

# THE IMPACT OF SECURED TRANSACTIONS REFORMS IN MEXICO AND COLOMBIA

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## I. INTRODUCTION

Modern secured transactions systems have proven successful as a means to increase access to finance. The World Bank Group conducted a study in 2013 to compare access to finance pre and post the introduction of collateral registries using firm-level surveys for 73 countries.<sup>1</sup> The study showed that the impact of introducing collateral registries is economically significant as access to loans increased by eight percent.<sup>2</sup> Likewise, the interest rates paid on loans decreased by three percent and the maturity of bank loans increased by six months.<sup>3</sup> Moreover, the study evidenced that the impact of the introduction of movable registries is larger among smaller firms, who also report a reduction in a perception-based measure of finance obstacles.<sup>4</sup> Therefore, a growing number of countries worldwide are in the process of implementing secured transactions reform.<sup>5</sup> Mexico and Colombia have recently implemented secured transactions reforms, including the creation of an exclusively electronic registry of security

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<sup>1</sup> Inessa Love et al., *Collateral Registries for Movable Assets: Does Their Introduction Spur Firms' Access to Bank Finance?* (University of Hawaii at Manoa, Working Paper 14-22, Sept. 2014), [http://www.economics.hawaii.edu/research/working\\_papers/WP\\_14-22.pdf](http://www.economics.hawaii.edu/research/working_papers/WP_14-22.pdf).

<sup>2</sup> *Id.* at 15.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 4.

<sup>5</sup> *Considering the Need and Shape of Future Reform*, SECURED TRANSACTIONS LAW REFORM PROJECT, <http://securedtransactionslawreformproject.org/reform-in-other-jurisdictions/> (last visited Nov. 22, 2015) (listing countries that have implemented secured transactions reforms).

interests. This article examines the impact of an efficient secured transactions framework in the credit market. Particularly, this article looks at the correlation between legal reforms in Mexico and the number of secured transactions in the country. Likewise, this article shows the impact of the Colombian reforms in 2014 that established Colombia's own registry of security interests.

## II. EVOLUTION OF THE MEXICAN SECURED TRANSACTIONS FRAMEWORK

In Mexico, the secured transactions reform process has been rather slow, incorporating a series of amendments to commercial laws in the past 20 years. Discussions on the importance of a secured transactions reform in Mexico started as a result of the North American Free Trade Agreement negotiations.<sup>6</sup> Yet, it was not until 2000 and 2003 that the Mexican Commercial Code<sup>7</sup> and the General Law of Negotiable Instruments and Credit Transactions (*Ley General de Títulos y Operaciones de Crédito* ("LGTOC"))<sup>8</sup> introduced new secured lending instruments, including the non-possessory pledge (*prenda sin transmisión de posesión*) and the guaranty trust (*fideicomiso de garantía*). Furthermore, the reforms enacted a judicial enforcement procedure for these two instruments and allowed the parties to agree on extra-judicial enforcement mechanisms upon the debtor's default.<sup>9</sup> However, the extra-judicial procedure had some disadvantages.<sup>10</sup> For instance, there could be no disputes between the parties regarding the amount or the status of the debt, and the process could cease at any moment if the debtor raised a challenge.<sup>11</sup>

The non-possessory pledge and the guaranty trust were modern mechanisms that allowed for the creation of floating liens on equipment, inventory, receivables, and other revolving property.<sup>12</sup> However, some of the rules that applied to such instruments were restrictive.<sup>13</sup> For instance, there was a prohibition on creating a subsequent encumbrance on assets subject to a non-

<sup>6</sup> Boris Kozolchik, *Modernization of Commercial Law: International Uniformity and Economic Development*, 34 *BROOK. J. INT'L L.* 709, 745 (2009).

<sup>7</sup> Código de Comercio [CCoM], Diario Oficial de la Federación [DOF] 13-12-1889, últimas reformas DOF 13-06-2014 (Mex.), formato PDF, [http://www.diputados.gob.mx/LeyesBiblio/pdf/3\\_241215.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/3_241215.pdf) [hereinafter Mexican Commercial Code].

<sup>8</sup> Ley General de Títulos y Operaciones de Crédito [LGTOC] [General Law for Securities and Credit Operations], Diario Oficial de la Federación [DOF] 27-08-1932, últimas reformas DOF 13-06-2014 (Mex.), formato PDF, [http://www.diputados.gob.mx/LeyesBiblio/pdf/145\\_130614.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/145_130614.pdf) [hereinafter LGTOC].

<sup>9</sup> See Mexican Commercial Code, *supra* note 7, arts. 1414 bis.-bis. 20.

<sup>10</sup> John E. Rogers et al., *Recent Improvements in Mexican Secured Transactions Laws*, STRASBURGER, <http://www.strasburger.com/wp-content/uploads/2014/11/Recent-Changes-in-Mexican-Secured-Transactions-Law.pdf> (last visited Nov. 24, 2015).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

possessory pledge, limiting a debtor's potential to obtain credit.<sup>14</sup> Likewise, the description of the assets in the agreements needed to be specific. Such a requirement complicated encumbering assets like inventory.

Besides the non-possessory pledge and the guaranty trust, there were other instruments with the functional effect of securing obligations with movable property governed by different laws. For instance, the Civil Codes of each Mexican State govern pledges and special privileges;<sup>15</sup> the LGTOC governs financial leasing,<sup>16</sup> factoring,<sup>17</sup> and special types of non-possessory pledges to acquire floating or fixed assets for the production of businesses such as farms (*créditos refaccionario y de habilitación o avío*).<sup>18</sup>

Different rules applied to these lending devices, including third party priority rules. At that time, some instruments needed to be registered in the local office of the Public Registry of Commerce for publicity purposes.<sup>19</sup> Others, such as the financial leasing, could be registered in the Public Registry of Commerce, but that registration would not be effective against third parties.<sup>20</sup> Moreover, the Public Registry of Commerce had operative issues that made registrations difficult and obscured the transparency of security interests filed therein.<sup>21</sup> There were 260 offices operating entirely on paper,<sup>22</sup> and registrations were subject to the registrars' revision.<sup>23</sup> According to the Mexican Commercial Code, there are four phases of the registration process in the Public Registry of Commerce: (1) reception of the form and documentation to file; (2) analysis and verification of previous registrations related; (3) determination to authorize a registration; and (4) issuance of a registration certificate.<sup>24</sup> As a consequence, registration and searching processes were; (a) slow, taking 17 days (national average) to register and ten days to search,<sup>25</sup> (b) costly, subject to different fees according to each State's law that charged a percentage of the loan—up to ten percent and two percent of the national average;<sup>26</sup> and (c) unreliable because registrations were subject to the registrars' analysis and determination, searches were requested in each local office, and some offices provided inaccurate information, according to

<sup>14</sup> *Id.*

<sup>15</sup> *E.g.*, arts. 2856–92 of Mexico City's Civil Code govern the civil pledge.

<sup>16</sup> *See* LGTOC, *supra* note 8, art. 408.

<sup>17</sup> *Id.* art. 419.

<sup>18</sup> *Id.* arts. 321, 323.

<sup>19</sup> Harry C. Sigman, *Security Over Movable in Mexico: Mexico's New Registro Único de Garantías Mobiliarias ("RUG")*, UNIVERSIDAD NACIONAL AUTÓNOMA DE MÉXICO, INSTITUTO DE INVESTIGACIONES JURÍDICAS (2013), <http://biblio.juridicas.unam.mx/libros/8/3581/30.pdf>.

<sup>20</sup> *Id.*

<sup>21</sup> Information provided by the Ministry of the Economy, on file with the National Law Center for Inter-American Free Trade [hereinafter Ministry of the Economy].

<sup>22</sup> *Id.*

<sup>23</sup> *See* Sigman, *supra* note 19, at 389.

<sup>24</sup> *See* Mexican Commercial Code, *supra* note 7, art 21 bis.

<sup>25</sup> *See* Ministry of the Economy, *supra* note 21.

<sup>26</sup> *Id.*

creditors' reports.<sup>27</sup> To overcome some of these issues, creditors would avoid registering in certain offices, creating mechanisms to register in others that were cheaper or faster, which incurred additional costs (e.g. in creating a debtor's domicile in another State and transporting from one State's registry office to the other).<sup>28</sup>

In 2009, the Mexican Congress (*Congreso de la Unión*) reformed the Mexican Commercial Code again, creating the Mexican Single Registry of Security Interests (*Registro Único de Garantías Mobiliarias*) (RUG).<sup>29</sup> Conceptually, RUG was a section of the Public Registry of Commerce, but it actually existed in a different system exclusively in charge of the Ministry of the Economy without intervention from the local offices of the Public Registry of Commerce. The RUG began to operate in October 2010, taking over the Public Registry of Commerce's registration of security interests.<sup>30</sup> The goal of the RUG was to provide certainty and transparency of security interests. It was to be an entirely electronic notice-filing system with no paper registrations.<sup>31</sup> Likewise, the reform transferred the registration responsibility to the creditors, eliminating the role of registrars in revising registration information.<sup>32</sup> The RUG thus eliminated the issues associated with registering and searching for security interests.<sup>33</sup>

Nonetheless, the 2009 reform did not cure all of the deficiencies of the former framework. The Regulations to the RUG (RUG Regulations)<sup>34</sup> included a list of legal devices subject to registration that left out some devices like the possessory pledge and factoring.<sup>35</sup> Indeed, the 2009 reform did not amend the substantive laws on each lending device.<sup>36</sup> For that reason, the RUG Regulations could not truly govern any legal instruments that secured transactions with movable property. For example, although RUG subjected financial leasing to registration, the LGTOC provided that registration was not mandatory.<sup>37</sup> Thus, it

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Código de Comercio [CCom] [Commercial Code], Diario Oficial de la Federación [DOF] 13-12-1889, última reformas DOF 27-08-2009 (Mex.), formato HTML, [http://dof.gob.mx/nota\\_detalle.php?codigo=5107094&fecha=27/08/2009](http://dof.gob.mx/nota_detalle.php?codigo=5107094&fecha=27/08/2009) [hereinafter Amended Mexican Commercial Code].

<sup>30</sup> See Sigman, *supra* note 19, at 389. The Public Registry of Commerce continued to operate regularly in all other matters.

<sup>31</sup> See Amended Mexican Commercial Code, *supra* note 29, art. 32 bis 3.

<sup>32</sup> *Id.* art. 32 bis 4.

<sup>33</sup> RUG is accessible through a government webpage. *Registro Único de Garantías Mobiliarias*, SECRETARÍA DE ECONOMÍA, [www.rug.gob.mx](http://www.rug.gob.mx) (last visited Feb. 1, 2016).

<sup>34</sup> Reglamento del Registro Público de Comercio, Diario Oficial de la Federación [DOF] 24-10-2003, últimas reformas DOF 30-12-2014 (Mex.), formato PDF, [http://www.economia.gob.mx/files/marco\\_normativo/R14.pdf](http://www.economia.gob.mx/files/marco_normativo/R14.pdf) [hereinafter RUG Regulations].

<sup>35</sup> *Id.* art. 32.

<sup>36</sup> See most importantly LGOTC, *supra* note 8.

<sup>37</sup> *Id.* art. 32; Sigman, *supra* note 19, at 389.

could be interpreted that unregistered financial leases remained fully effective against third parties.<sup>38</sup> Secret liens therefore continued to exist in Mexico.

It took four more years to continue the modernization of the secured transactions framework. In January and June of 2014, the Mexican Congress enacted further reforms that addressed significant substantial matters. The January reform modified ten different laws, including the Mexican Commercial Code, the LGTOC, the Mexican Bankruptcy Law (*Ley de Concursos Mercantiles*), and the Organic Law of the Judicial Branch of the Federation (*Ley Orgánica del Poder Judicial de la Federación*).<sup>39</sup> The changes significantly improved the commercial judicial and extra-judicial enforcement procedures, strengthening creditors' rights. For instance, the LGTOC now allows the parties to agree on mechanisms pursuant to which the creditor can collect cash up to the amount of the secured obligation in the event default without the need for a judicial decision.<sup>40</sup> Creditors are entitled to take the cash and determine whether it covers the amount owed. They are also entitled to request additional measures to cover any shortfall.<sup>41</sup>

Similarly, the reform modified an interim relief in commercial proceedings that allows a creditor to request an order for provisional sequestration of assets (*retención de bienes*).<sup>42</sup> Upon the reform, the Mexican Commercial Code established that the judge shall issue this interim relief "*de plano*" (immediately and without possibility of the debtor's opposition). The debtor may pay the amount due, or an amount as security, in the three days after the interim relief is issued by the court, in which case, the interim relief will be terminated.<sup>43</sup> Likewise, the reform modified provisions governing the organization of the judiciary branch, establishing special federal district courts for commercial matters.<sup>44</sup> These modifications should have an impact in the judicial enforcement procedures by making them quicker and more efficient.<sup>45</sup>

The June reform modified dispositions of security interest registration in the RUG.<sup>46</sup> Pursuant to this reform, the Mexican Commercial Code specifies that all security mechanisms available under Mexican law must be registered in the RUG to be effective against third parties, and it adds a list that includes financial leasing, factoring, and guaranty trust, all of which were not previously required to be registered to be effective against third parties.<sup>47</sup> Furthermore, the list included an omnibus clause that encompasses "any other acts, encumbrances or liens similar to the afore listed and which rely on movable or personal property to

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<sup>38</sup> See RUG Regulations, *supra* note 34 at art. 32; LGTOC, *supra* note 8, art. 408.

<sup>39</sup> *Id.*

<sup>40</sup> See LGTOC, *supra* note 8, art. 336 bis.

<sup>41</sup> *Id.*

<sup>42</sup> See Mexican Commercial Code, *supra* note 7, art. 1168.

<sup>43</sup> *Id.* art. 1179.

<sup>44</sup> Rogers, *supra* note 10.

<sup>45</sup> *Id.*

<sup>46</sup> Mexican Commercial Code, *supra* note 7.

<sup>47</sup> *Id.* art. 32 bis 1.

secure loans in which the creditor is not in possession of the collateral<sup>48</sup> to treat all encumbrances on movable property as security interests regardless of their designation.

Congruently, the LGTOC was amended to refer to the RUG instead of the Public Registry of Commerce when applicable. The new language introduced pursuant to the June reform solved previous concerns regarding the devices subject to registration and their registration's effects.<sup>49</sup> It is now clear that priority and effectiveness against third parties is achieved by filing in the RUG.<sup>50</sup>

The June reform also addressed other important issues in the old legal framework. It eliminated the prohibition of granting subsequent encumbrances over assets subject to a non-possessory pledge.<sup>51</sup> It allowed generic descriptions of the encumbered assets where, before, a generic description was only allowed if a non-possessory pledge was granted over all of the debtor's assets.<sup>52</sup> Moreover, the provision regulating purchase money security interest was modified to clarify that a purchase money security interest can encumber the same type of assets already subject to a previously created security interest.<sup>53</sup>

The finance and legal communities had positive views towards the reform. Several opinions considered that it strengthened and modernized the financial laws and institutions and increased legal certainty in financial transactions from the perspectives of both creditors and debtors.<sup>54</sup>

Hence, Mexico now has quite a strong and successful secured transactions legal system, according to RUG statistics.<sup>55</sup> Just one year after RUG started operations in October 2010, it presented remarkable results. There were four times more initial registrations of security interests than in the previous years in the Public Registry of Commerce (over 13,000 in the period of 2009-2010 compared to 45,000 in the period of 2010-2011).<sup>56</sup> By November 2011, there were more than 69,000 registrations, including initial registrations, modifications, and cancellations of security interests.<sup>57</sup> Those registrations represented savings of \$2.68 billion USD<sup>58</sup> because registrations in the RUG are free of charge.<sup>59</sup>

Moreover, the Ministry of the Economy estimates that 96% of the collateral secured loans of less than one million U.S. dollars, which suggests that

<sup>48</sup> Mexican Commercial Code, *supra* note 7, art. 32 bis 1.

<sup>49</sup> Rogers, *supra* note 10.

<sup>50</sup> *Id.*

<sup>51</sup> See LGTOC, *supra* note 8, art X.

<sup>52</sup> See *id.* art. 354.

<sup>53</sup> See *id.* art. 358.

<sup>54</sup> See, e.g., *id.*; Gaspar Gutierrez-Centeno et al., *Financial Reform*, LEXOLOGY, <http://www.lexology.com/library/detail.aspx?g=6ac5b4f3-b420-4ad2-bfc5-db1c600baade> (last visited Nov. 12, 2015).

<sup>55</sup> See the figures below. The Mexican Ministry of the Economy provided the statistics related to the RUG.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

those loans were granted to micro-, small-, and medium-sized enterprises (MSMEs).<sup>60</sup> MSMEs represent 99.82% of the businesses in Mexico.<sup>61</sup> In any case, the RUG numbers show that institutions are taking collateral from the MSMEs to secure an increasing number of loans.<sup>62</sup>

Additionally, the majority of collateral after the first year of the RUG's operations were agricultural products, representing 41% of the assets, followed by machinery and equipment, representing 23%.<sup>63</sup> These statistics show that farmers, an important sector for Mexico's economy, were receiving significant loans. In 2012, the Ministry of the Economy launched a new application in the RUG that allowed creditors to make multiple registrations by uploading a single file.<sup>64</sup> The Ministry developed this application for requests from banks and other institutions that finance the acquisition of motor vehicles. From September to December 2012, there were seven times more registrations filed in the RUG compared with registrations performed in the Public Registry of Commerce under the previous legal framework.<sup>65</sup> By November 2014, 44% of the filings were of motor vehicles, 26% corresponded to agricultural products, and 17%<sup>66</sup> to machinery and equipment.<sup>67</sup>

The graph below<sup>68</sup> shows a dramatic increase of security interests filed in 2014: there have been ten times more filings in the RUG than the total number of registrations of security interests filed in the Public Registry of Commerce.<sup>69</sup> The increase occurred after the enactment of the secured transactions reforms in January and June of 2014. While there is no evidence suggesting that the increase of registration resulted directly from the reforms, the numbers show that there is an increasingly positive response of the creditors at using the RUG to file their transactions. After four years of operation, by November 2014, there were more

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<sup>60</sup> Mexican Ministry of the Economy, *supra* note 55. It should be noted that this number is not 100% accurate because filling this field is not mandatory in the RUG, thus not all registrations indicate an amount.

<sup>61</sup> Banco de México, *Reporte Sobre las Condiciones de Competencia en el Otorgamiento de Crédito a las Pequeñas y Medianas Empresas (PYME)*, 04-2015, (Mex.), formato PDF, <http://www.banxico.org.mx/publicaciones-y-discursos/publicaciones/informes-periodicos/reportes-sobre-las-condiciones-de-competencia-en-lo/7BB0D52028-C9F4-9410-0DA9-AA76BD9474AB%7D.pdf>.

<sup>62</sup> However, taking \$1 Million USD as a representative amount of credit allocated to MSMEs might be a high amount because financial institutions usually grant significantly smaller amounts to such businesses. The Central Bank of Mexico (*Banco de México*) considers that businesses with debts of less than 1 Million UDIS (nearly \$323,000 USD) are in the category of MSMEs. *See id.* For statistical purposes, the RUG could take into account a more suitable figure.

<sup>63</sup> *See* Mexican Ministry of the Economy, *supra* note 55.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

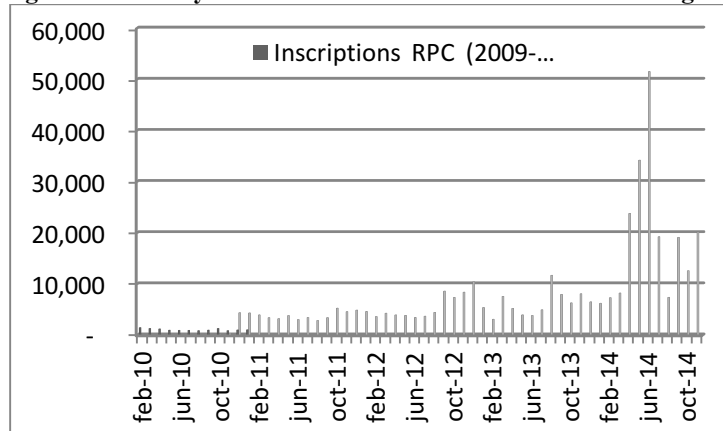
<sup>67</sup> *Id.*

<sup>68</sup> Mexican Ministry of the Economy, *supra* note 55.

<sup>69</sup> *Id.*

than 400,000 registrations in the RUG, of which 97% secured amounts up to one million U.S. dollars. This creditor behavior may suggest their perception of a stronger framework governing the RUG and security rights.<sup>70</sup>

**Figure 1: Security Interests Filed in RUG and the Public Registry**



Another interesting feature is that 97% of the registrations are made by creditors directly, while three percent are made by intermediaries.<sup>71</sup> Before the RUG started operations, creditors usually hired an intermediary, such as a notary public or a lawyer, to file their security interests. The laws governing the RUG allow for the registrations by an intermediary who might be a notary public, a commercial notary public, an officer of the Ministry of the Economy, another authority for registrations of non-consensual liens, such as an enforcement notice by a judge, or another entity authorized by the Ministry of the Economy.<sup>72</sup> In this regard, the RUG requires the use of an electronic certificate to file an initial registration, amendment, cancellation, or any other filings available. The RUG has accepted two types of electronic certificates, one named “*e.firma*”, which is a certificate issued by the financial authority (*Servicio de Administración Tributaria*) (SAT). The FIEL *e.firma* is issued to all Mexican citizens and corporations with a representative in Mexico for entering taxes and other fiscal purposes.<sup>73</sup> The Ministry of the Economy issues the other electronic certificate for the notaries’ and authorities’ exclusive use. Although notaries and authorities are the smallest percentage of registrations, this figure is significant because it represents, in part, registrations requested by foreign creditors that do not have an *e.firma*.<sup>74</sup> Nonetheless, the Ministry of the Economy has announced that it will no

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> See Mexican Commercial Code, *supra* note 7, art. 32 bis 4.

<sup>73</sup> Servicio de Administración Tributaria, *Firma Electrónica*, formato HTML, [http://www.sat.gob.mx/informacion\\_fiscal/tramites/fiel/Paginas/default.aspx](http://www.sat.gob.mx/informacion_fiscal/tramites/fiel/Paginas/default.aspx).

<sup>74</sup> See Mexican Ministry of the Economy, *supra* note 55.



longer use certificates other than those issued by the SAT.<sup>75</sup> In this regard, the Ministry has to specify if the persons acting as intermediaries, such as notaries and other authorities like judges, will use their personal *e.firma*. The Ministry of the Economy has entered into collaboration agreements with several Mexican states' judiciary branches in order to implement the registration of judicial non-consensual liens directly by the officers of the courts. Registration of such liens is necessary for priority purposes.<sup>76</sup>

The reform of 2014 also provided for the RUG with the special registries that file security interests in narrowly defined sets of assets to allow for public awareness of such security interests using only the RUG.<sup>77</sup> For instance, security interests over intellectual property are filed in the National Institute of Intellectual Property (*Instituto Nacional de Propiedad Intelectual*)<sup>78</sup> and security interests on aircrafts are filed in the Mexican Aeronautic Registry (*Registro Aeronáutico Mexicano*).<sup>79</sup> This solution increases transparency and facilitates looking for a debtor's security interests by looking only into the RUG. The rules for transition in the RUG Regulations of 2010 established that the interconnection should be implemented in two years from the RUG's launching.<sup>80</sup> However, so far there has been no announcement in that sense and there is no information available as to when the Ministry of the Economy will deliver on this mandate.

The RUG Regulations also established that the Public Registry of Commerce rules would continue to govern security interests filed in the Public Registry of Commerce.<sup>81</sup> Thus, there may still be registered security interests in any of the 260 offices of the Public Registry of Commerce that are effective. The Mexican government should consider mandating a migration of the filings from the Public Registry of Commerce to the RUG, following Colombia's example.<sup>82</sup>

The overall assessment of the RUG is that its system is outstanding. In the view of the scholar, Harry Sigman, the RUG is one of the two best registries in

<sup>75</sup> Correduría Pública, *Circulares*, 18-03-2015, (Mex.), formato HTML, <http://www.correduriapublica.gob.mx/correduria/?P=16&circular=306>.

<sup>76</sup> The collaboration agreement entered into between the Ministry of the Economy and the Judiciary Branch of Mexico City (Convenio Específico de Colaboración para implementar la inscripción de garantías mobiliarias de manera directa por indicaciones de los Jueces del Tribunal Superior de Justicia del Distrito Federal en el Registro Unico de Garantías Mobiliarias, Diario Oficial de la Federación [DOF] 14-12-2011, (Mex.), formato HTML, [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5224283&fecha=14/12/2011](http://www.dof.gob.mx/nota_detalle.php?codigo=5224283&fecha=14/12/2011)).

<sup>77</sup> See RUG Regulations, *supra* note 34, art. 31 Bis.

<sup>78</sup> See Ley de la Propiedad Industrial [LPI] Diario Oficial de la Federación [DOF] 27-6-1991, últimas reformas DOF 09-04-2012, (Mex.), formato PDF, <http://www.diputados.gob.mx/LeyesBiblio/pdf/50.pdf>.

<sup>79</sup> See Ley de Aviación Civil [LAC] Diario Oficial de la Federación [DOF] 12-05-1995, últimas reformas DOF 26-01-2015, (Mex.), formato PDF, [http://www.diputados.gob.mx/LeyesBiblio/pdf/25\\_260115.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/25_260115.pdf).

<sup>80</sup> RUG Regulations, *supra* note 34.

<sup>81</sup> *Id.*

<sup>82</sup> See *infra* Part III.

Latin America.<sup>83</sup> The above statistics show that secured lending in Mexico has significantly increased. Furthermore, and most importantly, the statistics showing that access to finance in general has improved.<sup>84</sup> The numbers show that finance institutions perceive less risk by providing credit in better conditions—more credit at reduced interests rates.<sup>85</sup>

However, access to finance in Mexico continues to be a major constraint for MSMEs.<sup>86</sup> In 2012, only 2.7% of the new MSMEs had banking finance as these institutions only lend to businesses that are at least two years old.<sup>87</sup> There is a high risk in this type of lending because 80% of businesses fail before two years.<sup>88</sup> One of the reasons for that is the lack of economic resources to grow a business.<sup>89</sup> For these reasons, the government must continue to intervene to foster access to finance. Although Mexico now has a strong secured transactions system, there are still improvements to be made that—hopefully—will be addressed when the country transitions into a single law on secured transactions.<sup>90</sup> For instance, like in Colombia, all pre-RUG registrations should be migrated into the RUG to make it truly the sole source of registration information relating to security interests.

### III. COLOMBIA'S REFORM

Colombia's secured transactions reform was straightforward in the sense that this country enacted a law on secured transactions and simultaneously implemented a registry of security interest with passage of the Law No. 1676 to Foster Access to Finance and Establish Rules on Security Interests (*Ley No. 1676 por la cual se promueve el acceso al crédito y se dictan normas sobre garantías mobiliarias*) (Colombian Secured Transactions Law) in 2014.<sup>91</sup>

According to the International Finance Corporation (“IFC”), prior to the secured transactions reform in Colombia there was a deficient legal and regulatory framework that complicated access to finance.<sup>92</sup> There was no effective publicity

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<sup>83</sup> See Sigman, *supra* note 19, at 389.

<sup>84</sup> Banco de México, *supra* note 61.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Banco de México, *supra* note 61.

<sup>90</sup> According to the Ministry of the Economy, there is a Working Group currently drafting a new bill on Secured Transactions.

<sup>91</sup> L. 1676, 20-08-2013, DIARIO OFICIAL [D.O.] (Colom.), <http://wsp.presidencia.gov.co/Normativa/Leyes/Documents/2013/LEY%201676%20DEL%2020%20DE%20AGOSTO%20DE%202013.pdf> [hereinafter Colombian Secured Transactions Law].

<sup>92</sup> Alejandro Alvarez de la Campa, *Potential Research Opportunity for Secured Transactions Reform in Colombia*, INTERNATIONAL FINANCE CORPORATION WORLD BANK GROUP (Sept. 16, 2011), [https://www.poverty-action.org/sites/default/files/alvarez\\_de\\_la\\_campa.pdf](https://www.poverty-action.org/sites/default/files/alvarez_de_la_campa.pdf).

of security interest due to the inefficiency of the public registries and enforcement procedures that were slow, long, and costly.<sup>93</sup> Moreover, an IFC survey showed that 41.35% of businesses identified access to finance as a major constraint on growth and that the cost of credit for MSMEs was high.<sup>94</sup> According to the Colombian government, in 2011 only 12 out of 100 MSMEs had access to credit.<sup>95</sup> In Colombia, most of lending was secured by land and movable property other than motor vehicles, which were rarely used as security.<sup>96</sup>

The Colombian Secured Transactions Law was based on the Organization of American States' Model Inter-American Law on Secured Transactions (OAS Model Law).<sup>97</sup> Unlike in Mexico, the Colombian Secured Transactions Law subjects all security interests to the same rules of creation, priority, registration, and enforcement.<sup>98</sup> The Law defines a security interest as any operation, contract, agreement, or clause that functions to secure an obligation on movable property, including sales with retention of title, pledge of a commercial establishment, purchases and assignments of accounts receivable, and consignments of security purposes.<sup>99</sup>

The Colombian Secured Transactions Law allows parties to agree on extra-judicial enforcement upon debtors' default.<sup>100</sup> Likewise, it establishes that parties may opt for alternative dispute resolution to resolve any controversy arising with regards to the creation, interpretation, priority, fulfillment, cancellation, enforcement, or liquidation of a security interest.<sup>101</sup> These dispositions are applicable to all security interests, unlike in Mexico, where the enforcement procedures were established for the non-possessory pledge and the guaranty trust.<sup>102</sup>

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<sup>93</sup> *Id.*

<sup>94</sup> Alexander Correa, *Estudio Económico "Las Garantías Mobiliarias en la Promoción de la Competencia y el Acceso al Crédito en Colombia,"* SUPERINTENDENCIA DE INDUSTRIA Y COMERCIO (Oct. 2011), [http://www.academia.edu/10871507/Propiedad\\_Intelectual\\_Polizas\\_de\\_Seguros\\_Inventarios\\_Vehiculos\\_Automotores\\_Productos\\_Agricolas](http://www.academia.edu/10871507/Propiedad_Intelectual_Polizas_de_Seguros_Inventarios_Vehiculos_Automotores_Productos_Agricolas).

<sup>95</sup> Leonor Sanz Alvarez & Juan Camilo Berrio, *Garantías Mobiliarias: La Hora de la Verdad, Semana Económica* 2 (Mar. 10, 2014), <http://www.supersociedades.gov.co/prensa/garantias-mobiliarias/Documents/Informe%20de%20Garantias%20Mobiliarias%20Marzo%202014%20Asobancaria.pdf>.

<sup>96</sup> *Id.*

<sup>97</sup> SECRETARIAT FOR LEGAL AFFAIRS, ORGANIZATION OF AMERICAN STATES, MODEL INTER-AMERICAN LAW ON SECURED TRANSACTIONS, [http://www.oas.org/en/sla/dil/docs/secured\\_transactions\\_BOOK\\_Model\\_Law.pdf](http://www.oas.org/en/sla/dil/docs/secured_transactions_BOOK_Model_Law.pdf) (2002).

<sup>98</sup> See Colombian Secured Transactions Law, *supra* note 91, art. 3.

<sup>99</sup> See *id.*

<sup>100</sup> See *id.* arts. 60 & 62.

<sup>101</sup> *Id.* art. 78.

<sup>102</sup> The rules introduced in June 2014 in Mexico are not exclusive to the enforcement of a non-possessory pledge and guaranty trust, but applicable to all commercial procedures. See Mexican Commercial Code, *supra* note 7.

But similarly to Mexico, Colombia implemented a notice-filing registry of security interests (Colombian Registry) that functions exclusively by electronic means. The Confederation of Chambers of Commerce (*Confederación Colombiana de Cámaras de Comercio*), which is a private non-profit organization, that represents 57 relevant entities of the commerce industry,<sup>103</sup> administers the Colombian Registry. The Colombian Registry operates in a centralized platform where registrations are filed in real time. Colombia eliminated the fees for searching the Registry and charges about \$15 USD for filings.<sup>104</sup> Any person can search the Colombian Registry by visiting the website. A secured creditor needs to set up an account in order to register a security interest. However, no other requirement, such as electronic signature (certificate) is needed to file registrations.<sup>105</sup>

The Colombian Registry started operations in March, 2014. By May of the same year, there were more than 11,000 registrations of security interests filed.<sup>106</sup> These registrations corresponded to loans of more than five billion U.S. dollars in financing.<sup>107</sup> Within the same period more than 100 creditors had created accounts with the Colombian Registry, including physical persons and organizations like commercial banks, financial institutions, and cooperatives.<sup>108</sup> The assets used as collateral included oil drills, rice crops, and sewing machines.<sup>109</sup> These types of assets were not likely to be accepted as collateral under the previous legal framework.<sup>110</sup>

According to the Confederation of Chambers of Commerce, the number of registrations filed by May 2014 exceeded the estimations that the IFC had forecasted for the whole first year.<sup>111</sup> By July of 2014, there were more than 57,000 registrations.<sup>112</sup> This means that there were more registrations of security interests in the Colombian Registry than the total of registrations filed in the

<sup>103</sup> *Quienes Somos*, Confecamaras (July 18, 2012), <http://www.confecamaras.org.co/la-confederacion/quienes-somos>.

<sup>104</sup> See Alvarez & Berrio, *supra* note 95, at 5.

<sup>105</sup> *Preguntas Frecuentes*, REGISTRO DE GARANTÍAS MOBILIARIAS, <https://www.garantiasmobiliarias.com.co/Informacion/RGM.aspx> (last visited March 1, 2016).

<sup>106</sup> *Billones de pesos registrados en crédito para empresarios*, SEMANA, (May 23, 2014), <http://www.semana.com/especiales-comerciales/ley-garantias-mobiliarias/articulo/billones-de-pesos-registrados-en-credito-para-empresarios/389095-3> [hereinafter *Semana*].

<sup>107</sup> This figure corresponds to the maximum amount secured rather than to the amount actually lent. The Colombian Secured Transactions Law provides that indication of the maximum amount secured in the registry is mandatory. See Colombian Secured Transactions Law, *supra* note 91, art. 42.

<sup>108</sup> *Semana*, *supra* note 106.

<sup>109</sup> *Gracias a las garantías mobiliarias se han registrado créditos por más de \$10 billones*, SUPERINTENDENCIA DE SOCIEDADES (May 2014), <http://www.supersociedades.gov.co/noticias/Paginas/Gracias-a-las-garantias-mobiliarias-se-han-registrado-creditos-por-mas-de-10-billones.aspx>.

<sup>110</sup> *Id.*

<sup>111</sup> *Semana*, *supra* note 106.

<sup>112</sup> *Id.*

public registries under the previous legal framework. In 42 years, there were only 40,000 security interests in the old public registries.<sup>113</sup>

Colombia incentivized the registration of security interests that predated the enactment of the Colombian Secured Transactions Law by waiving the fees for such registrations and maintaining their priority, though this waiver ended in August 2014.<sup>114</sup> Creditors seized this opportunity, and by August they had filed more than 500,000 security interests.<sup>115</sup> By December 2014, there were more than one million registrations in the Colombian Registry, of which nearly 76% corresponded to transactions created before the enactment of the Colombian Law of Secured Transactions, nearly 14% corresponded to security interests created after the reform, nearly 8% to modifications, and less than 1% to non-consensual liens.<sup>116</sup>

The majority of assets used as collateral were motor vehicles at 78%, with 22% corresponding to crops, mining drills, industrial equipment, livestock, fish, and consumer goods like sewing machines and vacuums.<sup>117</sup> Finally, Colombia advanced positions in the Doing Business Report of 2015,<sup>118</sup> in part, because of its secured transactions reform.<sup>119</sup> It rose 19 positions in general and advanced 53 positions up to the second place in the Getting Credit Indicator.<sup>120</sup> The statistics thus suggest that the implementation of the Colombian Registry was successful. However, it is too soon to assess the success of the Colombian reform to expand credit at better conditions.

#### IV. FINAL REMARKS

Both Mexico's and Colombia's reforms in secured transactions showed that implementing efficient secured transactions reforms can benefit both creditors

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<sup>113</sup> *Id.*

<sup>114</sup> *Más de dos meses para que venza plazo de inscripción sin costo*, CONFECAMARAS (June 24, 2014), <http://www.confecamaras.org.co/noticias/277-mas-de-dos-meses-para-que-venza-plazo-para-inscripcion-sin-costo>.

<sup>115</sup> Santiago Renjifo, *Secured Transactions Registry-Colombia's Experience*, Second Pacific-Rim Colloquium on Economic Development and the Harmonization of Commercial Law (Jan. 2015) (presentation on file with the National Law Center for Inter-American Free Trade).

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> The Doing Business Project provides measures of business regulations and their enforcement across 189 countries. Every year a report is issued providing rankings in 11 indicators. *See About Doing Business*, WORLD BANK GROUP, <http://www.doingbusiness.org/about-us> (last visited Feb. 8, 2016).

<sup>119</sup> This indicator measures the strength of credit reporting systems and the effectiveness of collateral and bankruptcy laws in facilitating lending. *See Ease of Doing Business in Colombia*, WORLD BANK GROUP, <http://www.doingbusiness.org/data/exploreconomies/colombia/#getting-credit> (last visited Dec. 12, 2015).

<sup>120</sup> *Id.*

and debtors. In both countries the increasing use of the registries of secured transactions illustrates that creditors positively perceive such tools. In Mexico, the statistics show that credit conditions are slowly improving after the secured transactions reform. The Colombian Secured Transactions Law has been recognized as a model that other countries are following, for instance Costa Rica and Chile.<sup>121</sup>

Reforming secured transactions systems in other Pacific Rim countries is important to ease lending, investment, and economic growth and prosperity. Therefore, the successful reforms to these systems in Colombia and Mexico should serve as models for other Pacific Rim countries that wish to improve access to finance.



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<sup>121</sup> Information on file with the National Law Center for Inter-American Free Trade.