ANNEX – REVIEW OF COLLATERAL REGISTRY’S OPERATIONS

Issue #1: Initial registrations - creating and uploading relevant information

Sub-issue (a): an initial registration currently involves a three-step process.

- Currently, direct operators are using a three-step process to create and upload an initial registration notice into the registry system:
  - **Step 1**: The parties provide a direct operator with 3 signed original copies of their agreement and a signed registration notice of the pledge (aviz de inregistrare).¹
  - The direct operator manually transcribes the data from the aviz de inregistrare presented by the parties and submits it to the registry database.
  - **Step 2**: The registry system automatically generates a duplicate aviz de inregistrare, which the operator prints for the parties.²
  - Debtor and creditor sign a printed copy of the aviz de inregistrare in the presence of the operator, even though this step is not required by the regulations.³
  - **Step 3**: Once the duplicate registration notice is signed, the direct operator submits the transcribed electronic record to the registry system.
  - The information submitted by the operator becomes the entry of record in the database, and the registry system automatically generates a verification certificate.⁴

- Under the current procedure for entering information into the registry system, the three-step process is understandable. Step 2 (above) ensures that the notary has transcribed the information presented by the parties into the system correctly, and once the duplicate aviz de inregistrare is signed by the parties, the notary is relieved of responsibility for errors.

- The problem is that the manual transcription involved in this three-step process is cumbersome, it creates a margin for error and is relatively inefficient.

- Importantly, it does not comply with the method provided for in the Law of Pledge⁵ nor the new provisions of the amended Civil Code.⁶

¹ The aviz de inregistrare is a standard form, which the parties have downloaded and completed in advance.
² This is a legacy of the old version of Article 39 of the Pledge Law (pre-2014), which (erroneously) required 2 documents to be produced, the first registration application (demers) – signed by both parties, and the second registration application (cerere) – generated by the operator and signed solely by the debtor. This defective provision was abolished by the 2014 amendments to the Pledge Law, which requires a single registration notice.
³ Functionally, by signing the duplicate aviz de inregistrare generated by the system, the parties are confirming that the information transcribed by the direct operator into the system is accurate.
⁴ If the direct operator is a notary they record the transaction in their notarial journal (a journal of transactions), enter the information in their notarial registry (a register of archived documents), and archive one of the original documents. The verification certificate is generated in accordance with Article 39 para. (7) of the Pledge Law and which is substantively comparable to Article 477² para. (7) of the amended Civil Code.
⁵ Article 39 para. (3) of the Law of Pledge: Pledge registration notice can be submitted to the operator on paper base, bearing the holograph signature of the parties, or can be sent using electronic means of communication, bearing the digital signature of the parties applied pursuant to the regulations.
⁶ Civil Code will come into force in March. Article 477², para. (3) is comparable to Article 39 para. (3) (above).
Suggested solution:

- Technological procedures that are readily available would render steps 1 & 2 (above) redundant. We suggest that the following two processes be implemented.
  - In conjunction with a small group of stakeholders, the registry staff should design a standard *aviz de inregistrare* template in fillable form;\(^7\)
  - The parties would obtain the template either in electronic format from the web, or as a printed hard-copy from a direct operator;
  - Thereafter the parties should complete the form and submit it to a direct operator either as printed hard-copy or in electronic format;
  - Where a hard-copy is presented for upload, the operator should scan and upload the form. Where an electronic document is presented, the operator should submit it directly into the registry system.
  - Regardless of the format of the document presented (hardcopy or electronic format) the operator should submit it as presented by the parties directly into the registration system, without manual modification.
  - The registry system should be reconfigured to extract the data contained in the scanned form or the electronic fillable form and automatically create a registry record from the various fields in that form.
  - A printable “preview” window should render the extracted data in the form of a registry record, for approval by the parties, prior to final submission.
  - The alternative processes described in this suggested solution would follow the procedure described in the *Pledge Law* and would make the creditor, not the direct operator, responsible for the completeness and accuracy of all information that they provide in the prescribed fields on the scanned document or screen-fillable form.
  - The registry system should automatically assign a registration number to the new registry record and that number should be included on the verification certificate generated by the system.
  - The verification certificate should replicate the registration record, and the information in the registration record should match the information in the *aviz de inregistrarare*.

Agreed actions:

- The Registry’s management agreed to implement the suggested solutions. To do so they need to initiate a procurement process and implement the necessary steps to:
  - create the fillable pdf template;

\(^7\) An example of a fillable form is an Adobe fillable Portable Document Format (a “fillable pdf”). A “fillable” pdf form is one that can be completed on a computer by simply typing information into the form’s displayed fields. The pledge registry database would be configured to extract data from the prescribed fields on this form and generate a searchable database record of the information relating to the secured transaction.
- reconfigure the registry database so that it will extract the information from a scanned document or the fillable form’s fields, as the case may be;
  - automatically create a valid registry record, including time and date of submission, from the extracted data and assign a registration number to the new record; and
  - generate a verification certificate for the parties.
    - The pdf template, registration record and verification certificate would be designed in collaboration with a small but representative group of stakeholders.
    - The Registry’s management anticipates completion of this component by May.

Sub-issue (b): Secured creditor’s agent reportedly appears on registry as secured party.
  - This appears to be an anomalous situation. The creditor’s agent – especially where the agent is an attorney - should not appear as a secured creditor in the system.

*Suggested solution:*
  - This could be resolved when designing the standard template for the *aviz de înregistrare* and through reconfiguration of the registry system to collect and allocate the agent’s information to a separate table, to ensure that a registrant’s agents are recorded as such, and not as secured parties.

*Agreed actions:*
  - The Registry’s management agreed to implement this suggested solution in the process of designing the standard template and reconfiguring the registry system.

**Issue #2: Amendments to the original, and subsequent, registry records**

Sub-issue (a): Registration of amendments is a three-step process.
  - Registry personnel confirmed during our meetings in December 2018 that amendments currently go through the same three-step registration process as the initial registration (discussed above - Issue #1).

*Suggested solution:*
  - We suggested the procedure for submitting amendments to a registry record should be the same as the procedure outlined above for an initial registration.
  - We also suggested that the standard template for amendments to the record should be a different design from that of the form for the creation of the initial record on the system.

*Agreed actions:*
  - The Registry’s management agreed to implement this suggested solution in the process of reconfiguring the registry system. The anticipated timeline for completion would be the end of May.
Sub-issue (b): Amendments are treated as a new record

- The regulations provide that each amendment shall constitute a new registration. Article 70 of the Regulations 210/2016 provides that “changing the information on the Register of Real Guarantees is procedurally treated as a new security record”.
- Therefore, based on Article 70 the registry system is currently configured to generate a new registration number for each amendment relating to a registry record.
- This causes a significant problem.
  - Where there are claimants competing over the same asset, the priority position of each creditor is based on the date of the original registration.
  - If the registration number of either of the competing claimants keeps changing, the chain dating back to the original registration is lost, or at best, is not apparent on the system.
  - As a result, the creditor may lose its initial priority and a subsequent creditor may validly claim that he/she relied on public information which failed to reveal the original registration.
- More importantly, Article 70 of the regulations is not in accordance with the current provisions of the Civil Code relating to this matter.

Suggested solution:

- Article 70 of the Regulations 210/2016 was taken from a provision of the Pledge Law that pre-dated the legislative amendments of 2014. The pre-2014 provision in relation to the creation of a new record for each amendment of a registry record was revoked.
- The relevant provisions of the Pledge Law in relation to amending a registration record are Articles 38, 41, 42 and 43. In the Civil Code the relevant provision is Article 478 and by reference internal to that Article, Articles 477² and Article 492.
- Article 70 of the regulations should be revoked when the regulations are redrafted, and regulatory provisions that conform to Articles 38 and 41 to 43 (Pledge Law), or Articles 478, 477² and 492 (Civil Code) should be issued.⁸

Agreed actions:

- The Registry’s management agreed to redraft the regulations so that they conform with the provisions of the Articles mentioned immediately above.⁹

Sub-issue (c): The contents of a standard amendment form.

- The fields in a standard amendment template need to cover a variety of circumstances. For example:

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⁸ The applicable law in this regard will depend upon the date when the Civil Code amendments take effect.
⁹ Article 478 para. (3) provides that: An initial registration shall be retained and specified in the pledge register in a manner which would allow to keep track of changes or corrections in the pledge information.
• A change in the secured party’s name, most commonly when the secured party’s interest is assigned;
• A change in the debtor’s name, which may occur for the same debtor, or where a debtor sells their business;
• A change in the address of either party;
• A change in the category of collateral secured;
• A change in specific items of collateral.

Currently, in addition to the issue identified above regarding the creation of a new registry record for each amendment (sub-issue (b)), other significant issues arise when a secured party attempts to amend a registered record. For example:
• The process for amending the description of collateral is tedious and time consuming, especially where the collateral consists of a fluctuating pool of collateral such as stock-in-trade;
• The margin for error in the current amendment process is large;
• Stakeholders report that it is difficult to make partial amendments where the collateral consists of several fixed assets, and the parties wish to terminate the registration for one of those assets.  

Suggested solution:
• The standard amendment template should accommodate this variety of circumstances, through a series of radio buttons, check boxes and/or drop-down menus. For example, the form should include, at a minimum:
  • A field for the original registration number, and if appropriate, the registration numbers of previous amendments;
  • A field for the name of the debtor;
  • The reasons for change, perhaps in a text box or drop-down menu;
  • A field for the name of the new secured creditor, if relevant;
  • A section where the parties can add or subtract a classification of collateral; and
  • A field for renewing a registration.

• It is important to create a form that serves as the template for a schedule of assets, to be added to the main registration. This is especially important in situations where the collateral is a fluctuating pool of stock-in-trade/inventory. Rather than amend the entire registry record, a secured creditor should be able to upload a new schedule – in effect changing the contents of an attached schedule. The new schedule would replace the registered schedule, while all other information on the registered record would be held constant.

10 One example that was cited by several stakeholders, in different meetings, was a situation where a debtor had pledged 5 vehicles. The debtor paid off the obligation on one of those vehicles but could not amend the registered record to terminate the secured party’s registered interest in that one vehicle. The inability to terminate the interest on that vehicle prevented the debtor from selling it. Termination in this instance could only be accomplished on an “all or nothing” basis, even though all parties agreed to a release for the vehicle.
A special form should be designed for motor vehicles, with cells for “year”, “make”, “model” and “vehicle identification number”, at a minimum.

In the section where parties can add or subtract categories of collateral, or substitutions, it is important to distinguish between an addition or subtraction of collateral and configure the system accordingly.

An addition of a category of collateral or an increase in the maximum amount of the secured obligation should not be cumulated with the original collateral or expressed maximum. The increase should only take effect from the date of the amendment, otherwise it could prejudice the interests of parties whose interests arise in the interim.

**Agreed actions:**
- The Registry’s management agreed to implement the suggested solutions outlined above, in conjunction with stakeholders.
- The anticipated timeline for completion would be the end of May.

**Issue #3: The contents of a standard cancellation form**

- Article 43 of the *Pledge Law* and Article 480 of the *Civil Code* provide for cancellation of a registered interest.
- In both instances these provisions stipulate that cancellation should be by registration of a “cancellation form”, thereby implying that the form should be different from an amendment form.

**Suggested solution:**
- Assuming Parliament intended a cancellation form to be different from an amendment form, the Registry’s management should design a separate form for cancellation of a registered record, in conjunction with local stakeholders.
- The form should be designed to permit partial or complete cancellation.

**Agreed actions:**
- This issue was not raised in our meetings in December 2018. It should be discussed by the Registry’s management and if they agree with the suggested solution, then they should design a separate cancellation form that allows for partial and whole cancellation and reconfigure the registry system accordingly.
**Issue #4: Search criteria**

- Article 45 of the Pledge Law and Article 4811 of the amended Civil Code are substantially the same. They provide that any person may consult the register and obtain an excerpt therefrom.
- The provisions of these two laws do not appear to define the search parameters. The parameters are included in Article 36 of the Regulations 210/2016.
- Article 36 of the Regulations provides that a party may search the registry using the identification of the property, the identification of the debtor, or the registration number of the record.
- However, the wording of Article 36 is quite open-ended, and it is possible to search the registry using several criteria.
- The problem is that the more criteria permitted by the legislation, the more exact all entries must be.
- Otherwise there is room for a party to claim that they conducted a search by one of those criteria and failed to find the asset because of an error in one of the vague criteria mentioned in Article 36, even if the rest of the registered record contains accurate and searchable information.
- For example, if the information is correct except for the address of the debtor, and a third party searches the registry using that incorrect address, would they find the entry that is otherwise valid? If not, could they challenge the validity of the registration?
- For this reason, most jurisdictions tend to limit the search criteria to a few relevant parameters.

*Suggested solution:*

- We suggest that search criteria identified in Article 36 be clearly defined and limited to a minimum number, to avoid the possibility of unnecessary litigation.
- Those criteria should be:
  - The state identification number (IDNP) or the identification number (IDNO) of the debtor;
  - The vehicle identification number of a motor vehicle, where applicable; or
  - The registration number of the initial registration.

*Agreed actions:*

- The Registry’s management agreed to implement the suggested solution relating to search criteria, in consultation with stakeholders.
- The anticipated timeline for completion would be the end of May.

**Issue #5: Search results**

- The registry system only generates a “snapshot” or “excerpt” of the registration record on file when an inquiry is made by anyone.
That snapshot only contains (i) a general or specific description of the secured assets; and (ii) the status of the security (Regulation article 43).

The snapshot is generated for all inquiries, regardless of whether a search reveals an initial entry or an amended or cancelled entry (Regulation article 43). Critical information including the amount of the secured obligation does not seem to be included, whereas less-relevant information (e.g. pledge type, which cannot be other than non-possessor) appears on the excerpt.

Consequently, in the case where there have been amendments, the chain of registration and amendments is not reproduced for an inquirer.

Registry staff prefer not to reproduce the entire chain in the extracts they provide to inquirers because each amendment is recorded on a separate page and there could be hundreds of amendments.

It is however unlikely that there will be many amendments to one registration.

**Suggested solution:**

- We suggest that the registry system be configured to distinguish between two types of fields in a registered record:
  - The first set of fields would be the information that is constant – debtor name, identifier and address, secured party name, identifier and address, maximum amount secured, etc.
  - The second set of fields would be information that changes frequently.
  - One example where there might be a significant number of amendments would be inventory financing, where there is a fluctuating pool of assets. In that instance, the search results should generate the first component – the stable information – and the second component, which would be the schedule of inventory on record at the time of the inquiry.
  - The search results should also trace the chain of amendments made after the initial registration, with a brief (one or two lines at most) description of the purpose and consequences of the amendments.

**Agreed actions:**

- The Registry’s management agreed to implement the suggested solutions outlined above, in conjunction with stakeholders.
- The anticipated timeline for completion would be the end of May.

**Issue #6: Notice of Pledge Execution (Enforcement Notice)**

- Article 67 para. (1) of the Pledge Law and Article 497 of the revised Civil Code provide that upon default a pledgee shall exercise their pledge right by sending a notice of pledge execution (*aviz de executare*) to several parties including the debtor, registrants
of record, and any other creditors who have notified the pledgee of their rights over the pledged assets.\(^{11}\)

- Upon actual or deemed receipt of the notification of default and intended enforcement, the pledgee shall register the *aviz de executare* in the collateral registry.\(^{12}\)

**Sub-issue (a): The three-step process**

- Under the *Pledge Law*, registration of an *aviz de executare* goes through the same three-step process as registration of an *aviz de inregistrare*. A creditor files the *aviz de executare* through the agency of a direct operator, using the three-step process outlined above.\(^{13}\)
- The debtor and creditor sign the duplicate *aviz de executare* and resubmit it to a direct operator, who submits the record into the database.

**Suggested solution:**

- The direct operator should submit the *aviz de executare* directly into the database, as required by the *Pledge Law*, using the technological method described above under Issue #1. That is, creation of an *aviz de executare* as a fillable template, which the creditor would then complete and submit to a direct operator, either in hardcopy or as an electronic document. Where the document is submitted in hard-copy, the operator would scan the form and upload it directly. Where it is submitted directly in electronic format, it would be uploaded directly into the registry.
- The registry system would extract the data directly from the form and generate a registered *aviz de executare*.
- Consider configuring the registry system to automatically send notification of the registration of an *aviz de executare* electronically to creditors of record, via email.

**Agreed action:**

- The Registry’s management agreed to implement the suggested solution outlined above. This action would be included in the timeline projected for completion of the first issue – that is, anticipated completion of this component by the end of May.

**Sub-issue (b): the contents of an enforcement notice**

- End-users report that the information in relation to collateral in a registered enforcement notice is insufficient to allow bailiffs and other interested parties to take

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\(^{11}\) Article 497(1). Consider delaying the notice to other parties (other pledgees in particular) until the period mentioned in Article 497(11) (below). Most creditors have provisions in their agreements that list seizure by another creditor as a defaulting event. An untimely or premature notice of seizure – especially when the debtor has not actually defaulted – could result in the debtor being wrongfully put out of business by creditors other than the pledgee who issued the notice. Consider delaying notification to others until at least the period mentioned in Article 497(11) in relation to notification of the debtor has passed.

\(^{12}\) Article 497(11)

\(^{13}\) The parties submit the *aviz de executare* to a direct operator; the operator transcribes the contents of the document onto a form in the registry system; the system generates a duplicate *aviz de executare* with the transcribed contents; the parties sign the duplicate form and then the operator files the *aviz de executare*. 
meaningful action. In the case of bailiffs, the information on the registry does not identify the collateral in sufficient detail to allow them to seize the assets.

- Article 497, para. (11) of the Civil Code provides for the contents of the enforcement notice.

**Suggested solution:**

- Referring to sub-paragraph (b) of Article 497, para. 11, the registry staff should ensure that the fillable template for the aviz de executare – and hence the registration record of the aviz de executare - contains a description of the assets in sufficient detail:
  - to allow the bailiff to identify and seize the appropriate collateral; and
  - to allow other creditors to clearly ascertain whether the enforcement affects their interests.\(^{14}\)

**Agreed action:**

- The Registry’s management agreed to implement the suggested solution outlined above and, as with sub-issue (a), anticipated completion of this action would be in May.

**Issue #7: uploading the pledge agreement into the system**

- Registry staff reported that a scanned copy of the physical pledge agreement should be submitted to the registry because it might be needed as evidence before court.
- This requirement contradicts Article 39 para (4) of the Pledge Law, and Article 477\(^2\) para.(4) of the amended Civil Code.\(^{15}\)
- In this regard, the Registry has taken far more a responsibility than it needs to.
- Unlike a traditional registry system, in a notice-filing system the onus is on the secured creditor to ensure that they have a valid security agreement and that the information is entered in the appropriate fields.

**Suggested solution:** Consider amending the regulations so that they conform to the primary legislation.

**Agreed action:**

- The Registry’s management agreed to implement the suggested solution outlined above. This action should be implemented immediately.

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\(^{14}\) In particular, sub-paragraph (b) states that the notice of execution shall include “b) a description of the pledged assets that form the object of seizure;”.

\(^{15}\) Article 39 para. (4) of the Pledge Law provides: The operator shall accept the data exactly as they are contained in the pledge registration notice. The operator shall not require copy of the pledge agreement and shall not verify the content of the notice but is obliged to verify the identity of the parties and the powers of representation. Article 477\(^2\) para. (4) of the amended Civil Code is substantively the same.
**Issue #8: multiple registries for recording interests in the same assets**

**Sub-issue (a): One pledge registry**

- Registry staff report that the pledge registry system can capture information that is registered on the motor vehicle registry. The form of capture is through a data pull model. They also report that the Agricultural Registry is paper based, and from a practical perspective it does not exist. It has fallen into disuse.
- The pledge registry cannot capture information that is entered on the IP registry or the register of company securities.
- There was some discussion about linking the information on the various registries, but registry staff were concerned that linkage might replicate errors across the spectrum of registries, or conversely, lead to a discrepancy in information about the same asset.

*Suggested solution:*

- The registry staff favor the pledge registry being the sole registry for pledges, regardless of asset type, and that vision would conform with the provisions of the *Pledge Law*.
- Pursuant to this vision, the Motor Vehicle Registry would be a registry of ownership of vehicles, and pledges of vehicles would be registered on the Pledge Registry.

*Agreed action:*

- The WBG mission team has no objection to this vision and would encourage the Registry’s management to implement the vision at the earliest moment.

**Sub-issue (b): discrepancy between information on multiple registries.**

- Occasionally, there is a discrepancy between information on the different systems.
  - For example, the name of the owner of a motor vehicle, as recorded on the motor vehicle registry, might not match the name of the pledgor on the pledge registry.

*Suggested solution:*

- The pledge registry could be configured to identify mismatches through appropriate coding of the system, and automatically notify creditors about the mismatches. The burden of fixing mismatches should be on the creditor, not the registry staff.

*Agreed action:*

- The Registry’s management agreed with this policy decision and undertook to reconfigure their system accordingly.
- It is anticipated that this process will be completed by the end of May.
**Issue #9: Subsequent pledges**

- Article 56 of the *Pledge Law* provides that a creditor cannot ban subsequent pledges except in circumstances that are specifically stipulated by law.\(^{16}\) Article 490, paras. (1) and (2) of the amended *Civil Code* are to the same effect.
- To date, no law has expressly allowed the prohibition of subsequent pledges.
- The current registration form does not reflect the provisions of the law. It contains a box to check in situations where a creditor elects the option of prohibiting subsequent pledges. This appears to be a legacy of the pre-2014 legislation.
- There is a tendency for creditors to tick the box in all instances, thereby prohibiting subsequent pledges, in contravention of the law.

**Suggested solution:**

- The registry forms – and therefore, the regulations that stipulate the requisite information for these forms – should be reconfigured to hide the checkbox that indicates a prohibition on subsequent pledges.
- If and when a law is enacted that permits prohibition of subsequent pledges, the checkbox can be revealed, and additional checkboxes should be created that reference the specific laws that contain exceptions.
- Creditors would then be required to select the specific legislation that permits them to prohibit the subsequent pledges in relation to a specific debtor.

**Agreed action:**

- The Registry’s management agreed with this solution and undertook to reconfigure their system. It is anticipated that this process will be completed immediately.

**Issue #10: Prohibition on search - the presumption of a general security interest**

- Article 481\(^1\) of the amended *Civil Code* provides that debtors may prevent searchers from discovering encumbered assets when making an inquiry.\(^{17}\) Where this prohibition applies, the law creates a presumption that all assets of the debtor are encumbered.
- This “deemed general security interest” discourages perspective creditors from lending to that debtor.

**Suggested solution:**

- The debtor should have the right to request that the registry staff provide information to a prospective creditor, upon request in writing from the debtor.
- It would be up to the debtor to submit a signed authorization form permitting the release of information to specified parties. Apparently, this is provided by para. (3) of the above Article 481\(^1\) and if so the Registry shall ensure this is duly enforced.

**Agreed action:**

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\(^{16}\) *Pledge of a pledged asset (subsequent pledge) is allowed provided this is not prohibited by the law.*

\(^{17}\) This provision reintroduces Article 46 of the original *Pledge Law*. Article 46 which was repealed in 2014.
- The Registry’s management agreed with this solution and undertook to create an authorization form that, upon request of the debtor, would authorize registry staff to release information to a specific party, identified by the debtor.
- There is no need to engage in this activity immediately, because Article 481\(^1\), para. (3) has not been enacted yet. However, it was agreed that creation of the relevant form and procedure should be undertaken soon, so that the registry staff are ready when the Government proclaims the new amendments to the Civil Code.