 Introduction
- § 14A:2 Types of security interests
- § 14A:3 Personal security rights
- § 14A:4 Asset security interests
- § 14A:5 Assignment of receivables
- § 14A:6 Lien (*droit de retention*)

### II. CREATION OF SECURITY INTERESTS

- § 14A:7 Generally
- § 14A:8 Personal security interests: Need for written instrument and duties of creditors
- § 14A:9 Personal security interests: Duties of creditors

## TABLE OF CONTENTS

- § 14A:10 Personal security interests: Letters of intent
- § 14A:11 Asset security interests: Transfer of possession
- § 14A:12 Immovable assets

### III. PUBLICITY AND FILING SYSTEMS

- § 14A:13 In general
- § 14A:14 Transfer of possession as publicity
- § 14A:15 Security rights registries

### IV. DEFAULT AND ENFORCEMENT

- § 14A:16 In general
- § 14A:17 Post-default options—Enforcement of personal guarantee
- § 14A:18 —Enforcement of asset security interests
- § 14A:19 —Enforcement of pledges over tangible assets
- § 14A:20 —Enforcement of pledges over intangible assets
- § 14A:21 —Enforcement of security over receivables and accounts
- § 14A:22 —Enforcement of assignment of receivables
- § 14A:23 —Enforcement of mortgages over immovable assets
- § 14A:24 —Enforcement of property rights used as security interests

### V. INSOLVENCY

- § 14A:25 Generally
- § 14A:26 Key objectives of insolvency proceedings
- § 14A:27 Security rights in insolvency proceedings
- § 14A:28 Limitations on enforcement of security interests
- § 14A:29 Participation of secured creditors in insolvency proceedings
- § 14A:30 Validity of security rights and avoidance actions
- § 14A:31 Relative priority of security interests
- § 14A:32 Filing proof of claim

### VI. CONFLICTS OF LAWS AND TERRITORIAL APPLICATION

- § 14A:33 French conflicts-of-laws rules
- § 14A:34 Rules relating to asset security interests
- § 14A:35 Effect of subsequent change in connecting indicia
- § 14A:36 Rules relating to personal guarantees

### VII. INTERNATIONAL INSOLVENCY LAW

- § 14A:37 Common body of law
- § 14A:38 European law
- § 14A:39 French conflicts-of-law jurisdiction
- § 14A:40 Foreign judgments
- § 14A:41 Foreign arbitral awards

## CHAPTER 15. GERMANY

- § 15:1 Introduction

- § 15:2 Basic approaches to security—In general
- § 15:3 —Principle of determination
- § 15:4 —Principle of separation and abstraction
- § 15:5 —Accessory nature of certain security rights
- § 15:6 —Security agreements
- § 15:7 —Over-collateralization
- § 15:8 —Restrictions on upstream and downstream security
- § 15:9 —Categories of security rights
- § 15:10 Creation of security rights—In general
- § 15:11 —Types of security rights
- § 15:12 —Personal security
- § 15:13 —Security over assets
- § 15:14 —Pledge of movable assets
- § 15:15 —Creation of contractual pledges—In general
- § 15:16 — —Pledge of rights and claims
- § 15:17 —Security transfer of title to movable assets
- § 15:18 —Security assignment of receivables or rights
- § 15:19 —Security rights over real estate—In general
- § 15:20 — —Land charges
- § 15:21 — —Foreclosure of land charges
- § 15:22 — —Foreclosure of mortgages
- § 15:23 Publicity and filing systems—Publicity
- § 15:24 —Filing systems
- § 15:25 —Priority
- § 15:26 Enforcement—Default and enforcement of security rights  
in insolvency proceedings
- § 15:27 —Enforcement of pledges
- § 15:28 —Enforcement of title transferred for security purposes to  
movable assets
- § 15:29 —Enforcement of receivables or rights assigned for  
security purposes
- § 15:30 Insolvency—In general
- § 15:31 —Objectives
- § 15:32 —Insolvency stages
- § 15:33 —Reasons for filing for insolvency
- § 15:34 —Commencement of insolvency proceedings
- § 15:35 —Preliminary administration
- § 15:36 —Regular insolvency proceedings
- § 15:37 —Challenge rights in insolvency proceedings
- § 15:38 —Creditors' rights
- § 15:39 —Special insolvency proceedings
- § 15:40 —End of insolvency proceedings
- § 15:41 —International insolvency law
- § 15:42 Conflict of laws and territorial application—In general
- § 15:43 —Conflict-of-laws rules for creation and publicity
- § 15:44 Recognition and enforcement of foreign judgments and  
arbitral awards
- § 15:45 Conclusion

## **CHAPTER 16. GREECE**

### **I. IN GENERAL**

- § 16:1 Introduction
- § 16:2 Importance of security rights

### **II. LEGAL SYSTEM AND FORMS OF SECURITY**

- § 16:3 In general
- § 16:4 Forms of security
- § 16:5 Objectives of secured transactions regime

### **III. BASIC APPROACHES TO SECURITY**

- § 16:6 In general; Security rights in tangibles and intangibles
- § 16:7 Instruments traditionally designed for security
- § 16:8 Summary and recommendations

### **IV. CREATION OF SECURITY RIGHTS**

- § 16:9 In general; Elements of security rights
- § 16:10 Security agreement
- § 16:11 —Summary and recommendation

### **V. PUBLICITY AND PUBLIC REGISTRATION OF SECURITY RIGHTS**

- § 16:12 In general; Public registration for non-possessory security rights in movables
- § 16:13 Grantor dispossession and equivalent control mechanisms
- § 16:14 Third-party notice of control
- § 16:15 Third-party effects of unpublicized security rights
- § 16:16 Third-party effects of publicized security rights
- § 16:17 Summary and recommendations re. registration system

### **VI. FILING SYSTEM**

- § 16:18 In general
- § 16:19 Key design issues
- § 16:20 Effect of registry error and allocation of risk of loss
- § 16:21 Proof of content of database
- § 16:22 Alternative systems
- § 16:23 Non-discrimination
- § 16:24 Summary and recommendations re. filing system

### **VII. PRIORITY OF SECURITY INTERESTS**

- § 16:25 In general; Concept of priority and importance
- § 16:26 Priority rules
- § 16:27 Types of competing claimants
- § 16:28 Priority in future advances and after-acquired property

- § 16:29 Voluntary alteration of priority and subordination agreements
- § 16:30 Relevance of priority prior to enforcement
- § 16:31 Summary and recommendations re. priority of security interests

## **VIII. PRE-DEFAULT RIGHTS AND OBLIGATIONS OF PARTIES**

- § 16:32 In general

## **IX. DEFAULT AND ENFORCEMENT**

- § 16:33 In general
- § 16:34 Meaning of default
- § 16:35 Cure of default
- § 16:36 Notice of default
- § 16:37 Judicial or administrative review

## **X. OPTIONS AFTER DEFAULT**

- § 16:38 Judicial action to enforce security right
- § 16:39 Sale or other disposition of encumbered assets
- § 16:40 Judicial proceedings brought by other creditors
- § 16:41 Summary and recommendations re. options after default

## **XI. INSOLVENCY**

- § 16:42 In general
- § 16:43 Security rights in insolvency proceedings
- § 16:44 Summary and recommendations re. insolvency

## **XII. CONFLICT OF LAWS AND TERRITORIAL APPLICATION**

- § 16:45 In general
- § 16:46 Conflict-of-laws rules for creation, publicity, and priority
- § 16:47 Summary and recommendations

# **CHAPTER 17. HUNGARY**

## **I. IN GENERAL**

- § 17:1 Introduction
- § 17:2 Creation of security right; effectiveness between parties
- § 17:3 Minimum content of security agreement
- § 17:4 Form of security agreement
- § 17:5 Obligations secured by security agreement
- § 17:6 Assets subject to security right
- § 17:7 Continuation of security right in proceeds; continuation in mass or product

TABLE OF CONTENTS

§ 17:8 Assignment of claims and/or receivables

**II. EFFECTIVENESS OF SECURITY RIGHT AGAINST  
THIRD PARTIES**

§ 17:9 Achieving third-party effectiveness

§ 17:10 —General method

§ 17:11 Third-party effectiveness of security right in tangible asset  
by possession

§ 17:12 Third-party effectiveness of security right in movable  
asset, right, or claim subject to special registration

§ 17:13 Automatic third-party effectiveness of security right in  
proceeds

**III. REGISTRY SYSTEM**

§ 17:14 In general

§ 17:15 Purpose of filing registry

§ 17:16 Operational framework of registration and search  
processes

§ 17:17 Security and integrity of registry

§ 17:18 Required content of registration notice

§ 17:19 Duration and extension of registration of notice

§ 17:20 Authority for registration

§ 17:21 Cancellation or amendment of notice

§ 17:22 Priority of security right

**IV. RIGHTS AND OBLIGATIONS OF PARTIES TO  
SECURITY AGREEMENT**

§ 17:23 Possessory pledge

§ 17:24 Non-possessory pledge

§ 17:25 Pledge over claims against third-party obligors (including  
receivables)

§ 17:26 Rights and obligations of third-party obligors

**V. ENFORCEMENT OF SECURITY RIGHT**

§ 17:27 General standard of conduct in context of enforcement

§ 17:28 Post-default rights of grantor

§ 17:29 Post-default rights of secured creditor

§ 17:30 Distribution of proceeds of disposition of encumbered asset

§ 17:31 Acquisition of encumbered asset in satisfaction of secured  
obligation

§ 17:32 Asset-specific issues

**VI. ACQUISITION FINANCING**

§ 17:33 In general

§ 17:34 Method of retention of title as acquisition financing

§ 17:35 Third-party effectiveness of retention of title right

**VII. CONFLICT OF LAWS**

- § 17:36 In general
- § 17:37 Law applicable to security right
- § 17:38 Relevant time for determining location
- § 17:39 Law applicable to enforcement of security right
- § 17:40 Effective date of new Civil Code

**VIII. EFFECT OF INSOLVENCY ON SECURITY RIGHTS**

- § 17:41 In general
- § 17:42 Law applicable to validity and effectiveness of right and claims
- § 17:43 Insolvency act as applicable law
- § 17:44 Assets constituting insolvency estate
- § 17:45 Provisional measures
- § 17:46 —Balance of rights between debtor and insolvency representative
- § 17:47 —Notice to interested parties of provisional measures
- § 17:48 —Termination of provisional measures
- § 17:49 Measures applicable upon commencement of insolvency proceedings
- § 17:50 Duration of measures
- § 17:51 Ability to sell assets of estate free and clear of encumbrances and other interests
- § 17:52 Avoidable transactions
- § 17:53 Participation by creditors
- § 17:54 Approval by classes
- § 17:55 Secured claims

**CHAPTER 17A. INDIA****I. OVERVIEW**

- § 17A:1 Introduction
- § 17A:2 Key objectives of secured transactions regime

**II. BASIC APPROACHES TO SECURITY**

- § 17A:3 Security over movables
- § 17A:4 Security over immovable property

**III. CREATION AND EFFECTIVENESS OF SECURITY**

- § 17A:5 In general
- § 17A:6 Obligations—Future assets, and advances
- § 17A:7 Security agreement—Essentials and form
- § 17A:8 Right to proceeds
- § 17A:9 Publicity and filing

**IV. PRIORITY RULES**

- § 17A:10 In general

## TABLE OF CONTENTS

- § 17A:11 Rights of buyers, lessees, and subsequent creditors
- § 17A:12 Preferential creditors
- § 17A:13 Pre-default rights and obligations of parties

## V. DEFAULT AND ENFORCEMENT

- § 17A:14 In general
- § 17A:15 Key objectives
- § 17A:16 Default
- § 17A:17 Summary and recommendations for enforcement procedures

## VI. INSOLVENCY

- § 17A:18 Moratorium—Scope, duration and relief
- § 17A:19 Avoidance

## VII. CONFLICT OF LAWS

- § 17A:20 Generally; law of the location (*lex situs*)

## CHAPTER 17B. INDONESIA

### I. IN GENERAL

- § 17B:1 Introduction
- § 17B:2 Key objectives of secured transaction regime

### II. BASIC APPROACHES TO SECURITY

- § 17B:3 In general
- § 17B:4 Pledge
- § 17B:5 Fiduciary security
- § 17B:6 Mortgage
- § 17B:7 Hypothec
- § 17B:8 Security over warehouse receipt

### III. CREATION OF SECURITY INTERESTS

- § 17B:9 In general
- § 17B:10 Pledge
- § 17B:11 Fiduciary security
- § 17B:12 Mortgage
- § 17B:13 Hypothec
- § 17B:14 Security over warehouse receipt

### IV. PUBLICITY

- § 17B:15 In general
- § 17B:16 Registry and filing system
- § 17B:17 Priority
- § 17B:18 Preference right over special securities

- § 17B:19 Pledge
- § 17B:20 Fiduciary security
- § 17B:21 Mortgage
- § 17B:22 Hypothec
- § 17B:23 Warehouse receipt

## **V. PRE-DEFAULT RIGHTS AND OBLIGATIONS**

- § 17B:24 Pledge
- § 17B:25 Fiduciary security
- § 17B:26 Mortgage
- § 17B:27 Hypothec
- § 17B:28 Warehouse receipt

## **VI. DEFAULT AND ENFORCEMENT**

- § 17B:29 In general
- § 17B:30 Default
- § 17B:31 Enforcement

## **VII. BANKRUPTCY**

- § 17B:32 In general
- § 17B:33 Security rights in bankruptcy proceedings
- § 17B:34 Conflict of laws and territorial application

## **VIII. MISCELLANEOUS**

- § 17B:35 Cessie

## **IX. CONCLUSION**

- § 17B:36 Concluding observations

## **CHAPTER 18. IRELAND**

- § 18:1 Basic approaches to security—Instruments traditionally designed for security—Security rights in tangible movable property
- § 18:2 — —Security rights in intangible movable property
- § 18:3 — —Use of title for security purposes—Transfer of title to creditor
- § 18:4 — —Retention of title by creditor
- § 18:5 Creation of security interest—Basic elements of security right—In general
- § 18:6 — —Obligations to be secured
- § 18:7 — —Description
- § 18:8 — —Assets to be encumbered
- § 18:9 — —Assets not specifically identified
- § 18:10 — —Security agreement—Minimum contents
- § 18:11 — —Formalities
- § 18:12 — —Effects

## TABLE OF CONTENTS

- § 18:13 —Additional requirements—Right of disposition of grantor
- § 18:14 — —Transfer of possession, publicity, and control
- § 18:15 Filing system—In general
- § 18:16 —Key design issues—Notice filing and document filing
- § 18:17 — —Authority to file and signature
- § 18:18 — —Grantor asset-based index
- § 18:19 — —Filing process
- § 18:20 —Other basic elements—Public access to data base
- § 18:21 — —Fees
- § 18:22 — —Effect of registry error and allocation of risk of loss
- § 18:23 — —Alternative systems
- § 18:24 — —Non-discrimination
- § 18:25 Priority—Concept of priority and importance
- § 18:26 —Priority rules—First-to-file priority rules
- § 18:27 — —Alternative priority rules
- § 18:28 —Types of competing claimants—Buyers of encumbered assets
- § 18:29 — —Judgment or execution creditors
- § 18:30 — —Statutory (preferential) creditors
- § 18:31 — —Creditors adding value or storing encumbered assets
- § 18:32 — —Insolvency administrators
- § 18:33 —Priority in future advances and after-acquired property—Future advances
- § 18:34 — —After-acquired property
- § 18:35 —Voluntary alteration of priority: subordination agreements
- § 18:36 Pre-default rights and obligations of parties—Principle of party autonomy
- § 18:37 —Limitations of party autonomy
- § 18:38 Default and enforcement—In general
- § 18:39 —Default—Meaning of “default”
- § 18:40 — —Cure of default
- § 18:41 — —Notice of default
- § 18:42 — —Judicial or administrative review
- § 18:43 —Options following default—Judicial action to enforce security right
- § 18:44 — —Freedom of parties to agree to enforcement procedure
- § 18:45 — —Acceptance of encumbered assets in satisfaction of secured obligation
- § 18:46 — —Redemption of encumbered assets
- § 18:47 — —Allocation of proceeds of disposition
- § 18:48 Insolvency—Inclusion of encumbered assets in insolvency estate
- § 18:49 —Limitations on enforcement of security rights
- § 18:50 —Participation of secured creditors in insolvency proceedings
- § 18:51 —Validity of security rights and avoidance action
- § 18:52 —Relative priority of security rights
- § 18:53 —Reorganization plans

**CHAPTER 19. ISRAEL**

- § 19:1 Introduction—In general
- § 19:2 —Organization
- § 19:3 —Terminology
- § 19:4 —Financing practices
- § 19:5 Key objectives of secured transactions regime
- § 19:6 Basic approaches to security—In general
- § 19:7 —Assignment of debts
- § 19:8 —General provisions pertaining to security interests—In general
- § 19:9 — —Possessory security interests
- § 19:10 — —Non-possessory security interests
- § 19:11 —Fixed security interest and floating charge
- § 19:12 —Produce of security interests
- § 19:13 Creation—In general
- § 19:14 —Perfection of security interests of movables owned by individuals
- § 19:15 —Perfection of security interests on movables of an Israeli company
- § 19:16 Publicity and filing systems—In general
- § 19:17 —Real property
- § 19:18 —Motor vehicles
- § 19:19 —Aircraft
- § 19:20 —Water-faring vessels
- § 19:21 —Intellectual property: Patents, trademarks, and copyrights
- § 19:22 —Bank accounts
- § 19:23 —Securities
- § 19:24 Priority—Priority among security interests
- § 19:25 —Re-ordering of security interests
- § 19:26 —Maintenance of collateral
- § 19:27 Default and enforcement—In general
- § 19:28 Insolvency—In general
- § 19:29 —Equality principle
- § 19:30 —Preference prohibition
- § 19:31 Conflicts of law, governing law, enforcement of foreign judgments—In general
- § 19:32 —Governing law agreed between parties
- § 19:33 —Governing law absent agreement between parties
- § 19:34 —Enforcement of foreign judgments
- § 19:35 Conclusion

**CHAPTER 20. ITALY**

- § 20:1 Introduction
- § 20:2 Key objectives of secured transaction regime
- § 20:3 Basic approach to security
- § 20:4 Basic approach to security; in general—Liens
- § 20:5 Pledges

## TABLE OF CONTENTS

- § 20:6 —Pledge on movable assets
- § 20:7 —Revolving pledge
- § 20:8 —Pledge on receivables
- § 20:9 —Pledge on bank accounts and proceeds
- § 20:10 —Pledge on intellectual property rights
- § 20:11 —Pledge on inventory
- § 20:12 —Pledge on universalities of movable assets
- § 20:13 —Pledge over shares and quotas
- § 20:14 —Non-possessory pledge
- § 20:15 Mortgages; in general
- § 20:16 Mortgages—Mortgage over real estate
- § 20:17 —Mortgage over registered moveable assets
- § 20:18 Creation of security right; in General; UNCITRAL Guide and Model Law
- § 20:19 Creation of a lien
- § 20:20 Creation of a pledge
- § 20:21 —Pledge instrument
- § 20:22 Creation of a mortgage
- § 20:23 —Mortgage over vessels and aircraft
- § 20:24 —Mortgage over motor vehicles
- § 20:25 —Mortgage over government bonds
- § 20:26 Publicity and filing system
- § 20:27 —Pledges
- § 20:28 —Mortgages
- § 20:29 Priority
- § 20:30 —Liens
- § 20:31 —Pledges
- § 20:32 —Mortgages
- § 20:33 Rights and obligations of the parties
- § 20:34 Transfer of liens
- § 20:35 Transfer of pledge
- § 20:36 Transfer of mortgages
- § 20:37 Termination of liens
- § 20:38 Discharge of Pledge
- § 20:39 Discharge of Mortgage
- § 20:40 Default and enforcement; in general
- § 20:41 Pledge
- § 20:42 Mortgage
- § 20:43 Conflict of laws and territorial application

## CHAPTER 21. JAPAN

- § 21:1 Introduction—Organization and scope
- § 21:2 —Terminology
- § 21:3 —Financing practices—Inventory and equipment purchase-money financing
- § 21:4 — —Receivable and inventory revolving loan financing
- § 21:5 — —Term loan financing
- § 21:6 Key objectives of secured transactions

- § 21:7 Basic approaches to security—In general—Secured transactions in Japan
- § 21:8 — —Instruments traditionally used to provide security
- § 21:9 — —Use of title for security purposes
- § 21:10 — —Uniform comprehensive security
- § 21:11 — —Summary and recommendations
- § 21:12 Creation—Introduction—Basic elements of security right
- § 21:13 — —Security agreement
- § 21:14 — —Additional requirements
- § 21:15 — —Summary and recommendations
- § 21:16 Publicity (notification)—Introduction—In general
- § 21:17 — —Public registration for non-possessory security in movables
- § 21:18 — —Debtor dispossession and equivalent control mechanisms
- § 21:19 — —Third-party effects of unpublicized security rights
- § 21:20 — —Third-party effects of publicized (notified) security rights
- § 21:21 — —Summary and recommendations
- § 21:22 Filing system—Introduction—In general
- § 21:23 — —Key design issues
- § 21:24 — —Other basic elements
- § 21:25 — —Summary and recommendations
- § 21:26 Priority—In general—Concept of priority and its importance
- § 21:27 — —Priority rules
- § 21:28 — —Types of competing claimants
- § 21:29 — —Priority over future advances and after-acquired property
- § 21:30 — —Priority in proceeds
- § 21:31 — —Voluntary alteration of priority: subordination agreements
- § 21:32 — —Relevance of priority prior to enforcement
- § 21:33 — —Summary and recommendations
- § 21:34 Pre-default rights and obligations of parties—In general—Party autonomy
- § 21:35 — —Pre-default rules
- § 21:36 Default and enforcement—In general—Key objectives
- § 21:37 — —Default
- § 21:38 — —Options after default
- § 21:39 — —Judicial proceedings brought by other creditors
- § 21:40 — —Summary and recommendations
- § 21:41 Insolvency—Introduction—Scope and commercial context
- § 21:42 — —Key objectives
- § 21:43 — —Security rights in insolvency proceedings
- § 21:44 — —Summary and recommendations
- § 21:45 Conflict of laws and territorial application—Introduction—In general

## TABLE OF CONTENTS

- § 21:46 — —Conflict-of-laws rules for creation, publicity, and priority
- § 21:47 International Jurisdiction
- § 21:48 Conflict of laws and territorial application—Introduction—  
Effect of subsequent change in location of property
- § 21:49 — —Conflict-of-laws rules for enforcement issues
- § 21:50 —Summary and recommendations

## CHAPTER 22. JERSEY

- § 22:1 Introduction—Legal system and constitutional position
- § 22:2 —Bankruptcy
- § 22:3 —Security interests
- § 22:4 Objectives of secured transactions regime
- § 22:5 Basic approaches to security—In general
- § 22:6 —Traditional forms of security—Security rights over tangible movable property
- § 22:7 — —Security rights in intangible movable property
- § 22:8 — —Use of title only for security purposes
- § 22:9 Creation—In general
- § 22:10 —Basic elements of security right—In general
- § 22:11 — —Assets to be encumbered
- § 22:12 — —Proceeds or “fruits”
- § 22:13 —Security agreement—Pledge
- § 22:14 — —Requirements for security agreements under the Security Interests (Jersey) Law 1983
- § 22:15 — —Additional requirements and perfection of security
- § 22:16 Publicity and filing
- § 22:17 Priority
- § 22:18 Pre-default obligations—Debtor’s obligations
- § 22:19 —Secured party’s obligations
- § 22:20 Default and enforcement
- § 22:21 Insolvency
- § 22:22 Conflict of laws and territorial application

## CHAPTER 22A. LATVIA

### I. IN GENERAL

- § 22A:1 Introduction
- § 22A:2 Terminology

### II. OBJECTIVES OF THE SECURED TRANSACTIONS REGIME

- § 22A:3 In general
- § 22A:4 Utilize full value of assets to obtain credit
- § 22A:5 Obtain security simply and efficiently
- § 22A:6 Validate non-possessory rights
- § 22A:7 Establish clear and predictable rules of priority

- § 22A:8 Facilitate enforcement of the creditor's rights in a predictable and timely fashion
- § 22A:9 Provide for equal treatment of domestic and non-domestic creditors
- § 22A:10 Recognize autonomy of the parties

### **III. APPROACHES TO SECURED TRANSACTIONS**

- § 22A:11 In general
- § 22A:12 Instruments designed for security
- § 22A:13 Transfer of legal title

### **IV. CREATION OF RIGHTS**

- § 22A:14 In general
- § 22A:15 Basic elements of security rights
- § 22A:16 Security agreement
- § 22A:17 Summary and recommendations

### **V. PUBLICITY**

- § 22A:18 In general
- § 22A:19 Public registration of non-possessory security
- § 22A:20 Third-party effects of publicized security rights
- § 22A:21 Third-party effects of unpublicized security rights
- § 22A:22 Means of security in proceedings
- § 22A:23 Collection in proceedings
- § 22A:24 Summary and recommendations

### **VI. FILING SYSTEM**

- § 22A:25 In general
- § 22A:26 Authority to file and signature
- § 22A:27 Filing process
- § 22A:28 Duration of effectiveness of filed notice
- § 22A:29 Public database access
- § 22A:30 Fees
- § 22A:31 Land register
- § 22A:32 Commercial pledge registry
- § 22A:33 Effect of registry error and apportionment of risk of loss
- § 22A:34 Alternative systems
- § 22A:35 Summary and recommendations

### **VII. PRIORITY**

- § 22A:36 In general
- § 22A:37 Priority rules
- § 22A:38 First-to-file priority rule
- § 22A:39 Priority based on possession or control
- § 22A:40 Alternative priority rules
- § 22A:41 Priority in proceeds

## TABLE OF CONTENTS

§ 22A:42 Summary and recommendations

### **VIII. PRE-DEFAULT RIGHTS AND OBLIGATIONS OF THE PARTIES**

§ 22A:43 Autonomy of parties

§ 22A:44 Limitations

§ 22A:45 Default rules

§ 22A:46 Types of default rules: Duty of care and liability related to dealing with pledge

§ 22A:47 Summary and recommendations

### **IX. DEFAULT AND ENFORCEMENT**

§ 22A:48 In general

§ 22A:49 Default

§ 22A:50 Summary and recommendations

### **X. INSOLVENCY**

§ 22A:51 In general

§ 22A:52 Terminology

§ 22A:53 Key objectives

§ 22A:54 Security rights in insolvency proceedings

§ 22A:55 Inclusion of encumbered assets in insolvency estate

§ 22A:56 Limitations on enforcement of security rights

§ 22A:57 Participation of secured creditors in insolvency proceedings

§ 22A:58 Validity of security rights and avoidance actions

§ 22A:59 Relative priority and avoidance proceedings

§ 22A:60 Security rights in reorganization proceedings

§ 22A:61 Summary and recommendations

### **XI. CONFLICTS OF LAW AND JURISDICTION**

§ 22A:62 In general

§ 22A:63 Conflict-of-laws rules for creation, publicity, and priority

§ 22A:64 Summary and recommendations

## **CHAPTER 22B. MEXICO**

### **I. IN GENERAL**

§ 22B:1 Introduction

§ 22B:2 Key objectives of secured transactions regime

### **II. BASIC APPROACHES TO SECURITY; TYPES OF INSTRUMENTS FOR SECURITY**

§ 22B:3 Generally

§ 22B:4 Non-possessory pledge

- § 22B:5 Guaranty trust
- § 22B:6 Pledge on securities
- § 22B:7 Industrial mortgage

### III. CREATION OF SECURITY INTERESTS

- § 22B:8 Generally
- § 22B:9 Creation by type of security instrument
- § 22B:10 Obligations secured
- § 22B:11 Assets granted as collateral
- § 22B:12 Security agreement

### IV. REGISTRATION; PUBLICITY

- § 22B:13 Generally
- § 22B:14 Registration by type of security instrument—Pledge
- § 22B:15 —Pledge on assets or merchandise deposited in an authorized public bonded warehouse (*almacén general de depósito*), the property of which is evidenced in a certificate of deposit (*certificado de depósito*)
- § 22B:16 —Purchase and sale with reservation of title
- § 22B:17 —Working-Capital and Fixed-Assets Loans
- § 22B:18 —Non-possessory pledge
- § 22B:19 —Guaranty trust
- § 22B:20 —Industrial mortgage
- § 22B:21 —Public registration for non-possessory rights in movables
- § 22B:22 Debtor dispossession and control mechanisms
- § 22B:23 Third-party effect of unregistered security rights
- § 22B:24 Third-party effects of registered security rights

### V. FILING SYSTEM; REGISTRY FOR SECURITY INSTRUMENTS

- § 22B:25 Generally
- § 22B:26 Sole securities registry
- § 22B:27 Filing process

### VI. PRIORITY

- § 22B:28 Generally
- § 22B:29 Concept of priority
- § 22B:30 Priority rules

### VII. PRE-DEFAULT RIGHTS AND OBLIGATIONS OF PARTIES

- § 22B:31 Generally
- § 22B:32 Party autonomy

### VIII. DEFAULT AND ENFORCEMENT

- § 22B:33 In general

## TABLE OF CONTENTS

### **IX. INSOLVENCY**

- § 22B:34 Generally; governing law
- § 22B:35 Objectives of commercial insolvency law
- § 22B:36 Insolvency stages
- § 22B:37 Assets constituting the insolvency estate
- § 22B:38 Acknowledgment of credits
- § 22B:39 Credit ranking and priority of payment

### **X. CONFLICTS OF LAW**

- § 22B:40 Generally
- § 22B:41 Recognition and enforcement of foreign judgments and arbitral awards

## **CHAPTER 22C. THE NETHERLANDS**

### **I. INTRODUCTION**

- § 22C:1 Secured transactions regime
- § 22C:2 Terminology

### **II. KEY OBJECTIVES OF SECURED TRANSACTIONS REGIME**

- § 22C:3 In general
- § 22C:4 Key objectives of secured transactions regime

### **III. BASIC APPROACHES TO SECURITY RIGHTS**

- § 22C:5 Source and nature of secured transactions regime
- § 22C:6 Instruments traditionally designed for security rights
- § 22C:7 Characteristics of secured transactions regime and security rights; right in rem, limited right, accessory right
- § 22C:8 Use of transfer of title for security purposes
- § 22C:9 Uniform comprehensive security right

### **IV. CREATION OF SECURITY RIGHTS**

- § 22C:10 In general
- § 22C:11 Formalities for creating security interests
- § 22C:12 Creating right of pledge over after-acquired property
- § 22C:13 Receivables and non-assignability clauses (*onoverdraagbaarheidsclausules*)
- § 22C:14 Obligations to be secured

### **V. PUBLICITY AND FILING SYSTEMS**

- § 22C:15 Publicity requirements
- § 22C:16 Filing systems

### **VI. PRIORITY**

- § 22C:17 Priority rules

- § 22C:18 Voluntary alteration of priority: subordination agreements

## VII. ENFORCEMENT OF SECURITY RIGHTS

- § 22C:19 Enforcement of security rights in respect of movable assets
- § 22C:20 Enforcement of security rights in respect of receivables
- § 22C:21 Enforcement of security rights in respect of real estate
- § 22C:22 Enforcement of movable assets and receivables transferred for security purposes

## VIII. INSOLVENCY

- § 22C:23 Sources of insolvency law
- § 22C:24 Insolvency proceedings
- § 22C:25 Commencement of bankruptcy proceedings
- § 22C:26 Consequences of commencement of bankruptcy proceedings
- § 22C:27 Security rights in bankruptcy proceedings
- § 22C:28 Limitations on enforcement of security rights
- § 22C:29 Validity of security rights and avoidance actions (*actio pauliana*)

## IX. CONFLICT OF LAWS AND TERRITORIAL APPLICATION

- § 22C:30 Sources of conflict-of-laws rules
- § 22C:31 Netherlands conflict-of-laws rules
- § 22C:32 Conflict-of-laws rules for creation and enforcement of security rights over movables
- § 22C:33 Conflict-of-laws rules for creation and enforcement of security rights over receivables

# Volume 2

## CHAPTER 23. NEW ZEALAND

- § 23:1 Introduction
- § 23:2 Key objectives of secured transactions regime
- § 23:3 Basic approach to security
- § 23:4 Creation of security interest—In general
- § 23:5 —Obligations to be secured
- § 23:6 —Assets to be encumbered
- § 23:7 —Security agreements
- § 23:8 —Proceeds
- § 23:9 —Additional requirements
- § 23:10 Publicity and filing system—Perfection
- § 23:11 —Possession
- § 23:12 —Notice filing

## TABLE OF CONTENTS

- § 23:13 —Content of financing statement
- § 23:14 —Grantor-based index
- § 23:15 —Pre-filing
- § 23:16 —Authority to file
- § 23:17 —Amendment and discharge
- § 23:18 —Filing process
- § 23:19 —Duration of effectiveness of filed notice
- § 23:20 —Public access to database
- § 23:21 —Error and allocation of risk of loss
- § 23:22 Priority—Priority rules
- § 23:23 —Purchase money security interests
- § 23:24 —Buyers of encumbered assets
- § 23:25 —Execution creditors
- § 23:26 —Preferential creditors
- § 23:27 —Creditors adding value to or storing encumbered assets
- § 23:28 —Priority in future advances
- § 23:29 —Proceeds
- § 23:30 —Voluntary alteration of priority: Subordination agreements
- § 23:31 Pre-default rights and obligations
- § 23:32 —Possessory security interests
- § 23:33 —Non-possessory security interests
- § 23:34 Default and enforcement—In general
- § 23:35 —Consumer goods
- § 23:36 —Part IX of the Personal Property Securities Act
- § 23:37 —Accessions
- § 23:38 —Receivers
- § 23:39 Insolvency—In general
- § 23:40 —Inclusion of encumbered assets in the insolvency estate
- § 23:41 —Limitation on enforcement of security rights
- § 23:42 —Validity of security rights and avoidance actions
- § 23:43 Conflict of laws and territorial application—Jurisdiction
- § 23:44 —Choice of law: Goods and possessory security interests in negotiable instruments
- § 23:45 —Choice of law: Intangibles, mobile goods, and non-possessory security interests in negotiable instruments
- § 23:46 —Choice of law: Minerals

## CHAPTER 23A. NORWAY

### I. INTRODUCTION

- § 23A:1 In general
- § 23A:2 Terminology
- § 23A:3 Key objectives of secured transactions regime

### II. BASIC APPROACHES TO SECURITY

- § 23A:4 In general

- § 23A:5 Principle of specificity
- § 23A:6 Floating charge
- § 23A:7 No extermination of competing unperfected security right if not in prudent, good faith
- § 23A:8 Movable assets connected to immovable property

### **III. CREATION OF SECURITY RIGHT**

- § 23A:9 In general
- § 23A:10 Obligations to be secured
- § 23A:11 Assets subject to security right
- § 23A:12 Creation of security rights in receivables
- § 23A:13 Proceeds
- § 23A:14 Effectiveness of security rights created in breach of agreement that limits grantor's right to create such right
- § 23A:15 Right of secured creditor to benefit from security rights that secure payment of receivables

### **IV. PUBLICITY; REGISTRATION IN PUBLIC REGISTRY**

- § 23A:16 In general
- § 23A:17 Movable assets
- § 23A:18 Purchase-money security interest
- § 23A:19 Security rights in securities and financial instruments
- § 23A:20 Security rights in receivables and other non-negotiable monetary claims
- § 23A:21 Register for security in movable assets, filing system

### **V. PRIORITY**

- § 23A:22 In general
- § 23A:23 Registrable movables
- § 23A:24 Preferential claims
- § 23A:25 Subordination and right of advancement

### **VI. PRE-DEFAULT RIGHTS AND OBLIGATIONS OF PARTIES**

- § 23A:26 In general
- § 23A:27 Third-party obligors

### **VII. DEFAULT AND ENFORCEMENT**

- § 23A:28 In general
- § 23A:29 Enforcement authorities
- § 23A:30 Enforcement procedures
- § 23A:31 Security rights in default and enforcement

### **VIII. INSOLVENCY**

- § 23A:32 In general

TABLE OF CONTENTS

- § 23A:33 Rights of creditors
- § 23A:34 Debt settlement proceedings

**IX. CONFLICT OF LAWS AND TERRITORIAL APPLICATION**

- § 23A:35 In general
- § 23A:36 Insolvency

**CHAPTER 24. THE PHILIPPINES**

- § 24:1 Basic approaches to security—Instruments traditionally designed for security—Security rights in tangible movable property
- § 24:2 — —Security rights in intangible movable property
- § 24:3 — —Use of title for security purposes—In general
- § 24:4 — —Finance lease
- § 24:5 — —Trust receipt transaction
- § 24:6 Creation of security—In general
- § 24:7 — —Basic elements of security right—In general
- § 24:8 — —Obligations to be secured
- § 24:9 — —Assets to be encumbered
- § 24:10 — —Proceeds
- § 24:11 — —Security agreement
- § 24:12 — —Additional requirements—In general
- § 24:13 — —Right of disposition of grantor
- § 24:14 — —Transfer of possession, publicity, and control
- § 24:15 — —Taxes
- § 24:16 Publicity
- § 24:17 Priority—Priority rules—First-to-file rule
- § 24:18 — —Priority based on possession or control
- § 24:19 — —Priority in proceeds
- § 24:20 — —Relevance of priority to enforcement
- § 24:21 Rights and obligations of parties—In general
- § 24:22 — —Default rules—In general
- § 24:23 — —Possessory security
- § 24:24 Default and enforcement—Default
- § 24:25 Options following default—Acceptance of encumbered assets in satisfaction of secured obligation
- § 24:26 — —Redemption of encumbered assets
- § 24:27 — —Removing encumbered assets from grantor’s control
- § 24:28 — —Sale or other disposition of encumbered assets—Pledge
- § 24:29 — —Chattel mortgage
- § 24:30 — —Finality
- § 24:31 Insolvency—State of insolvency
- § 24:32 — —Rights of secured creditors
- § 24:33 — —Validity of security rights and avoidance actions
- § 24:34 — —Relative priority of security rights
- § 24:35 Conflict of laws and territorial application—Creation of interest

- § 24:36 —Enforcement issues
- § 24:37 —Crossborder insolvency

## CHAPTER 25. POLAND

- § 25:1 Introduction
- § 25:2 Types of security and objectives of secured transactions
- § 25:3 Terminology
- § 25:4 Basic approaches to security—In general
- § 25:5 Accessory nature of security rights
- § 25:6 Personal securities
- § 25:7 Real securities
- § 25:8 Downstream and upstream stream security
- § 25:9 Financial assistance
- § 25:10 Overcollateralization
- § 25:11 Categories of security rights
- § 25:12 Creation of consensual security rights—Requirements as to form and perfection
- § 25:13 —Pledge and registered pledge
- § 25:14 Financial pledge
- § 25:15 Security assignment of receivables
- § 25:16 Security transfer of ownership interest
- § 25:17 Deposit
- § 25:18 Publicity and filing—In general
- § 25:19 Registration process
- § 25:20 Authority to file and signature
- § 25:21 Proof of content of database and extent of detail in statutory text
- § 25:22 Fees for entry of pledge in registry
- § 25:23 Effect of registry error and allocation of risk of loss
- § 25:24 Priority—In general—Concept of priority and importance
- § 25:25 Priority rule—First-to-file priority rule
- § 25:26 Types of competing claimants—Secured creditors and unsecured creditors
- § 25:27 Sellers and buyers of encumbered assets
- § 25:28 Priority in proceeds
- § 25:29 Voluntary alteration of priority: subordination agreements
- § 25:30 Pre-default rights and obligations of the parties—In general
- § 25:31 Party autonomy principle and its limitations
- § 25:32 Release and lapse of security
- § 25:33 Default and enforcement—In general
- § 25:34 Default—Meaning of default under facility agreements
- § 25:35 Cure of default
- § 25:36 Notice of default within restructuring proceedings
- § 25:37 Judicial or administrative review
- § 25:38 Allocation of proceeds of disposition
- § 25:39 Insolvency—In general
- § 25:40 Security rights in restructuring proceedings

## TABLE OF CONTENTS

- § 25:41 Security rights in insolvency proceedings
- § 25:42 Relative priority of security rights
- § 25:43 Conflict of laws and territorial application—Scope of conflict-of-law rules
- § 25:44 Conflict of law rules for creation, publicity, and priority of security rights
- § 25:45 Conflict of law rules for enforcement of secured rights

## **CHAPTER 25A. PORTUGAL**

- § 25A:1 Introduction
- § 25A:2 Basic Approaches to Security
- § 25A:3 Creation of Security Rights
- § 25A:4 Publicity and Effectiveness
- § 25A:5 Pre-Default Rights and Obligations
- § 25A:6 Default and Enforcement
- § 25A:7 Insolvency and Priority
- § 25A:8 Conflict of Laws and Territorial Application

## **CHAPTER 26. ROMANIA**

### **I. OVERVIEW**

- § 26:1 Legislation; Civil Code
- § 26:2 Terminology

### **II. FINANCING PRACTICES**

- § 26:3 In general
- § 26:4 Inventory and equipment purchase-money financing
- § 26:5 Receivable and inventory revolving loan financing
- § 26:6 Factoring
- § 26:7 Term loan financing

### **III. KEY OBJECTIVES OF SECURED TRANSACTIONS REGIME**

- § 26:8 In general
- § 26:9 Utilize full value of assets to obtain credit
- § 26:10 Obtain security in simple and efficient manner
- § 26:11 Validate non-possessory rights
- § 26:12 Establish clear and predictable priority rules
- § 26:13 Facilitate enforcement of creditor's rights in predictable and timely fashion
- § 26:14 Provide for equal treatment of domestic and non-domestic creditors
- § 26:15 Recognize party autonomy

### **IV. BASIC APPROACHES TO SECURITY**

- § 26:16 In general

- § 26:17 Instruments traditionally designed for security—Security rights in tangible movable property
- § 26:18 —Security rights in intangible movable property
- § 26:19 —Use of title for security; transfer of title to creditor
- § 26:20 —Retention of title by creditor
- § 26:21 Uniform comprehensive security

## **V. CREATION OF SECURITY RIGHTS**

- § 26:22 In general
- § 26:23 Basic elements of security right
- § 26:24 Security agreement—Definition
- § 26:25 —Minimum contents
- § 26:26 —Formalities for creating security rights
- § 26:27 Effects of security rights
- § 26:28 Additional requirements for security rights; right of disposition by grantor
- § 26:29 Transfer of possession, publicity and control
- § 26:30 Summary and recommendations

## **VI. PUBLICITY**

- § 26:31 In general
- § 26:32 Public registration for non-possessory security in movables; title transactions and security transactions
- § 26:33 Consensual and non-consensual security rights
- § 26:34 Single registry and multiple registries
- § 26:35 Notice and document filing
- § 26:36 Timing of registration
- § 26:37 Required Content of Registered Notice
- § 26:38 Need for protection of remote transferees of encumbered assets
- § 26:39 Linkage to registries for immovables
- § 26:40 Linkage between general registry and asset-specific registry
- § 26:41 Private registration or publication
- § 26:42 Registration and enforcement
- § 26:43 Debtor dispossession and equivalent control mechanisms
- § 26:44 Summary and recommendations

## **VII. FILING SYSTEM**

- § 26:45 In general
- § 26:46 Key design issues
- § 26:47 Other basic elements
- § 26:48 Summary and recommendations

## **VIII. PRIORITY**

- § 26:49 In general
- § 26:50 Priority rules

## TABLE OF CONTENTS

- § 26:51 Types of competing claimants
- § 26:52 Priority in future advances and after-acquired property
- § 26:53 Priority in proceeds
- § 26:54 Voluntary alteration of priority: Subordination agreements
- § 26:55 Summary and recommendations

## **IX. PRE-DEFAULT RIGHTS AND OBLIGATIONS OF THE PARTIES**

- § 26:56 In general
- § 26:57 Party autonomy
- § 26:58 Summary and recommendations

## **X. DEFAULT AND ENFORCEMENT**

- § 26:59 In general
- § 26:60 Key objectives
- § 26:61 Default
- § 26:62 Options following default—Removing encumbered assets from grantor's control
- § 26:63 —Judicial action to enforce the security right
- § 26:64 —Freedom of parties to agree to enforcement procedure
- § 26:65 —Acceptance of the encumbered assets in satisfaction of the secured obligation
- § 26:66 —Redemption of encumbered assets
- § 26:67 —Authorized disposition by grantor
- § 26:68 —Sale or other disposition of encumbered assets
- § 26:69 Allocation of proceeds of disposition
- § 26:70 Finality
- § 26:71 Management of business
- § 26:72 Variations on general framework
- § 26:73 Judicial proceedings brought by other creditors
- § 26:74 Summary and recommendations

## **XI. INSOLVENCY**

- § 26:75 In general
- § 26:76 Scope and commercial context
- § 26:77 Terminology
- § 26:78 Security rights in insolvency proceedings—Inclusion of encumbered assets in insolvency estate
- § 26:79 —Limitations on enforcement of security rights
- § 26:80 Participation of secured creditors in insolvency proceedings
- § 26:81 Relative priority of security rights
- § 26:82 Summary and recommendations

## **XII. CONFLICT OF LAWS AND TERRITORIAL APPLICATION**

- § 26:83 In General

- § 26:84 Purpose of conflict-of-laws rules
- § 26:85 Scope of conflict-of-laws rules
- § 26:86 Conflict-of-laws rules for creation, publicity, and priority
- § 26:87 Effect of subsequent change in connecting factor
- § 26:88 Conflict-of-laws rules for enforcement issues
- § 26:89 Summary and recommendations

## CHAPTER 27. RUSSIAN FEDERATION

- § 27:1 Introduction
- § 27:2 Basic approaches to security—In general
- § 27:3 —Instruments traditionally designed for security
- § 27:4 —Use of title for security purposes
- § 27:5 —Uniform comprehensive security
- § 27:6 Creation of a security right—Basic elements of security right—In general
  - § 27:7 — —Obligations to be secured
  - § 27:8 — —Assets to be encumbered
  - § 27:9 — —Proceeds
  - § 27:10 —Security agreement—Definition, functions, and minimal content
    - § 27:11 — —Effects
    - § 27:12 —Proprietary requirements—Ownership or right of disposition
  - § 27:13 Publicity—Introduction—In general
  - § 27:14 — —Requirement of public registration of security interest in movable assets
  - § 27:15 —Public registration for non-possessory security in movables—Title transactions and security transactions
  - § 27:16 — —Consensual and non-consensual security rights
  - § 27:17 — —Single encumbrance registry and multiple encumbrance registries
    - § 27:18 — —Notice and document filing
    - § 27:19 — —Timing of registration
    - § 27:20 — —Required content of registered notice
    - § 27:21 — —Need for protection of remote transferees of encumbered assets
    - § 27:22 — —Linkages to registries for immovables
    - § 27:23 — —Linkages between general encumbrance registry and asset-specific title registries
    - § 27:24 — —Private registration or publication
    - § 27:25 — —Registration and enforcement
    - § 27:26 —Debtor dispossession and equivalent control mechanisms—Debtor dispossession as substitute for registration
      - § 27:27 — —Quality of possession
      - § 27:28 — —Symbolic possession
      - § 27:29 — —Third-party notice or control
      - § 27:30 —Third-party effects of unpublicized security rights
      - § 27:31 —Third-party effects of publicized security rights

TABLE OF CONTENTS

§ 27:32 —Summary and recommendations  
§ 27:33 Filing system—Introduction—In general  
§ 27:34 —Key design issues—Notice filing and document filing  
§ 27:35 — —Authority to file and signature  
§ 27:36 — —Grantor or asset-based index  
§ 27:37 — —Filing process  
§ 27:38 — —Duration of effectiveness of filed notice  
§ 27:39 —Other basic elements—Public access to database  
§ 27:40 — —Extent of detail in statutory text  
§ 27:41 — —Fees  
§ 27:42 — —Public or private operator  
§ 27:43 — —Effect of registry error and allocation of risk of loss  
§ 27:44 — —Proof of content of database  
§ 27:45 — —Alternative systems  
§ 27:46 — —Special issues in federal state  
§ 27:47 — —Non-discrimination  
§ 27:48 —Summary and recommendations  
§ 27:49 Priority of a security right—In general—Concept of  
priority and its importance  
§ 27:50 Priority of security right—In general—Priority rules  
§ 27:51 — —Types of competing claimants  
§ 27:52 — —Priority in future advances and after-acquired  
property  
§ 27:53 — —Priority in proceeds  
§ 27:54 — —Voluntary alteration of priority; subordination  
agreements  
§ 27:55 — —Relevance of priority before enforcement  
§ 27:56 —Summary and recommendations  
§ 27:57 Pre-default rights and obligations of parties to security  
agreement—In general  
§ 27:58 —Party autonomy—The principle  
§ 27:59 — —Limitations  
§ 27:60 —Default rules—Possessory security  
§ 27:61 — —Non-possessory security  
§ 27:62 Enforcement of security right—Introduction  
§ 27:63 —Key objectives  
§ 27:64 —Default—Meaning of default  
§ 27:65 — —Cure of default  
§ 27:66 — —Notice of default  
§ 27:67 — —Judicial or administrative review  
§ 27:68 —Options following default—In general  
§ 27:69 — —Judicial action to enforce security right  
§ 27:70 — —Freedom of parties to agree to the enforcement  
procedure  
§ 27:71 — —Acceptance of encumbered assets in satisfaction of  
secured obligation  
§ 27:72 — —Redemption of encumbered assets  
§ 27:73 — —Authorized disposition by grantor  
§ 27:74 — —Removing encumbered assets from grantor’s control

- § 27:75 — —Sale or other disposition of encumbered assets
- § 27:76 — —Allocation of proceeds of disposition
- § 27:77 — —Finality
- § 27:78 — —Variations on general framework
- § 27:79 —Judicial proceedings brought by other creditors
- § 27:80 The impact of insolvency on security right—Introduction—  
Scope and commercial context
- § 27:81 — —Terminology
- § 27:82 —Key objectives
- § 27:83 —In general
- § 27:84 —Inclusion of encumbered assets in insolvency estate
- § 27:85 —Limitations on enforcement of security rights
- § 27:86 —Participation of secured creditors in insolvency  
proceedings
- § 27:87 —Validity of security rights and avoidance actions
- § 27:88 —Relative priority of security rights
- § 27:89 —Post-commencement financing
- § 27:90 —Reorganization proceedings
- § 27:91 —Expedited reorganization proceedings
- § 27:92 Conflict of laws—In general—Purpose of conflict-of-laws  
rules
- § 27:93 —Conflict-of-laws rules for creation, publicity, and priority
- § 27:94 —Conflict-of-laws rules for enforcement issues

## **CHAPTER 28. *[Reserved]***

## **CHAPTER 29. SOUTH KOREA**

- § 29:1 Introduction
- § 29:2 Objectives of secured transactions regime
- § 29:3 Basic approaches to security—In general
- § 29:4 —Instruments traditionally designed for security under  
the Civil Code—In general
- § 29:5 — —Security rights in tangible movable assets
- § 29:6 — —Use of title for security
- § 29:7 Creation—In general
- § 29:8 —Basic elements of security right—Obligations to be  
secured
- § 29:9 — —Assets to be encumbered
- § 29:10 — —Proceeds
- § 29:11 —Security agreement—Definition
- § 29:12 — —Minimum contents
- § 29:13 — —Formalities
- § 29:14 — —Effects
- § 29:15 —Additional requirements—In general
- § 29:16 — —Right of disposition of grantor
- § 29:17 — —Transfer of possession, publicity, and control
- § 29:18 Publicity—In general

TABLE OF CONTENTS

§ 29:19 —Public registration for non-possessory security in  
movable assets

§ 29:20 —Debtor dispossession and equivalent control  
mechanisms—Debtor dispossession as substitute for  
registration

§ 29:21 — —Quality of possession

§ 29:22 — —Symbolic possession

§ 29:23 — —Third-party notice

§ 29:24 — —Registration

§ 29:25 —Third-party effects of security rights

§ 29:26 Filing system

§ 29:27 Priority—Concept of priority and its importance

§ 29:28 —Priority rules—In general

§ 29:29 — —First-to-file priority rule

§ 29:30 — —Priority based on possession or control

§ 29:31 — —Alternative priority rules

§ 29:32 —Types of competing claims—Other secured creditors

§ 29:33 — —Unsecured creditors

§ 29:34 — —Sellers of encumbered assets

§ 29:35 — —Buyers of encumbered assets

§ 29:36 — —Judgment or execution creditors

§ 29:37 — —Statutory preferential creditors

§ 29:38 — —Creditors adding value or storing encumbered assets

§ 29:39 — —Insolvency administrators

§ 29:40 —Priority in future advances and after-acquired  
property—Future advances

§ 29:41 — —After-acquired property

§ 29:42 —Priority in proceeds

§ 29:43 —Voluntary alteration of priority: subordination  
agreements

§ 29:44 —Relevance of priority prior to enforcement

§ 29:45 Pre-default rights and obligations of parties—In general

§ 29:46 —Party autonomy—The principle

§ 29:47 — —Limitations

§ 29:48 —Mandatory rules—In general

§ 29:49 — —Mandatory rules in the Civil Code

§ 29:50 — —Mandatory rules in the SMPC Act

§ 29:51 —Non-mandatory rules—In general

§ 29:52 — —Non-mandatory rules in the Civil Code

§ 29:53 — —Non-mandatory rules in the SMPC Act

§ 29:54 — —Common rules

§ 29:55 Default and enforcement—In general

§ 29:56 —Key objectives

§ 29:57 —Default—Meaning of default

§ 29:58 — —Cure of default

§ 29:59 — —Notice of default

§ 29:60 — —Judicial or administrative review

§ 29:61 —Options following default—Security right under the Civil  
Code

- § 29:62 — —Security right under the Commercial Code
- § 29:63 — —Fiduciary transfer of title for security purposes
- § 29:64 — —Security right under the SMPC Act
- § 29:65 — —Enforcement methods—Judicial action to enforce security right
- § 29:66 — —Extrajudicial disposition of an encumbered asset
- § 29:67 — —Acquisition of encumbered asset in satisfaction of secured obligation
- § 29:68 — —Freedom of parties to agree to enforcement procedure
- § 29:69 — —Redemption of encumbered assets
- § 29:70 — —Authorized disposition by grantor
- § 29:71 — —Removing encumbered assets from grantor’s control
- § 29:72 — —Allocation of proceeds of disposition
- § 29:73 — —Finality
- § 29:74 — —Variations on general framework
- § 29:75 — —Judicial proceedings brought by other creditors
- § 29:76 — —Insolvency—In general
- § 29:77 — —Security rights in insolvency proceedings—In general
- § 29:78 — —Inclusion of encumbered assets in insolvency estate
- § 29:79 — —Limitations on enforcement of security rights
- § 29:80 — —Participation of secured creditors in insolvency proceedings
- § 29:81 — —Validity of security rights and avoidance actions
- § 29:82 — —Relative priority of security rights
- § 29:83 — —Post-commencement financing
- § 29:84 — —Reorganization proceedings
- § 29:85 — —Expedited reorganization proceedings
- § 29:86 — —Conflict of laws—In general—Purpose of conflict-of-laws rules
- § 29:87 — —Scope of conflict-of-laws rules
- § 29:88 — —Conflict-of-laws rules for creation, publicity, and priority
- § 29:89 — —Effect of subsequent change in connecting factor
- § 29:90 — —Conflict-of-laws rules for enforcement issues

## **CHAPTER 30. SPAIN**

### **I. INTRODUCTION**

- § 30:1 In general
- § 30:2 Common features of security rights

### **II. CREATION OF SECURITY RIGHTS, PERSONAL GUARANTEES, AND SECURITY OVER IMMOVABLE ASSETS**

- § 30:3 Personal guarantees
- § 30:4 Security over immovable assets: Real estate mortgages

### **III. SECURITY OVER MOVABLE ASSETS**

- § 30:5 Pledge

## TABLE OF CONTENTS

- § 30:6 Pledge over receivables
- § 30:7 Chattel mortgages and non-possessory pledges
- § 30:8 Registry system

## IV. ENFORCEMENT

- § 30:9 Default
- § 30:10 Enforcement proceedings
- § 30:11 Special procedures: Royal Decree Law Number 5 of 2005

## V. INSOLVENCY

- § 30:12 In general
- § 30:13 Insolvency test
- § 30:14 Continuation of business
- § 30:15 Claw back period
- § 30:16 Enforcement of security during insolvency
- § 30:17 Ranking of claims
- § 30:18 Protection of restructuring plans

## VI. CONFLICTS-OF-LAW RULES AND TERRITORIAL APPLICATION

- § 30:19 In general
- § 30:20 Choice of law
- § 30:21 Rome I and EU Regulation 1215/2012
- § 30:22 Conflict-of-law rules in event of insolvency

## CHAPTER 31. SWEDEN

- § 31:1 Introduction—Sources of Swedish law
- § 31:2 —Categories of property—In general
- § 31:3 — —Real property
- § 31:4 — —Movable property
- § 31:5 Basic approaches to security—In general
- § 31:6 —Categories of security interests
- § 31:7 Creation and perfection of security—In general
- § 31:8 —Security over real property
- § 31:9 —Security interests in movable property—In general
- § 31:10 — —Chattels
- § 31:11 — —Partial rights: Joint ownership of chattel and shares in limited-liability companies and partnerships
- § 31:12 — —Trade marks and patents
- § 31:13 — —Negotiable instruments: Promissory notes, shares in limited-liability companies, and other bearer instruments
- § 31:14 — —Non-negotiable instruments
- § 31:15 — —Building on another person's property
- § 31:16 — —Miscellaneous—Business mortgage
- § 31:17 — —Use of title for security purposes—Retention of title
- § 31:18 Publicity and filing systems—Publicity
- § 31:19 —Filing systems

- § 31:20 Priority—Preferential Rights Act—In general
- § 31:21 — —Public access
- § 31:22 —Validity of security interests in relation to new owner
- § 31:23 —Subordination agreements
- § 31:24 Pre-default rights and obligations—In general
- § 31:25 —Duty of care by secured creditor
- § 31:26 —General rights of secured creditor
- § 31:27 Default and enforcement—In general
- § 31:28 —Enforcement of security outside insolvency proceedings
- § 31:29 Insolvency—In general
- § 31:30 —Bankruptcy proceedings
- § 31:31 —Business restructuring
- § 31:32 —Property included in bankruptcy estate
- § 31:33 —Avoidance of security interests in bankruptcy proceedings
- § 31:34 —Creditor’s right to terminate agreements in insolvency
- § 31:35 —Enforcement of security in insolvency proceedings
- § 31:36 Conflict of laws and territorial application—Applicable law in respect of creation of security interests
- § 31:37 —Recognition and enforcement of foreign judgments and arbitral awards

## **CHAPTER 32. SWITZERLAND**

### **I. INTRODUCTION**

- § 32:1 Overview

### **II. APPROACHES TO SECURITY**

- § 32:2 In general
- § 32:3 Principle of causality
- § 32:4 Security undertakings
- § 32:5 Principle of specialty
- § 32:6 Accessory or non-accessory nature of certain security rights
- § 32:7 Over-collateralization
- § 32:8 Restrictions on upstream and downstream security

### **III. CREATION OF SECURITY RIGHTS**

- § 32:9 In general
- § 32:10 Pledge of movable assets
- § 32:11 Pledge of rights and claims
- § 32:12 Pledge of intermediated securities
- § 32:13 Security transfer of title to movable assets
- § 32:14 Security assignment of receivables or rights
- § 32:15 Security rights over real estate

### **IV. PUBLICITY AND FILING SYSTEMS**

- § 32:16 Publicity

## TABLE OF CONTENTS

- § 32:17 Filing systems
- § 32:18 Priority
- § 32:19 Pre-default rights and obligations of parties

### **V. ENFORCEMENT**

- § 32:20 Commencement
- § 32:21 Enforcement proceedings

### **VI. INSOLVENCY**

- § 32:22 In general
- § 32:23 Commencement of insolvency proceedings
- § 32:24 Regular bankruptcy proceedings
- § 32:25 Challenge rights in insolvency proceedings
- § 32:26 Creditors' rights
- § 32:27 Special composition proceedings
- § 32:28 International insolvency law

### **VII. CONFLICT OF LAWS AND TERRITORIAL APPLICATION**

- § 32:29 In general
- § 32:30 Conflict-of-laws rules for creation and publicity
- § 32:31 Recognition and enforcement of foreign judgments and arbitral awards

### **VIII. CONCLUSION**

- § 32:32 Concluding remarks

## **CHAPTER 33. THAILAND**

### **I. INTRODUCTION**

- § 33:1 Organization and scope
- § 33:2 Terminology
- § 33:3 Financing Practices
- § 33:4 Key Objectives of Secured Transactions Regime

### **II. BASIC APPROACHES TO SECURITY**

- § 33:5 In general

### **III. INSTRUMENTS TRADITIONALLY DESIGNED FOR SECURITY**

- § 33:6 Security rights in tangible movable property
- § 33:7 Security rights in intangible movable property

### **IV. USE OF TITLE FOR SECURITY PURPOSES**

- § 33:8 Transfer of title to creditor

- § 33:9 Retention of title by creditor
- § 33:10 Summary and recommendations

## **V. CREATION OF SECURITY INTERESTS**

- § 33:11 In general
- § 33:12 Obligations to be secured
- § 33:13 Assets to Be Encumbered
- § 33:14 Additional requirements

## **VI. PUBLICITY**

- § 33:15 In general
- § 33:16 Debtor dispossession and equivalent control mechanisms
- § 33:17 Third-Party effects of unpublicized security rights
- § 33:18 Summary and recommendations to protect encumbered property

## **VII. FILING SYSTEM**

- § 33:19 In general
- § 33:20 Authority to file and signature
- § 33:21 Grantor or asset-based index
- § 33:22 Other basic elements
- § 33:23 Summary and recommendations for the secured transactions database

## **VIII. PRIORITY OF SECURITY RIGHTS**

- § 33:24 In general
- § 33:25 Priority rules
- § 33:26 Types of competing claimants
- § 33:27 Priority in future advances and after-acquired property
- § 33:28 Voluntary alteration of priority; subordination agreements
- § 33:29 Relevance of priority prior to enforcement
- § 33:30 Summary and recommendations for priority rules

## **IX. PRE-DEFAULT RIGHTS AND OBLIGATIONS OF PARTIES**

- § 33:31 Principle of party autonomy
- § 33:32 Meaning of default rules
- § 33:33 Types of default rules

## **X. DEFAULT AND ENFORCEMENT**

- § 33:34 In general
- § 33:35 Notice of default
- § 33:36 Judicial or administrative review
- § 33:37 Judicial proceeding brought by other creditor
- § 33:38 Summary and recommendations

TABLE OF CONTENTS

**XI. INSOLVENCY**

- § 33:39 In general
- § 33:40 Security rights in insolvency proceedings
- § 33:41 Summary and recommendations

**XII. CONFLICT OF LAWS AND TERRITORIAL APPLICATION**

- § 33:42 In general
- § 33:43 Conflict of laws rules for creation, publicity, and priority
- § 33:44 Summary and recommendations for conflicts of laws

**CHAPTER 33A. TURKEY**

**I. OVERVIEW OF LEGAL FRAMEWORK FOR SECURED TRANSACTIONS**

- § 33A:1 Organization and scope
- § 33A:2 Terminology
- § 33A:3 Examples of financing practices in Turkey

**II. KEY OBJECTIVES OF SECURED TRANSACTIONS REGIME**

- § 33A:4 In general
- § 33A:5 Utilization of full value of assets to obtain credit
- § 33A:6 Obtain security in simple and efficient manner
- § 33A:7 Validate non-possessory rights
- § 33A:8 Establish clear and predictable priority rules
- § 33A:9 Facilitate enforcement of creditor's rights in predictable and timely fashion
- § 33A:10 Provide equal treatment of domestic and non-domestic creditors
- § 33A:11 Recognize party autonomy
- § 33A:12 Encourage responsible behavior by enhancing transparency

**III. BASIC APPROACHES TO SECURITY**

- § 33A:13 In general
- § 33A:14 Instruments traditionally designed for security
- § 33A:15 Use of title for security purposes
- § 33A:16 Uniform comprehensive security

**IV. CREATION OF SECURITY RIGHTS**

- § 33A:17 In general
- § 33A:18 Basic elements of security right
- § 33A:19 Formalities and perfection of security rights

**V. PUBLICITY**

- § 33A:20 In general

- § 33A:21 Public registration for security in immovables
- § 33A:22 Public registration for non-possessory security in movables
- § 33A:23 Debtor disposition and equivalent control mechanisms
- § 33A:24 Third-party effects of unpublicized security rights
- § 33A:25 Third-party effects of publicized security rights
- § 33A:26 Filing system

## **VI. PRIORITY**

- § 33A:27 Concept of priority and importance
- § 33A:28 Priority rules
- § 33A:29 Pre-default rights and obligations of parties

## **VII. DEFAULT AND ENFORCEMENT**

- § 33A:30 In general
- § 33A:31 What constitutes default
- § 33A:32 Options after default: Enforcement
- § 33A:33 Freedom of parties to agree to enforcement procedure
- § 33A:34 Acceptance of encumbered assets in satisfaction of secured obligation
- § 33A:35 Payment order, execution order, and redemption of encumbered assets
- § 33A:36 Sale of encumbered assets and allocation of proceeds

## **VIII. INSOLVENCY**

- § 33A:37 In general
- § 33A:38 Key objectives
- § 33A:39 Bankruptcy proceedings
- § 33A:40 Security rights in bankruptcy proceedings
- § 33A:41 Limitations on enforcement of security rights
- § 33A:42 Participation of secured creditors
- § 33A:43 Validity of security rights and avoidance actions
- § 33A:44 Relative priority of security rights
- § 33A:45 Security rights in reorganization proceedings

## **IX. CONFLICT OF LAWS AND TERRITORIAL APPLICATION**

- § 33A:46 In general
- § 33A:47 Conflict-of-laws rules for security rights
- § 33A:48 Recognition and enforcement of foreign judgments and arbitral awards

## **X. CONCLUSION**

- § 33A:49 Relation of Turkish law on secured transactions to UNCITRAL Guide

## **CHAPTER 34. UKRAINE**

- § 34:1 Introduction—Organization and scope of chapter

## TABLE OF CONTENTS

- § 34:2 —Terminology
- § 34:3 —Financing practices—Inventory and equipment purchase-money financing
- § 34:4 — —Receivables and inventory revolving loan financing
- § 34:5 — —Term loan financing
- § 34:6 — —Factoring and securitization
- § 34:7 Key objectives of secured transaction regime—Utilize full value inherent in assets to obtain credit
- § 34:8 —Obtain security rights in simple and efficient manner
- § 34:9 —Validate non-possessory security rights
- § 34:10 —Establish clear and predictable priority rules
- § 34:11 —Facilitate predictable and timely enforcement of creditor’s rights
- § 34:12 —Provide for equal treatment of domestic and non-domestic creditors
- § 34:13 —Recognize party autonomy
- § 34:14 —Encourage responsible behavior by enhancing transparency
- § 34:15 —Facilitation of efficient enforcement of creditors’ rights
- § 34:16 —Balancing of interests of affected persons
- § 34:17 —Integrated and functional approach
- § 34:18 Basic approaches to security—In general—Instruments traditionally designed for security
- § 34:19 Creation of security interests—Basic elements of a security right—In general
- § 34:20 — —Obligation to be secured
- § 34:21 — —Assets to be encumbered
- § 34:22 — —Proceeds
- § 34:23 — —Tangible assets commingled in a mass
- § 34:24 — —Tangible assets commingled in a product
- § 34:25 — —Creation or continuation of a security right in an attachment
- § 34:26 — —Creation or continuation of a security right in a mass or product
- § 34:27 — —Effectiveness of a bulk assignment of receivables and assignment of a future receivable, a part thereof, or an undivided interest in a receivable
- § 34:28 — —Effectiveness of an assignment of receivables made despite a non-assignment clause
- § 34:29 — —Creation of a security right in a personal or property right securing a receivable, negotiable instrument, or other intangible asset
- § 34:30 —Basic elements of security right—Security agreement
- § 34:31 — —Additional requirements
- § 34:32 Publicity—Public registration for non-possessory security in movables—Title transactions and security transactions
- § 34:33 — —Consensual and non-consensual security rights
- § 34:34 — —Single registry and multiple registry
- § 34:35 — —Notice and document filing
- § 34:36 — —Timing of registration

- § 34:37 — —Required content of notice
- § 34:38 — —Private registration or publication
- § 34:39 — —Registration and enforcement
- § 34:40 —Debtor dispossession and equivalent control mechanisms—Debtor dispossession as substitute for registration
- § 34:41 — —Quality of possession
- § 34:42 — —Third-party notice or control
- § 34:43 —Third-party effect of unpublicized security rights
- § 34:44 —Third-party effect of publicized security rights
- § 34:45 Filing system—Design issues—Notice filing
- § 34:46 — —Authority for filing and signature
- § 34:47 — —Duration of effect of filed notice
- § 34:48 —Other elements—Public access to database
- § 34:49 — —Statutory text
- § 34:50 —Effect of registry error and allocation of risk of loss
- § 34:51 Priority—Priority rules—First-to-file rule
- § 34:52 — —Priority based on possession or control
- § 34:53 —Types of competing claimants—Other consensual secured creditors
- § 34:54 — —Unsecured creditor
- § 34:55 — —Sellers of encumbered assets
- § 34:56 — —Buyers of encumbered assets
- § 34:57 — —Judgment or execution creditors
- § 34:58 — —Statutory (preferential) creditors
- § 34:59 — —Creditors adding value to or storing encumbered assets
- § 34:60 — —Insolvency representatives
- § 34:61 —Priority in future advances and after-acquired property—Future advances
- § 34:62 — —After-acquired property
- § 34:63 —Priority in proceeds
- § 34:64 —Subordination agreements
- § 34:65 —Priority prior to enforcement
- § 34:66 Pre-default rights and obligations of the parties—Party autonomy
- § 34:67 —Default rules
- § 34:68 Default and enforcement—Default—Meaning of “default”
- § 34:69 — —Cure of default
- § 34:70 — —Notice of default
- § 34:71 — —Judicial or administrative review
- § 34:72 —Options following default—In general
- § 34:73 — —Judicial action to enforce security right
- § 34:74 — —Freedom of parties to agree to enforcement procedure
- § 34:75 — —Post-default rights of the secured creditor
- § 34:76 — —Post-default rights of the grantor
- § 34:77 — —Acceptance of encumbered assets in satisfaction of secured obligation
- § 34:78 — —Redemption of encumbered assets

## TABLE OF CONTENTS

- § 34:79 — —Authorized disposition by grantor
- § 34:80 — —Removing encumbered assets from grantor's control
- § 34:81 — —Sale or other disposition of encumbered assets
- § 34:82 — —Allocation of proceeds of disposition
- § 34:83 — —Finality
- § 34:84 —Judicial proceedings brought by other creditors
- § 34:85 Insolvency—Scope and commercial context
- § 34:86 —Terminology
- § 34:87 —Key objectives
- § 34:88 —Security rights in insolvency proceedings—In general
- § 34:89 — —Inclusion of encumbered assets in insolvency estate
- § 34:90 — —Limitations on enforcement of security rights
- § 34:91 — —Participation of secured creditors in insolvency proceedings
- § 34:92 — —Validity of security rights and avoidance actions
- § 34:93 — —Relative priority of security rights
- § 34:94 — —Security rights in reorganization proceedings
- § 34:95 Conflicts of law and territorial application—Scope of conflict of laws rules
- § 34:96 —Rules for creation, publicity, and priority

## CHAPTER 35. UNITED STATES

- § 35:1 Introduction
- § 35:2 Key objectives of the transactions regime
- § 35:3 Basic approaches to security interests; in general
- § 35:4 Creation of security interests
- § 35:5 —Value has been given
- § 35:6 —Rights in collateral
- § 35:7 Perfection of security interests—Publicity
- § 35:8 — —General rule for perfection: Filing of UCC-1 financing statement
- § 35:9 — —Exceptions: other methods of perfection
- § 35:10 Publicity; perfection of security interests—Aircraft and intellectual property
- § 35:11 —Agricultural products and collateral covered by certificates of title; motor vehicles and boats
- § 35:12 —Deposit accounts and investment property
- § 35:13 —Automatic perfection
- § 35:14 Filing system for UCC financing statements
- § 35:15 Requirements of UCC-1 financing statement and indexing
- § 35:16 —Extracted collateral and fixtures
- § 35:17 Priority of security interests
- § 35:18 —Article 9 secured creditors versus lien creditors, statutory lienholders, and the Internal Revenue Service
- § 35:19 —UCC Article 9 v. Buyers and lessees of collateral
- § 35:20 —Competing secured creditors in the same collateral; UCC Article 9 v. UCC Article 9
- § 35:21 Default and enforcement—In general

- § 35:22 —Repossession; secured party gains dominion over collateral
- § 35:23 —Foreclosure and disposition of collateral
- § 35:24 Insolvency; bankruptcy
- § 35:25 Conflict of laws and territorial application

## **CHAPTER 36. VENEZUELA**

### **I. GENERALLY**

- § 36:1 Introduction
- § 36:2 Scope of Application and General Provisions
- § 36:3 Party Autonomy
- § 36:4 General Standards of Conduct

### **II. CREATION OF SECURITY RIGHT**

- § 36:5 In General
- § 36:6 Ordinary Pledge
- § 36:7 Particular Pledges
- § 36:8 Retention Rights
- § 36:9 Obligations That May Be Secured
- § 36:10 Assets That May Be Encumbered
- § 36:11 Description of Encumbered Assets

### **III. COMMINGLED TANGIBLE ASSETS**

- § 36:12 In General
- § 36:13 Right to Proceeds and Commingled Funds

### **IV. OTHER RIGHTS IN SECURITY INTERESTS**

- § 36:14 Extinguishment of Security Right
- § 36:15 Creation of Security Right over Receivable
- § 36:16 Rights Securing Encumbered Receivable or Similar Credit
- § 36:17 Right to Payment of Funds Credited to Bank Account
- § 36:18 Tangible Assets Covered by Negotiable Documents
- § 36:19 Security Interest over Intellectual Property
- § 36:20 Primary Methods for Achieving Third-Party Effectiveness
- § 36:21 Proceeds
- § 36:22 Insolvency
- § 36:23 Foreclosure
- § 36:24 Registration
- § 36:25 Conclusions

## **PART III. UNIDROIT**

### **CHAPTER 37. UNIDROIT CONVENTION AND AIRCRAFT PROTOCOL**

- § 37:1 Introduction

## TABLE OF CONTENTS

- § 37:2 The aircraft industry in the ERA of globalization and world insecurity
- § 37:3 Benefits of the UNIDROIT Convention/aircraft protocol's asset-based financing principles
- § 37:4 Decision to “opt-out” of certain provisions—In general
- § 37:5 —International registry system
- § 37:6 —International interest
- § 37:7 —Remedies on insolvency
- § 37:8 —“Self-help” remedies
- § 37:9 Conclusion

## APPENDICES

- Appendix A. UNCITRAL Draft Legislative Guide on Secured Transactions
- Appendix B. UNCITRAL Report of Secretary General
- Appendix C. Report on UNCITRAL-CFA International Colloquium on Secured Transactions
- Appendix D. United Nations Convention on the Assignment of Receivables in International Trade
- Appendix E. United Nations Commission on International Trade Law—Report of Working Group VI (Security Interests) on the Work of Its First Session (New York, 20–24 May 2002)
- Appendix F. UNCITRAL Draft Legislative Guide on Secured Transactions (May 2004)