

## New Mexican Unified Secured Transactions Registry

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Recent improvements in the Mexican secured transaction law will be very important for U.S. and Canadian banks and other companies taking security interests in Mexican personal property. In August 2009, the Mexican Congress approved amendments to the Commercial Code providing for a Unified Registry of Movable Property Collateral (RUG). On September 23, 2010, President Calderon issued an executive decree implementing the amendments, which is now effective. The changes bring Mexico more in line with the U.S. UCC Article 9 or Canadian PPSA systems, which will provide comfort and more security to banks and other companies taking security interests in Mexico.

The amendments created a centralized registry for all types of security interests granted in favor of any creditor that carries out commercial activities (*comerciante*) in personal property. The registry is supervised by the Ministry of the Economy, unlike prior filings, which had to be made in the local commercial registry in the domicile of the debtor. All RUG filings must be electronic and made solely through the RUG website, which simplifies both the filing, and with time, the searching for security interests.

The stated purpose of the RUG is twofold: to create a mechanism that allows public disclosure of security interests in personal property and to establish priority rules for secured creditors. The "first in time" rule applies to all electronic filings. Filings through RUG have immediate effect and do not require approval of any authority. Filings may only be made by financial institutions, public officials, notary publics, or brokers (*corredores publicos*). There is a detailed registration process required in order to be permitted to file on-line, including registering for electronic signatures. If the party taking the security interest is ineligible to file directly on-line, it must do so through an intermediary -- such as a notary public. Precautionary filings will be permitted prior to closing a loan, to ensure that another creditor does not preempt the later, definitive filing of the first lender.

In addition to the filing function for those registering security interests, RUG has a broad search capability. Under the law, any "interested party" may request a certificate as to what security interests are on file with respect to a particular creditor.

Unlike the state and province-based filing systems in the U.S. and Canada, RUG will become the only registry for most personal property security interests because Mexico has a Federal Commercial Code. However, similar to the implementation of the new UCC Article 9 in the U.S., there will be a transition time before creditors may search only the RUG and be certain there are no prior security interests over certain assets. Until the old filings are no longer valid, creditors will need to search both RUG and the old commercial registries. In addition, certain movable assets such as airplanes or boats have a specific registry, where the filing of liens is still mandatory. A RUG filing for these assets is an optional additional filing, but does not replace the mandatory one in the specific registry. Note also that RUG does not apply to real property.

The formal requirements for creating a secured interest must still be observed (usually a notarization requirement). Undoubtedly, the creation of a unified, searchable registry will benefit foreign companies with security needs doing business in Mexico.

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For more detailed information on RUG, how to file or search the database, the security interests subject to RUG, or any other questions on secured lending in Mexico that you may have, please contact our Mexico team.